

tive association to a party who is not an affiliate of the developer.

Once the rebuttable presumption is established, the court, in making its finding, shall consider the lease or portion of the lease to be unconscionable unless proven otherwise by the preponderance of the evidence to the contrary.

**(c) Presentation of evidence after finding of unconscionability**

Whenever it is claimed, or appears to the court, that a lease or any portion thereof is, or may have been, unconscionable at the time it was made, the parties shall be afforded a reasonable opportunity to present evidence at least as to—

- (1) the commercial setting of the negotiations;
- (2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests;
- (3) the effect and purpose of the lease or portion of the lease or portion thereof, including its relationship to other contracts between the association, the unit owners and the developer or an affiliate of the developer; and
- (4) the disparity between the amount charged under the lease and the value of the real estate subject to the lease measured by the price at which similar real estate was readily obtainable in similar transactions.

**(d) Remedial relief; matters considered; attorneys' fees**

Upon finding that any lease, or portion thereof, is unconscionable, the court shall exercise its authority to grant remedial relief as necessary to avoid an unconscionable result, taking into consideration the economic value of the lease. Such relief may include, but shall not be limited to rescission, reformation, restitution, the award of damages and reasonable attorney fees and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plaintiff<sup>1</sup> is frivolous, malicious, or lacking in substantial merit.

**(e) Actions allowed after termination of special developer control**

Nothing in this section may be construed to authorize the bringing of an action by cooperative and condominium unit owners' association, seeking a judicial determination that a lease or leases, or portions thereof, are unconscionable, where such unit owners or a unit owners' association representing them has, after the termination of special developer control, reached an agreement with a holder of such lease or leases which either—

- (1) sets forth the terms and conditions under which such lease or leases is or shall be purchased by such unit owners or associations; or
- (2) reforms any clause in the lease which contained an automatic rent increase clause, unless such agreement was entered into when the leaseholder or his affiliate held a majority of the votes in the owners' association.

(Pub. L. 96-399, title VI, §609, Oct. 8, 1980, 94 Stat. 1677.)

<sup>1</sup> So in original. Probably should be "plaintiff".

**EFFECTIVE DATE**

Section effective one year after Oct. 8, 1980, see section 618 of Pub. L. 96-399, set out as a note under section 3601 of this title.

**§ 3609. Void lease or contract provisions**

Any provision in any lease or contract requiring unit owners or the owners' association, in any conversion project involving a contract meeting the requirements of section 3607 of this title of in any project involving a lease meeting the requirements of section 3608 of this title, to reimburse, regardless of outcome, the developer, his successor, or affiliate of the developer for attorneys' fees or money judgments, in a suit between unit owners or the owners' association and the developer arising under the lease or agreement, is against public policy and void.

(Pub. L. 96-399, title VI, §610, Oct. 8, 1980, 94 Stat. 1678.)

**EFFECTIVE DATE**

Section effective Oct. 8, 1980, except that prohibition included in this section as it relates to a lease with respect to which a cause of action may be established under section 3608 of this title, shall be effective one year after Oct. 8, 1980, see section 618 of Pub. L. 96-399, set out as a note under section 3601 of this title.

**§ 3610. Relationship of statutory provisions to State and local laws**

Nothing in this chapter may be construed to prevent or limit the authority of any State or local government to enact and enforce any law, ordinance, or code with regard to any condominium, cooperative, or conversion project, if such law, ordinance, or code does not abridge, deny, or contravene any standard for consumer protection established under this chapter. Notwithstanding the preceding sentence, the provisions of this chapter, except for the application of section 3608 of this title and the prohibition included in section 3609 of this title as it relates to a lease with respect to which a cause of action may be established under section 3608 of this title, shall not apply in the case of any State or local government which has the authority to enact and enforce such a law, ordinance, or code, if, during the three-year period following October 8, 1980, such State or local government enacts a law, ordinance, or code, or amendments thereto, stating in substance that such provisions of this chapter shall not apply in that State or local government jurisdiction.

(Pub. L. 96-399, title VI, §611, Oct. 8, 1980, 94 Stat. 1679.)

**§ 3611. Additional remedies**

**(a) Suits at law or equity**

Unless otherwise limited as in section 3607 or 3608 of this title, any person aggrieved by a violation of this chapter may sue at law or in equity.

**(b) Recovery of actual damages**

In any action authorized by this section for a violation of section 3607 or 3609 of this title where actual damages have been suffered, such damages may be awarded or such other relief granted as deemed fair, just, and equitable.

**(c) Contribution**

Every person who becomes liable to make any payment under this section may recover contributions from any person who if sued separately, would have been liable to make the same payment.

**(d) Amounts recoverable; defendant's attorneys' fees**

The amounts recoverable under this section may include interest paid, reasonable attorneys' fees, independent engineer and appraisers' fees, and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plaintiff is frivolous, malicious, or lacking in substantial merit.

(Pub. L. 96-399, title VI, §612, Oct. 8, 1980, 94 Stat. 1679.)

**§ 3612. Concurrent State and Federal jurisdiction; venue; removal of cases**

The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction under this chapter and, concurrent with State courts, of actions at law or in equity brought under this chapter without regard to the amount in controversy. Any such action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the sale took place, and process in such cases may be served in other districts of which the defendant is an inhabitant or wherever the defendant may be found. No case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where any officer or employee of the United States in his official capacity is a party.

(Pub. L. 96-399, title VI, §613, Oct. 8, 1980, 94 Stat. 1679.)

**§ 3613. Limitation of actions**

No action shall be maintained to enforce any right or liability created by this chapter unless brought within six years after such cause of action accrued, except that an action pursuant to section 3608 of this title must be brought within four years after October 8, 1980.

(Pub. L. 96-399, title VI, §614, Oct. 8, 1980, 94 Stat. 1680.)

**§ 3614. Waiver of rights as void**

Any condition, stipulation, or provision binding any person to waive compliance with any provisions of this chapter shall be void.

(Pub. L. 96-399, title VI, §615, Oct. 8, 1980, 94 Stat. 1680.)

**§ 3615. Nonexclusion of other statutory rights and remedies**

The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist under Federal or State law.

(Pub. L. 96-399, title VI, §616, Oct. 8, 1980, 94 Stat. 1680.)

**§ 3616. Separability**

If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby.

(Pub. L. 96-399, title VI, §617, Oct. 8, 1980, 94 Stat. 1680.)

**CHAPTER 63—TECHNOLOGY INNOVATION**

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**§ 3701. Findings**

The Congress finds and declares that:

(1) Technology and industrial innovation are central to the economic, environmental, and social well-being of citizens of the United States.

(2) Technology and industrial innovation offer an improved standard of living, increased public and private sector productivity, creation of new industries and employment opportunities, improved public services and enhanced competitiveness of United States products in world markets.

(3) Many new discoveries and advances in science occur in universities and Federal laboratories, while the application of this new knowledge to commercial and useful public purposes depends largely upon actions by busi-