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THE NO-BUY PLEDGE: A POTENTIAL TOOL FOR TENANTS IN A CONDOMINIUM CONVERSION

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I. INTRODUCTION

The conversion[1] of rental apartments into condominium or cooperative ownership is occurring in cities throughout the country. In Minneapolis, St. Paul, Chicago, Washington, D.C., Boston, and New York City, many apartment buildings are being converted and sold to existing tenants as condominiums or cooperatives.[2]

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1. "A conversion is the sale of individual units in an apartment building by its owner to tenants or outside purchasers." Comment, *The Regulation of Rental Apartment Conversions,* 8 FORDHAM URB. L.J. 507, 507 (1980).

2. In many jurisdictions, particularly New York, rental apartments are converted into cooperatives instead of condominiums. This Article is generally applicable to both condominium and cooperative conversions. Local customs and preferences typically dictate which form will be used. While the terms "condominium" and "cooperative" are often used interchangably, they are conceptually quite different. A condominium entails "[i]ndividual ownership in 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." 4B R. POWELL, THE LAW OF REAL PROPERTY ¶ 633.1[2] n.2, at 770 (1981) (citing J. RAMSEY, CONDOMINIUM: THE NEW LOOK IN CO-OPS 3 (1961)). The condominium owner pays his own tax bill and his own individual mortgage payment. On the other hand, a cooperative building is owned by an apartment corporation. Tenant/shareholders own stock in the

The national trend toward conversion of rental property results primarily from the increased costs of operation, which have greatly exceeded rent revenues. This disparity denies landlords a reasonable return on their investments. The disparity is exacerbated by rent control laws, which artificially depress rent levels in cities such as Boston, New York City, and Washington, D.C.[3]

Developers, who are often the landlords of the rental property,[4] have turned to conversion to reduce the disparity between expenses and rents. A handsome profit is usually available to landlords who choose to convert their properties. Many factors enter into the determination of whether to convert to condominium or cooperative ownership, including: (1) available individual unit financing; (2) favorable existing financing on the structure; (3) desire to screen prospective buyers; and (4) the tax consequences of the transaction.[5]

A conversion may also be economically advantageous to current tenants who are financially able to purchase their units in the condominium. Tenants are typically offered a substantial discount on the prevailing market price.[6] As condominium owners, purchasing tenants will be entitled to deduct mortgage interest and property tax payments from their federal income taxes.[7] These tenants can

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corporation, entitling them to a long-term "proprietary lease" to a particular apartment in the building. The tenant/shareholders pay monthly maintenance charges to the corporation. The corporation, in turn, pays the real estate taxes, monthly mortgage payments, and other bills. *See* Comment, *Tax Aspects of Choosing Between a Cooperative or Condominium Conversion,* 12 CUM. L. REV. 453, 455 (1982). The condominium and cooperative both have an executive board which oversees the maintenance and operation of the building or buildings.

3. *See, e.g.,* Emergency Tenant Protection Act, ch. 403, 1983 N.Y. Laws 698 (McKinney 1983) (combining New York City's Rent Control Law and Rent Stabilization Law into one statewide rent control system).

4. Landlords, developers, and sponsors will generically be referred to as "converters" throughout this Article.

5. For a discussion of the tax considerations when converting to condominium form of ownership, see Boris, *Co-ops and Condominiums Capital Gain on Conversion and Other Problems,* 40 INST. ON FED. TAX'N § 22.01 (1982); Kaster, *Co-Ops and Condominiums--The Sponsor's Viewpoint,* 28 INST. ON FED. TAX'N 99 (1970); Kaster, *Residential Co-ops and Condominiums Development Projects and Conversions Promoter's Tax Techniques,* 38 INST. ON FED. TAX'N § 13.01 (1980); Comment, *supra* note 2.

6. *See* Wissner v. 15 W. 72nd St. Assoc., 87 A.D.2d 120, 450 N.Y.S.2d 790 (App. Div. 1982) (25% discount). Purchase by existing tenants is essential to the developer in jurisdictions where a minimum number of occupying tenants are required by law to purchase before a building may be converted. *See, e.g.,* N.Y. GEN. BUS. LAW § 352eeee (McKinney Supp. 1982-1983).

7. Section 164 of the Internal Revenue Code permits a condominium owner to deduct state and local property taxes assessed on his condominium unit. *See* I.R.C. § 164

also expect to realize a substantial gain upon the sale of their units because of the increasing value of the condominium.

Despite the advantages to purchasing tenants, almost all conversions are met by tenant opposition. Although many tenants would like to become owners, most of them are unable to do so. Some tenants may be unable to obtain financing, while others cannot afford the total monthly carrying costs of the unit. Tenants who have the ability to purchase may simply not want to purchase, choosing instead to remain in a rental arrangement. Consequently, many tenants are opposed to a proposed conversion which may result in the eviction of non-purchasing tenants.[8]

It has become commonplace, therefore, for tenants faced with a conversion of their building to band together. A device which enables tenants to unite is the "no-buy pledge," a simple contract which binds tenants to refrain from purchasing a unit. This Article examines the legal ramifications of the no-buy pledge, taking into account the perspectives of all the parties involved in a conversion. The Article then analyzes the various issues concerning the validity of the no-buy pledge, summarizing and comparing the judicial decisions arising thereunder. Finally, the Article discusses the different types of no-buy pledges, suggesting a model no-buy pledge for consideration. The New York experience provides the necessary focal point for this inquiry, as a considerable amount of conversion activity occurs in New York City, and because the New York courts have carefully scrutinized the no-buy pledge.

II. Conversion Process and Definitions

The conversion process in New York City involves a complex sequence of events. First, the attorney for the converter prepares an offering plan containing all the pertinent information and facts of the proposed conversion. This plan is simultaneously submitted to the Attorney General's office and to the existing tenants. The

(West Supp. 1983). Section 163 of the code allows condominium owners to deduct interest paid on a mortgage loan. *Id.* § 163. For co-operative housing tenant stockholders, section 216 of the Internal Revenue Code allows some deduction of taxes, interest, and business depreciation. *See id.* § 216.

8. In New York City, non-purchasing tenants can only be evicted if a building is converted pursuant to an "eviction plan," whereby a majority of existing tenants agree to purchase. N.Y. Gen. Bus. Law § 352eeee(1)(c) (McKinney Supp. 1982-1983). Non-purchasing tenants may still remain for three years after the conversion offering has been declared effective. *Id.* § 352eeee(2)(d)(ii). Any conversion involving a lesser number of existing tenant/purchasers is characterized as a "non-eviction plan." *Id.* § 352eeee(1)(b). Tenants cannot be evicted under a "non-eviction plan." *Id.* § 352eeee(2)(c)(ii).

Attorney General's office reviews the plan to ascertain whether it contains any fraudulent schemes or devices. This process can take four to six months. Once the Attorney General's office determines that the offering has been completely and accurately described, the proposed plan is "accepted for filing" and the final offering plan is presented to the tenants.[9] By this time, the tenants in the building have usually organized a tenants' association. The terms of the proposed offering are often unacceptable to many of the tenants. This factor alone serves to unite the tenants. Next, the tenants' association hires an experienced lawyer.[10] This lawyer provides the association with certain services including: (1) advice on how to organize; (2) attendance at all public tenants' meetings; (3) analysis of the conversion offering; and (4) formulation of a legal strategy which will enable the tenants to negotiate as a unified block. This strategy typically includes preparation and distribution of a no-buy pledge.

The no-buy pledge consists of an agreement among the tenants not to purchase an apartment in the building until the tenants' executive committee, acting on the advice of counsel, votes to accept the offering and release the tenants from the pledge, or until certain conditions are met. These conditions might include making the financing arrangements for conversion more affordable for the tenants or changing the plan from an eviction plan to a non-eviction plan.[11]

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9. *Id.* § 352eeee.

10. An attorney representing a tenant's association must be cautious. "No-buy pledges" might not be signed by each member of the association and where all members sign, some may not adhere to the agreement. Therefore, members of a tenants' association may end up suing each other. The attorney representing the association may be subject to disqualification under the Code of Professional Responsibility.

In *Wilshire Tenant Ass'n v. Spiegel,* the defendants, seven tenants alleged to have violated a "no-buy pledge," moved to disqualify the attorney for the tenants' association. N.Y.L.J., Nov. 12, 1981, at 12, col. 1. The defendants argued that the association's attorney was violating DR 5-105, which prohibits an attorney from representing a client where his judgment is adversely affected from acting on behalf of another client. *See id.; see also* MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-105 (1980). The *Spiegel* Court stated that Ethical Consideration 5-18 provides that an attorney representated by a corporation or similar business entity does not owe a duty to the individuals of the entity, but only to the entity itself. *See* MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 5-18 (1980). Therefore, the *Spiegel* court denied defendant's motion for disqualification. N.Y.L.J., Nov. 12, 1981, at 12, col. 1.

11. There are many different forms of a no-buy pledge agreement. Each has its own unique mechanism for releasing the signers. Set forth below are several typical release clauses:

> TENANT PROMISES AND WARRANTS that he will not execute a subscription agreement for the purchase of any shares for any apartment located at

The no-buy pledge agreement frequently contains a stipulation that it will be unenforceable until a specified number of tenants have agreed to its terms, and that it will expire after a specified date.[12] No-buy pledges commonly contain a promise by the signing tenants not to bargain with the converting landlord except through the officers and counsel for the tenants' association.[13] Virtually all pledge agreements contain a paragraph stating that the terms of the pledge may be enforced by an injunction[14] and that the party signing the pledge consents to service of process by registered or certified mail.

_____, New York, New York, pursuant to any plan to convert the building to Cooperative Ownership until one of the two events designated below occurs:
(a) A period of time, whose duration is eighteen (18) months and one (1) day after the date of the presentation of a plan which is filed in the Attorney General's office; or
(b) The above plan or any amendment to such plan which is accepted for filing by the Attorney General's Office is "approved" by fifty five percent (55%) of the tenants in occupancy at the date of the presentation of such plan or amendment. Such "approval" must be in writing, and must indicate that each tenant is prepared to execute a subscription agreement.
(c) You will be released by a majority vote of the Executive Committee when it determines that it has obtained substantially the best available terms and conditions from the Sponsor upon which the Sponsor is willing to convert the building to cooperative ownership. Release by the Executive Committee is not intended to infer that it has approved the plan or determined that the terms are acceptable or favorable to the signers of the contract.
(d) I will not purchase or agree to purchase any apartment in the building pursuant to any plan to convert the building to cooperative ownership during the term of this Pledge Agreement, until an amendment to such Plan is accepted for filing by the Attorney General's Office which incorporates the recommendations that shall be set forth in a report of the Tenants Steering Committee and countersigned by the Attorney for the Tenants Committee.

No-buy pledges which can be released only upon a majority vote of the executive committee present a significant problem. If the committee is composed primarily of stalwart opponents to the conversion plan, the vast majority of the tenants in the building could be prevented from purchasing their apartments. *See* 2 P. ROHAN & M. RESKIN, COOPERATIVE HOUSING LAW & PRACTICE § 6.11, at 6-131 (1983).

12. This date is usually one year to eighteen months after the conversion plan was accepted for filing by the governmental agency charged with overseeing the offering to the public.

In New York City, a conversion offering plan must be declared effective within fifteen months from the date of acceptance of the final plan by the attorney general. *See* N.Y. GEN. BUS. LAW § 352eeee(2)(a) (McKinney Supp. 1982-1983). Therefore, the expiration date on no-buy pledges to be used in New York City conversions will typically be one day after fifteen months from the date the plan was accepted for filing.

13. *See supra* note 11.

14. Courts may hesitate to issue an injunction absent this provision. In Wilshire Tenants Ass'n v. Spiegel, N.Y.L.J., Nov. 12, 1981, at 12, col. 1, the court held that a preliminary injunction would not be granted to a tenants' committee seeking to enforce a no-buy pledge executed prior to a change from an eviction plan to a non-eviction plan. The court ruled that since the tenants' rights of continued occupancy were not threatened by the non-eviction plan, irreparable harm could not be demonstrated. *Id.*

The no-buy pledge may enable tenants to negotiate more favorable terms or to block the proposed conversion completely. The pledge works most effectively in jurisdictions where the law requires a certain percentage of tenants to purchase apartments before a building can be converted. Within such a framework, an effective no-buy pledge signed by a majority of existing tenants can shift the balance of power from the converter to the tenants. In New York City, for example, an "eviction plan"[15] to convert a rental building cannot be declared effective unless fifty-one percent of the existing bona fide tenants in occupancy agree to purchase their units.[16] If more than fifty-one percent of the tenants execute a no-buy pledge they can block the implementation of an eviction plan. As a result, the converter is forced to negotiate with the tenants' association.

The no-buy pledge can also assist tenants in jurisdictions without statutory minimum percentage requirements, in that the presentation of an organized and unified tenants' position can still compel the owner to negotiate.[17] Landlords and developers in

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15. An "eviction plan" is:

> A Plan which . . . can result in the eviction of a non-purchasing tenant by reason of the tenant failing to purchase pursuant thereto, and which may not be declared effective until at least fifty-one percent of the bona fide tenants in occupancy of all dwelling units in the building . . . on the date the offering statement or prospectus was accepted for filing by the attorney general . . . shall have executed and delivered written agreements to purchase under the plan pursuant to an offering. . . .

N.Y. GEN. BUS. LAW § 352eeee(1)(c) (McKinney Supp. 1982-1983).

16. Section 352eeee previously provided that an eviction plan was valid where thirty-five percent of the bona fide tenants agreed to purchase, but was amended in 1982 to the fifty-one percent requirement. *See* N.Y. GEN. BUS. LAW § 352eeee(1)(c) (McKinney Supp. 1982-1983). As a result of the amendment, no-buy pledges no longer need the signatures of sixty-five percent of the tenants. Rather, only fifty-one percent or more of the tenants need to sign to effectively block an eviction plan. *See id.* Dean Rohan and Melvin Reskin have stated that:

> [T]here are only a few ordinances in effect today which require that a certain precentage [sic] of tenants must either approve of conversion or agree to purchase units before the conversion can proceed. However, some ordinances have tenant approval provisions which exempt the conversion from other statutory requirements if the required tenant approval is obtained. . . . The City of Newport Beach, California requires that at least 30 percent of the tenants express written interest in exercising their option to purchase their unit. San Francisco's conversion ordinance states that an application for conversion may not be filed unless 40 percent of the tenants have either signed intent to purchase forms, or indicate that they are eligible for, and interested in, lifetime leases. Those qualifying for lifetime leases are included in the 40 percent needed for conversion.

P. ROHAN & M. RESKIN, CONDOMINIUM LAW AND PRACTICE § 3A.05[4], at 3A-16.225 (1983).

17. Minnesota statutes, for example, do not require that a minimum percentage of

these jurisdictions cannot ignore tenants' concerns because existing tenants constitute a built-in market of potential purchasers which the developer can tap at little or no cost.

III. CHALLENGES TO THE NO-BUY PLEDGE

A. The No-Buy Pledge as an Antitrust Violation

In light of state and federal antitrust statutes,[18] careful consideration should be given to the use of the no-buy pledge. Should these statutes be found applicable to the no-buy pledge the prospect of treble damages is both real[19] and significant.[20] This section discusses potential state and federal antitrust obstacles to the no-buy pledge and how they may be overcome.

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tenants purchase their units in order to complete the conversion plan. Nonetheless, Minnesota obligates the declarant to give each tenant and subtenant in possession of a residential unit 120 days notice prior to compelling them to vacate. *See* MINN. STAT. § 515A.4-110(a) (1982). The tenant of each unit has the first option to purchase that unit for 60 days from the time the notice of conversion is mailed or delivered. *See id.* § 515A.4-110(b). If the tenant fails to exercise this option during the 60-day period, the declarant may not offer to dispose of the unit at terms more favorable than those offered to the tenant. *See id.* These statutory provisions work to keep the tenants in the buildings as buyers. A no-buy pledge agreement can work to achieve the same result by forcing the landlord to negotiate.

A number of interests are promoted when tenants become buyers. The developer profits by retaining tenants as buyers in most conversion projects. It ensures a minimum of public controversy and protects the all-important reputation of the developer who contemplates long-term involvement in the real estate market. *See* B. LUKERMANN, M. PINKERTON, T. ANDING, L. BROWN, N. HOMANS & R. SMITH, TWIN CITIES CONVERSIONS OF THE REAL ESTATE KIND 16 (Pub. No. CURA 81-5, 1981).

Tenants also benefit by purchasing their unit. The tenant-buyer receives a more favorable purchase agreement; it enables him to invest in an ownership opportunity at a fair monthly cost with an expectation for investment gains; it provides an alternative form of owner occupied housing for neighborhood residents; and it ensures that the individual can remain in the building he selected for location and structural characteristics and benefit from the improvements made to the remodeled unit. *Id.* at 23-24.

18. *See, e.g.,* Sherman Antitrust Act, 15 U.S.C. §§ 1-7 (1976); Minnesota Antitrust Law of 1971, MINN. STAT. §§ 325D.49-.66 (1982); New Jersey Antitrust Act, N.J. REV. STAT. §§ 56:9-1 to -19 (Supp. 1983-1984); Donnelly Act, N.Y. GEN. BUS. LAW §§ 340-47 (McKinney 1968 & Supp. 1982-1983).

19. 15 U.S.C. § 15. The Clayton Act provides:

> Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court . . . and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Id. The purpose of treble damages is to deter potential violators and compensate victims for their injuries. Illinois Brick Co. v. Illinois, 431 U.S. 720, *reh'g denied,* 434 U.S. 881 (1977); Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477 (1977).

20. Antitrust suits frequently involve claims for damages in excess of a million dollars. *See, e.g.,* Affiliated Capital Corp. v. City of Houston, 700 F.2d 226 (5th Cir. 1983) (damages over $2 million).

Section one of the Sherman Antitrust Act prohibits "every [unreasonable][21] contract, combination . . . or conspiracy in restraint of trade. . . ."[22] The Sherman Act has been construed to forbid several types of economic restraints[23] including boycotts,[24] which are concerted refusals to deal.[25] The no-buy pledge is a concerted refusal by prospective condominium buyers to deal with a converter. As a result, the no-buy pledge could be characterized as a classic boycott.[26]

Boycotts are considered manifestly anticompetitive.[27] Thus, once a boycott is found to exist many courts apply a per se analysis.[28] Under a per se analysis, the antitrust plaintiff is not required to prove that the no-buy pledge actually had an anticompetitive effect.[29] If the plaintiff establishes that the defendant engaged in an activity characterized as a per se restraint, the defendant is

21. Standard Oil Co. of N.J. v. United States, 221 U.S. 1 (1911).

22. 15 U.S.C. § 1 (1976).

23. *See id.* § 1-2. For example, cartels, refusals to deal, tying arrangements, price fixing, monopolies, price discrimination, market allocation, and customer restrictions. *See generally* P. AREEDA & D. TURNER, ANTITRUST LAW (1978).

24. United States v. General Motors Corp., 384 U.S. 127 (1966); Silver v. New York Stock Exchange, 373 U.S. 341 (1963); Radiant Burners, Inc. v. Peoples Gas, Light and Coke Co., 364 U.S. 656 (1961); Klor's, Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959); Fashion Originators' Guild of America, Inc. v. FTC, 312 U.S. 457 (1941); Eastern States Retail Lumber Dealers' Ass'n v. United States, 234 U.S. 600 (1914).

25. Bartholomew v. Virginia Chiropractors Ass'n, 612 F.2d 812 (4th Cir.), *cert. denied,* 446 U.S. 938 (1980). "Boycott" is derived from actions taken by disgruntled Irish tenant farmers against Captain C. Boycott, a British army officer. *See* THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 177 (1971).

26. Typically, in cases brought under the Sherman Act, a formal agreement to boycott will not exist. *See* Wilder Enterprises v. Allied Artists Pictures Corp., 632 F.2d 1135, 1141 (4th Cir. 1980); *see also* United States v. Paramount Pictures, Inc., 334 U.S. 1 (1948); Frey & Son v. Cudahy Packing Co., 256 U.S. 208 (1921). In many boycott cases, the main issue is whether a concerted refusal to deal exists. *See Wilder,* 632 F.2d at 1141. The no-buy pledge, a signed contractual refusal to deal, would not present this issue.

27. Boycott agreements, "no less than those to fix minimum prices, cripple the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment." Kiefer-Stewart Co. v. Seagram & Sons, 340 U.S. 211, 213 (195l); *see also* Northern Pac. R.R. v. United States, 356 U.S. 1, 5 (1958); Times-Picayune Publishing Co. v. United States, 345 U.S. 594, 625 (1953); Fashion Originators' Guild v. FTC, 312 U.S. 457 (1941); Binderup v. Pathe Exchange, Inc., 263 U.S. 291 (1923); Eastern States Retail Lumber Ass'n v. United States, 34 U.S. 600 (1914).

28. *See, e.g., Klor's,* 359 U.S. 207; *Fashion Originators',* 312 U.S. 457; Worthen Bank & Trust Co. v. National BankAmericard, Inc., 485 F.2d 119 (8th Cir. 1973), *cert. denied,* 415 U.S. 918 (1974).

29. *See Klor's,* 359 U.S. at 211. Under a per se analysis, it is "not for the courts to decide whether in an individual case injury had actually occurred." *Id.; see also* Radovich v. National Football League, 352 U.S. 445, 453-54 (1957); United States v. Trenton Potteries Co., 273 U.S. 392, 395-402 (1927); Standard Oil Co. v. United States, 221 U.S. 1, 63-68 (1911).

deemed to have violated the Sherman Act.[30]

The no-buy pledge has not been tested in the federal courts. Federal courts may be hesitant to apply a per se analysis to the no-buy pledge because of the nature of the interests involved.[31] While the typical boycott involves competing business entities, the no-buy pledge pits tenants against a converter. Courts are unlikely to apply a per se analysis when the challenged activity results from social and political concerns.[32]

Activities not characterized as per se violations of the Sherman Act are tested under the "Rule of Reason."[33] Under this test, plaintiffs must prove that the challenged activity's anticompetitive effect outweighs its pro-competitive impact.[34] Even though the "Rule of Reason" is strictly applied to boycotts,[35] the unique characteristics of the no-buy pledge, as well as the surrounding circumstances in a given housing market, may satisfy the "Rule of Reason" analysis.[36]

The no-buy pledge does not involve traditional business competitors. It attempts to preserve and protect tenants' homes, typically arising only in areas where the free market system is affected by rent control. Thus, a court could conclude that the no-buy pledge

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30. *See supra* note 29.

31. Per se analysis is used less frequently when the purpose of the boycott is political or social, rather than economic. *See, e.g.,* United States v. Oregon State Medical Soc., 343 U.S. 326, 335 (1952); Missouri v. National Org. for Women, 620 F.2d 1301 (8th Cir.), *cert. denied,* 449 U.S. 842 (1980); Molinas v. National Basketball Ass'n, 190 F. Supp. 241 (S.D.N.Y. 1961).

32. *See supra* note 31.

33. *See* Chicago Bd. of Trade v. United States, 246 U.S. 231 (1918).

34. The most often cited formulation of the "Rule of Reason" states:

> The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts.

Id. at 238.

35. *Cf.* Mackey v. National Football League, 543 F.2d 606 (8th Cir. 1976), *cert. dismissed,* 434 U.S. 801 (1977).

36. A court might find, for example, that any anti-competitive effects of the no-buy pledge are offset by the tenant's motive of protecting their homes and the effect on competition. *See* White & White, Inc. v. American Hospital Supply Corp., 540 F. Supp. 951 (D. Mich. 1982); Williams v. Kleaveland, 534 F. Supp. 912 (D. Mich. 1981). *But see* National Soc'y of Professional Eng'rs v. United States, 435 U.S. 679 (1978); United States v. National Ass'n of Broadcasters, 536 F. Supp. 149 (D.D.C. 1982).

does not violate the Sherman Act.[37] Particular state statutes declaring housing crises, giving tenants the option to buy their apartments, and requiring tenants' approval of the conversion plan would all weigh in favor of the no-buy pledge.[38]

Concern over whether the no-buy pledge falls under the auspices of the Sherman Act may be unwarranted. Only activities in or affecting interstate commerce are governed by the Sherman Act.[39] The activities of a single tenants' association against the landlord are not in interstate commerce.[40] Any effect upon interstate commerce could be de minimus and insufficient to invoke federal jurisdiction.[41] Thus, the no-buy pledge may escape potential Sherman Act liability.

Although the no-buy pledge should withstand a federal antitrust challenge, the arrangement may be subject to state antitrust laws.[42] Most state antitrust statutes are modeled after the Sherman Act,[43] although some are broader in scope than the federal laws.[44] Courts located in areas not affected by housing shortages,

37. *See supra* note 36; *cf.* Missouri v. National Org. for Women, 620 F. 2d 1301 (8th Cir.), *cert. denied,* 449 U.S. 842 (1980).

38. These factors could be considered when applying the "Rule of Reason." The no-buy pledge would not, however, be exempt from antitrust laws under the doctrine of state-action immunity because the tenants' actions are not actively supervised by state government. In order to qualify for state-action immunity, the no-buy pledge would have to be " 'clearly articulated and affirmatively expressed as state policy'; second, the policy must be 'actively supervised' by the state itself." California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97, 104 (1980), *citing,* City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 410 (1978); *see also* Community Communications Co. v. City of Boulder, 455 U.S. 40 (1982); City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389 (1978); Cantor v. Detroit Edison Co., 428 U.S. 579 (1976) (anticompetitive activity illegal where not *required* by state regulations); Parker v. Brown, 317 U.S. 341 (1943).

39. 15 U.S.C. 1 (1976); McLain v. Real Estate Bd., 444 U.S. 232 (1980); Hospital Bldg. Co. v. Trustees of Rex Hospital, 425 U.S. 738 (1976). *See generally* P. AREEDA, ANTITRUST LAW 90-99 (Supp. 1982) (interstate commerce discussion).

40. These activities are usually confined to the geographic location of the apartment building.

41. The plaintiff in an antitrust action must show that the activity has a "not insubstantial effect" on the interstate commerce involved. *McLain,* 444 U.S. at 242. The limited effects of the no-buy pledge may not affect interstate commerce. *See also* Bain v. Henderson, 621 F.2d 959 (9th Cir. 1980) (attorney appointment list); Cardio-Medical Assoc. v. Crozer-Chester Med. Ctr., 552 F. Supp. 1170 (E.D. Penn. 1982) (hospital staff privileges); Heille v. City of St. Paul, 512 F. Supp. 810 (D. Minn. 1981), *aff'd,* 671 F.2d 1134 (8th Cir. 1982) (rubbish); Dominion Parking Corp. v. Baltimore & O.R.R., 450 F. Supp. 441 (E.D. Va. 1978) (parking lots).

42. *See supra* note 18.

43. *See id.*

44. *See, e.g.,* MINN. STAT. § 325D.53 (1982).

rent control, or strict condominium conversion legislation may hesitate to sanction the no-buy pledge.

Nonetheless, several states have declared housing emergencies and passed corrective regulatory legislation.[45] Much of this legislation increases tenants' rights when dealing with landlords and condominium developers.[46] One of the most common provisions gives tenants the first right of refusal for their particular unit.[47] Another statute requires that a certain percentage of tenants approve the conversion plan in order for the conversion to take place.[48] Under these circumstances, state antitrust laws should seldom, if ever, be construed to conflict with or nullify subsequent emergency housing legislation.[49]

In *Pensic v. Sultzberger,*[50] the New York County Supreme Court addressed the issue of whether a no-buy pledge violated the Donnelly Act,[51] New York's state antitrust statute. The building owners in *Pensic* challenged the no-buy pledge shortly after the New York legislature had increased the percentage of tenant approval required for conversions from fifteen to thirty-five percent.[52] The court summarily rejected the plaintiffs' antitrust argument, stating:

> It is not unrealistic to assume that the increase in the percentage of tenant approval required was in contemplation of the advisability of mutual consultation and discussion by tenants. If tenants as a group choose to act together to protect themselves against an unacceptable plan, their rights in that regard are no different from stockholders, joint venturers, or limited partners who participate jointly in dealing with their real property.[53]

Pensic indicates that no-buy pledges may be able to withstand antitrust scrutiny under state statutes. Tenants should be aware that a condominium developer may still allege antitrust violations and

45. *See* 1983 CAL. LEGIS. SERV. 665-66 (West) (urgency statute); N.Y. GEN. BUS. LAW § 352eeee (McKinney Supp. 1982-1983) (serious public emergency because of acute housing shortage).

46. *See supra* note 45.

47. *See* 1983 CAL. LEGIS. SERV. 665-66 (West); MINN. STAT. § 515A.4-110 (1982); N.Y. GEN. BUS. LAW § 352eeee(2)(d)(ix) (McKinney Supp. 1982-1983).

48. N.Y. GEN. BUS. LAW § 352eeee (McKinney Supp. 1982-1983).

49. For a general discussion of the rules of statutory interpretation, see J. DAVIES & R. LAWRY, INSTITUTIONS AND METHODS OF THE LAW 191-213 (1982).

50. N.Y.L.J., July 16, 1970, at 2, col. 2 (Sup. Ct. N.Y. County).

51. N.Y. GEN. BUS. LAW. §§ 340-47 (McKinney 1968 & Supp. 1982-1983).

52. N.Y.L.J., July 16, 1970, at 2, col. 3.

53. *Id.*

claim treble damages. The tenants' association should be prepared to defend itself against these claims.

B. Validity of No-Buy Pledge as a Binding Contract

No-buy pledges may also be vulnerable to attacks based on contract doctrines of legal consideration[54] and mutuality of obligation.[55] Courts are reluctant to enforce no-buy pledges where the reciprocal obligations of each party are not clearly set out in the agreement. *Vermeer Committee for Fair Options v. Guterman,*[56] for example, involved the proposed conversion of a Manhattan rental apartment building. The plaintiffs, representing forty-five percent of the eligible tenants, sought to enjoin a second group of tenants and the sponsor from declaring the eviction plan effective. Plaintiffs argued that the statutory minimum of thirty-five percent had been achieved illegally through purchases by tenants who had previously signed no-buy pledges.[57] Defendants contended, *inter alia,* the pledges were invalid for lack of consideration and mutuality of obligation since no measurable standard of negotiation existed and the obligations of the signors were vague and indefinite.[58] The *Vermeer* Court denied the tenants' motion for a temporary injunction against proceeding with the conversion plan, holding that "[t]here is a substantial question as to whether the . . . pledge is supported by sufficient legal consideration . . . and embodies the requirements fo [sic] concrete mutual reciprocal duties and obligations to qualify as a binding contractual relationship."[59]

Subsequent lower New York court decisions, however, have found that no-buy pledge agreements are valid and binding agree-

54. *See generally* 1&1A A. CORBIN, CORBIN ON CONTRACTS §§ 109-159 (1963). Corbin states that although the doctrine of consideration cannot be precisely defined, the notions of "*quid pro quo,* something given as an agreed exchange, benefits received by the promisor, detriments incurred by the promisee, action by the promisee in reasonable reliance" are useful in understanding the concept. 1 A. CORBIN, *supra,* § 109, at 488. For further discussion of the consideration doctrine, see Fridman, *The Basis of Contractual Obligation: An Essay in Speculative Jurisprudence,* 7 LOY. L.A.L. REV. 1 (1974); Chloros, *The Doctrine of Consideration and The Reform of the Law of Contract,* 17 INT'L & COMP. L.Q. 137 (1968); Hamson, *The Reform of Consideration,* 54 LAW. Q. REV. 233 (1938); Hepple, *Intention to Create Legal Relations,* 28 CAMBRIDGE L.J. 122 (1970).

55. Corbin states that "[m]utuality of obligation should be used solely to express the idea that each party is under a legal duty to the other; each has made a promise and each is an obligor." 1A A. CORBIN, *supra* note 54, § 152, at 4.

56. N.Y.L.J., May 13, 1980, at 6, col. 3 (Sup. Ct. N.Y. County).

57. *Id.*

58. *Id.* at col. 4.

59. *Id.* at col. 5.

ments. In *136 East 64th Street Tenant Association v. Bloom,*[60] plaintiff tenants sought to enjoin a conversion since more than seventy percent of the tenants had signed no-buy pledges, thus precluding the sponsor from obtaining subscription agreements from thirty-five percent of the tenants as mandated by New York law.[61] The problem arose when five of the original pledge signors violated their pledges and subsequently executed subscription agreements. This enabled the sponsor to obtain the percentage of purchasing tenants necessary to proceed with the eviction plan.

The defendants claimed that the no-buy pledges were invalid, alleging lack of consideration and no mutuality of obligation. The court carefully analyzed the four page document and concluded:

> The no-buy pledge agreement in this case is an extremely well-drawn, formal document . . . . Each signatory to the no-buy pledge agreement promised and warranted that he would not execute a subscription agreement for the purchase of any apartment in the building until the happening of [certain events]. This phraseology clearly implies an obligation, duty and liability on the part of each signatory.[62]

The court in *345 West 70th Street Tenant Association v. 345 West 70th Tenants Corp.*[63] reached a similar conclusion. In this case, the sponsor of the conversion plan actively solicited tenants to sign subscription agreements. The sponsor continued solicitation even after the tenants moved the court to enjoin the sponsor from accepting further subscriptions from tenants who were parties to no-buy pledge agreements.[64]

The court granted the tenants' motion for a preliminary injunction, rejecting defendant's argument that the signors of the pledge did not understand its terms. The court stated:

> [T]he obligations of the contract between the tenants must be enforced. An examination of the subject document indicates that it contains the required elements of a binding contract and is sufficiently specific to allow the signors to understand the nature of their obligations. Moreover, the agreement clearly provides that it can be enforced against those tenants who violate its provisions. In these circumstances, it is apparent that

60. N.Y.L.J., June 17, 1981, at 6, col. 3 (Sup. Ct. N.Y. County), *modified,* N.Y.L.J., Feb. 22, 1982, at 13, col. 1 (App. Div. 1st Dep't).

61. *Id.*

62. *Id.* at col. 4.

63. N.Y.L.J., Nov. 24, 1981, at 6, col. 3 (Sup. Ct. N.Y. County).

64. *Id.*

> injunctive relief is the only adequate remedy to insure against the severe and irreparable harm to other signatories that would take place by allowing the "No-Buy" agreement to be breached . . . .[65]

As these cases illustrate, pledges must be drafted concisely so that each party clearly understands the nature of its obligations. Well-drawn documents should be able to withstand challenges based on lack of consideration and mutuality of obligation.

C. Misrepresentation, Duress, Disclosure Omissions, and Other Equitable Issues

The validity and enforceability of no-buy pledges may be affected by the manner in which the signatures were solicited. The converter may allege that the tenants' association misrepresented the nature of the pledge,[66] solicited signatures through intimidation of other tenants,[67] or made material omissions of disclosure.[68]

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65. *Id.* In *227 E. 12th St. Assoc. v. 227 E. 12th St. Tenants Ass'n,* the court upheld a no-buy pledge as a binding contract stating, "The sanctity of contracts must be respected." N.Y.L.J., Sept. 7, 1982, at 7, col. 3 (Sup. Ct. N.Y. County).

66. For example, in one case, various allegations of misconduct were made by the sponsor-respondent, including misrepresentations as to the number of signatures to the no-buy pledge in order to fraudulently induce the signing of additional pledges. Respondent's Brief at 5, Vermeer Comm. for Fair Options v. Guterman, N.Y.L.J., May 13, 1980, at 6, col. 3 (Sup. Ct. N.Y. County), *aff'd,* 77 A.D.2d 505, 429 N.Y.S.2d 980 (App. Div. 1st Dep't), *appeal denied,* 51 N.Y.2d 991, 415 N.E.2d 981, 434 N.Y.S.2d 993 (1980). "Allegedly, the Vermeer Committee repeatedly misrepresented the nature of the no-buy pledges, conveying the seemingly erroneous message that the pledges were only tactical devices for the purpose of negotiating and were not legally binding agreements." Respondent's Brief at 7, *Vermeer,* N.Y.L.J., May 13, 1980, at 6, col. 3.

In one instance, tenants were told the pledge was not a binding document and was nothing more than a show of support for a tenants' committee:

> No sooner was the pledge distributed and signed by the building's tenants, when a handful of proponents engaged an attorney who promptly disabused the majority of their misconception by writing a letter to all signatories stating, in clear and unequivocal terms, that they had signed a valid contract, that they could not now sign a subscription agreement with the sponsor . . . and that any tenant who violated the terms of the pledge would be sued by the committee and by the other tenants in the building.

Law Proposed to Regulate 'No Buy' Tenant Contracts, N.Y.L.J., March 16, 1983, at 19, col. 3. When the sponsor asked a court for relief from the pledges, his action was dismissed for lack of standing. *Id.*

67. It is not inconceivable that an individual tenant may be harassed and intimidated by other tenants both to sign no-buy pledges and to refrain from executing purchase agreements. *See generally Law Proposed to Regulate 'No Buy' Tenant Contracts, supra* note 69, at 22, col. 1. If the harassment is held to constitute duress, the contract can be voided. *See* 1A A. CORBIN, *supra* note 54, § 228.

68. An example of misrepresentation by omission occurred when tenants were persuaded to sign a no-buy pledge without knowing, if they signed the pledge, the sponsor would refuse to negotiate or amend a non-eviction plan, effectively foreclosing them from

The provisions of the pledge itself may be vague, unconscionable, or contrary to public policy.

Perhaps the most controversial issue is whether the tenants' association has a fiduciary or statutory duty to fully disclose all the ramifications of a no-buy pledge once such a pledge is promulgated. A tenants' association, in soliciting no-buy pledges and undertaking exclusive negotiations on behalf of its signatories, may be acting as a securities broker negotiating on behalf of prospective purchasers.[69] As such, the association may be subject to the full disclosure requirements of federal[70] and state[71] securities laws. Some states have disclosure statutes which require the preparation of a public offering statement in connection with a condominium

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ever purchasing their apartment. *See* Vermeer Comm. for Fair Options v. Guterman, N.Y.L.J., May 13, 1980, at 6, col. 3 (Sup. Ct. N.Y. County), *aff'd,* 77 A.D. 505, 429 N.Y.S.2d 980 (1st Dep't), *appeal denied,* 434 N.Y.S.2d 993, 415 N.E.2d 981 (1980). Misrepresentation as to the nature of the pledge may justify rescission of the pledge on grounds of mistake. *See generally* 3 A. CORBIN, *supra* note 54, § 610.

If the tenants' association derides the physical condition of the building through misrepresentation, the converter may have a cause of action for slander of product. The Uniform Deceptive Trade Practices Act, 7A U.L.A. 45 (1978), a codification of the common law action for disparagement, provides that a person engages in a deceptive trade practice when he "disparages the goods, services, or business of another by false or misleading representation of fact." *Id.* at 50. The burden of proof in such an action would probably be heavy since freedom of speech and collective bargaining agreements have a constitutional imprimatur.

The free speech issue arose in the context of condominium conversions in Nyer v. Munoz-Mendoza, 385 Mass. 184, 430 N.E.2d 1214 (1982), when a tenant posted a sign advocating resistance to conversion on a door which connected common areas of the building. The trial court granted a permanent injunction against any such signs in public view including those within his own apartment. The Supreme Judicial Court of Massachusetts held the signs constituted "pure speech" and that although the landlord had significant interests, the injunction was unreasonably broad as it affected signs posted within the tenant's apartment. *Id.*

The *Nyer* court noted that the constitutional policy against prior restraints of speech applies even when the speech is false and defamatory. Because of this, the landlord might not gain an injunction, but rather would be left with an action for damages. *Id.; see also* 227 E. 12th St. Assoc. v. 227 E. 12th St. Tenants Ass'n, N.Y.L.J., September 7, 1982, at 7, col. 3 (Sup. Ct. N.Y. County); Litwack, *The Doctrine of Prior Restraint,* 12 HARV. C.R.-C.L.L. REV. 519, 539-40 (1977).

69. The question of whether the sale of a condominium is a securities offering has been the subject of voluminous litigation and literature. *See, e.g.,* Ellsworth, *Condominiums are Securities?,* 2 REAL EST. L.J. 694 (1974); Schneider, *Developments in Defining a "Security" (Update),* 16 REV. OF SEC. REG. 985 (1983); Schneider, *The Elusive Definition of a "Security,"* 14 REV. OF SEC. REG. 981 (1981); Note, *Federal Securities Regulation of Condominiums: A Purchaser's Perspective,* 62 GEO. L.J. 1403 (1974); Comment, *Condominium Regulation: Beyond Disclosure,* 123 U. PA. L. REV. 639 (1975).

70. *See* Securities and Exchange Act of 1933, 15 U.S.C. § 12 (1976); 17 C.F.R. § 240.10b-5 (1983).

71. *See, e.g.,* MINN. STAT. §§ 80A.01-.31 (1982).

conversion.[72] The no-buy pledge is conceivably within the purview of such laws.

If the manner of solicitation was not objectionable, the converter or the tenant seeking release from the pledge might refer to the substance of the contract for relief from enforcement. The terms of the pledge may be too vague or ambiguous to be enforceable.[73] The tenants' association can avoid such a challenge by clarifying the no-buy pledge in accordance with the "plain language" law of the jurisdiction.[74]

The terms of the no-buy pledge may also be subject to attack on the ground of unconscionability. The Supreme Court of New York County has held a no-buy pledge to be unconscionable because it did not make clear to the signors that it contained a waiver of certain rights.[75]

IV. REMEDIES FOR BREACH OF THE NO-BUY PLEDGE

The tenants' association is generally entitled to obtain injunctive relief against pledge violators as well as against the converter. In *136 East 64th Street Tenants Association v. Bloom,*[76] the court, after ruling that the no-buy pledges were valid and legally binding, held that all violating signatories were precluded from continuing with their transactions until a final determination was made in the action. Furthermore, the *Bloom* court held that the converter and

72. *See, e.g.,* FLA. STAT. ANN. § 718.503 (West 1982); ME. REV. STAT. ANN. tit. 33, § 1604-102 to -103, 1604-105 (Supp. 1982-1983); MICH. COMP. LAWS ANN. §§ 559.121, § .184a (Supp. 1983-1984); MINN. STAT. § 515A.4-104 (1982); N.Y. GEN. BUS. LAW § 352-e (McKinney Supp. 1982-1983); PA. STAT. ANN. tit. 68, §§ 3401-02, 3401-04 (Purdon Supp. 1983-1984); R.I. GEN. LAWS § 34-36.1-4.06 (Supp. 1982); W. VA. CODE § 36B-4-104 (Supp. 1983); WIS. STAT. ANN. § 703.33 (West 1981); *see also* UNIF. CONDOMINIUM ACT § 4-102, 7 U.L.A. 201 (1977).

73. The indefiniteness of essential terms may serve to prevent the creation of an enforceable contract. *See* 1 A. CORBIN, *supra* note 54, at § 95.

74. These laws require that consumer contracts be written in a clear and coherent manner, use words with common and everyday meanings, and be captioned and divided by their various sections. *See, e.g.,* MINN. STAT. § 325G.31 (1982). These statutes generally apply only to consumer contracts, however, a no-buy pledge written in accordance with such a statute will probably withstand an attack based on vagueness or ambiguity.

75. Memorandum of Law at 8, 345 W. 70th St. Tenants Ass'n v. 345 W. 70th Tenants Corp., N.Y.L.J., Nov. 24, 1981, at 6, col. 3 (Sup. Ct. N.Y. County). The court was persuaded that the failure to inform the tenants of the waivers expressed in the pledge was sufficiently unfair to relieve them of its enforcement. "[T]he waiver of the rights of a tenant in a building undergoing a condominium conversion should not be sanctioned; at a minimum, they should be subject to the most careful scrutiny before they are deemed waived." *Id.*

76. N.Y.L.J. June 17, 1981, at 6, col. 3 (Sup. Ct. N.Y. County).

selling agent could not proceed with the eviction plan pending a final determination of the action.[77] In New York, where an eviction plan is converted to a non-eviction plan, injunctive relief will *not* be granted to tenants seeking to enforce a no-buy pledge, since they can not show irreparable harm.[78] The tenants' rights of continued occupancy would not be affected by the consummation of the non-eviction plan.

V. Model No-Buy Pledge

Given the importance of the no-buy pledge and the increase in its use, a model form that is clearly written and reasonable for all parties is desirable. One such form has recently been drafted.[79] Its release mechanism is reasonable, and fair to both tenants and converter. The pledge is effective for forty-five days after presentation of the final offering plan. It must then be reaffirmed by the necessary percentage of the tenants in order to remain in effect.[80] Similar to all pledges, the tenant consents to the granting of injunctive relief in the event the pledge is breached and also consents to the jurisdiction of the court of general jurisdiction.

VI. Conclusion

This Article is intended as a survey of the myriad legal issues that are presented when tenants in a building undergoing conversion to condominium status make use of no-buy pledges. Many of the legal issues that arise are generated by the very nature of such pledges, to the extent that they involve boycotts or organized economic pressure. Still other legal complications may or may not arise, depending upon such variables as the degree of disclosure made by the individuals sponsoring the pledge, the presence or

77. *Id.; see also* 345 W. 70th St. Tenants Ass'n v. 345 W. 70th Tenants Corp., N.Y.L.J., Nov. 24, 1981, at 6, col. 3 (Sup. Ct. N.Y. County).

78. Wilshire Tenants Ass'n v. Spiegel, N.Y.L.J., Nov. 12, 1981, at 12, col. 1 (Sup. Ct. N.Y. County). In Vermeer Comm. for Fair Options v. Guterman, N.Y.L.J., May 13, 1980, at 6, col. 3 (Sup. Ct. N.Y. County), *aff'd,* 77 A.D. 505, 429 N.Y.S.2d 980 (1st Dep't), *appeal denied,* 415 N.E.2d 981, 434 N.Y.S.2d 993 (1980), the court denied a motion for an injunction and found that damages would provide an adequate remedy. This finding might not have been made if other grounds for denying the preliminary injunction did not exist. *Id.*

79. A model no-buy pledge is contained in the Appendix to this Article.

80. In New York City, each tenant is granted an exclusive right, for a period of ninety days, to purchase his apartment. The model pledge, therefore, gives each tenant a substantial period of time to purchase in the event the pledge is not reaffirmed by the requisite percentage.

absence of a conflict of interest on the part of the sponsors of the pledge, the agreement's duration, and the reasonableness of relief mechanisms, if any.

Some states may find such pledges to be violative of their common law or statutes, while other jurisdictions may sustain them, at least where the pledges have not been tainted by other facts or circumstances. As these pledges turn up with increased frequency in conversion situations, still other issues may arise, as, for example, whether a successor tenant is bound by a no-buy pledge executed by his predecessor or assignor. The state legislatures are not likely to resolve the issues presented by no-buy pledges, for fear of being viewed as denying consumers or tenants the right to band together for mutual protection and benefit. Accordingly, the courts will be called upon to sort out the relevant considerations in such cases. In passing upon this sort of agreement, the judiciary should take the long view and eschew facile generalizations. Unfortunately, here, as in so many areas of daily living, lay people often do not appreciate what they are agreeing to when they sign a piece of paper. While it is not the law's primary function to protect the careless or uninformed, agreements entered into casually, and without the aid of counsel, should not be so construed as to become a millstone around the neck of the signatories, especially when it comes to matters of enforcement, rescission, damages, and injunctive relief.

APPENDIX
MODEL NO-BUY PLEDGE AGREEMENT†

Warning: This is a binding legal agreement. By signing it you may lose your right to buy your apartment or any other apartment in the building and you may subject yourself to severe penalties if you should attempt to do so.

Building address _____, New York
(herein called the Building)

Tenant(s) name(s) _____
(herein called the Undersigned Pledgor, whether one or more)

Apartment No. _____ (herein called the Apartment)

The Undersigned Pledgor is the tenant of the Apartment and has received or expects soon to receive a copy of an offering plan to convert the Building to condominium or cooperative ownership on an eviction basis (herein called the Plan), under which the Undersigned Pledgor will have the right to purchase the Apartment.

In consideration of tenants of other apartments in the Building signing pledge agreements containing the same terms and provisions as this one (all such signing tenants, including the Undersigned Pledgor, being herein called Pledging Tenants), the Undersigned Pledgor agrees as follows:

1. No-Buy Pledge. During the period that this pledge agreement is in effect, the Undersigned Pledgor will not purchase or agree to purchase either the Apartment or any other apartment in the Building. The Undersigned Pledgor represents and warrants that no other person is named in the lease or has otherwise acquired tenancy rights to the Apartment.

2. Amendments of Plan. Except as provided in paragraph 5, this pledge agreement shall not be terminated by any amendment of the Plan.

3. Initial Effectiveness. This pledge agreement shall become effective 3 business days after signing. It shall thereafter remain in effect until 45 days after formal presentation of the filed version of the Plan to tenants of the Building (herein called the Presentation Date). Its effectiveness may be ex-

† Copyright 1982. Julius Blumberg, Inc., Publisher. This model was drafted by Professor Joel E. Miller of St. John's University School of Law and appears here with his permission.

tended as provided in paragraph 4.

4. Continued Effectiveness. This pledge agreement shall cease to be effective at the end of the period of initial effectiveness mentioned in paragraph 3 unless no later than 5 business days prior to that time every Pledging Tenant shall have been sent written notice by certified or registered mail, return receipt requested, advising that similar unrevoked pledge agreements have been signed and acknowledged by tenants of more than —% of the apartments in the Building and identifying all such Pledging Tenants and their apartments, in which event this pledge agreement shall (unless sooner terminated as hereinafter provided) remain in effect until 20 months after the Presentation Date.

5. Termination. This pledge agreement shall cease to be effective (a) if the Plan is changed to a wholly non-eviction plan or (b) if a majority of the Pledging Tenants signify in writing that they desire that these pledge agreements shall no longer be binding.

6. Monetary Damages. The Undersigned Pledgor acknowledges that other Pledging Tenants may become entitled to collect substantial amounts of money from the Undersigned Pledgor if the Undersigned Pledgor violates this pledge agreement.

7. Injunction. The Undersigned Pledgor further acknowledges that, because consummation of the Plan may result in eviction and because monetary damages may be difficult to assess with precision, other Pledging Tenants may have no adequate remedy at law. The Undersigned Pledgor accordingly agrees that other Pledging Tenants shall be entitled as of right to obtain injunctive relief to restrain or undo any threatened or actual violation of this pledge agreement.

8. Consent to Jurisdiction. The Undersigned Pledgor submits to the jurisdiction of the Supreme Court of the State of New York, in the county in which the Building is situated, and agrees that any action by other Pledging Tenants to enforce this pledge agreement may be commenced against the Undersigned Pledgor by service of a summons by certified or registered mail, return receipt requested, addressed to the Undersigned Pledgor at the Apartment.

9. No Assurances. The Undersigned Pledgor understands that no statements made by any person, including the person soliciting this pledge agreement, shall have any effect upon its validity or enforceability. The Undersigned Pledgor

specifically acknowledges that no assurances have been given to the effect that this pledge agreement will not be fully enforced.

10. No Other Obligations. Nothing contained in this pledge agreement shall under any circumstances require the Undersigned Pledgor either to purchase any apartment or to contribute any money to oppose the Plan.

11. Separability. The invalidity or unenforceability of any portion of this pledge agreement shall not affect other portions.

12. Successors. This pledge agreement shall inure to the benefit of and be binding upon the assigns, personal representatives and other successors in interest of the Undersigned Pledgor.

13. Certain Definitions. For purposes of this pledge agreement, (a) all of the co-tenants of any one apartment shall be considered to be collectively only one tenant and (b) in the case of a cooperative, purchasing an apartment shall mean purchasing the corporate shares allocated to that apartment.

14. Revocability. This pledge agreement may be revoked by a writing by the Undersigned Pledgor before it becomes effective as provided in paragraph 3. Thereafter it shall be irrevocable, but it may be modified by a writing signed by all Pledging Tenants.

I certify that I have read and understand this agreement and that I have received a copy.

Dated_____ _____L.S.
Tenant Pledgor

I certify that I have read and understand this agreement and that I have received a copy.

Dated_____ _____L.S.
Tenant Pledgor
(if more than one)

Acknowledgement

STATE OF NEW YORK)
COUNTY OF)ss.:

On the date set forth above, before me personally came

_____,

to me known to be the person(s) described in and who executed the foregoing pledge agreement, and the person(s) duly acknowledged to me execution of the same.

_____
Notary Public