

characteristics set forth in subsection (a) of this section, the lease—

(1) creates a lien subjecting any unit to foreclosure for failure to make payments;

(2) contains provisions requiring either the cooperative or condominium unit owners or the cooperative or condominium association as lessees to assume all or substantially all obligations and liabilities associated with the maintenance, management and use of the leased property, in addition to the obligation to make lease payments;

(3) contains an automatic rent increase clause without establishing a specific maximum lease payment; and

(4) requires an annual rental which exceeds 25 per centum of the appraised value of the leased property as improved: *Provided*, That, for purposes of this paragraph “annual rental” means the amount due during the first twelve months of the lease for all units, regardless of whether such units were occupied or sold during that period, and “appraised value” means the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium or after the sale of a membership or share interest in the cooperative 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 plaintiff¹ 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.)

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 or 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 in-

¹ So in original. Probably should be “plaintiff”.