

RECEIVED
CITY CLERK

APR 17 AM 8 56

CAMBRIDGE MA.

348 Franklin Street
Cambridge, MA 02139-3731
April 16, 1991

TO THE HONORABLE, THE CAMBRIDGE CITY COUNCIL:

I wish to, once again, praise the Rent Control Subcommittee for its report. This letter provides a bit of supporting materials. Request that these be added to the Report of the Rent Control Subcommittee.

It came as somewhat of a shock to go into more detail in the supporting materials contained in the Rent Control Committee's report and realize that, primarily as a courtesy, and to avoid burdening the record with a lot of documents, that I had not formally submitted some very important items. These items were informally transmitted to each Councillor on December 4, 1990, and, probably, have been very carefully filed away and lost.

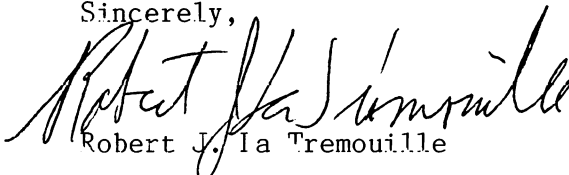
The first enclosed item (one page) has been formally submitted to the council twice, but not, apparently, made part of the committee record by me. It is my formal language on two of my three condo conversion concepts. Part 1, proposed state legislation, (a) provides the appropriate language changes to make the state condo conversion law apply to housing constructed in Cambridge during the 1969 - 1983 construction seasons, and (b) gives the Rent Control Board jurisdiction to administer the act in Cambridge. Rent Control Board jurisdiction is, of course, appropriate and essential. Part 2 of this proposed language cleans up the holes in the Removal Ordinance itself.

The vast bulk of the items appended are statutory materials upon which the suggested changes to the city's condo eviction protection are based. They are:

1. The first two pages of the removal ordinance as printed in the Rent Board's November 1990 republication of the Rent Control Act, Ordinance and Regulations.
2. The specific clause of the Rent Control Act giving the Board the power to administer the Act.
3. The state condo conversion statute taken from the West publication thereof. West incorporates it in the equivalent of a footnote to the Condominium chapter of the Massachusetts General Laws. I am providing it to you in full text for obvious reasons. It is my strong hope that you will use the language I have suggested, and by so doing, apply the state statute to post rent control construction in the City of Cambridge.

Thank you very much for your consideration.

Sincerely,


Robert J. La Tremouille

Enclosure 1, Presently Proposed Changes

1. Proposed State Legislation.

- a. Amend chapter 527 of the Statutes of 1983, as amended, by deleting the period at the end of the third unnumbered paragraph of Section 2, and inserting the following in place thereof:

, except that this act, including but not limited to the local legislative powers granted hereby, shall apply in the City of Cambridge to rental units the construction of which was completed on or after January one, nineteen hundred and sixty-nine, or which are housing units created by conversion from a non-housing to a housing use on or after said date. "Rental Units" as used in the immediately preceding sentence shall be defined as stated in Chapter 36 of the Acts of 1976 as amended.

[Note: tracks, word for word, section 3(b)(2) of the Rent Control Act.]

- b. Amend Chapter 36 of the Acts of 1976, as amended, by inserting a new sentence immediately following the first sentence of Section 5(a), so that, with this insertion, the first two sentences read:

This act shall be administered by a rent control board. Said rent control board shall also administer chapter 527 of the Statutes of 1983 as amended, insofar as it is applicable in the City of Cambridge.

2. Proposed removal ordinance change.

Amend Chapter 8.44 of the Cambridge Municipal Code by amending section 8.44.020.D.6,

- a. by inserting therein after the first "August 10, 1979,": "and which has been once legally occupied by the unit owner prior to August 1, 1990.", and
- b. by deleting the balance of that sentence so that the paragraph picks up again with the last sentence,

as a result of which said section reads as follows:

"Removal from the market" does not include occupancy of . . . a condominium unit as to which it can be shown with respect to its initial sale after the recording of the master deed that a purchase and sale agreement has been entered into prior to August 10, 1979, and which has been once legally occupied by the unit owner prior to May 1, 1990. No condominium unit once legally occupied by the unit owner shall ever again be subject to this section for any reason.

CHAPTER 8.44 RENT CONTROL*

Sections:

8.44.010	Findings of fact.
8.44.020	Definitions.
8.44.030	Applicability of chapter provisions.
8.44.040	Removal of controlled rental unit-Permit required-Hearing.
8.44.050	Permit-Criteria considerations.
8.44.060	Limited equity cooperative ownership.
8.44.070	Unlawful acts by developers.
8.44.080	Equitable relief.
8.44.090	Violation-Penalty

* Prior ordinance history: Ords. 926, 929, 932, 941 and 945.

8.44.101 Findings of fact.

A serious public emergency continues to exist in the City with respect to the housing of a substantial number of its citizens, as declared by Chapter 36 of the Acts of 1976, for the reasons stated in the Act. The emergency has worsened since 1976 because of the removal of a substantial number of rental housing units from the market, by condominium conversion, demolition, and other causes. As a result, more than two thousand or over ten percent of the controlled rental units in the city have been removed from the housing market since 1970, and the vacancy rate has fallen below one percent. In order to carry out the purposes of the Act, and to continue to provide a sufficient supply of decent, affordable rental housing accommodations especially for families of low and moderate income and for elderly people on fixed incomes, it is necessary for the City Council, in the exercise of its powers under Section 6 of the Home Rule Amendment and under section 5(c) of the Act, to regulate the removal of controlled rental housing units from the market.
(Ord. 966 (part), 1981; prior code Ch. 23 § 1(a))

8.44.020 Definitions.

As used in this section:

- A. **"Act"** means Chapter 36 of the Acts of 1976, as amended from time to time.
- B. **"Board"** means the Rent Control Board established by Section 5 of the Act.
- C. **"Controlled rental unit"** means any unit included in the definition under Section 3(b) of the Act.
- D. **"Removal from the market"** as applied to a controlled rental unit, means and includes but is not limited to:

1. Occupy as an owner of a unit which is a condominium unit, if the most recent occupant was a tenant, even if the prospective owner-occupant is the tenant, unless the prospective owner-occupant is the current tenant of the unit who has continuously occupied it as a tenant since before August 10, 1979 and intends in good faith to occupy it indefinitely as its owner; or
2. Demolish, but no unit has been removed from the market by demolition until its physical destruction has begun; or
3. Rehabilitate, repair or improve, other than as required by the laws of the Commonwealth or the City, in such a way as to prevent residential occupancy during the course of the rehabilitation, repair or improvement. This provision shall not apply to rehabilitation, financed at least in part by community development block grant funds, of a building owned by a non-profit corporation and intended for owner-occupancy by low and moderate income persons; or
4. Convert to a cooperative as the term is used in Section 3(b)(4) of the Act, all or part of any building which contains any controlled rental unit;
5. Cause a unit, not the primary residence of a legal unit owner, to be vacant for one hundred twenty days or more by refusing to rent or to offer for rent such unit in good faith or, when a unit is cited as unfit for human habitation, by failure to perform repairs required to restore such unit to habitable condition. The existence of a vacancy for one hundred twenty days or more, without a showing of good cause, shall constitute removal from the market.
6. **"Removal from the market"** does not include occupancy of a noncondominium unit by the owner of the building in which it is located or by any member of his/her immediate family; or a condominium unit which the owner occupied before the tenant occupied it; or a condominium unit as to which unit it can be shown with respect to its initial sale after the recording of the master deed that a purchase and sale agreement has been entered into prior to August 10, 1979, a canceled check being conclusive proof of the transaction, or a unit deed recorded in the Middlesex Registry of Deeds prior to August 10, 1979, whether or not the unit was being used for rental housing on August 13, 1979. No condominium unit once legally occupied by the unit owner shall ever again be subject to this chapter for any reason. (Ord.1014 § 1, 1984; Ord. 980 § 2, 1982; Ord. 966 (part), 1981; prior code Ch. 23 § 1(b))

8.44.030

Applicability of chapter provisions.

- A. This chapter shall apply to all controlled rental units which have not been removed from the market before August 13, 1979. This section shall take effect immediately, but cease to be effective if the Board files its certificate with the City Clerk that:
 1. The vacancy rate in the total supply of controlled rental units exceeds four percent; or

Rent Control Act, section

5

(7) that the City of Cambridge may exempt those rental units for which the rent charges exceed limits specified by said municipality; provided that in no event shall more than twenty-five percent of the total rental units in Cambridge be exempted under this subsection.

(8) (i) The unit that is an owner's principal residence, while vacated and rented by said owner for a period not to exceed two years, if said owner has not taken up residence elsewhere with the intention of not returning and has resided in the principal residence for at least two years immediately before vacating it.

(ii) This section shall not apply to leases agreed to and tenancies created before the effective date of this act.

(c) "**Rent**", the consideration including any bonus, benefits, or gratuity demanded or received for or in connection with the use or occupancy of rental units or the transfer of a lease of such rental units.

(d) "**Services**", repairs, replacement, maintenance, painting, providing light, heat, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishings, and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

SECTION 4. Transition.

(a) The board shall assume possession of all records, documents and other materials in possession of the Board established and operated under Chapter 842 of the Acts of 1970 or any special or general laws regulating rents and evictions enacted subsequent to Chapter 842 of the Acts of 1970.

(b) Any proceeding commenced by the board established under said Chapter 842, or orders related thereto and any rules and regulations of said board shall remain in effect for the purposes of this act unless otherwise ordered by the board.

(c) The board shall have authority to issue regulations and orders necessary and helpful for the efficient transition from the administration of said Chapter 842, or any special or general laws regulating rents and evictions enacted subsequent to said Chapter 842, to the administration of this act.

SECTION 5. Rent Board.

(a) This act shall be administered by a rent control board. Immediately upon the acceptance of this act the rent board established under Chapter 842 of the Acts of 1970 shall be deemed to be the rent board appointed by the city manager under this act to serve at the pleasure of the city manager or the city manager may appoint a new rent control board to serve at the pleasure of the city manager.

- (b) Members of the rent board shall receive no compensation for their services, but shall be reimbursed by the city for necessary expenses incurred in the performance of their duties.
- (c) The rent control board, hereinafter called the board, shall be responsible for carrying out the provisions of this act, and shall hire, with the approval of the city manager, such personnel, not subject to the provisions of section nine A of chapter thirty of the general laws or chapter thirty-one of the general laws, as are needed, shall promulgate such policies, rules and regulations as will further the provisions of this act, and shall recommend to the city, for adoption, such ordinances as may be necessary to carry out the purposes of this act.
- (d) The board may make such studies and investigations, conduct such hearings, and obtain such information as is deemed necessary in promulgating any regulation, rule or order under this act, or in administering and enforcing this act and regulations and orders promulgated hereunder. For the foregoing purposes, a person may be summoned to attend and testify and to produce books and papers in like manner as he may be summoned to attend as a witness before a court. Any person who rents or offers for rent or acts as broker or agent for the rental of any controlled rental unit may be required to furnish under oath any information required by the board and to produce records and other documents and make reports. Such persons shall have the right to be represented by counsel, and a transcript shall be taken of all testimony and such person shall have the right to examine said transcript at reasonable times and places. Section ten of chapter two hundred and thirty-three of the General Laws shall apply, and for the purposes of this act a justice of the district court shall have the same powers as a justice of the Supreme Judicial or Superior Court to implement the provisions of said section.
- (e) The board shall have the power to issue orders and promulgate regulations to effectuate the purposes of this act.
- (f) The provisions relating to adjudicatory proceedings in chapter thirty A of the General Laws, except for section nine and the provisions of paragraph (1) of the third paragraph of section fourteen which relates to the court in which judicial review may be sought, shall be applicable to the adjudicatory hearings held by the board.

SECTION 6. Maximum Rent.

- (a) The maximum rent of controlled rental units shall be the maximum rent most recently established under Chapter 842 of the Acts of 1970 and regulations thereunder, immediately prior to the initial acceptance of this act, for all units which were then subject to said Chapter 842. For any rental units controlled under this act which were not then subject to said Chapter 842 the maximum rent shall be the rent lawfully charged the occupant of such unit for the month six months prior to the date on which the unit became controlled. If the rental unit was unoccupied at that time but was occupied at any time prior to that date, the maximum rent shall be the rent lawfully charged therefore for the month closest to one month prior to the date on which the unit became controlled. Upon the reacceptance of this act the maximum rent of a controlled unit shall be the rent lawfully charged the occupant of such unit for the month six months prior to the reacceptance of this act unless the rent for the unit was established by the rent board within said six month period, in which case the rent shall be the rent so established by the rent board. If the rental unit was unoccupied at that time but was occupied at any time prior to the reacceptance of this act, the maximum rent shall be the rent

Condominium conversion legislation: Limitation on use of deprivation of rights? (1979-1980) 15 New England L.Rev. 815.

Fifth Amendment takings, and condominium conversion regulations that restrict owner occupancy rights. (1982) 62 Boston U.L.Rev. 467.

Judicial review of condominium rulemaking. (1981) 94 Harvard L.Rev. 647.

municipal land use controls. (1983) 63 Boston U.L.Rev. 955.

Library References

Comments.

Condominiums, see M.P.S. vol. 34, Stavisky, § 1451 et seq.

§ 1. Definitions

As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:—

[See main volume for text of definitions "Building" and "By-laws"]

"Common areas and facilities" shall, except as otherwise provided or stipulated in the master deed, mean and include:—

[See main volume for text of clauses (1) to (3)]

(4) The land on which the building is located, or the lessee's interest in any lease of such land which is submitted to the provisions of this chapter.

[See main volume for text of clauses (5) to (8) of definition "Common areas and facilities"; and definitions "Common expenses" to "Common profits"]

"Condominium", the land or the lessee's interest in any lease of such land which is submitted to the provisions of this chapter, the building or buildings, all other improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which have been submitted to the provisions of this chapter.

[See main volume for text of definitions "Master deed" to "Unit owner"]

Amended by St.1985, c. 788, §§ 1, 2.

Historical Note

1985 Amendment. St.1985, c. 788, § 1, an emergency act, approved Jan. 9, 1986, in cl. (4) of the definition of "Common areas and facilities" substituted a comma for a semicolon following "located" and added "or the lessee's interest in any lease of such land which is submitted to the provisions of this chapter." at the end of the clause.

Section 2 of St.1985, c. 788, in the definition of "Condominium" inserted "or the lessee's interest in any lease of such land which is submitted to the provisions of this chapter."

1983 Related Laws. St.1983, c. 527, §§ 1 to 5D and 7, provided:

"Section 1. **DECLARATION OF EMERGENCY.** The general court finds and declares that a serious public emergency exists within the commonwealth with respect to the housing of a substantial number of the citizens of the commonwealth. This rental housing emergency has been created by the lack of sufficient new rental housing production, by prolonged increases in housing costs at a rate substantially exceeding increases in personal income, by housing abandonment, by increased costs of new housing construction and finance, and by increased residential mortgage interest rates. It has also been created by the effect of conversion of rental housing into condominiums or cooperatives.

These forms of home ownership constitute an important and positive dimension in addressing the housing needs of the commonwealth. However, absent sufficient new rental housing production, such conversion necessarily reduces the stock of rental housing otherwise available. A substantial and increasing shortage of rental housing accommodations, especially for the elderly, the handicapped, and persons and families of low and moderate income, has been and will continue to be the result of this emergency. Unless the available stock of rental housing, and the tenants who reside therein, receive further protection from the consequences of conversion of said accommodations to condominiums and cooperatives than the law now affords, this rental housing shortage will generate serious threats to the public health, safety, and general welfare of the citizens of the commonwealth, particularly the elderly, the handicapped, and persons and families of low and moderate income. It is therefore necessary that such emergency be dealt with immediately.

"Section 2. The provisions of section four of this act shall be applicable to all housing accommodations in any city or town of the commonwealth, unless otherwise provided in this section.

"Any city or town may, by ordinance or by-law, impose provisions or requirements to regulate for the protection of tenants with respect to the conversion of housing accommodations to the

condominium or cooperative forms of ownership and evictions related thereto which differ from those set forth in this act, upon a two-thirds vote of the city council with the approval of the mayor, in the case of a city, or a two-thirds vote of a town meeting, or town council, in the case of a town; provided, however, that no such ordinance or by-law which imposes additional provisions or requirements than those set forth in this act shall be applicable to any of the following housing accommodations: (i) housing accommodations constructed or converted from a non-housing to a housing use after the effective date of this act; (ii) housing accommodations which were constructed or substantially rehabilitated pursuant to any federal mortgage insurance program, without any interest subsidy or tenant subsidy attached thereto; and (iii) housing accommodations financed through the Massachusetts Housing Finance Agency, with an interest subsidy attached thereto.

"Any city or town, which has adopted an ordinance or by-law for the regulation of the conversion of housing accommodations to the condominium or cooperative forms of ownership and evictions related thereto pursuant to the authority conferred upon such city or town by special act, shall be exempt from the provisions of this act, and this act shall not be construed to restrict the authority of any such city or town to amend or repeal any ordinance or by-law in accordance with the provisions of such special act.

"Local legislative action shall be accompanied by a declaration, in the form of findings, that local conditions constitute an acute rental housing emergency requiring local action, on account of the aggravating impact of the factors set forth in section one of this act.

"Section 3. As used in this act, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"'Condominium unit', a unit in a housing condominium as that term is defined in chapter one hundred and eighty-three A.

"'Cooperative unit', a unit in a housing cooperative which has been organized under the provisions of General Laws including, without limitation, the provisions of chapter one hundred and fifty-six B, one hundred and fifty-seven, or one hundred and fifty-seven B.

"'Condominium or cooperative conversion eviction', an eviction of a tenant for the purpose of removing such tenant from a housing accommodation in order to facilitate the initial sale and transfer of legal title to that housing accommodation as a condominium or cooperative unit to a prospective purchaser or an eviction of a tenant by any other person who has purchased a housing accommodation as a condominium or cooperative unit when the tenant whose eviction is sought was a resident of the housing accommodation at the time the notice of intent to convert is given to convert the building or buildings to the condominium or cooperative form of owner-

ship pursuant to section four; provided, however, that the eviction of a tenant for non-payment of rent or other violation of a rental agreement shall in no event be deemed a condominium or cooperative conversion eviction.

"'Elderly tenant', a tenant who is a person or group of persons residing in the same housing accommodation any of whom has reached the age of sixty-two years or over as of the date of receipt of the notice provided for hereunder.

"'Handicapped tenant', a person entitled to occupy a housing accommodation who is physically handicapped as defined in section thirteen A of chapter twenty-two as of the date of receipt of the notice provided for hereunder.

"'Housing accommodation', any building, structure, or part thereof or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property, but not including the following:

"(i) housing accommodations which the United States or the commonwealth or any authority created under the laws thereof either owns or operates;

"(ii) housing accommodations in any hospital, convent, monastery, asylum, public institution or college or school dormitory operated exclusively for charitable or educational purposes, or in any nursing or rest home for the aged;

"(iii) buildings containing fewer than four housing accommodations;

"(iv) housing accommodations in hotels, motels, inns, tourist homes, and rooming and boarding houses which are occupied by transient guests staying for a period of fewer than fourteen consecutive calendar days.

"'Interest subsidy', any payment made by the federal or state government to reduce the effective interest rate payable by a mortgagor.

"'Low or moderate income tenant', a tenant who is a person or group of persons residing in the same housing accommodation so long as the total income for all such tenants for the twelve months immediately preceding the date of notice provided for hereunder is less than eighty per cent of the median income for the area set forth in regulations promulgated from time to time by the Department of Housing and Urban Development pursuant to 42 USC 1437 et seq., and calculated pursuant to said regulations.

"'Tenant', a person or group of persons collectively entitled to occupy a housing accommodation pursuant to a rental agreement written or implied.

"'Tenant subsidy', any payment made by the federal or state government for or on behalf of any tenant to be applied toward the reduction of the tenant's rental payment. [Amended by St. 1984, c. 170, § 4.]

"Section 4. (a) If a building submitted to the provisions of chapter one hundred and eighty-

Source: MASS. GEN. LAWS ANNOTATED, c. 183A, 2-1 (Pocket Part)

Chapter A, Chapter One Hundred and Fifty-Six B, Chapter One Hundred and Fifty-Seven, Chapter One Hundred and Fifty-Seven B or any provisions of the General Laws governing the cooperative form of ownership has been used in whole or in part for residential purposes within one year prior to the recording of a master deed creating a condominium or the filing of the articles of organization creating a housing cooperative, the owner thereof shall give each tenant of all housing accommodations in such building or buildings notice of intent to convert the building or buildings to the condominium or cooperative form of ownership. Such notice shall state in clear and conspicuous language the following:—

"(i) that the owner has filed or intends to file a master deed at a registry of deeds whose location is stated in the notice or has filed or intends to file articles of organization with the secretary of the commonwealth;

"(ii) that any tenant residing on the date the notice of intent is given in the building or buildings converted or to be converted to the condominium or cooperative forms of ownership shall have a period of time which shall be stated in the notice, from the date of receipt of such notice, as authorized by this act, before the tenant shall be required to vacate the housing accommodation occupied on the date the notice is received;

"(iii) that any tenant residing on the date the notice of intent was given in the building or buildings to be converted shall have a period of time, which shall be stated in the notice, from the date of receipt of such notice, as authorized by this act, to purchase the unit occupied by the tenant on the date the notice is received on terms and conditions which are substantially the same as or more favorable than those which the owner extends to the public generally for the ninety days following the expiration of said tenant's right to purchase as may be required by paragraph (b).

"All notices required under this section shall be deemed to have been given when a written notice is delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom the notice is being given.

"Whenever an owner is required to give notice of intent provided for in this section, the period of notice shall not be less than the expiration of any written agreement between the owner and the tenant of the housing accommodation which governs the use and occupancy of said housing accommodation or one year from the date the tenant of such housing accommodation is given said notice of intent, whichever is greater; provided, however, that in the case of a housing accommodation occupied in whole or in part by a handicapped tenant or occupied by an elderly or low or moderate income tenant the period of notice shall not be less than two years from the date the tenant of such housing accommodation receives said notice of intent.

"No person shall bring any action seeking a condominium or cooperative eviction until the expiration of the periods of time for notice to tenants specified in this act.

"The burden of proving qualifications with respect to age, handicap, and income shall rest with the tenant.

"(b) Any owner of residential property who converts such property to the condominium or cooperative form of ownership shall give to any tenant who is entitled to receive notice pursuant to this section the right to purchase the housing accommodation occupied by such tenant at the time such notice is delivered on terms and conditions which are substantially the same as or more favorable than those which the owner extends to the public generally for the ninety days following the expiration of said tenant's right to purchase. Such tenant may exercise a right to purchase such housing accommodations by executing a purchase and sale agreement prior to the expiration of ninety days after the date of receiving a copy of the purchase and sale agreement properly executed by the person offering the housing accommodation for sale.

"(c) The owner of residential property converted to the condominium or cooperative form of ownership shall pay to any tenant who is entitled to receive a notice pursuant to this section and who does not purchase the housing accommodation which he occupies or another housing accommodation in the same building or buildings relocation benefits for the actual, documented costs of moving, not to exceed seven hundred and fifty dollars per housing accommodation; provided, that if such housing accommodation is occupied in whole or in part by a handicapped tenant or is occupied by an elderly or low or moderate income tenant, the maximum relocation benefit shall not exceed one thousand dollars per housing accommodation. Such relocation benefits shall be payable within ten days after the date on which the tenant vacates the housing accommodation occupied by him; provided, however, that no tenant shall be eligible for such relocation benefits unless all rent due and payable for said unit under the rental agreement or extension of such agreement, if any, has been paid by the tenant prior to the date on which the housing accommodation is vacated and only as long as the tenant voluntarily vacates the housing accommodation for which recovery of possession is sought on or before the expiration of the notice period.

"(d) Any owner of residential property converted to the condominium or cooperative form of ownership shall assist elderly, handicapped and low or moderate income tenants who qualified as such as of the date of receipt of the notice authorized pursuant to this section locating, within the period of the notice to such tenants, comparable rental housing within the same city or town in which such tenant resides which rents for a sum which is equal to or less than the sum which such tenant had been paying

for the housing accommodation occupied at the time of receipt of the notice authorized by this section. The failure of the owner of such residential property to find such substitute housing accommodation shall extend the period of notice for up to an additional two years.

"(e) Any owner of residential property converted to the condominium or cooperative form of ownership shall give to any tenant who is entitled to receive a notice pursuant to this section an extension of the rental agreement at the expiration thereof. Such extension, where required, shall be for such period or periods of one year or such fraction thereof as shall equal the period of notice to which such tenant is entitled pursuant to the provisions of this section. The provisions of such rental agreement may not otherwise be modified by the property owner except with respect to the amount of annual rent, any increase in which shall not exceed an amount equal to the sum which would result by multiplying said rent by the percentage increase in the consumer price index for all urban consumers as published by the United States Department of Labor, Bureau of Labor Statistics, during the calendar year immediately preceding the date upon which such rental agreement is commenced, or ten per cent, whichever is less; provided, however, nothing herein shall limit the right of a property owner to any amounts which may be due under a valid tax escalation clause. [Amended by St.1984, c. 170, § 5.]

"Section 5. Any owner who converts residential property in violation of any provisions of this act, or any ordinance or by-law adopted pursuant to this act, shall be punished by a fine of not less than one thousand dollars, or by imprisonment of not less than sixty days. Each unit converted in violation of this act constitutes a separate offense.

"Any violation of this act, or any ordinance or by-law adopted pursuant to this act, by an owner of residential property shall not affect the validity of a conveyance of a condominium unit or an interest in a housing cooperative to a purchaser for value who has no knowledge of the violation.

"The district and superior courts, and the housing courts in the city of Boston and Hampden county, shall have jurisdiction over an action arising from any violation of this act, or any ordinance or by-law adopted pursuant to this act, and shall have jurisdiction in equity to restrain any such violation.

"Section 5A. In the case of any housing accommodation for which sufficient notice, as hereinafter defined, was given subsequent to April first, nineteen hundred and eighty-three, the period of notice required pursuant to section four of this act shall be deemed to have commenced on the date such sufficient notice was received by the tenant. Provided that sufficient notice for purposes of this section shall be defined as written notice to the tenant informing him, in substance, that said housing accommodation was being or had been converted to a condominium

or cooperative form of ownership and that the tenant would be required to vacate not earlier than one year from the date of receipt of such notice. Sufficient notice given on or prior to April first, nineteen hundred and eighty-three, shall be deemed to have been given on April second, nineteen hundred and eighty-three.

"Section 5B. The provisions of this act shall not be applicable to any unit in a building or buildings converted to the condominium or cooperative forms of ownership for which on the effective date of this act a master deed has been recorded or articles of organization filed and: (i) a deed or, in the case of a cooperative a proprietary lease, conveying the unit to a bona fide purchaser for value, who intends to occupy such unit as a principal residence, recorded, in the case of such deed, in the registry of deeds for the county in which such unit is located on or before October fifteenth, nineteen hundred and eighty-three; or (ii) a purchase and sale agreement was entered into on or before October fifteenth, nineteen hundred and eighty-three, with a bona fide purchaser for value who intends to occupy such unit as a principal residence. Proof of payment of a reasonable deposit or down payment shall be evidenced by a canceled check or its equivalent establishing said value.

"Section 5C. The provisions of any ordinance or by-law adopted pursuant to this act shall not be applicable to any unit in a building or buildings converted to the condominium or cooperative forms of ownership for which, on or before the date of adoption of said ordinance or by-law, a master deed has been recorded or articles of organization filed, and a deed or, in the case of a cooperative, a proprietary lease, conveying the unit to a bona fide purchaser for value who intends to occupy such unit as a principal residence has been recorded, in the case of such deed, in the registry of deeds for the county in which such unit is located.

"Section 5D. Any ordinance or by-law adopted pursuant to the provisions of this act shall not be applicable to any building or buildings converted to the condominium or cooperative forms of ownership for which, on or prior to the effective date of this act, a master deed has been recorded, or articles of organization filed, and prior to the adoption of such ordinance or by-law, for not less than one-third of the units in such building or buildings: either (i) purchase and sale agreements were entered into prior to October fifteenth, nineteen hundred and eighty-three, with bona fide purchasers for value who intend to occupy such units as a principal residence as evidenced by a canceled check or its equivalent establishing said value; or (ii) deeds, or in the case of cooperatives, proprietary leases, conveying units in such building or buildings to bona fide purchasers for value, who intend to occupy such units as a principal residence were recorded, in the case of such deed, in the registry of deeds for the county in which such build-

183A § 1

ing or buildings are located, on or before October fifteenth, nineteen hundred and eighty-three.

"Section 7. There is hereby established a special commission, to consist of three members of the senate, five members of the house of representatives and the secretary of communities and development for the purpose of making an investigation and study relative to the establishment of a fund to provide low interest loans or subsidies to enable elderly tenants affected by condominium conversion to purchase or obtain joint equity in the condominiums thereby created.

"Said commission shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation to carry said recommendations into effect, by filing the same with the clerk of the house of representatives on or before the last Wednesday in December, nineteen hundred and eighty-four."

St.1983, c. 527, was approved Nov. 30, 1983. Emergency declaration by the Governor was filed on the same date.

§ 2. Application of chapter; creation of other interests in realty

This chapter shall apply only when the owner of the land, or the lessee of the land located within an area for which a land assembly and redevelopment plan or an urban renewal plan has been established, submits the same to the provisions hereof by duly executing and recording a master deed or assignment of lease, with an assent by the lessor, containing a statement to the effect that the owner or lessee proposes to create a condominium to be governed by the provisions of this chapter; provided, however, that any parcel or building which is subject to such lease and is located within a land assembly area or is subject to a redevelopment plan or an urban renewal plan shall have been either an abandoned building or parcel or a building or parcel designated for residential development; and provided, further, that the term of such lease shall not be less than sixty years. The provisions of this chapter shall not be deemed to preclude or regulate the creation or maintenance of other interests in real property not expressly declared by the owner or lessee to be subject hereto. For purposes of this section, the holder of a license granted by the department of environmental quality engineering under the provisions of chapter ninety-one for development of commonwealth tidelands shall be deemed the owner of the land, and the licensee shall be deemed the holder of a sufficient interest in real estate to be submitted to and governed by the provisions of this chapter.

Amended by St.1985, c. 788, § 3; St.1986, c. 35, § 7; St.1986, c. 348, § 6; St.1986, c. 557, § 219.

Historical Note

1985 Amendment. St.1985, c. 788, § 3, an emergency act, approved Jan. 9, 1986, rewrote the first sentence, and, in the second sentence substituted "the owner or lessee" for "the owner or owners".

1986 Legislation

St.1986, c. 35, § 7, an emergency act, approved April 29, 1986, inserted provisions relating to urban renewal plans.

CONDOMINIUMS

Cross References

Banks, first mortgage real estate loans, see c. 167F, § 2.

Utility rates, common areas, see c. 164, § 94H.

Code of Massachusetts Regulations

Department of public utilities, billing regulations for condominiums, definitions, see 220 CMR 28.02.

Notes of Decisions

Condominium 1

1. Condominium

Ownership of condominium unit constitutes interest in land. *Beaconsfield Towne House Condominium Trust v. Zussman* (1988) 517 N.E.2d 816, 401 Mass. 480.

CONDOMINIUMS

Large Condominium Ass'n (1986) 495 N.E.2d 488, 397 Mass. 683.

In suit brought by buyers of condominium against sellers for damages, trial court's decision that there were no "unfair and deceptive acts or practices" by either defendant within meaning of c. 93A, § 2 was not clearly erroneous. *Russell v. Denton* (1982) 437 N.E.2d 238, 14 Mass.App. 936, review denied 440 N.E.2d 1178, 387 Mass. 1103.

In suit brought by buyers of condominium against sellers to recover damages, trial court did not err in refusing to give plaintiffs' requests for rulings that there was a knowing and willful violation of c. 93A, § 2, prohibiting unfair practices and that one defendant's refusal to offer any settlement in his response to demand letter was in bad faith. *Id.*

Brookline bylaw amendments with tendency to decelerate condominium conversion did not conflict with purpose of § 1 et seq. of this chapter

§ 3. Nature of interest; sale or descent

Each unit together with its undivided interest in the common areas and facilities, whether or not such unit is built on owned or leased land shall constitute real estate, and may be the subject of demise, devise, gift, mortgage, ownership, possession, sale, trust, the laws of descent and distribution and all other rights incidental to the holding of real estate as if it were sole and entirely independent of the other units in the condominium of which it forms a part.

Amended by St.1985, c. 788, § 4.

Historical Note

1985 Amendment. St.1985, c. 788, § 4, an emergency act, approved Jan. 9, 1986, inserted "

whether or not such unit is built on owned or leased land".

§ 4. Exclusive ownership and possession; restrictions

Each unit owner shall be entitled to the exclusive ownership and possession of his unit, subject to the provisions of this section and of sections seventeen, eighteen and nineteen; provided, however, that:—

(1) No unit shall be devoted to a use prohibited in the master deed or any lease which is submitted to the provisions of this chapter.

[See main volume for text of clause (2)]

(3) Each unit owner shall comply with the by-laws and with any administrative rules and regulations adopted pursuant thereto, as either of the same may be amended from time to time, and with the lawful covenants, conditions and restrictions set forth in the master deed or in the deed to his unit and with each lease which is submitted to the provisions of this chapter.

Amended by St.1985, c. 788, §§ 5, 6.

Historical Note

1985 Amendment. St.1985, c. 788, § 5, an emergency act, approved Jan. 9, 1986, in cl. (1) deleted a semicolon at the end of the clause and

183A § 4

Note 1

entitled "Condominiums" which was a neutral provision, neither favoring nor disfavoring condominium conversion. *Grace v. Town of Brookline* (1979) 399 N.E.2d 1038, 379 Mass. 43.

Where contention that zoning by-law regulating conversion of cottage colony to single-family use as condominiums was unconstitutionally vague since it did not define "cottage colony" was not briefed on appeal, the contention was deemed by reviewing court to be waived. *Goldman v. Town of Dennis* (1978) 375 N.E.2d 1212, 375 Mass. 197.

Zoning bylaw regulating conversion of cottage colony to single-family use as condominiums was valid as regulation of change of use, notwithstanding that limitation was phrased in terms of type of ownership. *Id.*

Section 1 et seq., of this chapter regulating condominiums did not create exception to power of town to adopt zoning bylaws. *Id.*

Notes of Decisions

Conversion to condominiums 3

6.
Consent Communication

51506
Comm. from Robert J. LaTremouille, 348
Franklin Street, transmitting supporting
materials regarding rent control.

In City Council,

April 22, 1991

*Referred to hearing
at 7:00 p.m.*