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EXAMINING COOPERATIVE CONVERSION: AN ANALYSIS OF RECENT NEW YORK LEGISLATION

I. Introduction

New York City contains ninety-five percent of the cooperative housing units in the United States.¹ The fundamental reasons for the proliferation of cooperative housing in New York City are historical, economic and social.² A more specific factor is the New York State Legislature's support of conversion of residential real estate from rental to cooperative ownership.³ This support has taken form in the most comprehensive set of laws and regulations in the nation dealing with rental apartment conversion to cooperative housing.⁴

The most recent legislation in this area (the "Goodman-Grannis" bill)⁵ provides a method whereby developers may convert residential

1. OFFICE OF POLICY AND DEVELOPMENT RESEARCH, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, THE CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS AND COOPERATIVES, PUB. NO. PB 81-118234, A NATIONAL STUDY OF SCOPE, CAUSES AND IMPACTS: XI-1 (1980) [hereinafter cited as HUD STUDY].

2. *Id.* at 2. See notes 35-53 & 59 *infra* and accompanying text.

3. The legislative finding in three recent bills dealing with conversion of rental housing to cooperative or condominium housing supports apartment conversion as sound public policy and a means of "preserving, stabilizing and improving neighborhoods and the supply of sound housing accommodations. . . ." 1982 N.Y. Laws ch. 555, § 1; 1979 N.Y. Laws ch. 432, § 1; 1978 N.Y. Laws ch. 544, § 1.

4. See N.Y. GEN. BUS. LAW § 352-e (McKinney 1968 & Supp. 1982-1983), *id.* § 352-ee to -eeee (McKinney Supp. 1982-1983); N.Y. ADMIN. CODE tit. 13, § 18 (1982); see notes 102-35 & 152-65 *infra* and accompanying text for a discussion of legislation in this area. The only federal legislation directly affecting cooperative and condominium conversion is the Condominium and Cooperative Protection and Abuse Relief Act of 1980 (Title VI, Housing and Community Development Act of 1980), Pub. L. No. 96-399, 94 Stat. 1672 (codified at 15 U.S.C. §§ 3601-3616 (Supp. V 1981)). This Act encouraged the use of the condominium and cooperative forms of ownership as a way of meeting the shortage of adequate and affordable multi-family housing throughout the United States. At the same time, the Act aims at correcting and preventing abuse of long-term recreational and similar leases. HUD STUDY, *supra* note 1, at X-17 n.26. The Condominium and Cooperative Protection and Abuse Relief Act of 1980 provides very basic protection. This statute requires that tenants receive adequate notice of conversion and the first opportunity to purchase the units. All other attempts at federal legislation, including a bill requiring a conversion moratorium, have failed to pass Congress. See, e.g., Condominium Act of 1979, S. 612, 96th Cong., 1st Sess., 125 CONG. REC. 4637-45 (1979), and its companion bill H.R. 2792, 96th Cong., 1st Sess., 125 CONG. REC. 4702 (1979); H.R. 5175, 96th Cong., 1st Sess., 125 CONG. REC. 23,134 (1979).

5. N.Y. GEN. BUS. LAW § 352-eeee (McKinney Supp. 1982-1983). New York State Senator Goodman and Assemblyman Grannis are two major sponsors of this legislation.

rental housing in New York City to cooperative housing without obtaining an agreement to purchase a cooperative apartment from any of the existing tenants.⁶ Under this method, tenants who do not desire to purchase their apartments as cooperatives may remain in the targeted building indefinitely.⁷ In order to initiate this "noneviction" plan, a developer must be able to show that potential purchasers—tenant or non-tenant—will purchase at least fifteen percent of the apartment units in a targeted building.⁸ The only legal obligation of these potential purchasers is to indicate a desire to move into the purchased apartment when and if it becomes vacant.⁹ As a result of this procedure, landlord-developers may convert rental units to cooperative units without having to confront either individual tenants or tenant organizations.¹⁰

By contrast, the "noneviction" procedure for cooperative conversion in Nassau, Rockland and Westchester Counties requires that a developer be able to show that existing tenants will purchase at least fifteen percent of the apartment units in a targeted building.¹¹ In these counties, non-tenant purchasers cannot be included in the fifteen percent requirement.¹²

In New York City, the eviction approach to cooperative conversion allows a landlord-developer to evict non-purchasing tenants when at least fifty-one percent of the tenants agree to purchase their apartments.¹³ The non-purchasing tenants have the longer of three years or the expiration of their lease to vacate their apartments once an eviction type of cooperative conversion has been approved by the New York State Attorney General's office.¹⁴

Despite the fact that the noneviction approach of Goodman-Grannis is less harsh on New York City tenants than an eviction scheme, the ability of a landlord-developer to convert rental units without tenant support has been criticized. Specifically, the Goodman-Grannis legislation may result in increased tenant harassment,¹⁵ an increase in the

6. *Id.* § 352-eeee(1)(b), (d), (2)(c)(i).

7. *Id.* § 352-eeee(2)(c)(ii), (vi).

8. *Id.* § 352-eeee(1)(b), (d), (2)(c)(i).

9. *Id.* § 352-eeee(1)(b), (2)(c)(i).

10. "[W]ithout such an insider percentage sponsors can ignore the tenants' demands as long as there is a market for outside purchasers, many of whom buy not because they want a place to live but for speculative reasons." McKee, *How the City Got A New Co-op Law*, CITY LIMITS, Aug.-Sept. 1982, at 26.

11. N.Y. GEN. BUS. LAW § 352-eee(1)(b), (8) (McKinney Supp. 1982-1983).

12. *Id.*

13. *Id.* § 352-eeee(1)(c).

14. *Id.* § 352-eeee(2)(d)(ii).

15. See notes 159 & 161-62 *infra* and accompanying text.

number of buildings left unattended through apartment speculation,¹⁶ and the undermining of rent regulations.¹⁷

This Note will discuss the impact of the Goodman-Grannis legislation on tenant and landlord interests in the cooperative conversion process in New York City. Initially, cooperative housing will be defined in terms of its relationship to condominium ownership. In addition, the development of cooperative housing will be explored. Finally, relevant New York case law and the framework of cooperative conversion in New York State will be examined. This Note concludes that the ability of landlord-developers to meet the fifteen percent requirement of the Goodman-Grannis noneviction approach by the use of non-tenant purchasers leaves existing tenants without any leverage in the conversion process. Accordingly, adequate protection of New York City residents requires landlord-developers to meet the fifteen percent requirement solely from existing tenants.

II. Cooperative Housing and Cooperative Conversion

The most common form of cooperative housing in the United States and the type most frequently used in New York State is the corporate form.¹⁸ Title to the entire premises is vested in a corporation leasing specific apartments to the tenant.¹⁹ Three essential documents are necessary to create a cooperative corporate organization: (1) a corporate charter or certificate of incorporation, (2) a set of by-laws and (3) a proprietary lease or occupancy agreement (certificate of membership).²⁰ These documents constitute the contract between the tenants and the corporation.²¹ A proprietary lease sets forth the number of shares of the lessor corporation owned by the tenant-shareholder.²²

16. See notes 159 & 163-64 *infra* and accompanying text.

17. See note 165 *infra* and accompanying text.

18. 2 P. ROHAN & M. RESNICK, COOPERATIVE HOUSING, LAW AND PRACTICE § 2.01[i], at 2-2.1 (1982) [hereinafter cited as ROHAN & RESNICK]; C. SMITH & R. BOYER, SURVEY OF THE LAW OF PROPERTY 445, 446 (1971) [hereinafter cited as SMITH & BOYER]. Prior to the advent of condominium living the term cooperative was used to mean several types of organizations where occupants of individual units of a multi-family structure sought to acquire advantages of joint ownership. *Id.*; note that § 352 of the New York General Business Law does not contain a general statutory definition of a cooperative corporation. See ROHAN & RESNICK, *supra*, § 5A.03, at 5A-12 n.18. However, the New York Cooperative Corporation Law does give a general definition of a non-profit cooperative corporation. N.Y. COOP. CORP. LAW § 3(c)-(d) (McKinney 1951 & Supp. 1982-1983). See I.R.C. § 216(b) (1976 & Supp. V 1981) for the Internal Revenue Service definition.

19. ROHAN & RESNICK, *supra* note 18, § 2.01[4], at 2-8.

20. *Id.*; see N.Y. COOP. CORP. LAW §§ 11, 16, 40 (McKinney 1951 & Supp. 1982-1983).

21. ROHAN & RESNICK, *supra* note 18, § 2.01[4], at 2-8.

22. *Id.*

These shares entitle the owner to the issuance of a proprietary lease. It is the proprietary lease which gives the tenant-shareholder the right to occupy a particular apartment or unit for a stated term.²³

By contrast, condominium units are separately owned entities.²⁴ Each wholly owned apartment is considered real property.²⁵ In addition, each owner possesses an undivided share in the common areas of the condominium complex.²⁶ The three basic documents required to create a new condominium are: (1) a declaration or master deed, (2) by-laws for governing the condominium association and the operation of the building and (3) a deed to the individual units.²⁷

Condominium owners must acquire their own mortgage loans for their individually owned units.²⁸ In addition, owners pay real estate taxes on their own units.²⁹ By contrast, the shares of stock in a corporation purchased by an owner of cooperative housing are personal property.³⁰ Moreover, a single mortgage is executed for the entire corporation.³¹ Accordingly, shareholders pay a portion of mortgage payments, as well as taxes, in relation to the number of shares of the corporation held.³² Both cooperative and condominium housing owners, however, are treated similarly with respect to the ability to deduct interest on mortgage payments from income for tax purposes,³³ and the possession of equity in one's home.³⁴

III. The Development of Cooperative Housing in New York City

Cooperative housing in New York City dates back to the early 1900's.³⁵ This long history has familiarized lawyers, lending institu-

23. *Id.* at 2-9.

24. *Id.* § 1.02[3], at 1-5.

25. *Id.*

26. *Id.*

27. 1 P. ROHAN & M. RESNICK, *CONDOMINIUM LAW & PRACTICE* § 7.01, at 7-1 (1982); see N.Y. REAL PROP. LAW § 339(n), (u), (v), (o) (McKinney 1968 & Supp. 1982-1983); see generally Levine, *Registering a Condominium Offering in New York*, 19 N.Y.L.F. 495 (1974) (discussion of the New York State Condominium Act).

28. ROHAN & RESNICK, *supra* note 18, § 1.02[3], at 1-5.

29. *Id.*

30. ROHAN & RESNICK, *supra* note 18, § 1.03, at 1-7. The cooperator buys shares of stock in a corporation and obtains a lease to an apartment. The shares of stock are considered personal property (choses in action) and the lease a contract for the "use" of real property, but not itself a real property interest. *Id.*

31. *Id.* § 1.02[3], at 1-6.

32. SMITH & BOYER, *supra* note 18, at 447.

33. I.R.C. § 163 (a) (1976 & Supp. V 1981).

34. SMITH & BOYER, *supra* note 18, at 445.

35. 2 REPORT OF THE NEW YORK STATE TEMPORARY COMMISSION ON RENTAL HOUSING ch. 2, app. A, at 30 (1980) [hereinafter cited as RENTAL HOUSING COMM'N REPORT].

tions and the public with cooperative ownership.³⁶ After a difficult period in the 1930's when many cooperatives failed financially, cooperative housing development had a resurgence in the post World War Two period.³⁷ This resurgence has continued to the present day.³⁸

The advent of rent control regulations in New York City helped spur the development of cooperative housing.³⁹ These regulations⁴⁰ have restricted free market returns on investment and encouraged

The original cooperators were wealthy business people who viewed the cooperative corporation as a business arrangement. They were familiar with securities transactions, and the cooperative was considered one of the important investments of their lives. . . . The first cooperative buildings provided more than shelter. They were social clubs with a great emphasis on snob appeal. The residents formed the cooperative to control who lived with them, and to be assured that high standards were maintained in the building.

Id. at 30-31.

36. *Id.* at 52.

37. *Id.* at 30.

38. See Offering Plans Submitted to the New York State Department of Law, Real Estate Financing Bureau (available in the New York State Attorney General's Office):

OFFERING PLANS SUBMITTED TO THE NEW YORK STATE
DEPARTMENT OF LAW REAL ESTATE FINANCING BUREAU

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Total of All Plans	167	300	397	667	758	993
Cooperative conversion Plans Only	67	143	270	501	596	667

OFFERING PLANS FILED BY THE DEPARTMENT OF LAW

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Total of All Plans	121	249	295	386	474	634
Cooperative conversion Plans Only	44	126	180	261	347	327

39. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, app. A, at 28.

40. For a brief synopsis of New York City Rent Regulations, see 1 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 1, at 64-80, 94-95. The New York Local Emergency Housing Rent Control Act, (codified at N.Y. UNCONSOL. LAWS §§ 8601-8617 (McKinney 1974 & Supp. 1982-1983)) empowered New York City to create its own rent control program. New York City adopted a rent control program, the New

owners to convert their buildings to cooperative apartments.⁴¹ In addition, yield from the sale of apartments as cooperative units has proven significantly greater than where a rental apartment building is marketed to a single investor or successor landlord.⁴²

Cooperative housing, in comparison to condominium housing, has an additional tax benefit. Sales of cooperatives are more likely to be taxed on the profit from the sale at the lower capital gains rate, rather than as ordinary income.⁴³ Another economic incentive for the landlord of residential rental housing to convert to cooperative housing is the fact that the cooperative affords greater flexibility in financing than the condominium. Landlord-developers may vary the mortgage down payment requirements so as to make cooperative housing fall within the means of a greater number of individuals.⁴⁴ In addition, cooperative apartment financing is made easier because New York State banks are authorized to make loans on the pledge of an owner's stock and lease.⁴⁵

Converters to cooperative housing also benefit from permanent blanket financing.⁴⁶ If the existing mortgage on a building is at a low

York City Rent and Rehabilitation Law, in 1962. NEW YORK, N.Y. ADMIN. CODE tit. Y, §§ Y51-1.0 to 18.0 (1975 & Supp. 1982-1983), *reprinted in* N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 371 (McKinney 1974 & Supp. 1982-1983). The Rent Stabilization Law was adopted by New York City in 1969. NEW YORK, N.Y. ADMIN. CODE tit. YY, §§ YY51-1.0 to 8.0 (1975 & Supp. 1982-1983), *reprinted in* N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 587 (McKinney 1974 & Supp. 1982-1983). In general, rent control covers apartments constructed prior to February 1, 1947 and rent stabilization apartments constructed after February 1, 1947. The Rent Stabilization Law has been extended to March 31, 1985. NEW YORK, N.Y. ADMIN. CODE tit. YY, § YY 51-8.0 (1975 & Supp. 1982-1983), *reprinted in* N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 130 (McKinney Supp. 1982-1983). The New York City Rent and Rehabilitation Law was extended to June 30, 1983 pursuant to the N.Y. Local Emergency Rent Control Act, 1981 N.Y. Laws ch. 383, § 1, *reprinted in* N.Y. UNCONSOL. LAWS § 8582 note at 12 (McKinney Supp. 1982-1983).

41. ROHAN & RESNICK, *supra* note 18, § 6.09[1], at 6-73.

42. *Id.*

43. *Id.* § 6.02, at 6-5; *see* I.R.C. § 64 (1976 & Supp. V 1981) (ordinary income), *id.* § 1202 (capital gains taxation rate). *See* Comment, *Tax Aspects of Choosing Between A Cooperative or Condominium Conversion*, 12 CUM. L. REV. 453 (1982). The author concludes that the cooperative method is more likely to produce long term capital gain treatment. *Id.* at 483; *see generally* Spandorf, *Capital Gain Opportunities for Sponsors of Co-ops and Condominiums*, 31 INST. ON FED. TAX'N 1855 (1973) (discussion of capital gains taxation treatment available to sponsors of cooperative or condominium housing).

44. *See* 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, at 2-16.

45. A cooperative housing loan may be "secured . . . by an assignment or transfer of the stock or other evidence of an ownership interest" N.Y. BANKING LAW § 235 (8-a) (McKinney Supp. 1982-1983).

46. Permanent blanket financing refers to an entire housing cooperative being covered by one mortgage. ROHAN & RESNICK, *supra* note 18, § 1.02[3], at 1-6; *id.*

interest rate, the mortgage may be left on the building when it is transferred to the cooperative corporation. This is not available in a condominium conversion, since each individual condominium unit has its own mortgage agreement.⁴⁷ An underlying cooperative blanket mortgage also makes easier any assessments for capital improvements.⁴⁸ By contrast, owners of individual condominium units must be assessed separately.⁴⁹ It has been argued that the assessment procedures in a condominium complex may generate conflict among individual owners.⁵⁰

Certain lending practices and regulations have contributed to the growth in cooperative conversion. In 1971, lending institutions in New York State were permitted to charge an interest rate of 1.5% above the general usury rate for loans for cooperative housing.⁵¹ This provision was enacted as a result of New York State's recognition of the need to encourage bank financing of cooperative loans.⁵² The regulation may have been based on the theory that lenders are at greater risk in providing cooperative loans.⁵³ There may be a high risk of default where many apartments are sold to investors who have given small cash downpayments and have no intention to live in the units.⁵⁴ Foreclosure may occur even where many tenants are making required payments.⁵⁵ Accordingly, the higher interest rates were a

§ 5.01[2], at 5-2 to 5-2.1. This is in contrast to condominium housing where each purchaser arranges his own individual unit financing. *Id.* § 5.01[2], at 5-2.1 to 5-3.

47. *Id.*, § 6.03, at 6-7. In a condominium conversion favorable mortgages are lost because the property must be free and clear at the time of the conversion since mortgages are to be placed solely on the individual units. *Id.*

The substantial discount that a tenant purchaser may receive is an additional feature making cooperative housing attractive. See 2 RENTAL HOUSING COMM'N REPORT, *supra* note 18, ch. 2, at 2-11; HUD STUDY, *supra* note 1, app. 1, at 219. Discounts of up to 60% below market value are offered to tenants when the conversion is an eviction-type plan. *Id.*

48. HUD STUDY, *supra* note 1, app. 1, at 223; see 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, app. A, at 32-33. "In New York City cooperatives, where many of the buildings are older structures potentially in need of major or minor repair, the ability to raise money quickly and efficiently is considered an important requirement. The cooperative offers this mechanism through the underlying blanket mortgage." *Id.*

49. HUD STUDY, *supra* note 1, app. 1, at 223.

50. *Id.*

51. NEW YORK BANKING LAW § 235 (8-a) (McKinney Supp. 1982-1983).

52. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, app. A, at 32; ROHAN & RESNICK, *supra* note 18, § 5A.02, at 5A-2 to 5A-3.

53. See Henry, *Lenders Lowering the Rates*, N.Y. Times, Oct. 17, 1982, § 8 (Real Estate), at 1, col. 1, 12, col. 1-2.

54. Henry, *supra* note 53, at 12, col. 2.

55. This may make cooperative housing loans less attractive for lending institutions. Interview with Robert Zinman, Vice President and Investment Counsel, Met-

necessary incentive for banks to provide loans for cooperative housing. While the federal government has preempted the New York State usury law in the area of initial financing of a residential housing cooperative by permitting unlimited usury rates,⁵⁶ a premium is still charged on cooperative loans.⁵⁷ This practice continues despite the fact that since World War Two there has not been a default of a cooperative.⁵⁸

To a lesser extent, the desire for control over choice of one's neighbors was important at the genesis of cooperatives and remains so today.⁵⁹ Initially, cooperatives did not represent a mere dwelling place. Cooperative buildings were similar to clubs which excluded certain people to maintain their "high standards."⁶⁰ While this selectivity still exists in the form of a cooperative association's control over the selection of prospective purchasers, reasons for rejection may not be violative of federal, state and local civil rights statutes.⁶¹

ropolitan Life Insurance Company and Adjunct Professor of Law, Fordham University School of Law (Dec. 1982). Since individual members of a cooperative cannot have their apartments free and clear of a mortgage, on default of a cooperative mortgage the equities of the individual owners are liquidated at foreclosure. Unless solvent cooperators assume the assessments of the insolvent cooperators, they lose their units as a result of foreclosure. ROHAN & RESNICK, *supra* note 18, § 5.01[2], at 5-3.

56. 12 U.S.C. § 1735 (f-7) (Supp. IV 1980). This probably does not apply to criminal usury rates which are applicable except for loans in the amount of \$2.5 million or more. N.Y. GEN. OBLIG. LAW § 5-501(6)(b) (McKinney 1978 & Supp. 1982-1983). However, the refinancing of a loan is still covered by state usury law which currently limits interest rates to 16% per year. N.Y. BANKING LAW § 14-a(1) (McKinney 1971 & Supp. 1982-1983).

57. Under New York State law a premium of 1.5% is still permitted for cooperative loans. N.Y. BANKING LAW § 235(8-a) (McKinney 1971 & 1982-1983); Henry, *supra* note 53, at 12, col. 4. It is a difficult habit to break. *Id.*

58. Henry, *supra* note 53, at 12, col. 4. According to some observers only one building has defaulted in the history of New York cooperatives. HUD STUDY, *supra* note 1, app. 1, at 223. The increased number of offering plans for cooperatives submitted to the New York State Attorney General's office indicates that interest rates have not discouraged the development of cooperative housing. *See* note 38 *supra* and accompanying text. This may be due in part to the 1971 law permitting savings banks to make personal loans for cooperative housing; *see* 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, app. A, at 32. As a result of this law, lenders were encouraged to make cooperative loans. Henry, *supra* note 53, at 12, col. 4. Prior to 1971 there was no such thing as a co-op mortgage. Regulations prohibited various types of banks from offering long-term loans to cooperatives. *Id.*

59. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, app. A, at 30-31.

60. *Id.* Today, the exclusivity still exists but rather than excluding people cooperative boards "include" people that they choose. *Id.*

61. *Id.* at 52. A typical reason for rejection includes financial ability. Note that the power to accept or reject prospective purchasers is not usually considered available to owners of condominium units. HUD STUDY, *supra* note 1, app. 1, at 222-23.

IV. Cooperative Housing Conversions Plans and Procedures

When converting to or creating cooperative housing,⁶² the sponsor of the housing unit(s) must meet the requirements of the New York State General Business Law and rules and regulations promulgated by the Attorney General.⁶³ These conversion procedures are the most elaborate in the United States.⁶⁴ A sponsor first submits a proposed filing to the New York State Attorney General's office.⁶⁵ The proposal must include certain information on selling prices, a description of the building, engineering reports, and an affidavit that there are no excessive long-term vacancies.⁶⁶ Second, within four to six months after the sponsor submits an offering plan, the Attorney General's office either accepts the plan or requests the sponsor to make certain amendments to the plan.⁶⁷ If accepted, the plan is considered "filed" by the Attorney General.⁶⁸ Finally, after the proposal is filed, the sponsor can begin to solicit tenants to purchase apartments.⁶⁹

62. ROHAN & RESNICK, *supra* note 18, § 6.03, at 6-6. One distinction between newly created cooperative housing units and conversion from existing residential rental housing to cooperative housing units is that new creation requires finding a building site and procuring construction financing while conversion to cooperative housing may require eviction of prior tenants. *Id.* at 6-6 to 6-7.

63. N.Y. GEN. BUS. LAW § 352-e (McKinney 1968 & Supp. 1982-1983), *id.* § 352-ee to 352-eeee (McKinney Supp. 1982-1983); N.Y. ADMIN. CODE tit. 13, § 18 (1982). The Supreme Court of the United States has held that federal securities laws do not apply to cooperative units. *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 847-48 (1975). *See also Grenader v. Spitz*, 537 F.2d 612, 613 (2d Cir.), *cert. denied*, 429 U.S. 1009 (1976). *Grenader* interpreted *Forman* to mean that cooperative shares were neither securities nor investment contracts within the meaning of the securities laws. *Id.* at 616, 619.

64. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, at 2-14.

65. N.Y. ADMIN. CODE tit. 13, § 18.3(a)(11), (a)(12) (1982). The offering plan must indicate whether it is an eviction or noneviction plan. N.Y. GEN. BUS. LAW § 352-eeee 2(b) (McKinney Supp. 1982-1983); N.Y. ADMIN. CODE tit. 13, § 18.3(a)(1), (2) (1982).

66. N.Y. ADMIN. CODE tit. 13, §§ 18.1(g), 18.2(c)(4), 18.3(d)(1), (e), 18.7 (1982); N.Y. GEN. BUS. LAW § 352-e(1)(b), (6) (McKinney 1978). An excessive long-term vacancy occurs when a sponsor of a cooperative conversion reduces the number of actual purchasers necessary to approve an eviction plan by keeping apartments unoccupied by bona fide tenants for more than five months prior to submission of the offering plan. "Excessive" is defined as the greater of a vacancy rate in excess of 10% or having vacancies twice the average vacancy rate for the building for two years prior to the submission of the offering plan to the Attorney General's office. N.Y. GEN. BUS. LAW § 352-eeee(2)(e) (McKinney Supp. 1982-1983); N.Y. ADMIN. CODE tit. 13, § 18.1(g) (1982).

67. N.Y. GEN. BUS. LAW § 352-e(2) (McKinney Supp. 1982-1983).

68. *Id.*

69. *Id.* § 352-e(2), (5) (McKinney 1968); N.Y. ADMIN. CODE tit. 13, § 18.3(a)(12) (1982).

Rental housing is converted to cooperative apartments by eviction and noneviction plans. Conversion eviction plans now require that at least fifty-one percent of the tenants agree to purchase their apartments.⁷⁰ If the minimum number of tenants agree to purchase, then the remaining tenants are subject to eviction within the longer of three years from the date the conversion eviction plan is declared effective by the Attorney General or the expiration of the tenant's lease.⁷¹

70. The "eviction plan" is defined as:

A plan which, pursuant to the provisions of this section, 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 or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the attorney general (excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and eligible disabled persons) shall have executed and delivered written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other discriminatory inducements.

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

Under Rent Stabilization and Rent Control laws which were applicable prior to passage of Goodman-Crannis, an eviction type plan of cooperative conversion required that at least 35% of tenants agree to purchase their apartments in order for said eviction plan to be declared effective by the Attorney General. *NEW YORK, N.Y. ADMIN. CODE* tit. YY51-6.0, § (c)(9)(a)(1975), reprinted in *N.Y. UNCONSOL. LAWS* tit. 23, ch. 4 app. at 599 (McKinney 1974 & Supp. 1982-1983), amended by 1982 N.Y. Laws ch. 555, § 7, codified in *N.Y. GEN. BUS. LAW* § 352-eeee note at 34 (McKinney Supp. 1982-1983); *New York City Rent and Eviction Regulations* § 55(c)(3)(a), reprinted in *N.Y. UNCONSOL. LAWS* tit. 23, ch. 4 app. at 543 (McKinney 1974).

71. *N.Y. GEN. BUS. LAW* § 352-eeee(2)(d)(ii) (McKinney Supp. 1982-1983). This, of course, is exclusive of groups exempted under § 352-eeee of the General Business Law, senior citizens and the eligible handicapped. Exempt senior citizens are defined as non-purchasing tenants

who are sixty-two years of age or older on the date the attorney general has accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date of the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

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

Exempt disabled persons are defined as

non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment on the date the attorney general has accepted the plan for filing, and the spouses of any such

Sponsors of noneviction plans⁷² are required only to attain tenant or outside purchasers for fifteen percent of the apartments in the building undergoing conversion.⁷³ The General Business Law requires that non-resident purchasers, or one or more of their immediate family, intend to reside in the purchased apartment when it becomes vacant.⁷⁴ Non-purchasing tenants are entitled to stay in their apartments indefinitely. These tenants, if previously subject to governmental regulation, continue to be covered by statutory rent regulations.⁷⁵ However, that is not true for those who begin to rent an apartment *after* a building has been converted.⁷⁶ As a result, landlord-developers can

tenants on such date, and who have elected, within sixty days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided, however, that if the disability first occurs after acceptance of the plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to sixty days following the acceptance of the plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit or the shares allocated thereto on the terms then offered to tenants in occupancy.

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

72. A "noneviction" plan is defined as:

A plan which may not be declared effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units in the building or group of buildings or development by bona fide tenants in occupancy or bona fide purchasers who represent that they intend that they or one or more members of their immediate family intend to occupy the unit when it becomes vacant.

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

73. *Id.*

74. *Id.* According to the Attorney General's office, outside purchasers must provide a sworn affidavit of their intent, which is difficult to monitor. Interview with Jane Rosenberg, Assistant Attorney General, Real Estate Financing Bureau, New York State Dep't of Law, in New York City (Sept. 13, 1982). In effect the outside purchaser is signing an affidavit that he is not a speculator. McKee, *supra* note 10, at 28.

75. N.Y. GEN. BUS. LAW § 352-eeee(2)(c)(iii) (McKinney Supp. 1982-1983).

76. The Attorney General's office has stated that the Conciliation and Appeals Board, operating under the Rent Stabilization Law, NEW YORK, N.Y. ADMIN CODE tit. YY, § YY51-3.0 (1975 & Supp. 1982-1983), *reprinted in* N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 589 (McKinney 1974 & Supp. 1982-1983), has not asserted jurisdiction over those who begin to rent an apartment in a building once it is converted to cooperative housing. Interview with Jane Rosenberg, Assistant Attorney General, Real Estate Financing Bureau, New York State Dep't of Law, in New York City (Sept. 13, 1982).

Those tenants living in a cooperative who opted not to purchase and who were not subject to governmental regulation or where such government regulation is eliminated after a conversion plan has been accepted for filing by the Attorney General's

effectively circumvent the rent control regulations after converting only fifteen percent of the apartments in a building.

The courts have interpreted the Attorney General's responsibility as limited to the scrutinization of apartment conversion offering plans for omission of material facts.⁷⁷ However, the Attorney General has the discretion to investigate the truthfulness of the representations included in the prospectus or offering statement.⁷⁸ The Attorney General also has both civil and criminal powers of subpoena over those involved in the conversion or creation process.⁷⁹

The New York Court of Appeals, however, has stated that the courts retain their traditional powers to hear suits against a sponsor of a cooperative offering plan.⁸⁰ However, suits against the Attorney General based on the sufficiency of the content and language of the plan, a determination as to compliance with disclosure requirements, acceptance or refusal of an offering plan, or defects not constituting independent actionable wrongs, can be brought only through an Article 78 proceeding based on the arbitrary and capricious nature of the Attorney General's determination.⁸¹ Success in Article 78 proceedings

office are protected from "unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy." N.Y. GEN. BUS. LAW § 352-eeee(2)(c)(iv).

77. *Wallach v. Abrams*, 108 Misc. 2d 25, 26, 436 N.Y.S.2d 916, 917 (Sup. Ct. N.Y. County 1980). Section 352-e of the New York General Business Law is a full disclosure consumer protection oriented statute that does not provide substantive protection. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, at 2-14. Thus, the Attorney General's role is limited to full disclosure of all relevant facts and does not extend to substantive regulations (i.e., the Attorney General is not required to look into the accuracy of information submitted). *Id.* The Attorney General is under no obligation to investigate the facts. *Whalen v. Lefkowitz*, 36 N.Y.2d 75, 78, 324 N.E.2d 536, 538-39, 365 N.Y.S.2d 150, 153 (1975). Note however that omission of material facts and fraudulent representations in real estate syndication offerings are made illegal. N.Y. GEN. BUS. LAW § 352-e(1)(a)(b) (McKinney 1968).

78. *Whalen v. Lefkowitz*, 36 N.Y.2d 75, 79, 324 N.E.2d 536, 538-39, 365 N.Y.S.2d 150, 153 (1975).

79. *Greenthal v. Lefkowitz*, 32 N.Y.2d 457, 462-63, 299 N.E.2d 657, 658-59, 346 N.Y.S.2d 234, 236-37 (1973) (citing N.Y. GEN. BUS. LAW § 352(1)-(2) (McKinney 1968)). The Attorney General is authorized to start an investigation and is given full authority to use subpoena power. *Greenthal*, 32 N.Y.2d at 463, 299 N.E.2d at 659, 346 N.Y.S.2d at 237 (citing N.Y. GEN. BUS. LAW § 352(1), (2) (McKinney 1968)). The *Greenthal* court concluded that in addition to investigatory and subpoena power the Attorney General can utilize "appropriate civil or criminal follow-up procedures when wrongdoing, in fact, is found." 32 N.Y.2d at 463, 299 N.E.2d at 659, 346 N.Y.S.2d at 237.

80. *Richards v. Kaskel*, 32 N.Y.2d 524, 533 n.5, 300 N.E.2d 388, 393 n.5, 347 N.Y.S.2d 1, 8 n.5 (1973) (dictum).

81. *Schumann v. 250 Tenants Corp.*, 65 Misc. 2d 253, 256-57, 317 N.Y.S.2d 500, 504-05 (Sup. Ct. N.Y. County 1970). Examples of wrongs not constituting independent actionable wrongs are omissions, indefiniteness, insufficient detail, and inap-

has been made extremely difficult by the court of appeal's decision in *In re Parkchester*.⁸² In that case, the Court held that the Attorney General's office can accept or reject a sponsor's application on rather superficial grounds if the Attorney General decides not to conduct an investigation of the application.⁸³ In a companion case,⁸⁴ the court of appeals concluded that the Attorney General was not required to look into alleged irregularities in an apartment conversion offering plan presented for filing; nor could the tenants successfully seek to annul the determination of the Attorney General in accepting the plan if it appeared proper.⁸⁵ As a result of these decisions, it appears that the Attorney General is not required to look beyond statements in the plan and can rely upon the appearance of truthfulness.⁸⁶

Despite a recession and high interest rates, the number of offering plans submitted for conversion to cooperative housing units have increased ten times since 1976 in New York State.⁸⁷ Most of this increase occurred in New York City.⁸⁸ In addition, there exists a trend toward

propriate language. *Id.* at 257, 317 N.Y.S.2d at 505. Another action deemed to be exclusively within the Attorney General's authority and therefore subject to an Article 78 proceeding is the Attorney General's decision whether to begin criminal proceedings or seek an injunction related to matters arising out of a cooperative housing conversion. *Id.* at 256, 317 N.Y.S.2d at 504. The courts, however, are deemed to retain jurisdiction on matters relating to fraud, deceit, misrepresentation and breach of fiduciary obligations. *Id.* at 257, 317 N.Y.S.2d at 505.

82. *Parkchester Apts. Co. v. Lefkowitz*, 44 A.D.2d 442, 355 N.Y.S.2d 592 (1st Dep't 1974), *aff'd*, 36 N.Y.2d 688, 325 N.E.2d 870, 366 N.Y.S.2d 409 (1975); ROHAN & RESNICK, *supra* note 18, § 6.04, at 6-15. The authors conclude that as a result of the *Parkchester* decision, the Attorney General does not have to go beyond surface statements if the Attorney General's office chooses not to investigate further. *Id.*; see note 77 *supra* and accompanying text.

83. 44 A.D.2d at 444-45, 355 N.Y.S.2d at 595.

84. *Whalen v. Lefkowitz*, 36 N.Y.2d 75, 324 N.E.2d 536, 365 N.Y.S.2d 150 (1975).

85. *Id.* at 78, 324 N.E.2d at 538, 365 N.Y.S.2d at 153.

86. See *Parkchester*, 44 A.D.2d at 444-45, 355 N.Y.S.2d at 595; *Whalen v. Lefkowitz*, 36 N.Y.2d at 78, 324 N.E.2d at 538, 365 N.Y.S.2d at 153.

87. Offering Plans Submitted to the New York State Department of Law, Real Estate Financing Bureau (available in Attorney General's office); see note 38 *supra*. Submissions of offering plans in New York State for both condominium and cooperative conversions increased in 1981 from the preceding year. *Id.* Many commentators attribute the low numbers of apartment conversion plans submitted during the 1974 to 1977 period to the inflexibility of the Goodman-Dearie legislation which required 35% of occupied units to purchase their apartments in either an eviction or noneviction plan of conversion. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, at 2-135 to 2-137 n.7; E. Lehner & D. Sweet, *Goodman-Dearie Expiration Leaves Coop Conversion Radically Altered*, N.Y.L.J., Nov. 16, 1977, at 25, col. 1.

88. HUD STUDY, *supra* note 1, app. 1, at 220. Within New York City most conversions have occurred in Manhattan. *Id.*

noneviction as opposed to eviction plans.⁸⁹ The focus of concern regarding conversion plans is on the tenants who are unable or unwilling to purchase their apartments. Critics claim that rental apartment conversion depletes available rental stock and increases the demand for rental housing. This occurs because tenants are forced into the market place for rental apartments.⁹⁰

According to a report of the New York Temporary State Commission on Living Costs and the Economy,⁹¹ the conversion of rental units to cooperative housing is "generally a socially unproductive investment of capital. . . ."⁹² The Commission, headed by then Assemblyman Andrew Stein,⁹³ objected to conversion because of the potential warehousing of apartments and eviction of tenants.⁹⁴ To a great ex-

89. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 1, ch. 2 at 2-18, 2-27; Oser, *Protections Widened in New York Conversions*, N.Y. Times, July 18, 1982, § 8 (Real Estate), at 7, col. 1; Oser, *Noneviction Method Adds to Complexity of Conversions*, N.Y. Times, Aug. 1, 1980, at 13, col. 1. In the early 1970's David Clurman, the Assistant Attorney General in charge of the Real Estate Financing Bureau in the Attorney General's office, devised the noneviction method of converting rental buildings to cooperative or condominium ownership. *Id.* His successors also encouraged the noneviction approach to building conversion. *Id.*, col. 3. In particular, Harold A. Lubell, Assistant Attorney General in charge of the Real Estate Financing Bureau in the late 1970's, said the noneviction approach to conversion is more acceptable socially and may be beneficial to the sponsor who can thereby spread his taxable income over a number of years. *Id.* While owners may have resisted noneviction conversion initially, they eventually concluded that it was a viable alternative. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, at 2-135 n.7 (citing a letter from Arthur S. Levine, former Assistant Attorney General in charge of The Real Estate Financing Bureau to the New York State Temporary Commission on Rental Housing (Mar. 15, 1979)).

90. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, at 2-152; *Abrams Would Tighten Co-op Conversion Laws*, N.Y. Times, May 23, 1981, at 27, col. 5. In this article the late Congressman Benjamin Rosenthal indicated his concern about the future of affordable rental housing in New York City. His solution was a national moratorium on conversions; *cf.* Oser, *Conversion to Cooperatives for Housing in the City*, N.Y. Times, Apr. 24, 1980, § 2, at 14, col. 1 (the decline in the availability of rental apartments in many neighborhoods makes the eviction of tenants as a result of eviction conversion plans all the worse); Saft, *Cooperative-Condominium Conversions*, N.Y.L.J., Oct. 22, 1980, at 1, col. 4; *see* Sullivan, *No Vacancy*, CITY LIMITS, May 1982, at 26. New York City's tri-annual housing and vacancy rate survey found that while New York City has a stable housing stock, the vacancy rate for rental units decreased from 2.95 to 2.13% during the 1978-1981 period. *Id.* at 26-27; *see* Daniels, *Rate of Vacancy For Rentals Fell 30% in 3 Years*, N.Y. Times, Mar. 2, 1982, at B1, col. 6. Only 42,000 of the 1.9 million apartments in New York City were vacant and available in 1981. *Id.*

91. TEMPORARY STATE COMMISSION ON LIVING COSTS AND THE ECONOMY, STATE OF NEW YORK, REPORT ON HOUSING AND RENTS TO THE GOVERNOR AND THE LEGISLATURE (1974) [hereinafter cited as LIVING COSTS COMM'N REPORT].

92. *Id.* § B-8, at 17.

93. Andrew Stein is currently Manhattan Borough President.

94. LIVING COSTS COMM'N REPORT, *supra* note 91, § E-VI.-5, at 5-6.

tent, however, these objections were remedied by subsequent legislation.⁹⁵ In addition, with regard to the eviction of tenants, the Goodman-Grannis legislation permits noneviction conversion plans and increases the minimum percentage of tenants required to purchase to fifty-one percent.⁹⁶ This largely negates the Commission's objections to conversion on the grounds that it displaces tenants.

Another basis of opposition to apartment conversion cited by the Stein Commission is that the sponsor and purchaser may benefit to the detriment of the community as a whole. The Commission's viewpoint, however, is in contrast to both the New York State policy supporting conversion of residential rental apartments to cooperative housing and the position of the New York State Temporary Commission on Rental Housing.⁹⁷ The state considers conversion to contribute to the supply of sound housing as well as to the preservation, stabilization and improvement of neighborhoods.⁹⁸ The Temporary Commission of Rental Housing concluded that "[a]s a matter of housing policy, it should be the declared objective of the State of New York to encourage conversion of residential property to . . . cooperative status, with adequate safeguards for the rights of both the tenants and the sponsor of the conversion."⁹⁹

Additionally, a comprehensive national study of conversion of rental housing to cooperative and condominium housing by the Department of Housing and Urban Development specifically addressed the impact of the conversion process on the availability of rental units. This report, completed in 1980, presented a statistical study covering the years 1970-1979. It concluded that on the national level only 1.31% and in New York City only 0.72% of available occupied rental housing stock was lost due to conversion.¹⁰⁰ Based on these findings, it

95. N.Y. GEN. BUS. LAW § 352-eeee(1)(b) (noneviction plan), (1)(c) (eviction plan now requires 51% of bona fide tenants agree to purchase their apartments), (2)(e) (anti-warehousing provision); *see also* N.Y. ADMIN. CODE tit. 13, § 18.1(g) (1982) (anti-warehousing regulation).

96. *See* note 95 *supra* and accompanying text.

97. *See* notes 98-99 *infra* and accompanying text.

98. *See* note 3 *supra* and accompanying text.

99. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, at 2-111. The basis for this conclusion included the following points: (1) many informed commentators indicated that the conversion of residential rental housing was the best hope for long range preservation of housing stock, (2) New York and other locations have found that such conversions generate pride of ownership, upgrading of properties and stabilization of neighborhoods. According to the commission, the municipality gains from the added impetus that such conversions give to maintenance and improvement of residential buildings as well as from full payment of real estate taxes and an increase in the assessed valuation of properties that have undergone conversion. *Id.*

100. HUD STUDY, *supra* note 1, IV-7 (table IV-2).

appears that the impact on the supply of occupied rental units due to conversion has been rather limited. Traditional concerns with the actual impact of cooperative conversion may therefore not be nearly as justified as some observers have indicated.¹⁰¹ This is due in part to the advent of noneviction conversion plans. Noneviction plans, however, present problems for tenants which can only be understood in the context of the legislative history from which the plans were derived.

V. Cooperative Conversion Legislation Prior to 1982

The initial state legislation in the cooperative housing area, General Business Law section 352-e,¹⁰² was enacted in 1960 and directed at the monitoring of real estate syndication transactions.¹⁰³ This legislation, still effective today, was enacted after a three-year investigation by the Attorney General's office which uncovered abuses by certain offerors of real estate securities that resulted in substantial losses to the investing public.¹⁰⁴ These abuses included misleading advertising and fraudulent offerings of real estate syndication interest to the public, particularly small investors.¹⁰⁵ Section 352-e set forth basic disclosure requirements for an apartment conversion offering statement including sponsor submission to the Attorney General for approval of apartment conversion.¹⁰⁶ This legislation did not, however, require that a landlord-developer, in either an eviction or noneviction plan, attain any purchasers for the offered cooperative units from existing tenants.

It was not until 1962 that landlord-developers in New York City were required to obtain purchase agreements from a percentage of the existing tenants in a targeted rent controlled building before an evic-

101. See note 100 *supra* and accompanying text; *contra* note 90 *supra* and accompanying text.

102. 1960 New York Laws ch. 987.

103. Memorandum for the Governor from Attorney General Louis J. Lefkowitz (Apr. 5, 1960). At that time the real estate syndication transactions involved issuance of securities of greater than \$100,000,000 a year in New York State. *Id.* Real Estate syndication is a method used to enable investors to own large properties jointly; the investors may be limited partners, stockholders or bondholders often assembled by a manager who acquires property and offers the public participation. *State Considers Syndicate Curbs*, N.Y. Times, Mar. 16, 1958, § 8, at 1, col. 4.

104. Memorandum for the Governor from Attorney General Louis J. Lefkowitz (Apr. 5, 1960).

105. *State Considers Syndicate Curbs*, *supra* note 103; Memorandum for the Governor from Attorney General Louis J. Lefkowitz (Apr. 9, 1958); Supplemental Memorandum for the Governor from Attorney General Louis J. Lefkowitz (Apr. 16, 1958).

106. See N.Y. GEN. BUS. LAW § 352-e (McKinney 1968 & Supp. 1982-1983).

tion plan may be approved.¹⁰⁷ In that year, the New York City Rent Control and Rehabilitation Law required at least thirty-five percent of the current tenants agree to purchase their apartment. The provision, however, did not apply to noneviction plans.¹⁰⁸

Attention was focused on the need for legislation in noneviction plans during the attempt in 1974 to convert the 12,000 unit Parkchester complex in Bronx, New York to condominiums.¹⁰⁹ During this conversion, it became apparent that nonpurchasing remaining tenants in a noneviction plan are subject to abuses, which may not reach the level of problems associated with eviction plans, but are nonetheless unacceptable. Specifically, residents who chose not to purchase their apartment were allegedly harassed and services or facilities were not provided on a nondiscriminatory basis.¹¹⁰ This conversion effort, one of the earliest attempts at a noneviction plan, resulted in both a great deal of litigation¹¹¹ and tenant pressure for protective legislation.

As a result of this pressure, the legislature enacted the Goodman-Dearie law in 1974.¹¹² The Goodman-Dearie law required that thirty-

107. See New York City Rent and Eviction Regulations § 55(c)(3)(a), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 543 (McKinney 1974).

108. Note also that the 35% purchase agreement provision for eviction plans became applicable to rent stabilized buildings as part of the 1969 Rent Stabilization Law. NEW YORK, N.Y. ADMIN. CODE tit. YY (1975 & Supp. 1982-1983), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 587 (McKinney 1974 & Supp. 1982-1983). Prior to the Goodman-Grannis legislation in 1982, see notes 152-65 *infra* and accompanying text, the Rent Stabilization Law covered *only* eviction type cooperative plans. NEW YORK, N.Y. ADMIN. CODE tit. YY, § YY51-6.0(c)(9)(a) (1975), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 599, amended by 1982 N.Y. Laws ch. 555, § 7, codified in N.Y. GEN. BUS. LAW § 352-eeee note at 34 (McKinney Supp. 1982-1983).

109. Oser, *Non-Eviction Conversion Under Way at Glen Oaks Village*, N.Y. Times, Dec. 19, 1980, at B10, col. 1; Lehner & Sweet, *supra* note 87.

110. Lehner & Sweet, *supra* note 87, at 25, col. 3.

111. See *Parkchester Apts. Co. v. Lefkowitz*, 41 N.Y.2d 987, 363 N.E.2d 712, 395 N.Y.S.2d 162 (1977), *aff'g* 51 A.D.2d 277, 381 N.Y.S.2d 230 (1st Dep't 1976); *Parkchester Apts. Co. v. Lefkowitz*, 36 N.Y.2d 688, 325 N.E.2d 870, 366 N.Y.S.2d 409 (1975), *aff'g* 44 A.D.2d 442, 355 N.Y.S.2d 592 (1st Dep't 1974); *Whalen v. Lefkowitz*, 36 N.Y.2d 75, 324 N.E.2d 536, 365 N.Y.S.2d 150 (1975), *aff'g* 44 A.D.2d 442, 355 N.Y.S.2d 592 (1st Dep't 1974).

112. 1974 N.Y. Laws ch. 1021 (extended one year from 1976 to 1977 and then allowed to expire). See also Lehner & Sweet, *supra* note 87, at 25, col. 2. It should therefore not be surprising that Goodman-Dearie contained the most restrictive provisions for apartment conversion ever enacted in New York State. This is reflected in the dramatic decrease in the number of conversions during the 1974-1977 period. *Id.*, at 34, col. 1. See Judge Jasen's dissent in *Parkchester Apts. Co. v. Lefkowitz*, 41 N.Y.2d 987, 994, 363 N.E.2d 712, 716, 395 N.Y.S.2d 162, 166 (1977) for a discussion of the factors leading to Goodman-Dearie. The judge characterized the Parkchester conversion attempt as typifying the kind of situation Goodman-Dearie was intended to correct.

five percent of tenants in occupancy agree to purchase their apartments for either an eviction or noneviction plan to be accepted for filing by the Attorney General's office.¹¹³ This statute has been credited as the reason for the dramatic decrease in apartment conversions during the 1974-1977 period.¹¹⁴ After a one-year extension from 1976 to 1977, the Goodman-Dearie law was allowed to expire due to the pressure from landlord-developers over its allegedly restrictive effect.¹¹⁵ As a result, landlord-developers in New York City, subject only to the rent control and stabilization laws, were required to obtain purchase agreements from thirty-five percent of existing tenants for eviction plans only; there were no such requirements for noneviction plans.¹¹⁶

The Director of the Real Estate Financing Bureau established guidelines in the early 1970's governing noneviction plans in New York City¹¹⁷ which became reactivated after the Goodman-Dearie law expired in 1977.¹¹⁸ Under these guidelines, landlord/developers had to obtain commitments to purchase at least fifteen percent of the

113. 1974 N.Y. Laws ch. 1021, § 2-a(1)(i); 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, at 2-17.

114. 2 RENTAL HOUSING COMM'N REPORT, *supra* note 35, ch. 2, at 2-17 to 2-19; Lehner & Sweet, *supra* note 87, at 34, col. 1. Representatives of the real estate industry in effect argued that Goodman-Dearie put a halt to cooperative conversions because of reluctance to file cooperative conversion plans under the restrictive Goodman-Dearie ground rules. *Id.* Tenant interests placed the blame for the drop in cooperative conversions during the 1974-1977 period on economic conditions as well as the landlord/developer decision to refrain from cooperative conversions in the hope Goodman-Dearie would not be extended another year. *Id.*

115. Lehner & Sweet, *supra* note 87, at 34, col. 1. Goodman-Dearie was attacked by owner interests as "overkill." *Id.* It had also been attacked previously as effectively putting an end to all building conversions. Letter from Real Estate Board of New York, Inc. to Governor Hugh Carey (July 1, 1976). Goodman-Dearie was also depicted as specifically limiting voluntary apartment conversions (i.e., noneviction type conversions). Letter from Rent Stabilization Ass'n of New York City, Inc. to Hon. Judah Gribetz, Executive Chamber, State Capitol (July 12, 1976). In addition it was also opposed as doing greater harm to condominium and cooperative housing. Letter from New York State Bar Ass'n to Counsel to Governor Hugh Carey (July 13, 1976).

116. *See* note 108 *supra*.

117. Telephone Interview with David Clurman, attorney, Phillips, Nizer, Benjamin, Krim & Ballon, former Director of Real Estate Financing Bureau and Assistant Attorney General, New York State Dep't of Law (Mar. 7, 1983); *see* note 89 *supra*.

118. *See* text accompanying note 115 *supra*. The Goodman-Dearie law requirement that 35% of tenants in occupancy agree to purchase their apartments in either an eviction or noneviction cooperative conversion plan exceeded the Attorney General's policy requiring 15% of tenants or outsiders to purchase their apartments in a noneviction conversion plan. Consequently, the Attorney General's policy was unnecessary during the 1974-1977 period that Goodman-Dearie was law.

units in a targeted building from either current tenants or *outsiders*.¹¹⁹ The Attorney General's guidelines for New York City did not include the "insider" purchase requirement found under the three county legislation.¹²⁰ As a result the types of problems encountered during the noneviction attempt to convert the Parkchester houses remained un-addressed.

Subsequent tenant-oriented legislation addressed certain aspects of the noneviction problem as well as other ancillary problems with the conversion law. However, it was not until passage of the Goodman-Grannis legislation in 1982¹²¹ that the Attorney General's noneviction guidelines were formalized.

In 1978, the New York State legislature enacted section 352-eee of the General Business Law providing better protection for tenants in Nassau, Rockland and Westchester counties¹²² facing a noneviction conversion type plan than that available under the New York City Rent Stabilization or Rent Control Laws.¹²³ The three county legislation, which is still in effect, requires that fifteen percent of tenants in occupancy of a building targeted for conversion agree to purchase their apartments in order for the Attorney General's office to accept a noneviction plan for filing.¹²⁴

In 1979, the Lehner-Flynn bill created a new section 352-eeee which was applicable only to New York City.¹²⁵ Under Lehner-Flynn, non-purchasing senior citizen tenants earning less than \$30,000 annu-

119. R. ABRAMS & J. ROSENBERG, COOPERATIVE AND CONDOMINIUM CONVERSION HANDBOOK 28 (1982).

120. Interview with Jane Rosenberg, Assistant Attorney General, New York State Dep't of Law, in New York City (Sept. 13, 1982).

121. See notes 152-53 *infra* and accompanying text.

122. 1978 New York Laws ch. 544.

123. *Id.*; see note 108 *supra* and accompanying text.

124. N.Y. GEN. BUS. LAW § 352-eee(1)(b) (McKinney Supp. 1982-1983). Following the 1977 legislative session there was clamor for some kind of protection for suburban tenants, few of whom had any protection once a cooperative conversion plan was filed other than for fraud or failure of a sponsor to make full disclosure. Once a conversion plan became effective, few had protection for continued occupancy. E. Lehner & D. Sweet, *Co-op Conversion Law; Impact in Suburbia*, N.Y.L.J., Sept. 20, 1978, at 1, col. 2.

In response, the State Assembly passed a bill similar to legislation that eventually passed both houses, but which also included New York City. *Id.*, at 7, col. 1. However, when the State Senate refused to act on the bill passed by the Assembly, the Assembly concluded that the urgency of legislation for the suburbs required passage of the Senate version that excluded New York City. This effectively eliminated New York City from the insider purchaser requirement in noneviction plans which was made available to Westchester, Rockland, and Nassau County resident tenants. *Id.*

125. 1979 N.Y. Laws ch. 432, § 2(8).

ally were protected from eviction resulting from an apartment conversion.¹²⁶ Additionally, an anti-warehousing provision was added in order to discourage an excessive number or length of vacancies.¹²⁷ This provision was intended to combat the landlord/developer reduction of apartments actually required by the New York City Rent Control and Rent Stabilization Laws to be purchased by tenants in an eviction plan (i.e. thirty-five percent).

A provision was also enacted requiring that as long as the sponsor continues to control the cooperative board the same managing agent must service and provide equivalent services to the non-purchasing as well as purchasing tenants.¹²⁸ Finally, the bill established the Attorney General's power to restrain the sale of the dwelling unit of a tenant who has been subjected to harassment,¹²⁹ and set forth a new formula for calculating the required number of purchasers.¹³⁰

Section 352-eeee was amended in 1980¹³¹ to provide additional tenant protections. However, the statute still failed to address the problems associated with noneviction conversion plans. Under the 1980 amendments, eligible handicapped persons could no longer be evicted as a result of the filing of an eviction type conversion plan.¹³² Furthermore, the maximum annual income allowed for senior citizens protected from eviction was raised from \$30,000 to \$50,000.¹³³ A procedure for periodically posting the percentage of purchasing tenants was also adopted.¹³⁴ Finally, the Attorney General was given the *exclusive* right to determine eligibility for handicapped and senior citizen status, reviewable only in an Article 78 proceeding.¹³⁵

126. *Id.* § 2(1)(e). It must have been the senior citizen's primary residence for at least two years prior to the date the Attorney General accepted the conversion plan for filing. *Id.* To be eligible, the tenant had to be 62 years of age or older on the date the Attorney General accepted the plan for filing. *Id.*

127. *Id.* § 2(3)(a).

128. *Id.* § 2(4).

129. *Id.* § 2(5).

130. *Id.* § 3(a), (f).

131. 1980 N.Y. Laws chs. 754-756.

132. *Id.* ch. 754, §§ 1(f), 2(d)(i).

133. *Id.* ch. 756, § 1(e).

134. *Id.* ch. 755, § 2(d).

135. *Id.* ch. 754, § 2(4). One commentator saw these 1980 amendments as indicative of a shift from New York's full disclosure statutory approach to apartment conversion to the "fairness test" applied by other states such as Texas and California. Saft, *supra* note 90, at 1, col. 2; 6, col. 2. A subject of debate is whether this comprehensive "full disclosure" statute is the best approach. There have been questions whether this disclosure approach really helps the prospective purchaser or buries him in a sea of detail. Zinman, *Condominium Investments and the Institutional Lender—A Re-View*, 48 *ST. JOHN'S L. REV.* 749, 782 (1974). New York makes little attempt at direct regulation but focuses on disclosure. It treats cooperative interests like securities. Miller, *Cooperative Apartments: Real Estate or Securities*, 45

VI. Judicial Support for "No-Buy" Pledges

Beyond legislative measures, tenants gained additional protection in the form of "no-buy" pledges.¹³⁶ No-buy pledges exist where tenants agree to bind themselves not to purchase apartments from a sponsor of a cooperative conversion plan.¹³⁷ The validity of such agreements was upheld in *136 East 64th Street Tenant Association v. Bloom*.¹³⁸ In *Bloom* the New York State Supreme Court enjoined five tenants from purchasing cooperative shares pending a final determination of the validity of the no-buy agreement.¹³⁹ The plaintiff tenant association, in opposition to the proposed cooperative conversion, obtained signatures from tenants on no-buy pledges which were to become effective after seventy percent of the tenants signed.¹⁴⁰ The plaintiff contended that it had more than the seventy percent required for validity.¹⁴¹ After signing the no-buy agreement, five tenants agreed to the conversion. The sponsor included these tenants in calculating the required thirty-five percent needed to proceed with an eviction plan.¹⁴² The court found that, as part of the no-buy agreement, a signatory consented to injunctive relief in the event or threat of breach of the agreement.¹⁴³ Both the lower court and the appellate division noted

B.U.L. REV. 465, 487 (1965); Levine, *supra* note 27, at 496-97. New York does not have a "fairness" or "feasibility" test and so may not refuse to file offering statements because of high prices, risk of loss, or unfair terms not in contravention of law. *Id.* at 498.

136. Saxe, *Developments in Law of Co-op, Condominium Conversions*, N.Y.L.J., Nov. 4, 1982, at 1, col. 3; 26, col. 1; Henry, *Pledges Are Key Tool in Co-op Deals*, N.Y. Times, July 11, 1982, § 12 (Real Estate), at 1, col. 1; 12, col. 4. The preponderance of lawyers say properly written no-buy pledges are enforceable. *Id.* However, some lawyers argue that this is still an open question. *Id.*

137. Henry, *supra* note 136, at 1, col. 1. It is a written agreement. *Id.*

138. N.Y.L.J., June 17, 1981, at 6, col. 3 (Sup. Ct. N.Y. County June 16, 1981), *modified*, 86 A.D.2d 808, 452 N.Y.S.2d 578 (1st Dep't 1982) (the appellate court affirmed the grant of a preliminary injunction except as against the State Attorney General). The court, in its decision, stated that " 'no-buy pledge' agreements are held to be valid and legally binding on the signatories. . . ." N.Y.L.J., June 17, 1981, at 6, col. 5. *See also* Goodwin, *'No-Buy' Pledges by Tenants Are Binding, Judge Decides*, N.Y. Times, June 22, 1981, at B3, col. 6.

139. *136 East 64th St. Tenants' Ass'n v. Bloom*, N.Y.L.J., June 17, 1981, at 6, col. 3, col. 5 (Sup. Ct. N.Y. County June 16, 1981), *modified*, 86 A.D.2d 808, 452 N.Y.S.2d 578 (1st Dep't 1982).

140. N.Y.L.J., June 17, 1981, at 6, col. 3.

141. *Id.*

142. *Id.*

143. *Id.* This may be an important factor distinguishing this decision from the decision in *Vermeer Comm. for Fair Options v. Guterman*, N.Y.L.J., May 13, 1980, at 6, col. 3 (Sup. Ct. N.Y. County May 12, 1980), *aff'd mem.*, 77 A.D.2d 505, 429 N.Y.S.2d 980 (1st Dep't 1980), discussed at notes 145-50 *infra* and accompanying text. As the lower court in *Bloom* said, "the signatories to the agreement are put on notice that a violation of the terms of the pledge can have serious consequences."

the certainty of irreparable harm to other signatories of the plan if the eviction conversion plan was allowed to proceed.¹⁴⁴

The *Bloom* decision followed an earlier case holding no-buy pledges not to be legally binding on the signatories.¹⁴⁵ In *Vermeer Committee for Fair Options v. Guterman*,¹⁴⁶ the supreme court denied the plaintiff tenants' motion for a preliminary injunction to enjoin another group of tenants and the sponsor from effecting a conversion.¹⁴⁷ The plaintiffs alleged that they represented forty-five percent of the eligible tenants and that the sponsor had reached the minimum of thirty-five percent through purchases by tenants who had previously signed a no-buy pledge.¹⁴⁸

In *Guterman*, the appellate division upheld the lower court ruling.¹⁴⁹ The lower court had held that a preliminary injunction was inappropriate as damages were available.¹⁵⁰ In *Bloom*, however, the no-buy agreements contained specific language providing for injunctive relief should the agreement be broken.¹⁵¹ Therefore, it seems that no-buy pledges, carefully drafted to provide injunctive relief in the event of breach, will be effective in halting a conversion if the minimum percentage of required tenants was reached by including breaching pledgees.

N.Y.L.J., June 17, 1981, at 6, col. 4 (Sup. Ct. N.Y. County June 16, 1981). The court added

[r]ealizing the uniqueness inherent in realty, the signatory further consents to the granting of injunctive relief as a matter of right, without notice in the event of a breach. Here again, the language is clear that the intent of the parties . . . was not to be limited to an action at law for damages. . . .

Id.

144. *Id.* The First Department stated this in terms of "the uncertainty to which all the tenants are subject as to whether they are going to lose or safeguard their homes on the one hand, or perhaps the opportunity of a large profit on the other." 86 A.D.2d at 809, 452 N.Y.S.2d at 580. The court went on to say "[w]e do not think tenants should be required to make decisions of investments of very large sums of money while under such uncertainty and fear" and therefore granted the preliminary injunction. *Id.*

145. *Vermeer Comm. for Fair Options v. Guterman*, N.Y.L.J., May 13, 1980, at 6, col. 3 (Sup. Ct. N.Y. County May 12, 1980), *aff'd mem.*, 77 A.D.2d 505, 429 N.Y.S.2d 980 (1st Dep't 1980). The lower court denied a preliminary injunction on the ground that damages would be available. *Id.*, col. 4.

146. *Id.*, col. 3.

147. *Id.*, col. 4.

148. *Id.*, col. 3.

149. 77 A.D.2d 505, 429 N.Y.S.2d 980 (1st Dep't 1980).

150. N.Y.L.J., May 13, 1980, at 6, col. 3 (Sup. Ct. N.Y. County May 12, 1980).

151. N.Y.L.J., June 17, 1981, at 6, col. 3 (Sup. Ct. N.Y. County June 16, 1981).

VII. The Goodman-Grannis Bill: Its Content and Criticisms

In 1982, the New York State Legislature enacted the most comprehensive cooperative conversion statute affecting New York City since the Goodman-Dearie law. The Goodman-Grannis legislation¹⁵² replaces prior section 352-eeee of the General Business Law and supercedes the New York City Rent Stabilization and Rent Control Laws. The new law, which expires on July 1, 1985,¹⁵³ imposes a formal fifteen percent purchase agreement requirement for noneviction plans. Unfortunately, the Goodman-Grannis legislation, as did the informal guidelines formerly used by the Attorney General's office, did not include an *insider* purchaser requirement for noneviction plans similar to that required in the three suburban county legislation,¹⁵⁴ thus leaving a major loophole in the New York City law. This omission, which overshadows the fact that the Goodman-Grannis legislation increases the purchase agreement requirement from thirty-five percent to fifty-one percent for eviction plans,¹⁵⁵ permits a landlord/developer to use non-tenants to meet the purchase requirement in noneviction plans.¹⁵⁶ The failure of this provision to include an "in-

152. 1982 N.Y. Laws ch. 555.

153. *Id.* § 10, codified at N.Y. GEN. BUS. LAW §352-eeee note (McKinney Supp. 1982-1983).

154. See McKee, *supra* note 10; N.Y. GEN. BUS. LAW § 352-eeee(1)(b) (McKinney Supp. 1982-1983). Goodman-Grannis represents a compromise between the State Senate and the Assembly. Dionne Jr., *Albany Meets Issues of Co-ops and Lofts*, N.Y. Times, July 18, 1982, § 8 (Real Estate), at 7, col. 1; Oser, *Protections Widened in New York Conversions*, N.Y. Times, July 18, 1982, § 8 (Real Estate), at 7, col. 1; McKee, *supra* note 10. Republican State Senators from New York City were under pressure from their constituents to pass a co-op bill. *Id.* The Assembly had previously proposed increasing the minimum number of tenant purchasers required for approval of an eviction type conversion plan to a majority. See, e.g., N.Y. Times, Jan. 10, 1982, at 30, col. 1.; Williams, *Rules on Co-op Conversions Tightened in Assembly*, N.Y. Times, May 5, 1981, § 2, at 4, col. 3. Although the Assembly finally achieved the 51% milestone for eviction type conversion plans they were "out maneuvered" by the State Senate which gave up nothing in the area of noneviction plans. McKee, *supra* note 10, at 28.

155. The Attorney General's office had been supporting a majority requirement for eviction type conversion plans since at least 1969. Oser, *Conversion to Cooperatives for Housing in the City*, N.Y. Times, April 24, 1980, § 2, at B14, col. 1; the Attorney General made such a proposal as recently as June 1982. Letter from Attorney General Robert Abrams to Warren N. Anderson, Majority Leader of the New York State Senate (June 20, 1982); Memorandum for the Governor from Attorney General Robert Abrams (July 12, 1982).

156. The law requires that in noneviction conversion plans the outside purchasers be "bona fide purchasers who represent that they intend that they or one or more members of their immediate family intend to occupy the unit, when it becomes vacant." N.Y. GEN. BUS. LAW § 352-eeee(1)(b). In effect they are signing an affidavit that they are not speculators. McKee, *supra* note 10, at 28. At the same time the Attorney General's staff recognizes the difficulty of monitoring their affidavits. Inter-

sider" purchaser requirement, permitting a landlord/developer to convert a building without the support of any existing tenants, caused a leading tenant representative to characterize the Goodman-Grannis legislation as having "fail[ed] utterly to address the major loophole in the law."¹⁵⁷

Three basic criticisms have arisen concerning the Goodman-Grannis legislation. First, both tenant groups and the Attorney General's office are concerned that Goodman-Grannis will encourage more noneviction plans¹⁵⁸ due to the increased percentage requirements for eviction plans. Additionally, as a result of the courts' approval of no-buy pledges and the ease with which a sufficient number of tenants may be attained to block an eviction plan under Goodman-Grannis (fifty percent as opposed to sixty-six percent under prior law), landlord/developers can be expected to take the course of least resistance—noneviction plans.

view with Jane Rosenberg, Assistant Attorney General, Real Estate Financing Bureau, New York State Dep't of Law (September 13, 1982).

In addition, in order to avoid sponsor collusion, the non-tenant purchasers in a noneviction plan are required to be bona fide purchasers and are not allowed to be related to the sponsor or each other. N.Y. ADMIN. CODE tit. 13, § 18.5(e)(6)(ii), (e)(2)(ii)(1982). It should be noted that there exists an exception for sponsors, relatives or associates if the sponsor submits proof satisfactory to the Attorney General's office establishing the purchaser as a bona fide tenant. *Id.*

157. McKee, *supra* note 10, at 28. Despite the controversy surrounding the Goodman-Grannis legislation as it relates to the noneviction plan, the legislation did include a number of important tenant protections in addition to the new 51% requirement for tenant purchasers in an eviction type plan. For instance, senior citizens and tenants 62 years old and older are exempt from eviction regardless of income or length of residency. N.Y. GEN. BUS. LAW § 352-eeee(1)(f), (2)(d)(i). In addition the definition of eligible disabled person was liberalized to allow some gainful employment and still be exempt from eviction. *Id.* § 352-eeee(1)(g), (2)(d)(i). Non-purchasing tenants are permitted to stay in a converted building for the longer of either three years or the length of the lease when an eviction type conversion plan is implemented. *Id.* § 352-eeee(2)(d)(ii). Furthermore, prospective purchasing tenants gained the right to have their representatives such as architects and engineers inspect the buildings. *Id.* § 352-eeee(2)(f). Finally, the Attorney General was given increased powers to combat harassment through court orders blocking not just the apartment sale where the harassment occurred but the conversion of the whole building. *Id.* § 352-eeee(2), (4).

158. This further compounds the already existing trend toward noneviction plans, *see* note 68 *supra* and accompanying text; Henry, *Occupied Units Lure Investors*, N.Y. Times, May 30, 1982, § 8 (Real Estate), at 1, col. 1. This trend is based on the lure of tax benefits, calculations regarding life expectancy and the notion that at the right price occupied units are a good investment. *Id.* While the precise number of investors is elusive, clearly the market for occupied units as investments has broadened beyond real estate professionals. *Id.*, at 11, col. 2. However, Scott Greathead, Assistant Attorney General in charge of the Real Estate Financing Bureau, New York State Dep't of Law believes that accompanying this trend toward noneviction plans are unscrupulous investors who work on the assumption they can harass tenants out

This shift to noneviction plans is particularly troublesome to the Attorney General's office because it raises the real prospect of tenant harassment, unattended buildings and lack of day-to-day maintenance.¹⁵⁹ In an eviction plan, fifty-one percent of the tenants must agree to purchase their apartments. Thus, the tenants gain control of the building. By contrast, in a noneviction plan, after fifteen percent of statutorily defined "bona fide"¹⁶⁰ purchasers subscribe to buy apartments, the remaining eighty-five percent of the apartments may be sold either to speculators who never intend to occupy a unit in the building or to outside purchasers who intend to reside in the cooperative unit as soon as it becomes vacant. Initially, it is the landlord/developer, in his desire to fully co-op his building by selling his units, who has the incentive to harass non-purchasing tenants into purchasing or vacating their apartments.¹⁶¹ This harassment subsequently may be compounded if the landlord/developer sells the occupied units either to speculators concerned with the marketability of their investment or to outside purchasers who desire immediate occupancy.¹⁶²

Second, noneviction plans may lead to unique living arrangements in which a traditional landlord or cooperative board does not exist. In addition, tenants in the same building may be renting and owning apartments simultaneously. A difficult question arises: who is responsible for the long-term interests of the building? Since eighty-five percent of the owners are not required to live in the building at any time, they may not have the same concern for building maintenance as occupying tenants. This may lead to a number of unattended buildings.¹⁶³ Even if buildings remain occupied, the absence of a controlling body leaves tenants responsible for the repair and maintenance of their apartments and common areas.¹⁶⁴ Third, the possibility

of their units and then sell them. *Id.*, at col. 4. According to Greathead, as " 'thousands of minilandlords' " take ownership of apartments in New York City, a " 'plethora of abuses' " are feared in the area of tenant harassment. *Id.*, at col. 3.

159. Interview with Jane Rosenberg, Assistant Attorney General, Real Estate Financing Bureau, New York State Dep't of Law, in New York City (Sept. 13, 1982).

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

161. See Lehner & Sweet, *supra* note 87, at 35, col. 4. The authors discuss the fact that in such noneviction plans harassment of non-purchasing tenants by "unscrupulous" landlords becomes more significant because it is the only way the tenants can be forced to move. *Id.*

162. The fear expressed by Scott Greathead, Assistant Attorney General in charge of the Real Estate Financing Bureau, New York State Dep't of Law, is that as these new "minilandlords" take ownership there will be numerous instances of tenant harassment. Henry, *supra* note 158.

163. Interview with Jane Rosenberg, Assistant Attorney General, Real Estate Financing Bureau, New York State Dep't of Law, in New York City (Sept. 13, 1982).

164. *Id.*

exists that a sponsor may choose not to sell but to rent apartments as they are vacated. By so doing, a sponsor is no longer under rent regulation.¹⁶⁵ Thus, a sponsor may circumvent the rent laws and escalate rents at will.

VIII. Recent Cooperative Legislation

In an effort to address the problems associated with the noneviction approach of cooperative housing conversion incorporated into the Goodman-Grannis legislation, three bills have been proposed recently in the New York State Assembly. These bills, A.5776,¹⁶⁶ A.5482,¹⁶⁷ and A.3889,¹⁶⁸ are currently in committee.

Assembly bill 5776 would repeal section 352-eee and amend section 352-eeee of the General Business Law. It would provide statewide local option legislation in line with that provided in New York City, as well as a new definition of a noneviction plan¹⁶⁹ to be effective where fifteen percent of tenants in occupancy purchase their apartments.¹⁷⁰ This would replace the current provision applicable to New York City which allows either outsiders or tenants in occupancy to compose the fifteen percent bona fide purchasers required in a noneviction plan.¹⁷¹

Assembly bill 5482 would amend section 352-eeee of the General Business Law to provide that a noneviction plan may not be declared effective until thirty-five percent of all dwelling units in a building are purchased by tenants.¹⁷² An additional sixteen percent of either tenants or outsiders would be required to purchase apartments in order for the noneviction plan to become effective.¹⁷³

Assembly bill 3889 would change the definition of a noneviction plan in New York City and Nassau, Rockland and Westchester Coun-

165. *Id.*; The New York City Rent Stabilization Law does not apply to converted cooperative buildings. NEW YORK, N.Y. ADMIN. CODE tit. YY, § YY51-3.0 (1975 & Supp. 1982-1983), reprinted in N.Y. UNCONSOL. LAWS tit. 23, ch. 4 app. at 589 (McKinney 1974 & Supp. 1982-1983). The local rent control law is inapplicable since as apartments are vacated they are shifted in the rent stabilized category. Telephone Interview with Jane Rosenberg, Assistant Attorney General, Real Estate Financing Bureau, New York State Dep't of Law (Mar. 4, 1983). While the rental of vacant apartments by the developer of the cooperative itself is possible in an eviction type conversion, this is not the traditional approach taken in such a plan. *Id.*

166. A. 5776, 206th Leg. Sess. (N.Y. Legis. Record & Index 1983).

167. A. 5482, 206th Leg. Sess. (N.Y. Legis. Record & Index 1983).

168. A. 3889, 206th Leg. Sess. (N.Y. Legis. Record & Index 1983).

169. A. 5776, 206th Leg. Sess. (N.Y. Legis. Record & Index 1983).

170. *Id.*

171. N.Y. GEN. BUS. LAW § 352-eeee(1)(b).

172. A. 5482, 206th Leg. Sess. (N.Y. Legis. Record & Index 1983).

173. *Id.*

ties.¹⁷⁴ The bill provides that twenty-five percent of tenants must purchase their apartments in order for the noneviction plan to be successful.¹⁷⁵

All three bills would revise the purchaser requirement in noneviction type conversion plans such that a percentage of tenants would have input in a determination concerning a noneviction conversion. However, A.5776 has the greatest chance of passing in the State Assembly and Senate due to its realistic approach to the problems identified above. This bill most closely resembles section 352-eee of the General Business Law covering Nassau, Rockland and Westchester Counties. By contrast, the other two bills provide an unrealistic and unnecessarily high level of input for tenants. Assembly bill 5776's fifteen percent tenant purchaser requirement would provide the basis for tenant organization without unduly restricting the landlord developer from utilizing the perhaps less attractive and less marketable noneviction approach.

IX. Conclusion

The controversy over noneviction plans is part of the continuous struggle between landlord and tenant interests in New York State which began when Attorney General Louis J. Lefkowitz recognized the need to prevent large real estate syndications from taking unfair advantage of small investors. Since passage of the first legislation directed toward real estate syndication in 1960, there have been shifts from broad tenant protection in cooperative conversion with the Goodman-Dearie legislation, to minimal tenant protection when Goodman-Dearie was allowed to expire in 1977. Since 1977, there has been a return to increased tenant protection with passage of the three county legislation, the 1979 Lehner-Flynn bill and amendments to Lehner-Flynn in 1980.

What makes the most recent legislation, Goodman-Grannis, unique to this developing trend in tenant protection is that while it gives tenants the desired fifty-one percent minimum tenant purchaser requirement for eviction type conversion plans, it codifies the outsider purchaser requirement in noneviction plans.

The impact of the noneviction approach to cooperative conversion in New York City is best evidenced by the potential element of speculation. At risk is an increasing number of buildings deteriorating as a result of an increase in absentee landlord/developers. While it is argu-

174. A.3889, 206th Leg. Sess. (N.Y. Legis. Record & Index 1983).

175. *Id.*

able that a developer may continue to provide minimal services and cosmetic repairs to remaining tenants to maintain the saleability of an apartment, after conversion it is unlikely that substantive maintenance will continue. More important is the economic incentive on the part of these speculators to remove tenants from their apartments illegally by harassment and failure to provide services. These tactics become all the more powerful if landlord/developers in a noneviction conversion plan do not meet organized tenant opposition. However, a powerful tenant movement which may include a threat of a rent strike may discourage potential outside purchasers concerned with return on their investment.¹⁷⁶ Even so, an assistant attorney general recently characterized noneviction cooperative conversion plans as a "time bomb ready to explode."¹⁷⁷

However one describes noneviction plans clearly, the Goodman-Grannis legislation has failed to provide the level of protection to tenants facing noneviction cooperative conversion in New York City as has been provided for tenants living in Nassau, Rockland and Westchester Counties. These counties, by virtue of their requirement that landlord developers show that *existing* tenants will purchase at least fifteen percent of the apartment units in a targeted building, have foreclosed the potential disruption associated with the Goodman-Grannis law. Goodman-Grannis, by providing that non-tenants alone can satisfy the fifteen percent requirement, has created a situation where tenants will have little to say concerning the conversion of the building in which they live. Without any leverage in a noneviction conversion plan, tenants, to a great extent, will be at the conversion sponsor's mercy. Adequate protection for tenants of the City of New York demands legislation similar to that presently effective in Nassau, Rockland and Westchester Counties. The existing law should be amended to reflect the tenants' needs by requiring that the fifteen percent of tenants required for a noneviction conversion in the City of New York be drawn solely from tenants in occupancy of a target building.

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176. It has also been suggested that this powerful tenant tool may be used as leverage to halt a noneviction plan since the sponsor wants to sell as many units as possible in a short period of time. See *Find Tenants Bargain Well In Non-Eviction Co-op Plans*, Real Estate Weekly, Aug. 30, 1982, at 1, col. 1. However, in a noneviction plan, no-buy pledges are of questionable value because the percentage required is low and the sponsor can sell vacant apartments to outsiders. Henry, *supra* note 136, at 1, col. 1.

177. Interview with Jane Rosenberg, Assistant Attorney General, New York State Dep't of Law, in New York City (September 13, 1982).