

46:8B-31; 46:8B-36; 46:8B-38

LEGISLATIVE HISTORY CHECKLIST

NJSA 46:8B-31; 46:8B-36, 46:8B-38 (Condominiums--sales contracts--
prohibit certain provisions)

LAWS 1980 CHAPTER 103

Bill No. S1151

Sponsor(s) Perokie

Date Introduced April 14, 1980

Committee: Assembly Commerce, Industry and Professions

Senate County and Municipal Government

Amended during passage Yes No Amendments during passage denoted by asterisks

Date of Passage: Assembly June 16, 1980

Senate April 21, 1980

Date of approval Sept. 11, 1980

Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note ~~Yes~~ No

Veto Message ~~Yes~~ No

Message on signing Yes No

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

Regulations mentioned in sponsor's and Senate committee statement:

N.J.A.C. 5:26-6.5

6/27/84

[OFFICIAL COPY REPRINT]
SENATE, No. 1151

STATE OF NEW JERSEY

INTRODUCED APRIL 14, 1980

By Senator PERSKIE

Referred to Committee on County and Municipal Government

AN ACT prohibiting the inclusion of provisions affording right of first refusal upon resale in certain contracts for sale of condominium units and in certain master deeds and bylaws of condominium associations, and amending and supplementing P. L. 1979, c. 297.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1979, c. 297 (C. 46:8B-31) is amended to
2 read as follows:

3 1. The Legislature finds and declares that many leases involving
4 use of parking, recreational or other common facilities or areas by
5 residents of condominiums were entered into by parties wholly
6 representative of the interests of a condominium developer at a
7 time when the condominium unit owners not only did not control
8 the administration of their condominium but also had little or no
9 voice in such administration. Such leases often contain numerous
10 obligations on the part of either or both a condominium association
11 and condominium unit owners with relatively few obligations on
12 the part of the lessor. Such leases may or may not be uncon-
13 scionable in any given case. Nevertheless, the Legislature finds
14 that certain onerous obligations and circumstances warrant the
15 establishment of a rebuttable presumption of unconscionability of
16 certain leases, as specified in this act.

17 The Legislature also finds and declares that many contracts for
18 sale of condominium units, *master deeds and association bylaws*
19 contain provisions affording *the developer or the association* a
20 right of first refusal to purchase in the event of resale, *gift or*
21 *devise* of condominium units by the purchaser, provisions which
22 are in the financial interest of *the developer or the association* and
23 are designed to limit the freedom of the purchaser to resell the
24 property as he sees fit. [Such provisions may or may not be un-
25 conscionable in any given case. Nevertheless, the] *The Legislature*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

26 finds that the relative balance between the consideration given the
 27 financial interests of *the developer or the association* and the limi-
 28 tations placed upon the property rights of the purchaser contained
 29 in such provisions is such as to warrant the establishment of a
 30 rebuttable presumption of unconscionability with respect **[thereto]**
 31 *to those master deeds and bylaws, and amendments thereof, adopted*
 32 *prior to the effective date of this amendatory and supplementary*
 33 *act, and to warrant the prohibition of such provisions in contracts*
 34 *for the sale of condominium units executed, and in master deeds and*
 35 *bylaws or amendments of master deeds or bylaws adopted, on or*
 36 *after that date.*

1 2. Section 6 of P. L. 1979, c. 297 (C. 46:8B-36) is amended to read
 2 as follows:

3 6. There is hereby established a rebuttable presumption of un-
 4 conscionability with respect to provisions of **[t]** bylaws of associa-
 5 tions **[master deeds or association bylaws recorded prior to the**
 6 *effective date of this act* which shall arise whenever such **a master*
 7 *deed or** by laws shall contain any provision *or clause* affording
 8 **[a master deed of]** the developer or the association a right of
 9 first refusal to buy a condominium unit upon resale, *gift or devise*
 10 by the condominium unit owner. Such presumption may be rebutted
 11 by *the developer or the association* by the presentation of evidence
 12 of the existence of facts and circumstances sufficient to justify and
 13 validate a provision of *the master deed or the bylaws* which would
 14 otherwise appear to be unconscionable under the provisions of this
 15 section. **[The provisions of this section shall be applicable to all**
 16 *association bylaws heretofore or hereafter adopted pursuant to*
 17 *the act to which this act is supplementary.]*

1 3. (New section) No contract for the sale of a condominium unit
 2 executed on or after the effective date of this **[act]** amendatory
 3 and supplementary act, nor any master deed or association bylaws
 4 adopted on or after that date, shall contain a clause or provision
 5 affording the developer or the association the right of first refusal
 6 to buy a condominium unit upon resale, gift or devise by the con-
 7 dominium unit owner. No master deed or association bylaws,
 8 whenever adopted, shall be amended on or after such date to in-
 9 clude any such clause or provision affording right of first refusal.
 10 **This section shall not apply to the State of New Jersey or any*
 11 *political subdivision of this State or any department, division,*
 12 *office, agency or bureau thereof or any authority or instrumen-*
 13 *tality created thereby if said right is required by State or Federal*
 14 *law.**

1 4. This act shall take effect immediately.

SENATE, No. 1151

STATE OF NEW JERSEY

INTRODUCED APRIL 14, 1980

By Senator PERSKIE

Referred to Committee on County and Municipal Government

AN ACT prohibiting the inclusion of provisions affording right of first refusal upon resale in certain contracts for sale of condominium units and in certain master deeds and bylaws of condominium associations, and amending and supplementing P. L. 1979, c. 297.

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6 representative of the interests of a condominium developer at a
7 time when the condominium unit owners not only did not control
8 the administration of their condominium but also had little or no
9 voice in such administration. Such leases often contain numerous
10 obligations on the part of either or both a condominium association
11 and condominium unit owners with relatively few obligations on
12 the part of the lessor. Such leases may or may not be uncon-
13 scionable in any given case. Nevertheless, the Legislature finds
14 that certain onerous obligations and circumstances warrant the
15 establishment of a rebuttable presumption of unconscionability of
16 certain leases, as specified in this act.

17 The Legislature also finds and declares that many contracts for
18 sale of condominium units, *master deeds and association bylaws*
19 contain provisions affording *the developer or* the association a
20 right of first refusal to purchase in the event of resale, *gift or*
21 *devise* of condominium units by the purchaser, provisions which
22 are in the financial interest of *the developer or* the association and

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23 are designed to limit the freedom of the purchaser to resell the
 24 property as he sees fit. [Such provisions may or may not be un-
 25 conscionable in any given case. Nevertheless, the] *The* Legislature
 26 finds that the relative balance between the consideration given the
 27 financial interests of *the developer or the association* and the limi-
 28 tations placed upon the property rights of the purchaser contained
 29 in such provisions is such as to warrant the establishment of a
 30 rebuttable presumption of unconscionability with respect [thereto]
 31 *to those master deeds and bylaws, and amendments thereof, adopted*
 32 *prior to the effective date of this amendatory and supplementary*
 33 *act, and to warrant the prohibition of such provisions in contracts*
 34 *for the sale of condominium units executed, and in master deeds and*
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1 2. Section 6 of P. L. 1979, c. 297 (C. 46:8B-36) is amended to read
 2 as follows:

3 6. There is hereby established a rebuttable presumption of un-
 4 conscionability with respect to provisions of [the bylaws of associa-
 5 tions] *master deeds or association bylaws recorded prior to the*
 6 *effective date of this act* which shall arise whenever such bylaws
 7 shall contain any provision or clause affording a master deed of the
 8 *developer or the association* a right of first refusal to buy a con-
 9 dominium unit upon resale, *gift or devise* by the condominium unit
 10 owner. Such presumption may be rebutted by *the developer or the*
 11 association by the presentation of evidence of the existence of facts
 12 and circumstances sufficient to justify and validate a provision of
 13 *the master deed or the bylaws* which would otherwise appear to be
 14 unconscionable under the provisions of this section. [The pro-
 15 visions of this section shall be applicable to all association bylaws
 16 heretofore or hereafter adopted pursuant to the act to which this
 17 act is supplementary.]

1 3. (New section) No contract for the sale of a condominium unit
 2 executed on or after the effective date of this act amendatory and
 3 supplementary act, nor any master deed or association bylaws
 4 adopted on or after that date, shall contain a clause or provision
 5 affording the developer or the association the right of first refusal
 6 to buy a condominium unit upon resale, gift or devise by the con-
 7 dominium unit owner. No master deed or association bylaws,
 8 whenever adopted, shall be amended on or after such date to in-
 9 clude any such clause or provision affording right of first refusal.

1 4. This act shall take effect immediately.

STATEMENT

In 1979, the Legislature passed P. L. 1979, c. 297 (C. 46:8B-31) which established a rebuttable presumption of unconscionability with respect to provisions in bylaws of condominium associations whenever adopted, whether before or after the effective date of that act (January 17, 1980), which afford the association a right of first refusal upon resale of a condominium unit.

This bill would prohibit such provisions in association bylaws or master deeds, or amendments thereof, adopted after the effective date of this act. The rebuttable presumption of unconscionability would remain with respect to master deeds and bylaws adopted prior to the effective date of this act.

The bill also would recognize in statute the regulations of the Division of Housing and Urban Renewal, Department of Community Affairs, which prohibit right of first refusal clauses in contracts and other documents filed by the developer.

[ASSEMBLY REPRINT]

SENATE, No. 1151

with Assembly committee amendments adopted June 9, 1980

STATE OF NEW JERSEY

INTRODUCED APRIL 14, 1980

By Senator PERSKIE

Referred to Committee on County and Municipal Government

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12 the part of the lessor. Such leases may or may not be uncon-
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15 establishment of a rebuttable presumption of unconscionability of
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17 The Legislature also finds and declares that many contracts for
18 sale of condominium units, *master deeds and association bylaws*
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 27 financial interests of *the developer or the association* and the limi-
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 5 **tions]** *master deeds or association bylaws recorded prior to the*
 6 *effective date of this act* which shall arise whenever such **a master*
 7 *deed or** by laws shall contain any provision *or clause* affording
 8 ***[a master deed of]** *the developer or the association* a right of
 9 first refusal to buy a condominium unit upon resale, *gift or devise*
 10 by the condominium unit owner. Such presumption may be rebutted
 11 by *the developer or the association* by the presentation of evidence
 12 of the existence of facts and circumstances sufficient to justify and
 13 validate a provision of *the master deed or the bylaws* which would
 14 otherwise appear to be unconscionable under the provisions of this
 15 section. **[The provisions of this section shall be applicable to all**
 16 **association bylaws heretofore or hereafter adopted pursuant to**
 17 **the act to which this act is supplementary.]**

1 3. (New section) No contract for the sale of a condominium unit
 2 executed on or after the effective date of this ***[act]*** amendatory
 3 and supplementary act, nor any master deed or association bylaws
 4 adopted on or after that date, shall contain a clause or provision
 5 affording the developer or the association the right of first refusal
 6 to buy a condominium unit upon resale, gift or devise by the con-
 7 dominium unit owner. No master deed or association bylaws,
 8 whenever adopted, shall be amended on or after such date to in-
 9 clude any such clause or provision affording right of first refusal.
 10 **This section shall not apply to the State of New Jersey or any*
 11 *political subdivision of this State or any department, division,*
 12 *office, agency or bureau thereof or any authority or instrumen-*
 13 *tality created thereby if said right is required by State or Federal*
 14 *law.**

1 4. This act shall take effect immediately.

ASSEMBLY COMMERCE, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 1151

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 1980

In 1979, this committee endorsed, and the Legislature passed, Assembly Bill No. 176, which became P. L. 1979, c. 297 (C. 46:8B-31 et seq.), and which established a rebuttable presumption of unconscionability with respect to provisions in bylaws of condominium associations whenever adopted, whether before or after the effective date of that act, which afford the association the right of first refusal upon resale of a condominium unit.

This bill further strengthens that measure by prohibiting the right of first refusal provisions in condominium contracts, bylaws and master deeds entered into or created after the effective date of this bill and by continuing the rebuttable presumption of unconscionability for the right of first refusal provisions in condominium bylaws and establishing the same rebuttable presumption for the right of first refusal in condominium master deeds entered into or created before the effective date of this bill. The bill also prohibits the amendment of any master deed or bylaws to provide for the right of first refusal.

The committee amended section 3 to provide that public agencies can have the right of first refusal in regards to the resale of condominium units. For example, some public agencies are developing condominiums for low and moderate income persons under public programs with Federal or State financial assistance and to ensure that these condominium units are owned by those for whom they are intended, public agencies hold the right of first refusal on the resale of these units.

ASSEMBLY COMMITTEE AMENDMENTS TO

SENATE, No. 1151

STATE OF NEW JERSEY

ADOPTED JUNE 9, 1980

Amend page 2, section 2, line 6, after "such", insert "a master deed or".

Amend page 2, section 2, line 7, omit "a master deed of".

Amend page 2, section 3, omit "act".

Amend page 2, section 3, line 9, after "refusal.", insert "This section shall not apply to the State of New Jersey or any political subdivision of this State or any department, division, office, agency or bureau thereof or any authority or instrumentality created thereby if said right is required by State or Federal law."

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 1151

STATE OF NEW JERSEY

DATED: APRIL 14, 1980

In 1979, this committee endorsed, and the Legislature passed, Assembly Bill No. 176, which became P. L. 1979, c. 297 (C. 46:8B-31), and which established a rebuttable presumption of unconscionability with respect to provisions in bylaws of condominium associations whenever adopted, whether before or after the effective date of that act (January 17, 1980), which afford the association a right of first refusal upon resale of a condominium unit.

This bill would prohibit such provisions in association bylaws or master deeds, or amendments thereof, adopted after the effective date of this act. The rebuttable presumption of unconscionability would remain with respect to master deeds and bylaws adopted prior to the effective date of this act.

The bill also would recognize in statute the regulations of the Division of Housing and Urban Renewal, Department of Community Affairs, which prohibit right of first refusal clauses in contracts and other documents filed by the developer.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

SEPTEMBER 12, 1980

KATHRYN FORSYTH

Governor Brendan Byrne today signed the following bills:

S-281, sponsored by Senator Bernard J. Dwyer (D-Middlesex), which gives judges the discretion of imposing a 30-day suspension of the motor vehicle license of a person who discards glass or other sharp, injurious or cutting objects on a highway or permits those objects to be discarded from his car.

Prior law provided that a \$100 to \$500 fine be imposed on any person who discarded such material himself. The license suspension will supplement the fine.

S-1114, sponsored by Senator Joseph P. Merlino (D-Mercer), which repeals five statutes enacted in 1877, which set forth powers, rules and procedures governing certain municipal boards.

A study by the Division of Legal Services revealed that no boards are currently governed by these statutes and they have outlived their useful purpose.

S-1219, sponsored by Senator Joseph Merlino (D-Mercer) is an omnibus bill to correct and restructure statutes that were in whole or in part inadvertently repealed or amended by other legislation.

Thirty-two sections of this bill deal with exemptions to the State Sales and Use Tax. Another 11 sections correct the inadvertent repeal of amendments adopted between the introduction and final passage of another bill that modifies the same statute.

S-1364, also sponsored by Senator Merlino is technically a companion bill to S-1219. S-1364 will immediately reinstate statutes on the taxation of alcoholic beverages at the wholesale level which would be repealed by the signing of S-1219.

S-1151, sponsored by Senator Steven Perskie (D-Atlantic) amends a 1979 law that gave condominium associations the right of first refusal on the resale of condominium units.

- more -

The amendment effectively denies the right of first refusal in existing condominiums where the unit is given as a gift or inheritance, and in new condominium units occupied after the effective date of the legislation.

Currently, the right of first refusal reduces the market value of the unit and in certain cases an association has received a windfall profit by acquiring a unit and reselling it themselves.

A-1796, sponsored by Assemblyman John Doyle (D-Ocean) amends New Jersey law to allow the manufacture, shipping and sales of devices which emit a tear gas-like substance intended for use by financial and businesses for security systems.

An example is a false pack of money that releases tear gas. Under current law, the possession and sale of these devices may be criminal and S-1796 clarifies the statute.

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