

REAL PROPERTY—CONDOMINIUMS—LEASES OF COMMON FACILITIES OR AREAS AND BY-LAWS—ALLEVIATION OF HIDDEN COSTS ABUSE—N.J. STAT. ANN. §§ 46:8B-31 to 46:8B-37 (West 1980)

By enacting N.J. STAT. ANN. §§ 46:8B-31 to 46:8B-37, the Legislature is attempting to correct an abuse frequently experienced by condominium owners. Due to the manner in which a condominium is initially established, the developer is necessarily responsible for entering into many contracts on behalf of the building, including, for example, leases for parking, recreational or other common facilities or areas. As the units are sold and the developer gradually relinquishes control, the condominium association often finds itself bound to a contract containing unconscionable clauses. Section 46:8B-31 creates a rebuttable presumption of unconscionability for certain types of leases. This presumption is also extended to a vehicle common to many condominium contracts which limit the individual owners right to resell his unit—the “right of first refusal.”

Some of the provisions which give rise to the presumption of unconscionability in a lease executed solely by persons chosen by the developer are the following: a requirement that the condominium association pay real estate taxes and insurance on the subject real property; a requirement that the association perform maintenance on the property or facilities; a provision that the lease remain in effect for a period greater than 10 years; a provision permitting the establishment of a lien on individual units upon a failure to pay rents; a rental fee disproportionate to the value of the property; and periodic rental increases. § 46:8B-31(2)(a-i).

In an effort to remove those costs which are often concealed from the unwary purchaser of a condominium unit, the developer is required to state separately in the selling price the full maintenance fee as well as all recreational fees. § 46:8B-31(4).

Section 46:8B-31(5) enables the owners to either renew the lease for, or to purchase, any parking, recreational, or other common area which was the subject of a lease for 20 or more years.

While the rebuttable presumption of unconscionability in the by-laws regarding the right of first refusal exists regardless of when the by-laws were enacted, the provisions of the Act do not apply to any lease in which the subject property has been fully completed and in operation as of January 18, 1980, and where the lease is duly executed either before or after January 17, 1980, by the developer and the association.

After a rather uneventful introduction into the New Jersey housing market, condominiums have rapidly become more popular. The legislature

has recognized the necessity of providing the consumer with increasing protection in this rather new area of real estate transactions. This and other new laws will serve to promote the development of condominium housing in New Jersey by expanding the rights of individual unit owners, and by restricting potential abuses by developers.

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REAL PROPERTY—CONDOMINIUMS—RIGHTS AND RESPONSIBILITIES OF
UNIT OWNERS—VOTING—GOVERNING BOARDS—N.J. STAT. ANN.
§§ 46:8B-3, -12.1, and -12.2 (West 1980)

The amendments and supplement to the Condominium Act of 1970, N.J. STAT. ANN. §§ 46:8B-3, 46:8B-12.1 and 46:8B-12.2, modify the relationship between the developer of a condominium building and the individual unit owners. The newly created provisions expand the rights and responsibilities of unit owners by increasing their participation in the general management of the building as a whole.

A "developer" is defined as a person who either creates a condominium, or leases or sells (or offers to lease or sell) a condominium, or its individual units. These actions must be in the developer's ordinary course of business. An owner or lessee of a unit who has acquired the unit for his own occupancy does not qualify as a developer. § 46:8B-3(j).

Section 46:8B-12.1 specifies the voting rights of the unit owners, vis-a-vis the developer, based on a pro rata ownership of the entire condominium building. When at least 25% of the units are owned by individuals other than the developer, those individuals are entitled to elect at least "25% of the members of the governing board or other form of administration of the association." When half of the units have been sold to private owners, such owners may elect at least 40% of the governing body. Upon conveyance of 75% of the units, the individual owners are entitled to elect the entire governing body. This increased power on the part of the owners is further protected by the stipulation that if, at any point in the conveyance process, the developer refuses to sell his remaining units, the unit owners will automatically be granted the power to elect all the members.

The developer is not left without his own safeguards. As long as he holds at least one unit for sale in the ordinary course of business, he reserves the right to elect at least one member of the governing board.

Subsequent provisions of this amendment specify the process by which elections must take place.