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The Regulation of Rental Apartment Conversions

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COMMENTS

THE REGULATION OF RENTAL APARTMENT CONVERSIONS

I. Introduction

Cities across the United States are experiencing a rapid growth in the conversion of rental apartments to condominium or cooperative ownership.[1] A conversion is the sale of individual units in an apartment building by its owner to tenants or outside purchasers. About 50,000 rental apartments were converted in the United States in 1977, 100,000 in 1978 and 130,000 in 1979.[2] Two major reasons exist for the increasing number of decisions by landlords to convert their rental apartment buildings. The first reason is that operating costs have increased more rapidly than rent revenues, thereby making it increasingly difficult to obtain an adequate return on an investment in the building.[3] These operating costs include real estate taxes,[4] mortgage debt charges, and utility and maintenance costs.[5] In some areas, especially New York City and

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1. Harris, *Moving In on the Condominium Boom*, MONEY, June, 1979, at 75. Condominium means " '[i]ndividual ownership in a fee simple of a one-family unit in a multi-family structure coupled with ownership of an undivided interest in the land and in all other parts of the structure held in common with all of the other owners of one-family units.' " R. POWELL, THE LAW OF REAL PROPERTY § 633.1 [2] n.2 (P. Rohan ed. 1979) (quoting RAMSEY, CONDOMINIUM: THE NEW LOOK IN CO-OPS 3 (1961)). A cooperative owner owns shares in a cooperative corporation that owns the building and has a proprietary lease entitling him to occupy a particular apartment the value of which corresponds to his shares. 11 N.Y. JUR. *Cooperative Associations and Corporations and Condominiums* § 122 (1971). For a detailed summary of the procedure involved in purchasing a cooperative apartment, *see* N.Y.L.J., Nov. 28, 1979, at 6, col. 1. It is not necessary for the purposes of this Comment to distinguish between condominium and cooperative forms of ownership.

2. Wall St. J., June 25, 1979, at 1, col. 1.

3. Rose, *First, the Buffalo; Then, Rental Housing*, N.Y. Times, May 21, 1979, at 19, col. 2.

4. In a typical Washington, D.C. apartment building, for example, real estate taxes increased 40 percent from 1974 to 1978, U.S. NEWS & WORLD REPORT, May 8, 1978, at 98.

5. Water and sewer bills for the same apartment building referred to in note 4 *supra*, tripled from 1974 through 1978; bills for gas and electricity rose 25 percent in that same period. *Id.* The most volatile expense in recent years has been fuel. One New York City landlord experienced a "four fold surge in fuel costs" in 1974 and fears he will face similar increases. Another owner reported that fuel costs had risen to 45 percent of the rental income

Washington, D.C., rent controls have exacerbated this problem by limiting the landlord's ability to raise rents to keep up with these costs.[6] The result is that landlords have begun to cut back on maintenance, to stop paying taxes[7] and to look for purchasers for their buildings.[8] Landlords argue that a second reason for the increase in conversions is that the Tax Reform Act of 1969 has made ownership of rental property less profitable by reducing the deduction allowed for depreciation on such property.[9] The Act reduced the maximum depreciation allowable on used residential rental property from 150% declining balance rate to 125% declining balance rate.[10] Use of the 200% declining balance rate and the sum-of-

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in one 50-unit building. "Fuel costs, housing experts say, should never exceed around 20 percent of the rents." *Rental Housing Facing Serious Financial Problems Again,* N.Y. Times, Oct. 19, 1979, at A21, col. 4 [hereinafter cited as *Rental Housing*]. This argument is without merit, as some landlords are permitted to pass along fuel costs to tenants as they are in New York City. N.Y. Times, Feb. 21, 1980, at B3, col. 6; *id.* Feb. 12, 1980, at B3, col. 1; *id.* Dec. 19, 1979, at B24, col. 1.

6. I UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, CONDOMINIUM/COOPERATIVE STUDY 11 (1975) [hereinafter cited as HUD STUDY]. New York has two laws which control the amounts by which landlords can raise rents: The Rent Control Law, NEW YORK, N.Y. ADMIN. CODE §§ Y51-1.0 to -18.0 (1975 & Supp. 1979), and The Rent Stabilization Law. *Id.* §§ YY51-1.0 to -8.0. Buildings built on or before Feb. 1, 1947 are subject to the Rent Control Law. Buildings built subsequent to this date are subject to the Rent Stabilization Law. All apartments in rent controlled buildings which became vacant after June 31, 1971 or became decontrolled because of high rentals or other reasons become subject to rent stabilization. Thus, almost every building built on or before Feb. 1, 1947 is subject to both the rent control and rent stabilization laws. Lehner & Sweet, *Goodman-Dearie Expiration Leaves Coop Conversions Radically Altered,* N.Y.L.J., Nov. 16, 1977, at 34, col. 6 [hereinafter cited as Lehner & Sweet]. Rent increases are limited to 7½% per year for rent controlled apartments. NEW YORK, N.Y. ADMIN. Code. § Y51-5.0(a)(5)(Supp. 1979). The Rent Guidelines Board establishes a scale of legal rent increases for buildings covered by the Rent Stabilization Law. For renewal leases taking effect between July 1, 1979 and June 30, 1980 the rates are: 8.5% for a one-year renewal; 12% for a two-year renewal; 15% for a three-year renewal. New tenants must pay an additional 5% over the renewal rate for the initial lease. N.Y. Times, Oct. 14, 1979, § 8, at 7, col. 2.

Landlords have difficulty raising rents even in areas where rent controls do not exist. For example, in Philadelphia, where there are no rent controls, one landlord stated that fuel costs in the past five years had increased 200% to 300% but he could not raise rents more than 10% without contending with complaints from tenants' associations. Philadelphia Inquirer, Sept. 24, 1979, at 6B, col. 2. *See* notes 47-58 *infra* and accompanying text for a discussion of Chicago where there are no rent controls but conversions prevail.

7. Close to 550,000 apartments in New York City are in arrears on their taxes for three full quarters. New York City already owns through foreclosure 11,000 buildings, 4,000 of which are occupied. *Rental Housing, supra* note 5, at A21, cols. 2-3.

8. II HUD STUDY, *supra* note 6, at C-18.

9. *Id.* at C-3.

10. I.R.C. § 167(J)(5). The Code defines residential rental property as structures in

the-years digits methods of accelerated depreciation is restricted to new residential rental property.[11]

These economic hazards of apartment ownership have created an extremely profitable alternative for landlords in conversions.[12] Whether the building owner sells wholesale,[13] or retail,[14] the return on the sale of an apartment building has proved to be great.[15] In

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which at least 80% of the income is derived from residential units. *Id.* § 167 (2)(B). Used residential property is that which is acquired after July 24, 1969, has a remaining useful life of 20 years or more and the original use of which did not commence with the taxpayer. *Id.* § 167(5).

11. *Id.* § 167(J)(2). The use of new residential rental property commences with the taxpayer. *Id.*

12. Converters with proven track records made anywhere from 6% to 500% on conversions in the Chicago area. Tamarkin, *Condomania in Chicago,* FORBES, Nov. 13, 1978, at 59.

13. A wholesale sale is a sale of the building by the landlord to a developer. The developer will convert the building after a short time. Berman, *Why Co-op or Condo?,* in How To Do A Co-op, Condo Or An Apartment Project Conversion, N.Y.L.J. Seminars Press, 1979, at 5 [hereinafter cited as Berman].

14. A retail sale is a sale by the landlord or a developer of the individual apartments either to the tenants of the building or to outside purchasers. *Id.*

15. The developer, who buys the building expecting to convert it at a later time, is often willing to pay the landlord a premium for the building because of the future profits which can be made from the conversion. *Id.* The landlord is usually able to sell his building to a converter for about 30% more than its value as a rental building. Philadelphia Inquirer, Sept. 24, 1979, at 4A, col. 2.

> The [developer], by paying a higher price, has an [added] risk that the long-term [owner] does not have. The long-term owner, if he fails to do his conversion, can always sell the [building] . . . at wholesale. The [developer], on the other hand, will have probably paid too high a price to dispose of the property at his original cost, if [the conversion fails].

Berman, *supra* note 13, at 7. A retail sale yields even a higher return on the building than a wholesale sale because the combined selling prices of the individual units are far greater than the selling price of the building as a whole. II HUD Study, *supra* note 6, at C-19. The following example compares the retail value of an apartment building containing 300 units with its investment value.

300 apartments; 1,300 rooms:

Income	$1,250,000
Expenses	1,100,000
Cash Flow	$ 150,000

Value as an Equity Sale:

Sell to yield 10% = $1,500,000
Sell to yield 8% = 1,875,000

Value as Cooperative or Condominium Conversion:

1,300 rooms at $10,000 a room = $13,000,000 (not including discounts to residing tenants).

addition, a conversion offers the middle to high income tenant an attractive investment for several reasons. First, tenants who purchase their apartments in a conversion often receive a substantial discount from the prevailing market price.[16] Discounting the apartment off the market price is a common practice by converters used to encourage existing tenants to buy.[17] Second, purchasing tenants in a conversion may be offered financing assistance by the converter.[18] Third, like homeowners, condominium and cooperative owners may deduct mortgage interest and property taxes from federal income taxes.[19] Finally, due to recent increases in the value of

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"While the numbers are hypothetical, transactions like these have taken place many times over the past 10 years." Berman, *supra* note 13, at 5-6. Benefits from a retail sale are compounded by the recent reduction in capital gains taxes. I.R.C. § 1202. Obviously, these high returns are only available under current market conditions. Were the demand for cooperatives and condominiums to decline or rent controls to be lifted, it might become more profitable for landlords to continue operating rental apartment buildings rather than to convert them.

16. *Some Tenants Snap Up Co-ops at Discount Prices,* N.Y. Times, Dec. 9, 1979, § 8, at 1, col. 1 [hereinafter cited as *Discount Prices*]. Real estate specialists in Manhattan suggest that tenants are paying from 40 to 50 percent of the market value of the apartments. *Id.* col. 2. In order to raise money for a reserve fund for capital improvements on the building and to discourage tenants from buying apartments just to make a profit, some buildings impose penalties on those who resell quickly. For example, in New York City some contracts provide that tenants who resell within a year of buying must give 10% of their profit to the building; in the second year, 7.5% and the third year, 5%. *Id.* at 6, col. 4. A case which illustrates that tenants are often anxious to purchase their apartments is Borchard Affiliations, Inc. v. Gill, N.Y.L.J., Jan. 30, 1980, at 10, col. 6 (Sup. Ct. N.Y. County). The plaintiff, owner of an apartment building, moved for a preliminary injunction enjoining the defendants, former tenants of the building from repossessing their old apartment. The defendants had notified the plaintiff that they would not renew the lease on the apartment. They moved out, taking all of their belongings, except for a grand piano. The day after the defendants moved out, the plaintiff distributed a preliminary conversion plan to the tenants in the building. Having learned of this, the defendants attempted to reenter the apartment with the hopes of being eligible to buy the apartment. The court granted the plaintiffs' motion for a preliminary injunction holding that the cooperative plan was only available to tenants in occupancy and that defendants had vacated the apartment. *Id.* at 11, col. 1.

17. *Discount Prices, supra* note 16, at 1, col. 2. Aside from economic motivations, landlords offer discounts to comply with statutory requirements that a minimum number of existing tenants agree to purchase. *See* notes 251 & 265 *infra* and accompanying text. In San Francisco, landlords are compelled to offer discounts. *See* note 342 *infra* and accompanying text.

18. *Discount Prices, supra* note 16, at 6, col. 3.

19. A tenant-shareholder of a cooperative housing corporation may deduct amounts which represent his proportionate share of real estate taxes incurred by the corporation on the building and the land and interest paid by the corporation on any indebtedness incurred with respect to the acquisition, construction, alteration or maintenance of the building or

cooperatives and condominiums, a purchaser can usually expect to realize a substantial gain when he decides to sell his apartment.[20]

The increasing rate of apartment conversions has several effects. First, home ownership tends to stabilize neighborhoods by giving the new owners a financial interest in their community.[21] Buildings are usually substantially renovated either in anticipation of a conversion or after the conversion by its new owners.[22] This effect has been recognized in New York City where a program has been instituted to convert rental apartments to cooperatives in an effort to save Brooklyn's Prospect Heights from "creeping urban blight."[23] Under this program, tenants in that neighborhood are being offered their apartments at reduced costs and will pay about the same in monthly maintenance charges as they paid in rent.[24] In addition, the apartments will be completely modernized.[25] This program provides a viable alternative to the prevailing practice of government subsidized rental housing.[26] Despite this practice, buildings and neighborhoods have continued to deteriorate. Now, city planners

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land. I.R.C. § 216. A cooperative owner may also deduct interest on the personal loan for his own apartment. *Id.* § 163. A condominium owner may deduct interest on a mortgage loan allocable to the apartment, *id.*, and state and local property taxes assessed on the apartment. *Id.* § 164. These tax advantages are not available to the apartment renter.

20. *See* Harris, *supra* note 1, at 74. The prices of apartments in cooperatives and condominiums in Manhattan rose dramatically in the year ending June 30, 1979. The average selling price per apartment rose to $150,244, as of June 30, 1979, from $91,459 the previous year. At $34,000 a room, a two-bedroom apartment with full dining room, which is counted as a 5½ room apartment, would sell for $187,000. N.Y. Times, Sept. 23, 1979, § 8, at 1, col. 5.

21. *In New York, A Plan to Fight Decay With Co-ops*, N.Y. Times, Oct. 13, 1979, § L, at 23, col. 2 [hereinafter cited as *Fight Decay With Co-ops*].

22. G. LONGHINI & D. LAUBER, CONDOMINIUM CONVERSION REGULATIONS: PROTECTING TENANTS 1-2 (1976) (American Planning Association, PAS Report No. 343) [hereinafter cited as LONGHINI & LAUBER]. While it is true that substantial renovation of buildings that might otherwise be abandoned often occurs, those opposed to conversions argue that most improvements are largely cosmetic. *Id.* at 3. *See also* N.Y. Times, Nov. 18, 1979, § 1, at 45, col. 2.

23. *Fight Decay With Co-ops, supra* note 21, at 21, col. 1.

24. *Id.*

25. *Id.*

26. It has been recognized that urban blight is not corrected by simply building subsidized rental housing. In fact, certain interested parties have recognized the fact and have called for a more comprehensive approach to community redevelopment. *See generally* N.Y. Times, Aug. 15, 1979, at B4, col. 1; Schur, *Prescription for the South Bronx*, THE NATION, Jan. 21, 1978, at 38-42; P. BLAKE, OUR HOUSING MESS . . . AND WHAT CAN BE DONE ABOUT IT 54 (1974); J. FRIED, HOUSING CRISIS U.S.A. 102 (1971).

are hoping that the pride resulting from apartment ownership will help to rescue neighborhoods threatened by decay.[27] Second, recent studies have shown that a community can reap financial benefits from conversion. Depending upon the assessment rates in a city, conversions may result in increases in property tax revenues.[28] In Boston, for example, the increase in tax revenues resulting from conversion is reported to range from nine percent to more than 100 percent per building.[29] Because most cities assess all multifamily units at the same rate, whether rental or ownership, the increased property value resulting from a conversion will usually increase the tax yield of that property.[30]

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27. *See generally Fight Decay With Co-ops, supra* note 21. *See* Miller v. Board of Public Works, 195 Cal. 477, 493, 234 P. 381, 387 (1925) ("With ownership comes stability . . . . With ownership of one's home comes recognition of the individual's responsibility for his share in the safeguarding of the welfare of the community and increased pride in personal achievement which must come from personal participation in projects looking toward community betterment.").

28. LONGHINI & LAUBER, *supra* note 22, at 2.

29. According to an analysis of the Boston situation,

> the principal dwellers in condominium units ('young marrieds' and 'empty nesters') do not place as great demands on city services as do renters (due to the fact that they have fewer school-age children than the population as a whole, and are usually not on public assistance programs), this increase in tax revenue does not entail a concomitant increase in municipal costs. For this reason condominium conversions are generally welcomed [in the Boston area]. The City of Boston in 1973 changed its tax assessment regulations . . . to encourage conversion activity in the city.

II HUD STUDY, *supra* note 6, § I, at A-36.

30. LONGHINI & LAUBER, *supra* note 22, at 2-3. A recent New York case that illustrates the increased value of cooperative buildings and the resulting increase in tax revenue for a city is River House-Bronxville, Inc. v. Hoffman, 101 Misc. 2d 422, 421 N.Y.S. 2d 161 (Sup. Ct. Westchester County 1979). In that case, the owner of a cooperative apartment building sought review of its property tax assessments for the years 1976, 1977 and 1978. The court heard testimony from two expert appraisers. The first expert utilized an income approach to value which "is normally utilized by the court to determine the fair market value of investment type apartment buildings." *Id.* at 424, 421 N.Y.S.2d at 163. The second expert utilized a market approach, based upon the sales of various apartments within the subject building and sales in other similar cooperative apartment buildings in the area. *Id.* The average unit value under the income approach was approximately $31,000 compared with $50,100 to $108,000 average unit value assessed under the market approach. *Id.* The court held that the market approach reflected more accurately the true market value of the property. *Id.* at 426, 421 N.Y.S.2d at 163. The court noted several factors in reaching this decision. First, the River House was not income producing property; to adopt an income approach would require speculation as to what its potential income would be if it were a rental building. *Id.* at 424, 421 N.Y.S.2d at 163. Second, the use of an income approach to value would not adequately reflect the value of ownership benefits in the total value of the building. These benefits are

Despite the obvious advantages conversions afford both to landlords and to purchasing tenants, as well as the combined community benefits, serious problems have arisen. Foremost among these problems is the displacement of elderly, low and moderate income families from their apartments.[31] Such families are precluded from purchasing their apartments for a number of reasons.[32] First, the

reflected in the market approach. *Id.* Thus, the assessment would be at a higher value and generate more tax revenue for the city.

31. 125 CONG. REC. H7346 (daily ed. Sept. 5, 1979) (floor statement of Rep. Rosenthal). The displacement rate is the proportion of tenants who do not purchase their converted apartments. The following table lists the tenant displacement ratio found in several conversion studies:

TABLE 1. FINDINGS OF STUDIES ON THE EFFECTS OF CONDOMINIUM CONVERSIONS

Study	Proportion of Tenants Not Purchasing Converted Units, Displacement Rate	Proportion of Displaced Tenants Who Move Out of Municipality
HUD Condominium/ Cooperative Study, 1975	75-85%	Not given
Palo Alto, California, Condominium Conversion Study, 1974	82%	Not given
District of Columbia Housing Market Analysis, 1976	76%	Not given
Condominium Housing: A New Homeownership Alternative for Metropolitan Washington, WASHCOG, 1976	82.3%	Not given
Effects of Condominium Conversions on Tenants, Tenants Organization of Evanston, Illinois, 1978	95-99%	55-73%
Condominium Conversions in the city of Evanston, Illinois, Evanston Human Relations Commission, 1978	80-88%	Not given

LONGHINI & LAUBER, *supra* note 22, at 2.

32. This point may be illustrated by a formula which has been used by converters in establishing the sales price and monthly maintenance fees for an apartment. A tenant can expect to buy an apartment for about 150 times its current monthly rental costs. Philadelphia Inquirer, Sept. 25, 1979, at 11-A, col. 3. An apartment which rents for $500 per month

poor often cannot afford the down payment necessary to buy the apartment. Second, it is difficult for older persons to obtain long-term mortgages to finance the purchase of their apartments.[33] Third, the monthly maintenance charges for a condominium or cooperative apartment may exceed the monthly rent paid by the tenant.[34] The elderly subsisting on fixed incomes and the poor living on relatively low incomes often cannot meet these increased expenses. Fourth, the elderly may not wish to purchase their apartments because they have been saving for eventual retirement.[35] Finally, low and moderate income families generally are not in tax brackets high enough to benefit from itemized deductions available to home owners.[36] These tenants are therefore forced to look for alternative rental housing as more buildings are converted. The search for alternative rental housing is made especially difficult because most of the conversions have occurred in cities where a low rental vacancy rate already exists.[37] The problem is exacerbated

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will sell for $75,000. A down payment on such a condominium or cooperative would be twenty percent of the purchase price or $15,000 in cash. *Id.* The apartment owner's monthly carrying charges, which include a mortgage payment, maintenance fee and property taxes, will be two or three times the old rent. *Id.* col. 4. Therefore, a tenant who paid $500 in rent each month for his apartment could pay from $1,000 to $1,500 per month in carrying charges for a condominium or cooperative. In the New York City market, however, converters apparently are pricing apartments based on discounts from their fair market value rather than on rental-based formulas. *Discount Prices, supra* note 16.

33. I HUD STUDY, *supra* note 6, at V-6.

34. In 1975, the monthly cost of owning an apartment including mortgage interest, property tax payments and maintenance fees went up an average of 30% to 35% over the previous monthly rent. 125 CONG. REC. H7347 (daily ed. Sept. 5, 1979) (floor statement of Rep. Rosenthal). A survey of two buildings in Newton, Massachusetts showed that in one converted building the monthly cost of ownership was 60% higher than the previous monthly rental cost before taxes. The deduction of mortgage interest payments and property taxes from federal income taxes still resulted in a real cost increase of 19% per month. LONGHINI & LAUBER, *supra* note 22, at 4. In Evanston, Illinois, the increase in monthly carrying costs of a converted unit ranged from 60% to 100%. *Id.* at 2.

35. N.Y. Times, Aug. 6, 1978, § 8, at 6, col. 2.

36. *See* note 19 *supra.*

37. Housing experts say that a rental vacancy rate below 5% represents a housing crisis. *Apartment Crunch Alters Manhattan Living,* N.Y. Times, Jan. 21, 1980, at A1, col. 1 [hereinafter cited as *Apartment Crunch*]. The national apartment vacancy rate in March 1979 was 4.8%, the lowest recorded figure. N.Y. Times, Nov. 18, 1979, § 8, at 8, col. 5. The vacancy rate hovers around 1% in New York City, *Apartment Crunch, supra,* at 1, col. 1, has been as low as 1% in Washington, D.C., I HUD STUDY, *supra* note 6, at A-43, and less than 2% in some areas of Chicago. Tamarkin, *supra* note 12, at 55. Conversions, however, have not been solely responsible for these low vacancies. Also contributing to the depletion of rental apartments are building abandonments and reduced construction of rental buildings

with each conversion.

The social effects of displacement are severe. In an area of low rental vacancies, for example, displaced tenants may be forced to move out of their old neighborhoods in order to find another apartment. Displaced, older, low and moderate income tenants often suffer emotional trauma resulting from the move because it is more difficult for them to see their friends and families, go to church, and visit their doctors.[38] The move often imposes a great financial burden. A typical intra-city move costing several hundred dollars could be devastating to the low income and elderly household.[39] Also, once the displaced tenant finds a new apartment he will probably have to pay a higher rent.[40]

Opponents of conversion argue that the only way to avoid displacement of the elderly and low and middle income tenant is to stop conversions from occurring. If, however, the ownership status that results from conversions is viewed as a means of stabilizing neighborhoods and preventing urban blight, then perhaps conversions should be encouraged. One way to achieve this end, and at the same time prevent displacement, is to offer financial assistance to the elderly and low and moderate income tenants so that they

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by private developers, N.Y. Times, Nov. 18, 1979, § 8, at 1, col. 2. This reduction in new construction can be attributed to unavailability of vacant land, LONGHINI & LAUBER, *supra* note 22, at 1, zoning restrictions, II HUD STUDY, *supra* note 6, at C-18, rising costs of construction and high interest rates on multi-family construction loans and permanent loans. *Id.* Distinct conversion patterns have emerged which show a direct correlation to the New York City construction cycle. During the first half of the 1960's an average of 24,000 multi-family units were constructed per year. During the same period conversions totaled a maximum of 13 projects, about 1650 units per year. Then, in the second half of that same decade, multi-family construction decreased to 5,000 units annually while conversions increased to an average of 35 projects, or an estimated 4,400 units per year. From 1970-73, new construction decreased (less than 2000 units per year) and conversions increased to an estimated 65 projects, or 8,125 units per year. II HUD STUDY, *supra* note 6, at C-3.

38. 125 Cong. Rec. H7347 (daily ed. Sept. 5, 1979) (floor statements of Rep. Rosenthal). It should be noted that the ease with which displaced tenants can find available housing varies. For example, Washington, D.C., in 1975, was one of the tightest rental markets in the country, with a rental vacancy rate of 1%. However, most of the displaced tenants had little difficulty finding alternative apartments. A sampling of 71 displaced tenants in the District showed that the majority of them found alternative housing quickly, found it near their old apartments and for nearly the same rent. LONGHINI & LAUBER, *supra* note 22, at 4.

39. 125 CONG. REC. H7347 (daily ed. Sept. 5, 1979) (floor statement of Rep. Rosenthal).

40. *Id.* According to a survey conducted by the National Council of Senior Citizens, displaced low and moderate income families and the elderly paid at least 20% more in rent for their new apartments. *Id.*

can more easily afford to purchase their apartments.[41] Such assistance could take the form of additional discounts from the converter on the purchase price of the apartment.[42] In addition, government assistance in the form of subsidies for the purchase price, mortgage payments and maintenance costs could be offered.[43]

The third problem caused by conversion is a reduction of private rental housing in the United States.[44] Those concerned with this development claim that the traditional mobility exercised by individuals in this country will be stymied without rental housing.[45] This argument, however, ignores the financial benefits inherent in home ownership. Moreover, to the extent that a conversion revitalizes and stabilizes a neighborhood, apartment owners should not face great difficulty in selling their apartments when they choose to do so.

Legislative action is necessary to establish protective measures which meet the interests of both landlord and tenant and furthers the housing goals of municipalities, which are to maintain an adequate rental housing supply and to stabilize neighborhoods. The purpose of this Comment is to discuss the social and legal implications of legislative remedies which have been enacted on both the local and national levels. Although conversions have become prevalent in many cities, this Comment will focus on conversion activity in four cities, Chicago, Washington, D.C., Philadelphia and New York. Part II will examine the use of conversion moratoriums as a stop-gap measure to provide time for lawmakers to study the

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41. *See* notes 21-26 *supra* and accompanying text.

42. One Washington, D.C. developer voluntarily offered additional discounts to tenants over 70 years old who lived in the apartment complex for 30 years or more. Wall St. J., June 4, 1979, at 31, col. 4.

43. This idea was postulated in the EMERGENCY CONDOMINIUM AND COOPERATIVE CONVERSION COMMISSION TO THE COUNCIL OF THE DISTRICT OF COLUMBIA, FINAL REPORT (September 1979) [hereinafter cited as D.C. COMMISSION REPORT]. The Commission believed that a maximum unit price toward which the assistance could be applied had to be limited so that the assistance was not used to purchase unreasonably expensive units. *Id.* at 82. *See* note 348 *infra* and accompanying text for a discussion of a San Francisco ordinance which requires such government assistance.

44. This concern led United States Congressman Rosenthal to submit a proposed bill in Congress calling for, *inter alia*, a national program to preserve private rental housing in the United States. H.R. 5175, 96th Cong., 1st Sess., 125 CONG. REC. H7349 (daily ed. Sept. 5, 1979).

45. *Id.* at H7348.

problems. Part III will address the constitutional claims made in recent cases against conversion moratoriums. Part IV will examine in detail the local ordinances regulating the conversion process in New York City, Washington, D.C. and several cities in California. These cities provide examples of comprehensive solutions to the problems posed by conversions.

II. Conversion Moratoriums

Any solution to the problems caused by conversion must reconcile the varied and often conflicting factors discussed above: the landlord's right to dispose of his property, the tenant's interest in obtaining equity ownership, the inability of persons in low and moderate income brackets and the elderly to afford home ownership, and the resulting changes in the affected neighborhoods.

A common response by government officials in several cities has been the declaration of moratoriums to permit time to study the problem and develop a comprehensive solution. The moratoriums enacted generally prohibit the conversion of rental apartment units to ownership status for a limited period of time.[46]

A. Chicago

Large scale conversions began in Chicago in 1973.[47] Thereafter, the number of rental units declined with a corresponding increase in the number of units converted.[48] Legislation was enacted by the

46. Condominium and Cooperative Stabilization Act of 1979, D.C. Act 1-132, 26 D.C. Reg. 2436 (90 day moratorium which took effect on Nov. 23, 1979); PHILADELPHIA, PA., CODE §§ 9-1201 to -1208 (1979) (18 month moratorium); Chicago, Ill., Ordinance — Temporary Moratorium on Condominium Conversion Authorized (Mar. 21, 1979)(40 day moratorium) [hereinafter cited as Chicago Ordinance]; Fort Lee, N.J., Ordinance 79-30 (Oct. 25, 1979) (8 month moratorium) (declared invalid in Hampshire House Sponsor Corp. v. Borough of Fort Lee, No. L-11977-79 P.W. (N.J. Super. Ct. Dec. 20, 1979) [hereinafter cited as Fort Lee Ordinance]; Verona, N.J., Ordinance 15-79 (Aug. 13, 1979) (1 year moratorium) (declared invalid in Claridge House One, Inc. v. Borough of Verona, No. 79-2765 (D.N.J. Dec. 28, 1979) [hereinafter cited as Verona Ordinance]. *See* LONGHINI & LAUBER, *supra* note 22, at 7, for references to other moratoriums which have been in effect.

47. Tamarkin, *supra* note 12, at 54.

48. Between 1973 and the end of 1978 the number of rental units in Chicago declined from 925,000 to 902,000. In the same period the number of single-family dwellings increased from 290,000 to 335,000. *Id.* In 1974, 3,100 units were converted in Chicago; in 1978 approximately 68,000 condominium units were converted in the Chicago area, 43,000 of them in the city, compared with just 10,000 units in 1976. *Id.* at 55.

City Council in 1977 in response to this development.[49] This ordinance did not attempt to limit the number of condominium conversions. It required only that developers give tenants 120 days notice of intent to convert.[50] During this period, the tenants are guaranteed the right of first refusal to purchase their apartments.[51] This ordinance did nothing to control the displacement of non-purchasing tenants which resulted from the increase in conversions.[52] Following the conversion of one of Chicago's few remaining rental complexes, the 16-acre, 2,632-unit Sandburg Village on the North Side,[53] the City Council enacted an ordinance entitled "Temporary Moratorium on Condominium Conversion Authorized," which became effective on March 22, 1979.[54] This ordinance imposed a forty day moratorium on any conversion to condominiums which involved thirty apartments or more.

The reasons for the increase in conversions in Chicago during the last few years are unclear. Rent control, a major impetus behind the conversion trend in other cities,[55] does not exist in Chicago.[56] In addition, full tax benefits of apartment building ownership were available to landlords because many of the buildings which were converted in Chicago were fairly new and not completely depreciated.[57] Therefore, it seems likely that the unusually high investment return resulting from conversions was the primary impetus behind the conversion activity in Chicago.[58]

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49. CHICAGO, ILL., CODE §§ 100.2-1 to -12 (1977).

50. *Id.* § 100.2-6 (A). Elderly and infirm tenants are given 180 days notice of intent to convert. *Id.* § 100.2-6(B).

51. *Id.* § 100.2-6(C). Elderly and infirm tenants are given the right of first refusal for 180 days.

52. *See* notes 31-40 *supra* and accompanying text.

53. FORBES, Apr. 30, 1979, at 16.

54. *See* Chicago Ordinance, *supra* note 46.

55. *See* note 6 *supra* and accompanying text.

56. Chicago has not had a rental control law since World War II and in recent years landlords there have been raising rents twice a year, by a total of fifteen to twenty-five percent in choice buildings. Tamarkin, *supra* note 12, at 55.

57. *See* notes 9-11 *supra* and accompanying text.

58. *See* notes 12 & 13 *supra* and accompanying text.

B. Philadelphia

In response to a sudden increase in conversions[59] and the resulting complaints by tenants who feared that increased apartment conversions would leave them without a place to live,[60] the Philadelphia City Council enacted a moratorium on September 27, 1979.[61] This ordinance placed an eighteen month moratorium on converting apartments to condominiums.[62] The purpose of the moratorium is to delay conversions long enough to complete full studies of the housing needs of Philadelphia and to determine whether permanent protective legislation is necessary.[63]

In addition to the moratorium, the ordinance contains other provisions that become operative following the moratorium period. First, tenants must be given a one year written notice of intent to convert before a conversion may occur.[64] This provision successfully delays condominium conversions for a total of thirty months. Second, tenants are granted the exclusive right to purchase their apartments during the first six months of the one year notice period.[65] Third, converters must provide tenants with a specific statement of the total dollar amount due on the settlement date plus

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59. In 1977, there were no apartments converted in Philadelphia. In 1978, 500 apartments were converted. Beckman, *The City Needs a Moratorium on Condos*, Philadelphia Inquirer, Sept. 25, 1979, at 11-A, col. 1. In the first eight months of 1979, 2,700 units were converted. Statement of Allen J. Beckman, President of the Council of Tenants Associations of Southeastern Pennsylvania (COTA), presented to the Rules Committee of the City Council of Philadelphia (Aug. 8, 1979).

60. *See* notes 37-40 *supra* and accompanying text. COTA was the group instrumental in obtaining the moratorium.

61. *See* PHILADELPHIA, PA., CODE §§ 9-1201 to -1208 (1979). The sale of condominiums is regulated by the Pennsylvania Unit Property Act, PA. STAT. ANN. tit. 68, §§ 700.101 to .805 (Purdon 1965). The statute does not regulate the conversion of rental apartments to condominiums.

62. The law mandates that no conversion plan can be filed with or accepted by the Department of Records or any other agency of the City of Philadelphia for 18 months, PHILADELPHIA PA., CODE § 9-1206(1)(a) (1979), and that, during the same period, no notice of intent to convert can be sent to tenants. *Id.* § 9-1206(1)(b). The law also gives the Fair Housing Commission of the City of Philadelphia the duty and authority to seek injunctive relief to enforce the law. *Id.* § 9-1206(1)(c).

63. *Id.* § 9-1206(2). The purpose of the law may have been frustrated by a number of filings before it was signed. On the day it was learned that the Philadelphia City Council would pass the 18 month ban, owners of six apartment buildings filed conversion plans. *Philadelphia's Ban on Condominiums Runs Into Problems*, Wall St. J., Oct. 2, 1979, at 20, col. 3.

64. PHILADELPHIA, PA., CODE § 9-1204(1)(a) (1979).

65. *Id.* § 9-1204(1)(b).

any initial or special condominium fees.[66] Fourth, converters must provide an itemized list for each apartment of the cost for repairs, maintenance, taxes and utility payments during the last three years.[67] Fifth, the Fair Housing Commission is granted the power to investigate any allegations of unfair conversion practices and to hold hearings thereon.[68] To enforce this provision, the Commission is granted the power to subpoena witnesses and documents.[69] Thus, the Philadelphia ordinance bars conversions for eighteen months and thereafter regulates the conversion process.

C. Washington, D.C.

Unlike Chicago and Philadelphia, Washington, D.C. initially addressed the conversion problem without resorting to a moratorium. In 1976 the Condominium Act was enacted by the District of Columbia Council.[70] Notably, conversions to cooperatives remained unregulated. Soon thereafter, a moratorium was passed on the conversion of rental apartments to cooperatives.[71] This moratorium was extended ten times for a period of three years.[72] During this period, the Rental Housing Act of 1977 was adopted.[73] In addition, the Cooperative Regulation Act was passed as a permanent regulatory scheme for the conversion of rental apartments to cooperatives.[74] Before the enactment of this Act, however, due to the con-

66. *Id.* § 9-1204(1)(c).
67. *Id.* § 9-1204(1)(d).
68. *Id.* § 9-1203.
69. *Id.*
70. D.C. CODE ANN. §§ 5-1201 to -1297 (Cum. Supp. V 1978 & Supp. VI 1979).
71. The Emergency Cooperative Conversion Act, D.C. Act 1-90, 22 D.C. Reg. 4379 (1976), and the Second Emergency Cooperative Conversion Moratorium Act of 1976, D.C. Act 1-112, 22 D.C. Reg. 6447 (1976). The Cooperative Conversion Moratorium Act, D.C. Law 1-71, (codified at D.C. CODE ANN. § 29-801 (Cum. Supp. V 1978)) became law on June 19, 1976. That law provided for a 180 day moratorium on cooperative conversions which expired on November 3, 1976. The purpose of this law was to allow the D.C. Council time to develop permanent legislation governing cooperative conversions. Washington Home Ownership Council, Inc. v. District of Columbia, C.A. No. 10624-79, slip op. at 4 (D.C. Super. Ct. Oct. 19, 1979).
72. *See* the legislative history of the moratorium following the text of D.C. CODE ANN. § 29-801 (Cum. Supp. V 1978).
73. D.C. CODE ANN. §§ 45-1681 to -1699.27 (Supp. VI 1979). This Act was amended by the Council in the Offer to Purchase Act of 1979, D.C. Law 3-26, 26 D.C. Reg. 1823 (1979) and the Multi-Family Rental Housing Purchase Act of 1979, D. C. Law 3-18, 26 D.C. Reg. 1648 (1979).
74. Cooperative Regulation Act of 1979, D.C. Law 3-19, 26 D.C. Reg. 1649 (*eff.* Sept. 28, 1979) [hereinafter cited as D.C. Law 3-19].

tinued increase in conversions,[75] the Council passed the Emergency Condominium and Cooperative Stabilization Act of 1979[76] that imposed a ninety day moratorium on conversion to both cooperatives and condominiums. This Act also established a commission to study the subject and to make recommendations for permanent legislation in this area.[77] Upon its expiration, the Act was extended for two additional ninety day periods.[78] Although the Act provided that no housing accommodation governed by the Rental Housing Act of 1977[79] would be eligible to convert under the Condominium Act of 1976[80] or under the exemption provisions of the Second or Third Emergency Cooperative Regulation Act of 1979,[81] it did contain limited exceptions. For example, a conversion to either condominium or cooperative status would be permitted where the developer purchased the housing accommodation in contemplation of such a conversion before the moratorium was enacted.[82] A conversion could also take place where notice of intent to convert had been served on the tenants[83] or where the conversion had been agreed upon by the tenants prior to the effective date of the moratorium.[84] Finally, a conversion could be completed by the converter where a substantial investment in the conversion had been made

75. Approximately three percent of the rental units in the District of Columbia in 1970 were converted between September 30, 1974 and May 18, 1979. D.C. COMMISSION REPORT, *supra* note 43, at 29. Because there is no registration of cooperative conversions, there are no figures available to determine the number of units which have been converted to cooperatives. *Id.* at 26.

76. D.C. Act 3-44, 25 D.C. Reg. 10363 (1979) (*eff.* May 29, 1979) [hereinafter cited as D.C. Act 3-44].

77. *Id.* § 5.

78. D.C. Act 3-95, 26 D.C. Reg. 1014 (1979) (*eff.* Aug. 27, 1979); D.C. Act 1-132, 26 D.C. Reg. 2436 (1979) (*eff.* Nov. 23, 1979).

79. D.C. CODE ANN. §§ 45-1681 to -1699.27. (Supp. VI 1979).

80. *Id.* § 5-1281 (Cum. Supp. V 1978).

81. *Id.* § 29-801. This Act provides:

> The Mayor may grant an exemption to the provisions of this act in any case where he finds that — (a) less than 50% of such units in the multifamily housing accomodation being converted to a cooperative are occupied; or (b) if more than 50% of such units are occupied, at least 50% of the lessees of such units have agreed in writing to the conversion of such housing accomodation to a cooperative. The exemptions provided for in this section shall be granted only upon application and shall not be granted in less than ten days after such application is made.

82. D.C. Act 3-44, *supra* note 76, § 4(a)(1).

83. *Id.* § 4(a)(2).

84. *Id.* § 4(a)(3).

before the moratorium was enacted.[85]

The Emergency Condominium and Cooperative Stabilization Act of 1979 was challenged in the Superior Court of the District of Columbia in *The Washington Home Ownership Council, Inc. v. District of Columbia.*[86] In this case, the plaintiff[87] sought a declaratory judgment that this moratorium was unlawfully enacted and sought to enjoin enforcement of it.[88] The plaintiff alleged that the District Council abused its "emergency" legislative power by successively enacting the same or similar emergency legislation.[89] The court held that "the successive enactment of substantially the same substantive provisions of law through the emergency power, maintaining such provisions in effect for more than ninety days without . . . [the required] Congressional review is . . . unlawful."[90] The court enjoined the enforcement of the moratorium and granted plaintiffs' motion for summary judgment.[91] Notably, the court expressly stated that only the procedure by which the moratorium was enacted was at issue and not the legality or constitutionality of the substantive provisions of the moratorium.[92] The

85. *Id.* § 4(a)(4).

86. C.A. No. 10624-79 (D.C. Super. Ct. Oct. 19, 1979).

87. The plaintiff, Washington Home Ownership Council, Inc., is a District of Columbia not-for-profit corporation, composed of member companies and individuals engaged in ownership, brokerage, development and/or management of real estate in the District, including condominium and cooperative housing. *Id.* slip op. at 2 n.*.

88. *Id.* at 3. Plaintiff also challenged other emergency acts which had expired or had been superseded by "permanent legislation, and thus the court held that injunctive relief was not available as to them." *Id.* at 9.

89. *Id.* at 2. Article 1, section 8, clause 17 of the United States Constitution vests legislative authority over the District of Columbia in the United States Congress. Pursuant to the District of Columbia Self-Government and Government Reorganization Act (the "Home Rule Act") Congress delegated the responsibility of establishing local laws to the District Council. D.C. CODE ANN. § 1-121 (Supp. VI 1979). Congress may delegate any or all of its legislative responsibility to the District Council so long as Congress retains the power to review, alter and revoke the acts of the Council. District of Columbia v. John R. Thompson Co., 346 U.S. 100 (1953). The delegation of legislative power by Congress to the Council under the Home Rule Act is subject to certain procedural limitations. D.C. CODE ANN. § 1-146 (Supp. VI 1979). For example, before "permanent" legislation which is adopted by the Council can become law it must have passed through two readings of the Council, *id.* § 1-146(a), and Congressional review. *Id.* § 1-147(c)(1). However, the Home Rule Act also permits the Council to enact "emergency" legislation which becomes effective immediately but for not more than ninety days. *Id.* § 1-146(a).

90. C.A. No. 10624-79, slip op. at 16.

91. *Id.*

92. *Id.* at 2.

Court of Appeals of the District of Columbia stayed the effect of the injunction.[93] Therefore, the moratorium remains in effect.[94]

D. Proposed Federal Legislation

The rate at which conversions have occurred throughout the country has prompted interest in national legislation. Concerned that the conversion of rental apartments to condominiums and cooperatives is displacing tenants and dangerously depleting the rental housing supply in this country, United States Congressman Benjamin S. Rosenthal introduced the Condominium-Cooperative Moratorium Act of 1979 in the House of Representatives.[95] The bill calls for a three year nationwide moratorium on conversions and the establishment of a Presidential Commission on Problems Relating to Condominium and Cooperative Conversions to study the problem and to make recommendations concerning its solution.[96]

A major problem inherent in federal legislation in this area is that it cannot accommodate the diversity that exists among cities in the United States. The supply of and demand for rental apartments varies among cities. A blanket moratorium on conversions throughout the nation would not take this diversity into account. For this reason, local legislation may more effectively regulate the conversion trend.[97]

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93. District of Columbia v. Washington Home Ownership Council, Inc., No. 79-1053 (D.C. App. Ct. Oct. 22, 1979).

94. There is a possibility that a permanent 180 day moratorium will be forthcoming. The Condominium and Cooperative Stabilization Act of 1979, D.C. Act 3-143, 27 D.C. Reg. 37, containing the same provisions as the emergency moratorium challenged in court was submitted to Congress on January 8, 1980. Congress has 30 days to review this legislation before it automatically becomes law.

95. H.R. 5175, 96th Cong., 1st Sess., 125 CONG. REC. H7349 (daily ed. Sept. 5, 1979). Congressman Rosenthal compared the present situation to that which existed during and immediately following World War II. *Id.* at H7346.

96. The proposed bill mandates that at least the following groups be represented in the Commission: 1) consumer organizations; 2) labor unions, especially the construction trades; 3) tenant organizations; 4) builders; and 5) urban planners. H.R. 5175, 96th Cong., 1st Sess., § 201(b)(1)-(5), 125 CONG. REC. H7350 (daily ed. Sept. 5, 1979). It is important to note that an express provision that landlords be represented has been conspicuously omitted from the proposed Act. Such an omission is blatantly unfair. Whereas the legislation does not expressly preclude landlords from participating in the Commission, the exclusion of an express provision requiring landlords be represented by the Commission disregards their interests.

97. National legislation will invariably entail higher imposition costs than the corresponding benefits achieved by such legislation. *See* Ellickson, *Alternatives to Zoning: Covenants, Nuisance Rules, and Fines as Land Use Controls*, 40 U. CHI. L. REV. 681, 688-90 (1973).

The proposed bill attempts to address the problem of displacement in several other ways. First, the proposed bill provides that, after the expiration of the moratorium period, converters who have received "federally related loans"[98] must pay up to $400.00 in relocation assistance to displaced persons.[99] Second, it offers federal tax relief to displaced tenants by permitting low and moderate income households to deduct moving expenses paid or incurred because of a conversion.[100] Third, it denies federal housing and development grants to any city which permits

> the conversion of residential rental units for low-or moderate-income households to units for higher income persons in condominium or cooperative projects unless all the persons displaced as a result of such conversion are assured of obtaining decent, safe and sanitary rental housing with rental charges similar to those units from which such persons were displaced.[101]

These additional efforts to ameliorate the problems of displacement are insufficient for several reasons. Presumably, the purpose of relocation assistance is to ease the burden of moving which would be imposed upon displaced tenants. The amount provided for moving expenses, however, is minimal and may not provide adequate assistance for tenants in cities where moving costs are quite high. Furthermore, the relocation assistance is meaningless in areas where there are no apartments to rent. Also, the $400.00 relocation assistance required to be paid by converters probably would not deter them from converting because of the high profits earned from conversions. Unfortunately, also, the tax deduction provision will not likely provide sufficient relief for low or moderate income families because such families are generally not in tax brackets high enough to benefit from itemized deductions. The proposed bill's provision to deny federal housing and development assistance to a city unless it provides alternative rental housing for non-purchasing tenants is designed to eliminate the problem of displacement which accompanies conversions. Although this provision forthrightly addresses a major cause of the displacement problem, it is

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98. For the definition of a "federally related loan" see H.R. 5175, 96th Cong., 1st Sess., § 105(3), 125 CONG. REC. H7350 (daily ed. Sept. 5, 1979).

99. *Id.* § 301(b). *See* note 315 *infra* for references to other statutes requiring relocation assistance.

100. H.R. 5175, 96th Cong., 1st Sess., § 402(a), 125 CONG. REC. H7351 (daily ed. Sept. 5, 1979).

101. *Id.* § 302, 125 CONG. REC. H7350 (daily ed. Sept. 5, 1979).

unlikely that a city would be able to guarantee such alternative housing.[102] The cities would soon look to the federal government for assistance in providing more rental housing. The cities would be forced to prohibit conversions if the federal government refused assistance. Landlords, in turn, unable to maintain their rental apartment buildings for the reasons discussed above,[103] would abandon them. This would result in the deterioration of neighborhoods. A more enlightened program which recognizes these problems would permit conversions and grant financial assistance to eligible tenants to buy their apartments.[104] The money offered to subsidize rental housing could be used to subsidize homeownership for the benefit of all.[105]

The proposed Condominium-Cooperative Act of 1979 also attempts to remove some of the incentives building owners have for conversions by proposing two amendments to the Internal Revenue Code. The first proposed amendment to the Code would tax the converter's profits as ordinary income rather than at capital gains rates.[106] The second proposed amendment offers an incentive for landlords to maintain rental apartment buildings by allowing additional depreciation deductions on such buildings. Presently, the Internal Revenue Code permits depreciation deductions up to $20,000 for the rehabilitation of low income housing.[107] The proposed amendment would expand this allowance to include all forms of rental housing and increase the amount that can be deducted to $50,000.[108] To the extent that the present tax structure inhibits rental ownership,[109] these proposals answer the landlord's grievance

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102. The present economic conditions of many cities dictate against the success of such a program. For a discussion of New York City's fiscal crisis see *Symposium: Proposals to Strengthen New York State Municipal Finance Laws*, 8 FORDHAM URB. L.J. 1-244 (1979). Philadelphia is also experiencing financial difficulty. N.Y. Times, Feb. 24, 1980, § 1, at 26, col. 1; *id.* Feb. 6, 1980, at A12, col. 1; Wall St. J., Feb. 5, 1980, at 33, col. 2, as is Chicago, N.Y. Times, Feb. 6, 1980, at A12, col. 6.

103. *See* notes 3-11 *supra* and accompanying text.

104. *See* notes 23-27 *supra* and accompanying text. *But see* D.C. COMMISSION REPORT, *supra* note 43, app. A, at 13-14.

105. *See* notes 41-43 *supra* and accompanying text.

106. H.R. 5175, 96th Cong., 1st Sess., § 401(a), 125 CONG. REC. H7351 (daily ed. Sept. 5, 1979).

107. I.R.C. § 167(k).

108. H.R. 5175, 96th Cong., 1st Sess., § 403(b), 125 CONG. REC. H7351 (daily ed. Sept. 5, 1979).

109. *See* notes 9-11 *supra* and accompanying text.

that residential rental buildings are unprofitable to maintain.[110] Such amendments are the most effective corrective action which can be taken by the federal government.

III. Constitutionality of Conversion Moratoriums

Recently, several challenges have been brought by rental apartment owners and tenants to conversion moratorium statutes. Claims have been made under the United States Constitution[111] and state constitutions.[112] Those brought under the United States Constitution allege that moratoriums: are unconstitutionally vague in violation of the due process clause of the fourteenth amendment,[113] result in a deprivation of property without due process of law,[114] amount to a taking of private property without just compensation,[115] violate the equal protection clause of the fourteenth amendment[116] and unconstitutionally impair the right to contract.[117] Challenges based on state constitutions allege that the municipality lacked the power to enact a conversion moratorium ei-

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110. *See* notes 3-11 *supra* and accompanying text.

111. Claridge House One, Inc. v. Borough of Verona, No. 79-2765 (D.N.J. Dec. 28, 1979); Chicago Real Estate Bd., Inc. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 20, 1979) (order granting preliminary injunction); Hampshire House Sponsor Corp. v. Borough of Fort Lee, No. L-11 977-79 P.W. (N.J. Super. Ct. Dec. 20, 1979).

112. Claridge House One, Inc. v. Borough of Verona, No. 79-2765 (D.N.J. Dec. 28, 1979); Hampshire House Sponsor Corp. v. Borough of Fort Lee, No. L-11977-79 P.W. (N.J. Super. Ct. Dec. 20, 1979).

113. U.S. CONST. amend. XIV, § 1; Claridge House One, Inc. v. Borough of Verona, No. 79-2765 (D.N.J. Dec. 28, 1979); Chicago Real Estate Bd., Inc. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 20, 1979).

114. *See* note 113 *supra*.

115. U.S. CONST. amend. V. The fifth amendment is made applicable to the states through the fourteenth amendment. *See* Chicago B. & Q.R.R. Co. v. Chicago, 166 U.S. 226, 239 (1897). Claridge House One, Inc. v. Borough of Verona, No. 79-2765 (D.N.J. Dec. 28, 1979).

116. U.S. CONST. amend. XIV, § 1. Claridge House One, Inc. v. Borough of Verona, No. 79-2765 (D.N.J. Dec. 28, 1979); Chicago Real Estate Bd., Inc. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 20, 1979).

117. U.S. CONST. art. I, § 10, cl. 1. *See* Brief and Appendix on Behalf of Plaintiffs at 1, Claridge House One, Inc. v. Borough of Verona, No. 79-2765 (D.N.J. Dec. 28, 1979). Except for a contract to which a state is a party, United States Trust Co. v. New Jersey, 431 U.S. 1 (1977), a claim based on impairment of the right to contract receives only a rational review. Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934). Until *United States Trust*, it had been 40 years since the Supreme Court had "seen fit to invalidate purely economic and social legislation on the strength of the Contract Clause. . . . " 431 U.S. at 60 (Brennan, J., dissenting). In light of this, challenges to conversion moratoriums brought under the contract clause will probably fail. The *Claridge House* court did not address this issue.

ther because the exclusive jurisdiction to act in this area was vested in the state legislature[118] or because the municipality exceeded the power vested in it to enact legislation of this kind.[119]

A. United States Constitutional Claims

1. *Vagueness*

In two recent cases, *Chicago Real Estate Board, Inc. v. City of Chicago*[120] and *Claridge House One, Inc. v. Borough of Verona,*[121] it was argued that a conversion moratorium was unconstitutionally vague in violation of the due process clause of the fourteenth amendment. In *Chicago Real Estate Board,* plaintiffs, property owners, property managers and real estate brokers, first sought a temporary restraining order[122] and later sought a preliminary injunction[123] against the enforcement of the Chicago conversion moratorium.[124] Plaintiffs' argued, *inter alia,* that the Chicago moratorium ordinance that read "[n]o building containing thirty (30) or more currently occupied dwelling units shall be the subject of a conversion to condominiums"[125] for a period of forty days was so vague that a landowner was unable to determine what activity was prohibited by the ordinance.[126] The plaintiffs contended that the ordinance violated due process requirements because a violation of the moratorium ordinance exposed a landowner to a potential fine or imprisonment.[127] The judge agreed and stated that

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118. Claridge House One, Inc. v. Borough of Verona, No. 79-2765 (D.N.J. Dec. 28, 1979); Hampshire House Sponsor Corp. v. Borough of Fort Lee, No. L-11977-79 P.W. (N.J. Super. Ct. Dec. 20, 1979).

119. *See* notes 86-94 *supra* and accompanying text for a discussion of the *Washington Home Ownership* case.

120. No. 79 C 1284 (N.D. Ill. Apr. 20, 1979) (order granting preliminary injunction).

121. No. 79-2765 (D.N.J. Dec. 28, 1979).

122. No. 79 C 1284 (N.D. Ill. Apr. 3, 1979) (temporary restraining order).

123. No. 79 C 1284 (N.D. Ill. Apr. 20, 1979) (order granting preliminary injunction).

124. Chicago Ordinance, *supra* note 46.

125. *Id.* § 1.

126. The conversion of rental apartments to condominiums usually involves a number of steps which vary among jurisdictions. These are: the formulation of preliminary plans for financing the conversion and improving the premises, the sale of the building to a converter or sponsor, the preparation of a preliminary prospectus, the preparation of legal documents creating the condominium, the preparation of a sales program, service of notices of intent, physical improvement of the premises, sales offerings and the actual conveyance of apartments as condominiums. Amended Complaint at 4, Chicago Real Estate Bd., Inc. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 20, 1979).

127. Plaintiff's Memorandum in Support of the Motion for a Preliminary Injunction at

> [i]t is first contended that the ordinance is vague, and I confess that having studied it, I must agree. We do not know precisely when a person contemplating a conversion of a rental unit building to a condominium-type building would find himself under the authority of this ordinance . . . . [T]he ordinance does not make this clear. I don't know how we would know whether there's been a violation, because it is sufficiently vague that we would not know [what] activities in regard to advancing existing condominium projects as may be now going on are or are not a violation of this particular ordinance.[128]

A preliminary injunction was granted against the ordinance's enforcement because, as the court stated, the ordinance was "impermissibly vague."[129]

The plaintiffs in *Claridge House*[130] also challenged the constitutionality of a conversion moratorium ordinance on the grounds that it was impermissibly vague in violation of due process. In that case, the plaintiffs, a New Jersey Corporation that had acquired a twelve-story rental apartment building located in Verona, New Jersey with the intent to convert it to a condominium, and a tenant, who had intended to purchase his apartment, sought declaratory and injunctive relief against enforcement of a municipal ordinance that declared a one year moratorium on the conversion of any rental unit in the Borough of Verona to a condominium.[131] Violations of the Verona moratorium were punishable by a fine of not more than $200 per day or imprisonment for not more than thirty days, or both.[132] The building owner argued that converting a rental building to a condominium involved up to nine different steps and that the Verona ordinance was so vague that it could not discern which of those steps could be taken without subjecting itself to prosecution under the ordinance.[133] The court in *Claridge House* did not rule on the federal constitutional claims presented in the

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12, 13, Chicago Real Estate Bd., Inc. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 20, 1979).

128. Partial Transcript of Proceedings at 5, Chicago Real Estate Bd., Inc. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 3, 1979) (order granting temporary restraining order).

129. Partial Transcript of Proceedings at 6, Chicago Real Estate Bd., Inc. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 20, 1979) (order granting preliminary injunction).

130. No. 79-2765 (D.N.J. Dec. 28, 1979).

131. "There is hereby declared a moratorium of the conversion of any rental unit in the Borough of Verona to a condominium. This moratorium shall last for a period of one year, commencing with the efffective date of this ordinance." Verona Ordinance, *supra* note 46.

132. *Id.*

133. No. 79-2765, slip op. at 2 (D.N.J. Dec. 28, 1979).

case. Rather, it held the ordinance void on the grounds that it was preempted by state law.[134] The court noted, however, "that [the] defendant [had] not offered to define the word [conversion] . . . . Therefore, the vagueness argument cannot be dismissed out-of-hand."[135]

It is well-settled law that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."[136] The terms of a penal statute, such as the Chicago and Verona moratoriums, that create a new offense "must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties."[137] A statute need not be drawn with "mathematical certainty"[138] for it to be upheld. Rather, if the statute uses words or phrases "having a technical or other special meaning, well enough known to enable those within their reach to correctly apply them,"[139] it will likely be sustained. Therefore, insofar as there are a number of different steps involved in the conversion process those which the city government intends to be prohibited should be precisely delineated. A moratorium ordinance enacted in Fort Lee, New Jersey illustrates the detail necessary to meet the standards set forth above. This ordinance provided that

> [d]uring the existence of this moratorium, no sales or contracts for sale can be entered into, no prospectus issued, and no notice of intent is to be sent to tenants and no one can request a tenant to vacate a unit as a consequence of conversion of a unit to a condominium or cooperative.[140]

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134. *Id.* at 9. For a discussion of the preemption doctrine *see* pt. III (B) *infra* and accompanying text.

135. No. 79-2765, slip op. at 2.

136. Connally v. General Constr. Co., 269 U.S. 385, 391 (1926) (denying enforcement of an Oklahoma statute providing that certain employees be paid "not less than the current rate of per diem wage in the locality where the work is performed" on the grounds that it was unconstitutionally vague).

137. *Id.*

138. Grayned v. City of Rockford, 408 U.S. 104, 110 (1972) (upholding against a vagueness challenge an anti-noise ordinance which provided "[n]o person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or intends to disturb the peace or good order of such school session or class thereof . . . . ").

139. 269 U.S. at 391.

140. Fort Lee Ordinance, *supra* note 46. This ordinance was struck down on the grounds

A conversion moratorium drafted in a similarly clear and precise manner stating the conduct it requires or prohibits should survive a vagueness challenge.

2. *Deprivation of Property Without Due Process of Law*

Plaintiffs in both *Chicago Real Estate Board*[141] and *Claridge House*[142] argued that the moratoriums deprived them of valuable property rights without due process of law in violation of the fourteenth amendment.[143] This argument is based on the proposition that the right to acquire, own, use and sell property is protected by the fourteenth amendment's guarantee that "[n]o person shall . . . be deprived of . . . property, without due process of law."[144] Any infringement of a person's fourteenth amendment rights, however, must be weighed against a state's legitimate role in protecting the general health, safety and welfare of its citizens.[145] Conversion moratoriums have been enacted pursuant to these police powers.[146]

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that it was preempted by state law in Hampshire House Sponsor Corp. v. Borough of Fort Lee, No. L-11977-79 P.W. (N.J. Super. Ct. Dec. 20, 1979).

141. No. 79 C 1284 (N.D. Ill. Apr. 20, 1979) (order granting preliminary injunction).

142. No. 79-2765 (D.N.J. Dec. 28, 1979).

143. Plaintiff's Memorandum in Support of the Motion for a Preliminary Injunction at 14, Chicago Real Estate Bd., Inc. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 20, 1979); Brief and Appendix on Behalf of Plaintiffs at 16, Claridge House One, Inc. v. Borough of Verona, No. 79-2765 (D.N.J. Dec. 28, 1979). In Hampshire House Sponsor Corp. v. Borough of Fort Lee, No. L-11977-79 P.W. (N.J. Super. Ct. Dec. 20, 1979), plaintiff, a New Jersey corporation that had registered a plan for the conversion of a rental apartment building to condominiums which had not been approved, sought an injunction against the enforcement of a conversion moratorium that had been instituted in Fort Lee, New Jersey. The plaintiff argued that the moratorium which, among other things, applied to any conversion that had been registered but not approved, amounted to a deprivation of its property in violation of the due process guarantee contained in article I of the Constitution of the State of New Jersey. Plaintiff's Brief in Support of Application for Declaratory and Injunctive Relief at 2, Hampshire House Sponsor Corp. v. Borough of Fort Lee, No. L-11977-79 P.W. (N.J. Super Ct. Dec. 20, 1979). The court did not rule on these constitutional issues but, rather, held that the ordinance was void because it was preempted by state law.

144. U.S. CONST. amend. XIV, § 1. Shelley v. Kraemer, 334 U.S. 1, 13 (1947) (holding that private agreements to exclude persons of designated race or color from the use or occupancy of residential real estate do not violate the fourteenth amendment).

145. Village of Euclid v. Ambler Realty Co., 262 U.S. 365 (1926) (general zoning ordinance restricting the location of residential and industrial districts held not an invalid exercise of the police power and not violative of due process).

146. *See, e.g.*, Verona Ordinance, *supra* note 46. "Whereas, the removal of existing units from the rental housing market would only serve to intensify the emergency, thereby adversely affecting the health, safety and general welfare of the citizens of the Borough of Verona . . . ."

Whether these police powers outweigh an individual's right to freely alienate his property depends upon whether there exists a rational basis for the conversion moratorium.[147] The plaintiffs in these cases argued that the conversion moratoriums were not a valid exercise of the police power because they were not rationally related to legitimate state interests.

The plaintiffs in both *Chicago Real Estate Board* and *Claridge House* based this due process argument on three different grounds. They first argued that a conversion of rental apartments to condominiums represents a change in ownership and not a change in use. Citing a basic principle of zoning law, plaintiffs claimed that ownership is not a legitimate subject of the police power.[148] Conversions, therefore, could not be prohibited. A case that supports this argument is *Maplewood Village Tenants Association v. Maplewood Village*.[149] In that case, a tenant's group sought an order requiring the defendant, an owner of an apartment building who intended to convert it into a condominium, to obtain subdivision approval under the local zoning law for his conversion plans. The court denied the request because the change involved one of ownership not use.[150] The court stated:

> The presently existing apartments conform to the township zoning ordinance, and the proposed conversion represents nothing more than a change in the form of ownership. The use of land will not be affected. Planning controls, including subdivision approval, cannot be employed by a municipality to exclude condominiums or discriminate against the condominium form of ownership, for it is use rather than form of ownership that is the proper concern and focus of zoning and planning regulation.[151]

Another case in support of this proposition is *Bridge Park Co. v. Borough of Highland Park*.[152] In that case, plaintiff, owner of an eleven-unit garden apartment building who wanted to convert the apartments to condominiums, sought a declaratory judgment and injunctive relief with respect to a zoning ordinance that defendant Borough argued prohibited the conversion of garden apartments to

147. *See, e.g.*, Mugler v. Kansas, 123 U.S. 623, 661 (1887).
148. 1 RATHKOPF, THE LAW OF ZONING AND PLANNING § 1.04 (4th ed. 1978).
149. 116 N.J. Sup. 372, 282 A.2d 428 (Super. Ct. Ch. Div. 1971).
150. *Id.* at 378, 282 A.2d at 431.
151. *Id.* at 377, 282 A.2d at 431.
152. 113 N.J. Sup. 219, 273 A.2d 397 (Super. Ct. App. Div. 1971).

multiple ownership.[153] The court granted the injunction holding that "the attempted regulation of ownership of property under the guise of the zoning power is beyond the [police] power of defendant borough."[154] The *Claridge House* court agreed with this argument stating that "condominiums cannot be discriminated against in zoning or planning because of its form or ownership."[155]

The second ground of plaintiffs' inalienability argument was that the ordinances bore no legitimate relation to the public welfare. Plaintiffs argued that the city did not view condominiums as inimical to the general welfare because the construction of new condominiums was not prohibited by the moratoriums. In addition, they argued that home ownership was positive and valuable to a community's welfare.[156] Such a claim of deprivation of a property right receives limited review by a court based upon a rational basis test.[157] Under this analysis, a prohibition on conversions is rational. The purpose of a moratorium is to prevent displacement and to limit the depletion of the rental housing supply while policy makers develop a permanent solution. This provides a rational basis for prohibiting conversions. The construction of new condominiums would not add to the problems of displacement and rental housing supply depletion.

The third ground on which plaintiffs' argument was based was that no true emergency existed which called for the imposition of a moratorium. Recent rent control cases have undermined this argument by eliminating the requirement that an emergency must exist to justify rent control.[158] The constitutionality of residential rent

153. Defendant based this argument on a Borough Zoning Ordinance which defined a garden apartment as "a building or series of buildings *under single ownership.*" *Id.* at 221, 273 A.2d at 398. A conversion would entail multiple ownership of the garden apartments and therefore would violate this ordinance. The court stated "[o]bviously, the definition was formulated intentionally so as to exclude . . . condominiums." *Id.*

154. *Id.* at 222, 273 A.2d at 399.

155. No. 79-2765, slip op. at 9.

156. *See, e.g.*, Miller v. Board of Pub. Works of City of Los Angeles, 195 Cal. 477, 234 P. 381 (1925); Zussman v. Rent Control Bd. of Brookline, 367 Mass. 561, 326 N.E.2d 876 (1975).

157. Mugler v. Kansas, 123 U.S. 623, 661 (1887).

158. Eisen v. Eastman, 421 F.2d 560, 567 (2d Cir. 1969), *cert. denied*, 400 U.S. 841 (1970); Birkenfield v. City of Berkeley, 130 Cal. Rptr. 465, 550 P.2d 1001 (1976); *see also* Amsterdam-Manhattan, Inc. v. City Rent and Rehabilitation Admin., 15 N.Y.2d 1014, 260 N.Y.S. 2d 23, 207 N.E.2d 611 (1965). *See generally* United States Trust v. New Jersey, 431 U.S. 1, 22 n.19 (1971). It was previously required that rent controls could only be imposed where an emergency existed. Bowles v. Willingham, 321 U.S. 503 (1944); Woods v. Miller, 333 U.S.

controls is now based upon the state's general police power and "upon the actual existence of a housing shortage and its concomitant ill effects. . . ."[159] Conversion moratoriums should similarly be sustained where it is shown that a rental housing shortage exists. The extremely low rental vacancy rates in areas where conversion moratoriums have been enacted indicate that a rental housing shortage exists in these areas.[160] In fact, it is precisely because of rental housing shortages that localities have deemed it necessary to impose conversion moratoriums.[161]

Claridge House did not rule on the issue of whether the conversion moratorium before the court constituted a deprivation of plaintiff's property without due process of law. In addition, *Chicago Real Estate Board* did not analyze this issue, but concluded summarily that the conversion moratorium was a deprivation of property without due process of law.[162]

An examination of a case challenging another type of moratorium on similar constitutional grounds may provide a more complete answer to how a court could resolve this issue in the future. In *Smoke Rise, Inc.* v. *Washington Suburban Sanitary Commission,*[163] real estate developers brought an action against the Maryland Department of Health and Mental Hygiene challenging the constitutionality of various sewer hook-up moratoriums. The plaintiffs planned to subdivide their land into small, single-family homes. However, a five year moratorium designed to protect the state waters from contamination by sewage overflow prevented them from obtaining the necessary sewer hook-ups. The developers sought declaratory and injunctive relief on the grounds that they had been deprived of their property without due process of law in violation of the fourteenth amendment.[164] The court stated that "no depriva-

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138 (1948).

159. Birkenfield v. City of Berkeley, 130 Cal. Rptr. 465, 488, 550 P.2d 1001, 1024 (1976).

160. *See* note 37 *supra* and accompanying text.

161. *See, e.g.,* Verona Ordinance, *supra* note 46, which states in part, "it has been determined . . . that an emergency exists within the Borough of Verona with respect to the unavailability of rental housing space . . . . " *Accord,* Los Angeles, Cal., Ordinance 153,251 (Dec. 17, 1979) (to be codified in LOS ANGELES, CAL., CODE § 47.06(A) (1979); Fort Lee Ordinance, *supra* note 46.

162. Partial Transcript of Proceedings at 6, Chicago Real Estate Bd. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 20, 1979) (order granting preliminary injunction).

163. 400 F. Supp. 1369 (D. Md. 1975).

164. *Id.* at 1372.

tion of property without due process will be found where the police power has been exercised in a reasonable manner, and the reasonableness of the moratoria ordinances in the instant case must be measured with regard to their duration as well as their purpose."[165] The court held that the statute satisfied both requirements and granted the defendant's motion to dismiss.[166]

As discussed above, often the duration of a conversion moratorium depends upon the time necessary to study the problems resulting from the conversion trend and to enact permanent protective legislation.[167] Other conversion moratoriums are tied to the vacancy rate.[168] Both of these durations seem to be reasonable. If a five year sewer moratorium was held to be a reasonable duration, it is likely that a court would find a one year conversion moratorium to be reasonable.[169] Furthermore, the purposes of a conversion moratorium are to prevent displacement and to avoid the further reduction of the rental housing supply in a community until its governing body can develop a plan for regulation in this area. These are clearly reasonable purposes on which to base collective action.

3. *Taking Without Compensation*

Building owners have argued that conversion moratoriums have taken their property without just compensation in violation of the fifth amendment by prohibiting them from withdrawing their property from the rental market.[170] Whereas the Supreme Court has recognized that the "Fifth Amendment's guarantee [is] designed to bar government from forcing some people alone to bear public burdens which in all fairness and justice, should be borne by the pub-

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165. *Id.* at 1385.

166. *Id.* at 1394.

167. *See* note 46 *supra* and accompanying text.

168. For example, the Fort Lee Ordinance, *supra* note 46, § 5(c) provides that "[t]his moratorium shall expire upon the occurrence of the earliest of the following: . . . (c) a vacancy rate greater than 5/100 . . . . "

169. *See also* Wincamp Partnership v. Anne Arundel County Md., 458 F. Supp. 1009 (D. Md. 1978) (two year moratorium, with certain limitations, on the development or sale of all parcels of unimproved real property in excess of three acres owned by water companies held reasonable).

170. Brief and Appendix on Behalf of Plaintiffs at 16, Claridge House One, Inc. v. Borough of Verona, No. 79-2765 (D.N.J. Dec. 28, 1979); Plaintiff's Memorandum in Support of the Motion for a Preliminary Injunction at 14, Chicago Real Estate Bd., Inc. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 20, 1979) (order granting preliminary injunction).

lic as a whole,"[171] it has been "unable to develop any 'set formula' for determining when 'justice and fairness' require that the economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons."[172] Essentially the Court engages in *ad hoc* factual inquiries to determine whether a taking has occurred and compensation is due.[173] However, out of these decisions, two significant factors can be identified. First, the economic impact of the regulation on the claimant and the intent to which the regulation has interfered with distinct investment-backed expectations are relevant.[174] Second, the character of the governmental action is also important. Often a "taking" is found when the interference with the property can be characterized as a physical invasion by government rather than an interference arising from some public program adjusting the benefits and burden of economic life to promote the common good.[175] There is no physical invasion by the government when it imposes a conversion moratorium. Rather, there is an interference with the owner's ability to alienate his property, presumably to promote the common good. Whether this interference constitutes a taking, therefore, depends upon its economic impact on the converter. In *Claridge House* the court noted only that "plaintiffs' taking without just compensation claim [cannot] be disregarded as completely without merit. The value of plaintiffs' property has . . . been substantially reduced by defendant's actions."[176] Due to the dearth of the court's analysis on this issue, it is necessary to examine other taking cases to understand the substance of this claim.

In *Smoke Rise Inc. v. Washington Suburban Sanitary Commission*,[177] the developers argued that because the moratoriums precluded them from subdividing their land into single family lots

171. Armstrong v. United States, 364 U.S. 40, 49 (1960) (government's complete destruction of a materialmen's lien in certain property held a "taking").

172. Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 124 (1978). *See* United States v. Central Eureka Mining Co., 357 U.S. 155, 168 (1958). *See also* Michelman, *Property, Utility and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 1165 (1967) [hereinafter cited as Michelman]; Sax, *Takings and The Police Power*, 74 YALE L.J. 36 (1964).

173. 438 U.S. at 124.

174. *Id.*

175. *Id.*

176. No. 79-2765, slip op. at 2.

177. 400 F. Supp. 1369 (D. Md. 1975).

their property had been taken without just compensation. The court first evaluated this argument under the traditional analysis; to wit, whether the moratoriums prevented a public harm or promoted a public gain.[178] According to this view, only the latter requires that compensation be paid.[179] The court held that the sewer moratoriums did not constitute a taking because their purpose was to prevent a public harm, not to promote a public gain. To the extent that conversion moratoriums require landlords to provide rental housing to the community, their purpose is to promote a public gain for which compensation should be paid.[180] Conversion moratoriums, however, have been enacted to prevent the harm caused by displacement and depletion of the rental housing supply.[181] On balance, it appears that conversion moratoriums are enacted to prevent public harm and according to the traditional view should be upheld as a valid exercise of the police power for which no compensation is due.[182]

The *Smoke Rise* court also evaluated the sewer moratoriums under the modern view that "no taking arises unless the property has been rendered worthless or useless."[183] The court noted that the moratorium only prohibited the developers from subdividing their land into small, single family lots. By selecting a different, less profitable use for their land, these developers could get sewer service. It could not be said that under these circumstances the developers' land had been rendered worthless or useless so as to establish a taking. This test focuses on the economic impact of the moratorium on the owner.[184] Applying this test to conversion moratoriums, such statutes should be upheld because a conversion moratorium does not render an apartment building useless to its

178. *Id.* at 1382. This view is espoused in E. FREUND, THE POLICE POWER 546-47 (1904).

179. 400 F. Supp. at 1382.

180. *See* Michelman, *supra* note 172, at 1181-84.

181. *See, e.g.*, LOS ANGELES, CAL., CODE § 47.06 (A) (1979) which provides that "[a]t the present time, there is a critically short supply of rental housing in the City of Los Angeles. Many rental housing units have been removed from the rental market through conversion to condominiums [and] stock cooperatives . . . . Tenants who are evicted due to conversions are experiencing serious difficulties in locating comparable replacement rental housing." *Accord,* Verona Ordinance, *supra* note 46.

182. Prof. Michelman would argue that even if it were found that compensation was due, it would be too difficult to evaluate and therefore should not be paid. Michelman, *supra* note 172, at 1258.

183. 400 F. Supp. at 1382.

184. *See* note 175 *supra* and accompanying text.

owner. It could still be operated as a rental apartment building or sold to a single purchaser. Thus, no taking would occur under this modern theory.

In *Sun Oil Co. of Pennsylvania v. Goldstein,*[185] wherein the court employed the modern test, the plaintiff challenged a conversion moratorium law prohibiting owners of fuel service stations from converting to gas-only stations for a period of two years. The plaintiff alleged, among other things, that the moratorium constituted a taking because it required the plaintiff to maintain repair facilities for public benefit without assuring a fair rate of return.[186] The court held that the oil company was not deprived of its property without just compensation by being forced to operate less profitable service stations. The company was not forced to continue operations at any station, was not required to continue in any lease agreement, was not required to maintain repair services at any station it chose to close, and was free to close any unprofitable station and build a gas-only station at any other location.[187] Applying the rule of *Sun Oil,* conversion moratoriums should be upheld provided owners can obtain a fair rate of return on their buildings.[188]

Penn Central Transportation Co. v. City of New York[189] is the most recent Supreme Court decision addressing the question of what constitutes a taking. In that case, Grand Central Station was declared a "landmark" pursuant to the Landmarks Preservation Law of the City of New York. Thereafter, in an effort to increase its income, Penn Central, the owner of the terminal, entered into a fifty year renewable lease and sublease agreement whereby the lessee was to construct a multi-story office tower above the terminal.[190] The lessee promised to pay Penn Central one million dollars annually during construction and at least three million dollars annually thereafter.[191] The Landmarks Preservation Commission re-

185. 453 F. Supp. 787 (D. Md. 1978), *aff'd*, 594 F.2d 859 (4th Cir. 1979).

186. *Id.* at 794.

187. *Id.*

188. For example, the Fort Lee Moratorium was limited to buildings covered by the Borough's Rent Leveling Ordinance so owners could obtain a fair rate of return on their buildings by administrative or judicial means during the pendency of the moratorium. Brief in Opposition to Order to Show Cause at 15, Hampshire House Sponsor Corp. v. Borough of Fort Lee, No. L-11977-79 P.W. (N.J. Super. Ct. Dec. 20, 1979).

189. 438 U.S. 104 (1978).

190. *Id.* at 116.

191. *Id.*

jected the plans for the multi-story building on the ground that such a massive structure would be aesthetically inconsistent with the terminal's architectural style.[192] Penn Central and the lessee filed suit charging that the application of the landmarks law constituted a taking of property without just compensation.

Penn Central argued that the landmarks law deprived them of any gainful use of their "air rights" above the terminal and that, irrespective of the value of the remainder of their parcel, the city had taken their right to the super adjacent air space, thus entitling them to compensation.[193] The Court rejected this argument, stating that "the submission that [plaintiffs] may establish a 'taking' simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development is quite simply untenable."[194] The Court focused "on the nature and extent of the interference with rights in the parcel as a whole" and not on the fact that a discrete segment of the parcel may "have been entirely abrogated."[195] Although Penn Central may have been deprived of its air rights above the terminal, it could still continue to use the property exactly as it had in the past—as a railroad terminal containing office space and concessions. Therefore, the Court held that the application of New York City's Landmarks Preservation Law did not effect a taking.[196] The law did not interfere with Penn Central's present use of the building and permitted "reasonable beneficial use of [it]."[197]

The Court also considered the economic impact of the landmarks law on Penn Central, noting that, despite the interference with its air rights, Penn Central had failed to show that it was unable to earn a reasonable return on the building.[198] The Court stated, "[w]e emphasize that our holding today . . . is based on Penn Central's present ability to use the Terminal for its intended purposes and in a gainful fashion."[199]

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192. *Id.* at 117-18.
193. *Id.* at 130.
194. *Id.*
195. *Id.*
196. *Id.* at 138.
197. *Id.*
198. *Id.* at 121-22. This conclusion was made by the New York Court of Appeals, 42 N.Y.2d 324, 333-36, 366 N.E.2d 1271, 1276-78, 397 N.Y.S.2d 914, 919-22 (1977) and affirmed by the Supreme Court.
199. 438 U.S. at 138 n.36. The city had conceded in oral argument that if the owner

Penn Central sheds light on the issues raised by taking challenges to conversion moratoriums. First, like the landmarks law, a conversion moratorium only interferes with one of the interests inherent in the ownership of a building, the right to sell the building. Second, like the landmarks law,[200] conversion moratoriums do not deny owners every use of their property. Moratoriums only prohibit the sale of the individual apartments.[201] Buildings remain usable as rental buildings and can be sold as such. Although moratoriums prevent the conversion of a building to ownership status and deprive the owner of the huge returns which usually result from a conversion, this is not under *Penn Central* enough to constitute a taking.

There might be instances in which *Penn Central* could provide the basis for granting relief to a potential converter requesting compensation. If an owner could show that he could no longer make a profit through the operation of rental apartments because of rent controls, maintenance costs, and real estate taxes, and, consequently, that he could not sell the building as a rental building, then some form of compensation would be due.[202] In such a case the owner would meet the test set forth in *Penn Central* that the taking deprived him of a "reasonable beneficial use" of the building.[203]

4. *Equal Protection*

To determine whether a conversion moratorium violates the equal protection clause of the fourteenth amendment the test is whether the classifications created by conversion moratoriums are rationally related to a legitimate governmental interest.[204] Concern for the displacement of tenants and the depletion of the existing rental housing stock is a legitimate governmental interest. The question, then, is whether these classifications are rationally re-

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demonstrated at some time in the future that circumstances had changed such that the terminal ceased to be "economically viable," the owner could obtain financial relief. *Id.*

200. *Id.* at 136-37. A smaller harmonious structure may have been permitted to be built above the terminal. *Id.*

201. *See* moratoriums cited in note 46 *supra.*

202. *See* notes 3-8 *supra* and accompanying text. *See, e.g.*, Segarra-Serra v. Scott, 242 F. 2d 315 (1st Cir. 1957) (where the court held it unconstitutional to require an owner to show that he has a financial loss before his building can be removed from the rental market).

203. 438 U.S. at 138.

204. *See generally* New Orleans v. Dukes, 427 U.S. 297, 303 (1976); Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 172 (1972).

lated to meeting this interest. These classifications must be examined separately to determine if they meet this requirement.

Conversion moratoriums only restrict the conversion of existing rental apartments to ownership status and do not prohibit the construction of new condominiums or cooperatives.[205] Thus, the class burdened by the ordinance consists of present owners of rental apartment buildings. This classification is rationally related to the municipal government purpose behind conversion moratoriums: minimizing the displacement of existing tenants and preserving existing rental housing. New condominiums or cooperatives do not cause displacement and do not erode the rental housing supply.

A second classification is found in moratoriums that only prohibit conversions to condominiums but not to cooperatives.[206] This classification may more easily be characterized as arbitrary and unreasonable. The displacement of non-purchasing tenants and depletion of the rental housing stock occurs equally with respect to the conversion of rental apartments to condominiums and to cooperatives.[207] The Verona, New Jersey conversion moratorium illustrates this type of classification by restricting only conversions to condominiums.[208] The court in *Claridge House* commented that "the equal protection arguments cannot be discarded as frivolous. Classifications are drawn by the ordinance in question, and while a municipality has much leeway in creating categories, they may not be totally arbitrary or unreasonable."[209]

A third classification made in moratorium legislation prohibits certain size buildings from being converted.[210] The Chicago moratorium which prohibited the conversion of rental buildings containing thirty units or more to condominiums is an example.[211] The court in *Chicago Real Estate Board* held that the moratorium was unconstitutional because, in part, it was "arbitrary in the selection of

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205. Plaintiff's Memorandum in Support of the Motion for a Preliminary Injunction at 29, Chicago Real Estate Bd., Inc. v. City of Chicago, No. 79 C 1284 (N.D. Ill. Apr. 20, 1979)(order granting preliminary injunction).

206. PHILADELPHIA, PA., CODE §§ 9-1201 to -1208 (1979); Chicago Ordinance, *supra* note 46; Verona Ordinance, *supra* note 46.

207. *See* notes 31-40 *supra* and accompanying text.

208. Verona Ordinance, *supra* note 46.

209. No. 79-2765, slip op. at 3.

210. Chicago Ordinance, *supra* note 46.

211. *Id.* § 1.

a 30-unit cut-off, thereby denying equal protection of the law."[212] The test is whether there is a rationale basis for such a cut-off. Presumably, the larger the building the greater the possibility of displacement. However, the *Chicago Real Estate Board* court appears to have rejected this argument. Therefore, an ordinance limiting conversions on the basis of building size would require a strong argument on the side of the municipality.

B. State Constitutional Claims

A municipality is a creature of state law having no inherent powers to adopt ordinances or regulations; it possesses only those powers granted to it by the state legislature.[213] In general, municipal powers may be granted by a home rule provision[214] or by express authorization.[215] Except in limited instances, state action may preempt local initiative even where a municipality has been granted power to act.[216] In New Jersey, for example, municipalities have been granted a wide range of powers through a home rule provision granting them the power to enact laws for the "preservation of the public health, safety and welfare."[217] Although the New Jersey

212. No. 79 C 1284, slip op. at 6.

213. *See, e.g.*, Datisman v. Gary Pub. Library, 241 Ind. 83, 170 N.E.2d 55 (1960); Maddy v. City Council of Ottumwa, 226 Iowa 941, 285 N.W. 208 (1939); Board of Trustees of Policemen's & Firemen's Retirement Fund v. City of Paducah, 333 S.W.2d 515 (Ky. Ct. App. 1960); Highland Park v. Fair Employment Practices Comm'n, 364 Mich. 508, 111 N.W.2d 797 (1961); Sussex Woodlands, Inc. v. Mayor & Council of West Milford, 109 N.J. Super. 432, 263 A.2d 502 (Super. Ct. Law Div. 1970).

214. Municipal home rule in its broadest sense means the power of local self-government. Any power of local self-government, therefore, in whatever manner arising, whether inherent as sometimes claimed, or conferred or recognized by constitutional or statutory grant, or powers emanating from the people of the local community themselves and set forth in a charter authorized by the state organic law, would be included. The phrase is usually associated with powers vested in cities and towns by constitutional or statutory provisions, particularly the former, and more especially organic authorization to the local inhabitants to frame and adopt their own municipal charters. Rights thus emanating by constitutional grant are viewed as constitutional rights protected from invasion or interference by the people of the state in their representative legislative capacity. Cities and towns having constitutional, freeholders or home-rule charters, in theory at least, derive their power of local self-government from the state constitution.

1 E. McQUILLAN, THE LAW OF MUNICIPAL CORPORATIONS § 1.41 (3d ed. 1971) (footnote omitted).

215. *Id.*

216. 6 *id.* § 21.34.

217. N.J. STAT. ANN. § 40:48-2 (West 1967).

Constitution provides that municipal legislation is to be liberally construed in the municipality's favor,[218] the ordinance will be found to be preempted where a municipal ordinance conflicts with a comprehensive state regulatory scheme.[219]

In *Claridge House,*[220] plaintiffs brought an action in the Federal District Court of New Jersey[221] alleging that the Verona conversion moratorium[222] was preempted by state law.[223] The New Jersey legislature had passed three state laws which regulated conversions: 1) the Eviction for Cause Law,[224] 2) the Condominium Act,[225] and 3) the Planned Real Estate Development Full Disclosure Act.[226] The Eviction for Cause Law provides for the removal of non-purchasing tenants in a conversion of rental units to condominiums. The Condominium Act regulates the creation, administration, taxing and termination of condominiums. The Planned Real Estate Development Full Disclosure Act requires developers to register condominiums and regulates the contents of the Registration Statement.

The court in *Claridge House* stated that preemption would be found where a state regulatory scheme is so comprehensive that it

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218. N.J. CONST. art. 4, § 7, ¶ 11.

219. *See* Garden State Farms, Inc. v. Bay, 77 N.J. 439, 450, 390 A.2d 1177, 1182 (1978):

> A legislative intent to preempt a field will be found either where the state scheme is so pervasive or comprehensive that it effectively precludes the coexistence of municipal regulation or where the local regulation conflicts with the state statutes or stands as an obstacle to a state policy expressed in enactments of the Legislature.

220. No. 79-2765 (D.N.J. Dec. 28, 1979).

221. Subject matter jurisdiction in federal district courts was predicated on a federal question. *See* pt. III(A) *supra* for discussion of these issues. Plaintiffs also alleged that the district court had competence to hear their state claim through the exercise of pendent jurisdiction. *See* United Mine Workers v. Gibbs, 383 U.S. 715 (1966). Federal courts have become liberal in granting pendent jurisdiction, requiring only that the federal constitutional claim supporting pendent jurisdiction not be insubstantial or frivolous. Hagans v. Lavine, 415 U.S. 528, 536-37 (1974); Louise B. v. Coluatti, 606 F.2d 392, 400 (3d Cir. 1979); Shands v. Tull, 602 F.2d 1156, 1158 (3d Cir. 1979). The district court granted pendent jurisdiction to hear the state claims. Curiously the court did not rule on any of plaintiff's federal claims. *See* pt. III(A) *supra.*

222. *See* Verona Ordinance, *supra* note 46.

223. State constitutional claims can be brought on one of two grounds: whether the municipality has the power to act or assuming a power to act, whether the municipal ordinance is preempted by state law. The grounds are separate and distinct. Although the *Claridge House* court recognizes this distinction, its holding was limited to the preemption issue. No. 79-2765, slip op. at 3.

224. N.J. STAT. ANN. §§ 2A: 18-61.1 to -61.13 (West Supp. 1979).

225. *Id.* §§ 46.83-1 to -30.

226. *Id.* §§ 45:22A-21 to -42.

precludes peaceful coexistence of a municipal regulation, where the local ordinance conflicts with state statutes or where local law stands as an obstacle to an expressed state policy.[227] The court held that the Eviction statute preempted any local law in this area.[228] The court stated that the Verona moratorium which prohibited eviction of non-purchasing tenants in a conversion could not coexist with a comprehensive statute designed to regulate eviction. For similar reasons the court held that the Condominium Act and the Planned Real Estate Development Full Disclosure Act preempted the local moratorium.[229]

The rules governing preemption and power vary in every jurisdiction.[230] However, local ordinances imposing moratoriums on conversions are invariably subject to challenges based on state law on the grounds that a municipality lacks the power to enact the ordinances[231] or that its power has been preempted by state regulations.

IV. Laws Regulating Conversions

Conversion moratoriums can offer only a temporary solution to the problems resulting from conversions. Long term solutions, enacted at the local level, which balance the interests of landlords and tenants are necessary to protect their respective rights and to enhance the quality of life in urban areas. The comprehensive state and municipal laws which regulate the conversion of rental apartments to condominiums and cooperatives presently in effect in New York City and Washington, D.C. may provide models for jurisdictions considering enacting protective legislation of this kind. This part of the Comment will investigate these and local California ordinances.

A. New York City

The conversion of rental apartments to cooperative or condomin-

227. No. 79-2765, slip op. at 5 (citing Garden State Farms, Inc. v. Bay, 77 N.J. 439, 450, 390 A.2d 1177, 1182 (1979)).

228. No. 79-2765, slip op. at 7; *accord*, Hampshire House Sponsor Corp. v. Borough of Fort Lee, No. L-11977-79 P.W. (N.J. Super. Ct. Dec. 20, 1979).

229. No. 79-2765, slip op. at 9.

230. *See* 6 E. McQUILLAN, THE LAW OF MUNICIPAL CORPORATIONS §§ 21.33, 21.34 and cases cited therein.

231. *See* discussion of *Washington Home Ownership Council*, pt. II(C) *supra*, a unique case in which a conversion moratorium was challenged on the grounds that the local government lacked the power to enact it.

ium status in New York City is governed by state laws[232] and local ordinances.[233] The state laws include one regulating the offering of real estate securities[234] and a recently enacted law protecting senior citizens and other tenants in conversions.[235] There is no single city ordinance which regulates conversions. Rather, provisions of the New York City Rent and Rehabilitation Law ("Rent Control Law")[236] and the New York City Rent Stabilization Law[237] ("Rent Stabilization Law") govern the rights of city tenants faced with a conversion, especially their right to be protected from eviction.

There are currently two types of conversions permitted in New York City, namely, eviction plans and non-eviction plans.[238] Under an eviction plan, tenants may be evicted only if the converter has complied with the requirements of the Rent Control Law or the Rent Stabilization Law.[239] The most important of these requirements is that at least thirty-five percent of the tenants in occupancy must consent to purchase their apartments before a conversion can be declared effective and evictions are permitted.[240]

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232. N.Y. GEN. BUS. LAW § 352-e (McKinney 1968 & Supp. 1979); *id.* § 352-eeee (McKinney Supp. 1979).

233. New York City Rent and Eviction Regs. § 55 (these regulations may be found following N.Y. UNCONSOL. LAW § 8700 (McKinney 1974) [hereinafter cited as N.Y.C. Rent and Eviction Regs.]. NEW YORK, N.Y. ADMIN. CODE § YY51-6.0(c)(9) (1975 & Supp. 1979).

234. N.Y. GEN. BUS. LAW § 352-e (McKinney 1968 & Supp. 1979).

235. *Id.* § 352-eeee (McKinney Supp. 1979).

236. NEW YORK, N.Y. ADMIN. CODE §§ Y51-1.0 to -18.0 (1975 & Supp. 1979). *See* note 6 *supra*, for a discussion of this law. The eviction of rent controlled tenants in buildings converted to cooperative or condominium status is governed by N.Y.C. Rent and Eviction Regs. *supra* note 233, § 55. These regulations have been promulgated pursuant to Section Y51-5.0(g) of the Rent Control Law which empowers the City Rent Agency to promulgate regulations to effectuate the purposes of the law, and specifically, pursuant to Section Y51-6.0(c) of the Rent Control Law which permits regulations deemed necessary or proper for the control of eviction. NEW YORK, N.Y. ADMIN. CODE §§ Y51-5.0(g), Y51-6.0(c) (1975).

237. NEW YORK, N.Y. ADMIN. CODE §§ YY51-1.0 to -8.0 (1975 & Supp. 1979). *See* note 6 *supra* for a discussion of this law. The provisions respecting the eviction of rent stabilized tenants in the case of a conversion are found at *id.* § YY51-6.0(c)(9) (1975).

238. Lehner & Sweet, *supra* note 6, at 34, col. 5. These concepts do not appear in the rent control or rent stabilization laws but rather, developed through practice. The term "eviction plan" is defined in the new state law as a "plan which, pursuant to the provisions of any law or regulation governing rentals and continuing occupancy, can result in the eviction of non-purchasing tenants by reason of the tenant failing to purchase pursuant thereto." N.Y. GEN. BUS. LAW § 352-eeee(1)(b) (McKinney Supp. 1979).

239. Lehner & Sweet, *supra*, note 6, at 34, col. 5.

240. N.Y.C. Rent and Eviction Regs., *supra* note 233, § 55c(3)(a)(for conversions to cooperatives) and *id.* § 55f(3)(b) (for conversions to condominiums). NEW YORK, N.Y. ADMIN. CODE § 51-6.0(c)(9)(a) (1975).

In order to circumvent the requirement that thirty-five percent of the tenants agree to purchase their apartments prior to conversion, developers began to permit non-purchasing tenants to remain in their apartments during and subsequent to conversion.[241] The term "non-eviction plan" was derived from this practice. This is a valid practice because there are no statutory provisions regulating non-eviction plans and therefore consent by a minimum number of tenants is not necessary for the plan to be declared effective.[242] Thus, non-eviction plans have been commonly referred to as "outside the law."[243] For a short period, this practice was made illegal by the Goodman-Dearie Law.[244] This state law provided that before a conversion plan could be declared effective, even if it did not envision the eviction of non-purchasing tenants, thirty-five percent of the tenants in occupancy had to first agree to purchase their apartments. A plan had to be declared effective within one year of its presentation to tenants or be abandoned, in which case a new plan could not be submitted to tenants for another eighteen months.[245] Thus, the law mandated a thirty-five percent tenant consent at all times and thereby abolished the so-called non-eviction plan. The practice of converting buildings pursuant to non-eviction plans, however, regained popularity[246] after the Goodman-Dearie Law was allowed to expire in July 1977.[247]

1. *Eviction Plans*

A conversion plan that involves the eviction of non-purchasing tenants from their apartments must be filed with the Attorney General[248] and must comply with the provisions of the Rent Control

241. Lehner & Sweet, *supra* note 6, at 25, col. 2.

242. *Id.* at 34, col. 5.

243. *Id.* at 25, col. 2. "Contrary to the impression which might be gained from the term 'outside the law,' these plans [are] not illegal." *Id.*

244. 1974 N.Y. Laws ch. 1021, § 2. This law was in effect from June 15, 1974 through July 1, 1977.

245. *Id.* § 2(2-a)(1)(i)-(ii).

246. *See* Lehner & Sweet, *supra* note 6, at 35, col. 4.

247. The precise reason why the Goodman-Dearie Law was permitted to expire is unclear. However, likely explanations include the presence of a strong real estate lobby that favored its expiration and the feeling that the provisions of the rent control and rent stabilizaion laws provided adequate safeguards. For a discussion of the issues being debated at that time, *see* N.Y. Times, Apr. 24, 1977, at 26, col. 1; *id.*, Apr. 8, 1977, at 15, col. 1; *id.*, Mar. 13, 1977, at 30, col. 1.

248. The New York General Business Law requires that every offering statement or pro-

Law or the Rent Stabilization Law. These laws are designed not only to protect tenants from eviction but also to give them time to learn of the conversion, to decide whether to purchase their apartment and to give them a voice in the decision of whether the building should be converted.[249]

a. Rent Controlled Apartments

Tenants of rent controlled apartments are given a number of time periods in which to decide to purchase. Initially; each tenant has an exclusive right for sixty days from the date the converter presents him with a copy of the conversion plan to purchase the apartment.[250] In order for the conversion plan to be declared effective by the Attorney General, at least thrity-five percent of the rent controlled tenants in possession at the time of presentation of the plan[251] must agree to purchase their apartments within a six month

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spectus relating to the conversion of rental apartments to condominiums or cooperatives be submitted for filing to the New York State Department of Law (the Attorney General's office). N.Y. GEN. BUS. LAW § 352-e(1) (McKinney 1968 & Supp. 1979). The Attorney General has 30 days after submission of the offering statement in which to issue a letter stating that the offering has been accepted for filing or setting forth the reasons for his refusal. *Id.* § 352(e)(2) (McKinney Supp. 1979). The issuance of the Attorney General's letter indicating that the offering statements have been filed permits the converter to present the plan to the tenants. *Id.*

249. This period also allows tenants time to study the provisions of the conversion plan and suggest amendments. Although a converter can amend a proposed eviction plan to provide that it shall be a non-eviction plan, the Attorney General requires that if such amendment is made, a purchaser must be given the right to cancel his agreement to purchase. Lehner & Sweet, *supra*, note 6, at 35, col. 5. This may be because non-eviction plans often result in "hybrid" buildings in which purchasers may not wish to live. *See* notes 278-80 *infra* and accompanying text. In contrast it is important to note that non-eviction plans may not be amended to eviction plans just because the converter has met the 35% consent requirement for such plans. Non-purchasing tenants should be able to rely on the converter's representation that they will not be evicted.

250. N.Y.C. Rent & Eviction Regs., *supra* note 233, § 55(c)(3)(a) (for conversion to cooperatives). *Id.* § 55(f)(3)(b)(3)(i) (for conversion to condominium). *Accord,* ALAMEDA, CAL., CODE § 11-14D6(b) (1977); Los Angeles, Cal., Ordinance 153,024 (Oct. 4, 1979); SAN FRANCISCO, CALIF., CODE § 1387(b) (1979); Seattle, Wash., Ordinance 107707, § 3.3 (Oct. 4, 1978). *See also* N.J. STAT. ANN. § 2A:18-61.8 (West Supp. 1979) (90 day exclusive right to purchase); CONCORD, CAL., CODE § 4478(B) (May 18, 1979) (90 day right of first refusal); DALY CITY, CAL., CODE § 26-106h(4) (July 9, 1979) (90 day right of first refusal); EVANSTON, ILL. CODE ch. 10-½, § 4-102 (1979) (120 day right of first refusal from date tenants receive notice of intent to convert or 30 days from filing of condominium instruments, whichever is longer).

251. N.Y.C. Rent & Eviction Regs., *supra* note 233, § 55(c)(3)(a) (cooperative conversions). Where the apartment is to be converted to a condominium 35% of the tenants residing in the building at the time of recording the declaration of condominium must consent.

period.[252] If at least thirty-five percent of the rent controlled tenants do not agree to purchase within six months, the plan will not be declared effective and must be abandoned. A period of eighteen months from the date of presentation of the first plan must elapse before another conversion plan may be presented to the tenants.[253]

If thirty-five percent of the rent controlled tenants agree to purchase and the plan is declared effective, those tenants who have not yet agreed to buy their apartment are given an additional thirty day period to buy on the previously offered terms.[254] The apartment may be offered for sale to an outsider if the tenant does not exercise this privilege within this thirty day period. However, the non-purchasing tenant must then be given an additional fifteen day period within which to purchase the apartment before it can be offered for sale to an outsider at more favorable terms than those previously offered to the tenant.[255] Thus, a rent controlled tenant is given a total of 105 days to decide whether to purchase the apartment. A purchaser of the apartment will have a right to obtain a certificate of eviction in order to gain possession of the apartment "for his own personal use"[256] if the conversion plan is declared effective and the tenant has not purchased the apartment during any of these periods. However, a non-purchasing tenant cannot be evicted until two years after the sale of the apartment unless eighty percent of the apartments in the building have been sold to tenants.[257] This two year period before a non-purchasing tenant can

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Id. § 55(f)(3)(b)(3)(ii). *See also* SAN FRANCISCO, CAL., CODE § 1388 (1979) (no application for conversion shall be approved unless 40% of the tenants sign intent to purchase forms).

252. N.Y.C. Rent & Eviction Regs., *supra* note 233, § 55(c)(3)(a) (cooperative conversions). When the apartment is being converted to a condominium, this six month period runs from the date the offering statement is formally filed with the Attorney General. *Id.* § 55(f)(6).

253. *Id.* § 55(c)(9) (cooperative conversions). In the case of a conversion to a condominium, 18 months "from the date of the formal filing of the . . . offering plan with the" Attorney General must elapse before another may be presented to the tenants. *Id.* § 55(f)(6). *See also* SAN FRANCISCO, CAL., CODE § 1394 (1979) (An application for conversion which is withdrawn by the applicant may not be resubmitted for 6 months from the date of withdrawal. An application which is denied may not be resubmitted for one year from the date of denial).

254. N.Y.C. Rent & Eviction Regs., *supra* note 233, §§ 55(c)(3)(b), 55(f)(3)(f). *Accord*, EVANSTON, ILL., CODE ch. 10-½, § 4-102(a) (Mar. 5, 1979).

255. N.Y.C. Rent & Eviction Regs., *supra* note 233, §§ 55(c)(3)(d), 55(f)(3)(f).

256. *Id.* §§ 55(c)(2), 55(f).

257. *Id.* §§ 55(c)(1)(c)-(d), 55(f)(1)(b)-(c). *See also* N.J. STAT. ANN. § 2A:18-61.2(g) (West Supp. 1979) (Three years prior notice is required before a dispossess action can be

be evicted is designed to give the tenant sufficient time to find a new apartment and relocate.

If eighty percent of the apartments have been sold to tenants, the purchaser of the apartment may obtain a certificate of eviction immediately.[258] The possibility of an immediate eviction because the eighty percent requirement has been met remains, especially in times such as these when many tenants quickly accept converter's offers to sell their apartments.[259] Perhaps the effects of this provision could be ameliorated by providing the non-purchasing tenant with more time to find another residence.

b. Rent Stabilized Apartments

The time periods in which a rent stabilized tenant must decide whether to purchase his apartment in an eviction plan differ from those set forth above respecting rent controlled tenants.[260] Each tenant has an initial exclusive right for ninety days from the date the conversion plan is presented to him to purchase his apartment.[261] Subsequent to the expiration of this period, a tenant who has not agreed to purchase his apartment is given the exclusive right, for an additional six months, to purchase the apartment on the same terms and conditions as the converter may offer to a non-

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instituted, and the action must await the expiration of the lease. Comparable housing may be requested of the landlord by the tenant within the first 18 months of the three years notice. *Id.* § 1-61.61. The owner must prove that a tenant was offered such comparable housing and a reasonable opportunity to inspect it. *Id.* Under the provision, courts can grant up to five one-year stays of eviction if it is not satisfied that the tenants was offered comparable housing and a reasonable opportunity to inspect it. *Id.* No more than a one-year stay shall be granted if the owner waives payment of five months rent. *Id.*; ALAMEDA, CAL., CODE § 11-14D6 (1977) (120 days written notice of intention to convert before tenants are required to relocate); CONCORD, CAL., CODE § 4478(A) (1979) (120 days written notice of intention to convert prior to any terminating tenancy); SAN FRANCISCO, CAL., CODE § 1391(a) (Each non-purchasing tenant shall be given 120 days from the date of receipt of a ratification of intent to convert or until the expiration of his lease to relocate). EVANSTON, ILL., CODE ch. 10-½, § 4-101(c) (1979) (no tenant may be required to vacate upon less than 210 days notice or the expiration of the lease for the apartment, whichever is longer).

258. N.Y.C. Rent & Eviction Regs., *supra* note 233, §§ 55(c)(1)(c)-(d), 55(f)(1)(b)-(c).

259. *See generally Why Condominium Ownership is Gaining New Support*, N.Y. Times, Nov. 2, 1979, at 19, col. 1; *Discount Prices*, *supra* note 16, at 1, col. 1.

260. For a detailed discussion of the interplay between these provisions of the rent control and rent stablization laws, *see* Lehner & Sweet, *supra* note 6.

261. NEW YORK, N.Y. ADMIN. CODE § YY51-6.0(c)(9)(b) (1975). The same provisions of the Rent Stabilization Law apply for both cooperative and condominium plans. *See* note 250 *supra* for a comparison with other ordinances.

tenant.[262] This right must be exercised within fifteen days after receiving notification that a non-tenant has agreed to purchase the apartment.[263]

The Rent Stabilization Law also contains a provision, similar to that found in the Rent Control Law,[264] requiring that a minimum percentage of tenants consent to the conversion. In order for an eviction plan to be declared effective under the rent stabilization law, thirty-five percent of all tenants in occupancy on the date the plan is accepted for filing by the Attorney General must agree to purchase their apartments[265] within eighteen months of the date that the plan is presented to the tenants.[266] If at least thirty-five percent of the tenants in occupancy do not agree to purchase their apartments within eighteen months, the eviction plan will not be declared effective and must be abandoned.[267] Should the plan be

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262. NEW YORK, N.Y. ADMIN. CODE § YY51-6.0(c)(9)(c) (1975).

263. *Id.*

264. *See* note 251 *supra* and accompanying text.

265. NEW YORK, N.Y. ADMIN. CODE § YY51-6.0(c)(9)(a) (Supp. 1979) as amended by N.Y. GEN. BUS. LAW § 352-eeee(8)(a) (McKinney Supp. 1979). Since almost all pre-war buildings have rent controlled and rent stabilized tenants, *see* note 6 *supra*, questions have arisen as to the effect of the different provisions of the two laws on the ability of the converter to have an eviction plan declared effective. The issue presented is whether the converter must obtain the consent of 35% of the rent controlled tenants as required by section 55 of the Rent and Eviction Regulations and 35% of the "tenants in occupancy" as provided in section YY51-6.0(c)(9)(a) of the Rent Stabilization Law, regardless of their status. This question was raised in Ortega v. Lefkowitz, 66 Misc. 2d 438, 321 N.Y.S.2d 231 (Sup. Ct. 1971), *aff'd*, 38 A.D.2d 792, 328 N.Y.S.2d 1008 (1st Dep't 1972). In this case, the building converted to cooperative ownership had both rent controlled and rent stabilized tenants. An amendment to the plan called for the conversion to be effective upon obtaining consent from 35% of the tenants in occupancy provided 35% of rent stabilized apartments also consented. The court held that the plan was valid and rejected the plaintiff's argument that 35% of the rent controlled tenants must also consent. In so doing, the court stated, "[w]hile stock of the co-operative representing ownership of the rent controlled apartments will be offered, the rights of tenants [who do not purchase] . . . such apartments to continued possession will not be affected by the conversion." 66 Misc. 2d at 440, 321 N.Y.S.2d at 19. It is the view of Lehner & Sweet, that

> the plan would have been valid if it had only called for the consents of 35 percent of all of the tenants since the [R]ent Stabilization Law refers to tenants in occupancy, while the [Rent Control Law] refers[s] to tenants of controlled premises. This conclusion is buttressed by Arnette v. Lefkowitz [77 Misc. 2d 821, 354 N.Y.S.2d 836 (Sup. Ct. 1974)] where the court held in a stabilized building the plan would be effective upon obtaining consents of 35 percent of the tenants in occupancy even though this would have included less than 35 percent of the stabilized tenants.

Lehner & Sweet, *supra* note 6, at 35, col. 1 (footnote omitted).

266. NEW YORK, N.Y. ADMIN. CODE § YY51-6.0(c)(9)(f) (Supp. 1979).

267. *Id.* There is no provision in the Rent Stabilization Law stating when a new conver-

declared effective because thirty-five percent of the tenants in occupancy have agreed to purchase their apartments within the eighteen month time period, a non-purchasing tenant may be removed from his apartment by the owner of the building, by a purchaser of the apartment or by a proprietary lessee entitled to possession of the apartment.[268] There is no requirement that any of these persons intend to occupy the apartment.[269] However, the right to remove a non-purchasing tenant may not be exercised until the latest of the following dates: one year from the date of presentation of the plan, one year from the date on which the plan is declared effective, or the expiration date of the lease.[270]

Both ordinances seek to control the conversion trend in a number of ways. The consent requirements of the Rent Control Law and the Rent Stabilization Law give tenants a voice in the conversion decision. The exact percentage of tenants required to buy is not as important as the fact that such a provision exists.[271] Requiring tenant consent is important for three reasons: 1) it curbs eviction of tenants and displacement of tenants, 2) it restricts the ease with which landlords can effect conversions, and 3) it gives tenants an active role in the conversion process. The time periods within which the converter must obtain tenant consent and within which the converter has to wait before he can submit a new plan prevents the converter from constantly soliciting tenants to purchase as well as encourage the converter to offer a plan that would be acceptable to tenants.

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sion plan may be submitted to the tenants.

268. *Id.* § YY51-6.0(c)(9)(d) (1975).

269. This provision should be compared with the rent control provision which requires that the purchaser who seeks possession of a converted apartment must do so for his own personal use. N.Y.C. Rent & Eviction Regs., *supra* note 233, §§ 55(a), 55(c)(2). *See* note 256 *supra* and accompanying text.

270. NEW YORK, N.Y. ADMIN. CODE § YY51-6.0(c)(9)(d)-(e) (1975). A rent stabilized tenant may be evicted before the expiration of his lease if the lease was entered into after the offering plan was submitted to the Attorney General and the lease contained a provision permitting cancellation on 90 days notice after the plan is declared effective. *Id.* § YY51-6.0(c)(9)(f) (Supp. 1979).

271. A minimum of 35% consent is the figure that the New York City Council found acceptable both to landlords and tenants. During the legislative hearings conducted respecting the Goodman-Dearie Act, *see* note 244 *supra* and accompanying text, tenant spokesmen argued that a 51% tenant consent requirement would be more equitable to tenants. N.Y. Times, Mar. 3, 1977, at 30, col. 6. *See* note 251 *supra* and note 303 *infra* for a comparison with other jurisdictions.

2. *Non-eviction Plan*

A converter who wishes to convert a building pursuant to a non-eviction plan is technically free from complying with the rigorous provisions of the Rent Control Law and the Rent Stabilization Law.[272] In recent years, however, the Attorney General[273] has required that at least fifteen percent of the tenants in occupancy agree to purchase their apartments for a non-eviction plan to be declared effective.[274] Under a non-eviction conversion plan, certificates of eviction may not be issued to dispossess non-purchasing rent controlled tenants[275] and renewal leases must be provided to rent stabilized tenants.[276] Non-purchasing tenants remain subject to the Rent Control Law and the Rent Stabilization Law.

A non-eviction plan apparently presents a method of effecting a conversion without presenting great hardship to either the converter or the tenants. The converter need not comply with the provisions of the Rent Control Law and the Rent Stabilization Law and the tenant is free to purchase or to continue as a tenant.[277] Problems, however, will invariably arise. The converter, as the landlord of many of the apartments in the building, will bear a heavy financial burden if the rents do not equal the monthly maintenance charges. This may tempt the landlord to harass non-purchasers in order to force them to move.[278] In addition, the non-purchasing tenant, although allowed to remain in his apartment, may not be able to live peacefully. Often, tension builds in "hybrid" buildings[279] because the landlord may discriminate between purchasers and non-purchasers in providing services and facili-

272. *See* notes 241-46 *supra* and accompanying text.

273. *See* note 248 *supra.*

274. Lehner & Sweet, *supra* note 6, at 36, col. 2. There is no statutory authority for this practice. However, a provision requiring a minimum percentage of tenants to purchase before a non-eviction plan can be effective has been considered by the New York State Legislature in the past. *Id.*

275. N.Y.C. Rent & Eviction Regs., *supra* note 233, § 55(c)(3). *See, e.g.*, De Minicis v. 148 East 83rd St., 15 N.Y.2d 432, 435, 209 N.E.2d 63, 64, 261 N.Y.S.2d 1, 3 (1965); Ortega v. Lefkowitz, 66 Misc. 2d 438, 440, 321 N.Y.S.2d 17, 19 (Sup. Ct. 1971), *aff'd*, 38 A.D.2d 792, 328 N.Y.S.2d 1008 (1st Dept. 1972).

276. *See* NEW YORK, N.Y. ADMIN. CODE § YY51-6.0(c)(9) (1975).

277. Lehner & Sweet, *supra* note 6, at 35, col. 4.

278. *Id.*

279. The term "hybrid" buildings has been used to refer to those buildings containing purchasers and non-purchasers. N.Y. Times, Mar. 7, 1980, at A20, col. 4.

ties.[280] Finally, non-eviction plans may also weaken the tenants' ability to bargain and negotiate a plan more favorable to the tenants.[281] This is because converters may feel that they need not negotiate with the tenants in a non-eviction plan because the tenants are not being forced to purchase or move out of their apartments.[282]

3. *State Law*

A state law protecting eligible senior citizens who refuse to purchase their apartments has recently been enacted.[283] This law provides that no eviction proceeding may be brought against a non-purchasing tenant who has used the apartment as his primary residence for at least two years prior to the filing date and is sixty-two years of age or older at the time the plan is "accepted for filing."[284] The tenant must be able to certify that his annual income does not

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280. Lehner & Sweet, *supra* note 6, at 35, col. 4.

281. *Id.* Typically, tenants form associations as soon as they learn that their building is about to be converted. The association will negotiate with the owner to purchase the building and convert it themselves, if the building owner has not sold to a developer. Tenant associations are often able to pay more to the building owner than the developer could and still pay less per unit by eliminating the converter's profit margin. Philadelphia Inquirer, Sept. 24, 1979, at 4-A, col. 3. In New York City tenant associations often negotiate with the converter for more favorable terms by threatening to withhold their consent. *See* notes 251 & 265 *supra* and accompanying text.

282. Lehner & Sweet, *supra* note 6, at 35, col. 4.

283. N.Y. GEN. BUS. LAW § 352-eeee (McKinney Supp. 1979). This law has already been the subject of litigation in the case of Reiner-Kaiser Assocs. v. McConnachie, N.Y.L.J., Aug. 27, 1979, at 13, col. 1 (Civ. Ct. Queens County). The case involved a holdover proceeding brought by a landlord to recover possession from a non-purchasing tenant of an apartment which had been converted to a cooperative in September 1978. The tenant sought protection from eviction under the new senior citizen non-eviction provision. The court rejected the tenant's contention that the law protected her because the conversion became effective well before the law was enacted. *Id.* at col. 2. The court also rejected the landlord's contention that the law was a violation of the equal protection clause of the United States Constitution and New York State Constitution. The court held that this legislation "which gives effect to the objective of protecting senior citizens from the effects of a critical housing situation is both rational and reasonable and any discrepancies in treatment which result do not amount to a denial of the equal protection of the laws under the Federal and State Constitutions." *Id.*

284. N.Y. GEN. BUS. LAW § 352-eeee(1)(e) (McKinney Supp. 1979). Non-purchasing senior citizens remain subject to the Rent Control Law or Rent Stabilization Law. *Id.* § 352-eeee(2)(a). *Accord,* SAN FRANCISCO, CAL., CODE § 1391(c) (1979) (62 year old tenants and disabled tenants are provided lifetime leases). *See also* Los Angeles, Cal., Ordinance 153,251 (Dec. 17, 1979) (to be codified in LOS ANGELES, CAL., CODE § 47.06(B) (1979) (tenants over age 62, handicapped and disabled tenants, and tenants with one or more children may not be evicted unless the landlord has provided them with relocation assistance).

exceed $30,000.[285] Although this law restricts a converter's ability to convert an entire building, its harshness is ameliorated by another provision in the same act. This provision permits the converter to deduct from the base figure for calculating the thirty-five percent consent requirement for an eviction plan to become effective all the eligible rent stabilized senior citizens and half of the eligible rent controlled senior citizens who elect not to buy.[286]

In addition to protecting the elderly from evictions, this new law also provides solutions to two other problems usually associated with conversions. The first problem is commonly known as warehousing; that is, keeping apartments vacant so as to reduce the number of tenants necessary to meet the thirty-five percent consent requirement. Under the anti-warehousing provision of this law, the Attorney General must find that an excessive number of "long-term vacancies"[287] does not exist on the date the plan is submitted to him before he can issue a letter stating that the offering plan has been accepted for filing. The second problem concerns harassment of non-purchasing tenants. This new statute alleviates this problem by requiring that all of the apartments occupied by non-purchasing tenants be managed by the same managing agent who manages the cooperative or condominium units in the building.[288] The managing agent must provide all required services and facilities to non-purchasing tenants on a non-discriminatory basis.[289] The Attorney General has the power to enforce this obligation

285. N.Y. GEN. BUS. LAW § 352-eeee(1)(e) (McKinney Supp. 1979). The term "annual income" is defined in the statute to include the "combined income from all sources of all tenants of the dwelling unit for the income tax year immediately preceding the year in which the plan is accepted for filing by the attorney general." *Id.* § 352-eeee(1)(d). The term has been interpreted to mean income after deductions of all business expenses. Otherwise, gross revenues would have been a more appropriate statutory term. The term includes non-taxable income such as social security payments and interest on municipal bonds. Lehner, Sweet & Dryfoos, *Cooperative and Condominium Conversions: (Lehner — Flynn Law's Impact on Protecting Senior Citizens)*, N.Y.L.J., Sept. 14, 1979, at 1, col. 2 [hereinafter cited as Lehner, Sweet & Dryfoos].

286. N.Y. GEN. BUS. LAW § 352-eeee(6) (McKinney Supp. 1979).

287. *Id.* § 352-eeee(3)(a). "Long-term vacancies" are apartments not leased or occupied for more than five months prior to the date of submission of the plan. The vacancy rate is "excessive" if it is greater than 10% of the apartments in the building and is double the normal average vacancy rate for the building for two years prior to the January preceding the date of submission of the plan. *Id.*

288. *Id.* § 352-eeee(4).

289. *Id.* The converter must guarantee the managing agent's obligation for so long as the converter controls the board of directors or board of managers of the cooperative or condo-

and obtain relief against harassment of tenants through either an order restraining such conduct or an order restraining the owner from selling the shares allocated to the apartment or selling the apartment itself.[290]

Whereas these laws evidence a comprehensive scheme for controlling conversions in New York City, a provision regulating the rate of conversion is conspicuously absent. The most radical provision of this kind is a moratorium on conversions under specific emergency conditions. Such conditions are usually keyed to the availability of vacant apartments in a city. For example, some local governments have enacted ordinances prohibiting conversions from taking place whenever the rental vacancy rate for that community falls below a certain level, usually three to five percent of the community's rental apartment stock.[291] The reason for such a provision is to insure that displaced tenants will be able to find alternative rental housing within the same community. Such an ordinance may be appropriate in New York City because the rental vacancy rate there is one percent.[292]

B. Washington, D.C.

Washington, D.C. has enacted conversion regulations which provide a more comprehensive regulatory scheme and grant greater protection to tenants than do New York's statutes. The legal system for regulating conversions in Washington D.C. is found in three acts and their respective amendments. These are the Condominium Act of 1976,[293] the Rental Housing Act of 1977,[294] and the Cooperative Regulation Act of 1979.[295] The relevant sections of each of these acts are discussed below.

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minium association. *Id.*

290. *Id.* § 352-eeee(5).

291. LONGHINI & LAUBER, *supra* note 22, at 9. Some cities like Palo Alto, California permit an exception to this rule when 67% of the tenants consent to a conversion. "The rationale for these thresholds is that a five percent rental vacancy rate makes it difficult for low and moderate income renters to find apartments, and a three percent rental vacancy rate makes it difficult for all renters, regardless of income." *Id.* at 10.

292. N.Y. Times, Jan. 22, 1980, at 1, col. 1.

293. D.C. CODE ANN. §§ 5-1201 to -1297 (Supp. V 1978).

294. *Id.* §§ 45-1681 to -1699.27 (Supp. VI 1979).

295. D.C. Law 3-63, 26 D.C. Reg. 361, 1649 (1979) (*eff.* Sept. 28, 1979).

1. *Condominium Act of 1976*

Title V of the Condominium Act of 1976, as amended, establishes a procedure for converting rental units into condominiums in the District of Columbia.[296] Initially the permission of the mayor is required for conversion.[297] Different criteria exist for condominium conversion depending upon 1) whether the building is a "high rent housing accommodation,"[298] 2) if the building is not a "high rent" building, whether the city's vacancy rate for low rent buildings is greater than three percent,[299] or 3) regardless of the rental or vacancy rate, whether a majority of the tenants in the building have agreed to the conversion.[300]

Any "high rent" building may be converted. It is assumed that tenants in a high rent building can afford either to purchase their apartments or to pay for alternative rental housing.[301] Also, because few low income tenants live in high rent buildings there is presumably no fear of displacing this class.

The conversion of low rent buildings is keyed to the availability of vacant low rent apartments in the District. Low rent buildings can be converted if their vacancy rate is greater than three percent.[302] This regulation insures that the District will have an adequate supply of low rent housing to meet the needs of displaced tenants and to preserve a diverse housing stock.

Finally, notwithstanding a vacancy rate of at least three percent, a majority of the heads of households actually residing in low rent buildings can consent in writing to a conversion.[303] This approach

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296. D.C. CODE ANN. §§ 5-1261 to -1278, -1281 to -1297 (Supp. V 1978).

297. *Id.* § 5-1281(a).

298. *Id.* § 5-1281(b)(1)(A).

> [T]he term "high rent housing accommodation" includes any housing accommodation in the District of Columbia for which the total monthly rent exceeds an amount computed for such housing accommodations as follows: (i) multiply the number of rental units in the following categories by the corresponding rent: (I) $228.50 for one-bedroom rental units; (II) $287 for two bedroom rental units; (III) $403 for three or more bedroom rental units; (IV) $174 for efficiency rental units; and (ii) total the results obtained in phase (i).

Id. § 5-1281(b)(1)(b) (Supp. VI 1979).

299. *Id.* § 5-1281(b)(1)(B) (Supp. V 1978). The method of computing the rental vacancy rate is contained in *id.* § 5-1282.

300. *Id.* § 5-1281(b)(2).

301. *See* notes 16-20 *supra* and accompanying text.

302. D.C. CODE ANN. § 5-1281(b)(1)(B) (Supp. V 1978).

303. *Id.* § 5-1281(b)(2).

assumes that if more than half of the tenants approve the conversion, tenants will either buy their apartments or expect to find alternative housing in the neighborhood. Therefore, little displacement will occur.

Once a building is found eligible to convert, a converter must file a Certificate of Registration and make a public offering statement.[304] Protective provisions which allow tenants time to decide whether to purchase their apartments, become operative upon registration of the offering statement. The converter must give an official notice to tenants, not more than ten days after the date of application for registration, giving them 120 days notice of the conversion before they can be served with a notice to vacate at the end of their lease terms.[305] Tenants have an exclusive right to contract for the purchase of the apartment in which they live during the first sixty days of this 120 day period.[306] The contract to purchase must be on terms and conditions at least as favorable to the tenants as those being offered by the converter to the general public.[307]

A tenant who fails to exercise the right to purchase must vacate the apartment at the end of the lease term.[308] Unlike New York City, there is no such thing as a "non-eviction plan."[309] The harshness of eviction is softened somewhat by the fact that an eligible tenant who is forced to vacate is entitled to receive housing assistance.[310] Eligible tenants can receive housing assistance for up to five years[311] in an amount equal to the difference between twenty-five percent of their average net monthly income and the amount of monthly rent to be paid in the first full month in the new apartment.[312] Housing assistance is paid by the converter for the first

304. *Id.* § 5-1263.
305. *Id.* 5-1268(b)(1).
306. *Id.* § 5-1268(b)(2).
307. *Id.*
308. *Id.* § 5-1268(b)(3).
309. *See* note 241 *supra* and accompanying text.
310. D.C. CODE ANN. § 5-1291 (Supp. V 1978). To be eligible for housing assistance a tenant must have lived in the apartment for at least one year prior to the first day of the month in which the registration statement was filed, must be displaced as a result of the conversion and must relocate in the District of Columbia. *Id.* § 5-1291(a)(1)-(4). Provisions respecting the computation of housing assistance payments are found at *id.* § 5-1292.
311. *Id.* § 5-1291(a)(4).
312. *Id.* § 5-1292.

two years after relocation and by the District for the next three years.[313] In addition to housing assistance payments, the District requires that the converter pay relocation compensation to eligible tenants.[314] The amount of compensation is presently $125 per room but may be subject to adjustment in the future.[315]

2. *Rental Housing Act of 1977*

Title VI of this Act regulates, *inter alia,* the sale of rental housing accommodations by requiring that a landlord, contemplating a sale of his building, first offer it for sale to the tenants.[316] In the case of a housing accommodation comprised of a single rental unit, the landlord must make a written offer to sell the housing accommodation to the tenant before he may sell it to another purchaser.[317] The tenant is given at least forty-five days in which to contract with the landlord for the purchase of the housing accommodation on mutually agreeable terms.[318] Thereafter, the tenant also has the right of first refusal for fifteen days after the landlord has received a written offer from a prospective purchaser.[319] If the housing accommodation is not sold during the six months immediately following the original offer to the tenant, the landlord shall re-offer it to the tenant in the same manner as the first offer was made.[320] A landlord shall not require the tenant to pay more than a five percent deposit of the purchase price nor may he demand a closing date less than sixty days from the signing of the contract.[321]

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313. *Id.* § 5-1291(a)(4). The converter's payments must be in one lump sum whereas the District's payments may be monthly or in one lump sum. *Id.*

314. *Id.* § 5-1291(b).

315. *Id.* § 5-1293(a)(1). *See* notes 101-02 *supra* and accompanying text for a discussion of the inadequacy of such financial assistance. *See also* N.J. STAT. ANN. § 2A:18-61:11 (West Supp. 1979)(hardship relocation compensation in the form of waiver of payment of 5 months rent); ALAMEDA, CAL., CODE § 11-14D6(d) (1977) (moving expenses up to $150 plus $10 per room); Los Angeles, Cal., Ordinance 153,251 (Dec. 17, 1979) (to be codified in LOS ANGELES, CAL., CODE § 47.06(D)(1)(a)(4) (1979)) ($2500 relocation assistance paid to eligible tenants); SAN FRANCISCO, CAL., CODE § 1392(a) (1979) (maximum of $1000 paid for moving expenses); Seattle, Wash., Ordinance 107707, §§ 3, 9 (Oct. 4, 1978) (relocation assistance of $350.00 per unit paid to non-purchasing tenants).

316. D.C. CODE ANN. §§ 45-1699.8 to -1699.9 (Supp. VI 1979).

317. *Id.* § 45-1699.8(a).

318. *Id.*

319. *Id.* § 45-1699.8(b).

320. *Id.* § 45-1699.8(c).

321. This provision is contained in Transmittal #2 of the Legislative Updating Service for Rent Control Laws (Nov. 27, 1979) (to be codified in D.C. CODE ANN. § 45-1699.8(d)).

A landlord of a building containing two to four apartments must give the tenants, either jointly or severally, an opportunity to purchase the building at a price which represents a bona fide offer of sale by giving them written notice containing the asking price for the building and a statement of the tenants' rights.[322] The tenants are then given a ninety day period in which to negotiate a mutually agreeable contract with the landlord.[323] If, at the end of this period, an agreement has not been reached among the tenants, an additional fifteen days is given to any one of the tenants to contract for the purchase of the building.[324] Again, the landlord may not require more than a five percent deposit of the purchase price nor may he demand a closing date less than sixty days from the signing of the contract.[325]

In the case of a building containing more than four units, the Act requires that there be a tenants' organization formed with the legal capacity to hold real estate.[326] The tenants are given thirty days to form such an organization. Ninety days are given for the organization to contract to purchase the building from the landlord on mutually agreeable terms. The landlord may not require more than a five percent deposit of the purchase price nor demand a closing date less than one hundred twenty days from the signing of the contract. The landlord must refund the deposit in the event of a good-faith failure of the tenants' organization to perform under the contract.[327]

This Act demonstrates a desire by the District of Columbia Council for tenants to have equity ownership in their apartments by requiring that tenants be given an opportunity to purchase their apartment buildings from the landlord. As a result they obtain the same benefits of equity ownership as tenants who purchase in a conversion. The concomitant community benefits will follow.[328]

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322. D.C. CODE ANN. § 1699.9(a) (Supp. VI 1979).

323. *Id.*

324. *Id.*

325. This provision is contained in Transmittal #2 of the Legislative Updating Service of Rent Control Law (Nov. 27, 1979) (to be codified in D.C. CODE ANN. 45-1699.9(a)).

326. D.C. CODE ANN. § 45-1699.9(b) (Supp. VI 1979).

327. This provision is contained in Transmittal #3 of the Legislative Updating Service for Rent Control Laws (Jan. 1, 1980) (to be codified in D.C. CODE ANN. § 45-1699.9(b)).

328. *See* notes 21-30 *supra* and accompanying text.

3. *Cooperative Regulation Act of 1979*

This Act regulates the conversion of rental apartments to cooperatives. Cooperative conversions are prohibited[329] except where: 1) less than fifty percent of the apartments in the building are occupied,[330] 2) where fifty percent or more of the apartments are occupied, the majority of the heads of these households consent in writing to the conversion,[331] or 3) where the building is a high rent accommodation.[332] Where one of these three situations exists, the mayor may grant an exemption[333] after notifying the tenants and giving them an opportunity to be heard.[334] The owner may not terminate any tenancies or require tenants to vacate unless an exemption is granted.[335] If an exemption is granted, the landlord must give the tenants at least 120 days notice of the conversion.[336] The landlord must make each tenant a bona fide offer of sale of the apartment in which the tenant resides.[337] The tenant is then given sixty days in which to contract with the landlord for the purchase of the apartment on mutually agreeable terms.[338] The landlord may not serve a tenant with a notice to vacate until ninety days after the tenant received the notice of conversion and prior to the expiration of the sixty day negotiating period unless the tenant has rejected the landlord's offer for sale of the apartment.[339]

This Act also requires housing assistance and relocation compensation with essentially the same provisions as found in the Condominium Act of 1976.[340]

C. Local California Ordinances

The San Francisco conversion ordinance addresses the problem of displacement of low and moderate income tenants by mandating that a converter offer the tenants their apartments at affordable

329. D.C. Act 3-19 § 3, 26 D.C. Reg. 361 (1979).
330. *Id.* § 4(a)(1).
331. *Id.* § 4(a)(2).
332. *Id.* § 4(a)(3).
333. *Id.* § 4(a)(4)(b).
334. *Id.*
335. *Id.* § 4(a)(5).
336. D.C. CODE ANN. § 45-1699.10(a) (Supp. VI 1979).
337. *Id.*
338. *Id.*
339. *Id.*
340. *See* notes 310-15 *supra* and accompanying text.

prices.[341] In a conversion of five or more units, the converter must retain ten percent of the apartments for rental or make available ten percent of the apartments for purchase by low and moderate income households.[342] Apartments made available for purchase must be offered at prices that do not exceed two and a half times the annual median income of low or moderate income families in the area.[343] To maintain these apartments for low or moderate income families, the ordinance provides that any low or moderate income purchaser, when he chooses to sell, must grant a right of first refusal to the city to purchase the apartment for a sum equal to the original purchase price, the costs of any improvements made therein, plus any market appreciation.[344] The city, in turn, must convey the unit to other qualified low or moderate income purchasers.[345] As an alternative to offering ten percent of the apartments to low or moderate income households at reduced prices, the converter may agree with the city to construct the same number of units for low and moderate income occupancy[346] or pay into a Housing Development Fund an amount equal to ten percent of the difference between the market prices of these apartments and their selling prices to moderate income tenants.[347] The Fund is used to provide money to reduce the cost of construction of low and moderate income housing and to make homeownership possible for low and moderte income families by providing them with financial assistance towards the down payment.[348] To curb the rate of conversions the San Francisco ordinance permits the conversion of only

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341. SAN FRANCISCO, CAL., CODE § 1385 (1979) (the price of the apartments shall be no greater than 2.5 times the highest income level for low and moderate income households).

342. *Id.* § 1341(b).

343. *Id.* § 1341(c).

344. *Id.*

345. *Id.*

346. *Id.* § 1341(f).

347. *Id.* § 1341(g).

> [T]he [converter] shall pay to the City and County of San Francisco an amount equal to ten percent (10%) of the difference between the aggregate total of the proposed market rate sale prices, as indicated on the price list supplied with the application packet, and the aggregate total of the sales price if the units were to be sold at moderate income sales prices . . . . This payment shall be made within two years of the recordation of the Final Map.

Id.

348. *Id.* § 1343(1).

1000 rental units per calendar year.[349]

Two conversion ordinances in California remedy the displacement problem by shifting the burden of finding a new residence from the non-purchasing tenant to the converter. In Alameda, California, a converter who controls other rental units must offer to rent them to non-purchasing tenants.[350] In Los Angeles, in addition to paying a relocation fee of $2500 to "qualified tenants,"[351] a converter must make available to each qualified tenant a current list of vacant and available comparable rental units within a one and one-half mile radius of the building being converted.[352] The converter must also actively assist non-purchasing tenants in their search for new housing.[353] Another provision of the Los Angeles ordinance attempts to solve the problem of depletion of the rental housing stock by requiring that, as a condition to obtaining approval of the conversion, a converter pay to the city a "Rental Housing Production Fee" of $500 for each converted unit.[354] These fees are held in an account and used exclusively for the development of low and moderate income rental housing in Los Angeles.[355]

V. Conclusion

Cities across the United States are experiencing a vast increase in the number of conversions of rental apartments to ownership status. The resulting displacement of non-purchasing tenants and depletion of the existing rental housing supply has prompted many cities to enact conversion moratoriums which give lawmakers time to study the problem and enact permanent protective legislation. Although a conversion moratorium would probably withstand fourteenth amendment challenges under the United States Constitution, it is possible that some local moratoriums would be struck

349. *Id.* § 1396.

350. ALAMEDA, CAL., CODE § 11-14D6(c) (1977).

351. A qualified tenant is either over age 62, handicapped, disabled or the parent or guardian of one or more children. The term qualified tenant does not include any tenant who is offered relocation assistance or who intends to purchase a unit in the conversion. Los Angeles, Cal., Ordinance 153, 251 (Dec. 17, 1979) (to be codified in LOS ANGELES, CAL., CODE § 47.06 (B)).

352. *Id.* § 47.06 (D)(1)(a)(1).

353. The converter may have to either drive qualified tenants to the replacement unit or hire an ambulance to take disabled tenants. *Id.*

354. Los Angeles, Cal., Ordinance 153, 024 (Oct. 4, 1979).

355. *Id.*

down on state constitutional grounds. In any case, conversion moratoriums are only useful as temporary measures and must be followed by permanent protective legislation.

With the exception of federal tax schemes that encourage the operation of rental apartment buildings, federal legislation in this area is inappropriate because it cannot accommodate the unique circumstances that exist among United States cities. A remaining issue is whether conversion regulation should emanate from state legislatures or from local governments. Local legislation is proper to the extent that a city's housing market does not affect neighboring areas. However, state regulation is preferable where local legislation would affect nearby communities. Regardless of whether the regulatory scheme is enacted at the state or local level, its purpose should be to encourage conversions and to minimize displacement and rental housing depletion.

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