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Overstaying Your Welcome: The Martin Act and Post-Effective-Date Tenants

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Overstaying Your Welcome: The Martin Act and Post-Effective-Date Tenants

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I. INTRODUCTION

Hope is a multi-unit building in the heart of Manhattan. This building holds the fictional tale of two individuals with similar stories, but very dissimilar outcomes. Five years ago, when Hope was just an apartment building, North Fork Realty purchased title and began converting the apartments into condominiums. Michael, a twenty-year tenant, was unable to afford the outrageous purchase price North Fork was asking and feared eviction. Lucky for Michael, non-purchasing tenants were protected from eviction and unconscionable rent increases during the conversion process. Two years later, unable to sell some of its units, North Fork entered into a lease term with Deborah. Time passed and the market changed. Realizing the profit potential, North Fork put Deborah's unit up for sale. Deborah, however, could not afford to purchase the space she now occupied. Lucky for her, New York protects non-purchasing tenants from eviction—or does it? The Appellate Division, First Department would have you believe that Michael is safe, but that Deborah is out of luck and out of a home.

Cooperatives (“co-ops”) and condominiums (“condos”) offer potential residents an attractive mix of home ownership and apartment living.¹ Occupants are able to enjoy the benefits of acquiring an equity stake while sharing the costs and upkeep of communal property.² However, co-ops and condos are not synonymous with each other. Co-ops are organized as single not-for-profit corporations.³ The cooperative corporation, not the shareholders, retains title over the entire property in fee simple,⁴ while the shareholders own a slice of the corporation.⁵ In addition to owning shares of stock in the cooperative corporation, shareholders receive a proprietary lease to their unit, thereby entering into a landlord-tenant relationship with the corporation.⁶

1. GERALD KORNGOLD & PAUL GOLDSTEIN, *REAL ESTATE TRANSACTIONS: CASES AND MATERIALS ON LAND TRANSFER, DEVELOPMENT AND FINANCE* 536 (Foundation Press 4th ed. 2002).

2. *Id.* (“They make it possible for neighbors to share swimming pools, tennis courts and other recreational facilities that none could afford individually.”).

3. *See* *Caprer v. Nussbaum*, 825 N.Y.S.2d 55, 65 (2d Dep’t 2006); WARREN FREEDMAN & JONATHAN B. ALTER, *THE LAW OF CONDOMINIA AND PROPERTY OWNERS’ ASSOCIATIONS* 22–23 (1992). New York cooperatives are governed by the New York Business Corporations Law. Gerald Lebovits & James P. Tracy, *Cooperatives and Condominiums in the New York City Housing Court*, 36 N.Y. ST. B.A. N.Y. REAL PROP. L.J. 45, 45 (2008).

4. Fee simple or fee simple absolute means, “[a]n estate of indefinite or potentially indefinite duration.” BLACK’S LAW DICTIONARY 649 (8th ed. 2004).

5. Lebovits & Tracy, *supra* note 3, at 45; *see* FREEDMAN & ALTER, *supra* note 3, at 22.

6. FREEDMAN & ALTER, *supra* note 3, at 22; Lebovits & Tracy, *supra* note 3, at 45.

Although condos and co-ops share essential characteristics,⁷ the most notable difference between the two is that condo owners possess their units in fee simple.⁸ Condos are single real-estate units in a multi-unit development in which individuals have both a separate ownership of a unit in fee simple and a common fee ownership in the common areas.⁹ Owners receive a deed that conveys fee title to their unit along with an undivided interest in the common areas.¹⁰

In addition to a differing legal status, co-op and condo units differ in their financing structures.¹¹ Prospective owners typically must borrow money to purchase either type of unit.¹² The owner of a co-op may secure her loan by pledging her shares in the cooperative corporation, whereas the owner of a condo may secure her loan with a mortgage secured by the property.¹³ Thus, the owner of a co-op must make due on two mortgages—her own mortgage and her share of the building’s underlying mortgage—while the owner of a condo must make due only on her own mortgage.¹⁴ Because of the interdependent nature of the co-op, a cooperative corporation typically restricts to whom an owner may sell her unit, whereas

7. *Nussbaum*, 825 N.Y.S.2d at 65–66.

Common interest developments may consist of condominiums, planned developments, stock cooperatives, and community apartments, but all share three essential characteristics: (1) common ownership of private property, (2) mandatory membership of all owners in an association that controls the use of the common property, and (3) governing documents that establish the procedures for governing the association, that is, the rules that owners must follow in the use of individual and common property, and the means by which owners are assessed to finance the operation of the association and maintain common property.

FREEDMAN & ALTER, *supra* note 3, at 24.

8. FREEDMAN & ALTER, *supra* note 3, at 21–22; Lebovits & Tracy, *supra* note 3, at 47.

9. BLACK’S LAW DICTIONARY 291 (8th ed. 2004); FREEDMAN & ALTER, *supra* note 3, at 21–22; Lebovits & Tracy, *supra* note 3, at 47. “Common areas” may be defined as:

Those portions of a condominium building, land, and amenities owned by the association for use by all unit owners. Included are hallways, roofs, stairways, main walls, parking areas, and social and recreational space. The operation and maintenance of the common areas are shared by all unit owners. Distinguish limited common elements (e.g., patios or decks) as those areas appurtenant to one or more units where repair and maintenance responsibilities are typically divided between the unit owner and the association.

FREEDMAN & ALTER, *supra* note 3, at 10.

10. KORNGOLD & GOLDSTEIN, *supra* note 1, at 536.

11. Michael H. Schill et al., *The Condominium versus Cooperative Puzzle: An Empirical Analysis of Housing in New York City*, 36 J. LEGAL STUD. 275, 281 (2007).

12. *Id.*; see also MELANIE BIEN, SORTING OUT YOUR FINANCES FOR DUMMIES 188 (2005) (“Before you can actually buy a property, you need to work out whether you can afford to do so. Affordability can be a big problem, most notably for first-time buyers. Most people need a *mortgage* to buy a property—a loan from a bank or building society.”).

13. Schill, *supra* note 11.

14. *Id.*

condominium associations are typically more lax in this regard.¹⁵ The prospective owner of a cooperative unit must apply for ownership to the board of directors and show certain prescribed documentation such as detailed financial statements and letters of recommendation.¹⁶ Due to these restrictions and requirements, condos are usually more valuable than co-ops.¹⁷ This is evidenced by the dominance of condominium housing in every part of the country, except New York City.¹⁸

The Martin Act (“Act”), New York State’s blue-sky law,¹⁹ governs the sale offerings of cooperative and condominium units.²⁰ The Act provides a number of protections to non-purchasing tenants,²¹ including the right to be free from eviction.²² When a property is converted into a condo or co-op, the conversion must take effect through either an eviction or a non-eviction plan.²³ To convert through an eviction plan, fifty-one percent of the current tenants must agree to purchase a unit.²⁴ To convert through a non-eviction plan, only fifteen percent of the current tenants must agree to purchase.²⁵ These plans aim to protect the investments of sponsors.²⁶ Through turnover alone, the fifteen percent required for conversion is easily

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15. *Id.* at 281–82; *see also* FREEDMAN & ALTER, *supra* note 3, at 22 (“[I]n condominiums, individuals are responsible only for mortgage indebtedness and taxes on their own property, while in cooperatives, each individual is dependent upon the solvency of the entire project.”).
 16. Schill, *supra* note 11, at 281–82; *see also* Burlington Community Land Trust, <http://www.bclt.net/coop-application.shtml> (last visited Oct. 13, 2009) (listing nine steps that prospective members must accomplish before getting co-op housing in one of their units. These steps include getting on a waiting list, filling out and returning an application, attending an orientation, interviewing with the co-op membership committee, verifying your income, and receiving a committee recommendation and a favorable board decision.).
 17. Schill, *supra* note 11, at 280.
 18. *Id.* at 280–81.
 19. N.Y. GEN. BUS. LAW § 352-eeee (McKinney 2009). The state’s statute that establishes “standards for offering and selling securities, the purpose being to protect citizens from investing in fraudulent schemes or unsuitable companies,” is commonly referred to as the state’s blue-sky law. BLACK’S LAW DICTIONARY 183 (8th ed. 2004).
 20. Lebovits & Tracy, *supra* note 3, at 51 (noting that in 1960 the New York Legislature incorporated into the Martin Act registration and disclosure requirements for cooperative units, and subsequently, the Condo Act of 1964 incorporated the same registration and disclosure requirements for condominiums).
 21. A non-purchasing tenant is defined in the Martin Act as “[a] person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date.” N.Y. GEN. BUS. LAW § 352-eeee(1)(e).
 22. *Id.* § 352-eeee(2)(c)(ii) (“No eviction proceedings will be commenced at any time against non-purchasing tenants for failure to purchase or any other reason applicable to expiration of tenancy . . .”).
 23. *Id.* § 352-eeee(2)(b). “A conversion is a change in the legal form of ownership of a multi-family rental property from single ownership by a landlord to multiple ownership, usually by the occupants.” FREEDMAN & ALTER, *supra* note 3, at 26.
 24. N.Y. GEN. BUS. LAW § 352-eeee(1)(c).
 25. *Id.* § 352-eeee(1)(b).
 26. The sponsor (i.e., the developer) is the organization that plans and pays for the project, which is then carried out by another. *See* THE AMERICAN HERITAGE COLLEGE DICTIONARY 1315 (3d ed. 2000).

attainable.²⁷ However, there is an existing tradeoff to each pre-condition. There is little to no protection given to non-purchasing tenants under an eviction plan, but there are strong protections given to non-purchasing tenants under a non-eviction plan.²⁸ The dual system serves as a compromise and has the effect of “abating the tensions and hostilities of apartment conversions.”²⁹

The issue addressed in this note is whether, under a non-eviction plan, post-effective-date tenants—renters that take possession after the sponsor has begun to sell units—are considered non-purchasing tenants, and are therefore protected by the Martin Act. In other words, when a non-purchasing tenant vacates his unit, the sponsor can either sell the unit or rent it out. However, if the sponsor decides to rent the unit, are the protections that were given to the former tenant also given to the new tenant? The First and Second Departments of the Appellate Division courts are not in agreement.³⁰ This department split, as well as the inconsistent application of law by the First Department, has harmed New York City residents.

The First Department, applying misplaced notions of fairness, has concluded that post-effective-date tenants are not considered non-purchasing tenants; while the Second Department, utilizing proper legal tools, has reached the opposite conclusion.³¹ In parsing the meaning of a statute, courts are compelled by law to use the canons of construction and determine the intent of the legislature.³² Regarding this issue, the First Department has failed to properly make such an inquiry, but instead rests its decision solely on notions of fairness.³³ Nonetheless, following the plain language of the Martin Act does not reach an unfair result.

New York courts should adhere to the Second Department’s position. Following the plain language and the intent of the New York Legislature, post-effective-date tenants should be considered non-purchasing tenants within the meaning of the Martin Act. Furthermore, it is logical to provide protection against eviction and unconscionable rent increases to these tenants. Part II of this note discusses the history of condominiums and cooperatives, and the evolution of the Martin Act, with a particular focus on understanding how the Act progressed into the dual system that is in place today. Using applicable case law as a backdrop, Part III explains the

27. See Alan S. Oser, *About Real Estate Noneviction Method Adds to Complexity of Conversions*, N.Y. TIMES, Aug. 1, 1980, at A13. “[A]bout one-third of the tenants in a typical rental building can be expected to purchase a unit in the project.” FREEDMAN & ALTER, *supra* note 3, at 26.

28. See *infra* Part V.A.

29. Oser, *supra* note 27.

30. Compare Paikoff v. Harris, 713 N.Y.S.2d 109 (2d Dep’t 1999), with Park West Village Assocs. v. Nishoika, 721 N.Y.S.2d 459 (1st Dep’t 2000).

31. Compare Paikoff, 713 N.Y.S.2d at 109, with Park West Village, 721 N.Y.S.2d at 459.

32. N.Y. STAT. LAW § 91 (McKinney 2009) (“If the intent of the lawmaking body is not clear, the court in construing a statute will apply established rules or canons of construction, the purpose of such rules being to discover the true intention of the law.”); Thomas v. Bethlehem Steel Corp., 466 N.Y.S.2d 808, 810 (3d Dep’t 1983).

33. See generally Park West Village, 721 N.Y.S.2d 459.

underlying dilemma caused by the department split. In Part IV, using the canons of construction, this note interprets the Martin Act as providing protections to individuals who rent after the effective date, satisfying the intentions of the New York State Legislature. Part V envisions dire consequences for all New York City residents if the First Department's position is ever fully adopted. Part VI concludes this note.

II. HISTORY

A. *History of Cooperatives and Condominiums*

In New York City, cooperative housing goes as far back as the late nineteenth century, before the creation of the condominium.³⁴ The Randolph was the first cooperative in New York City and was built in 1876 on West 18th Street.³⁵ It was promoted as a home club³⁶ where wealthy individuals could get all the benefits of home ownership without all the responsibilities.³⁷

Americans were much more skeptical of the idea of condominiums.³⁸ The growth of condominiums was spurred in 1961 by the passage of condominium-enabling acts³⁹ and the provision of mortgage insurance by the Federal Housing

34. Schill, *supra* note 11, at 277–78.

35. *Id.* at 277.

36. *Id.*

These early projects were called “home clubs;” the word “cooperative” was not applied to housing projects in this country until after the turn of the century. A home club was a joint stock company, the stockholders of which were entitled to long-term leases of apartments within the building owned by the company. The leases were transferable only to parties acceptable to other members of the club. The buildings were owned by only 40 to 50 percent of their occupants; the other occupants rented, and their rents paid for most of the maintenance of the entire building.

Richard Siegler & Herbert J. Levy, *Brief History of Cooperative Housing*, COOPERATIVE HOUSING JOURNAL OF THE NATIONAL ASSOCIATION OF HOUSING COOPERATIVES (1986).

37. Schill, *supra* note 11, at 277. “Conversions tend to be most numerous in areas in which the mean household income is in the middle to higher levels.” FREDMAN & ALTER, *supra* note 3, at 26.

38. *See* Schill, *supra* note 11, at 278.

39. *Id.*

The primary purpose of legislation authorizing condominiums is to insure the compatibility of these housing projects with preexisting law. The general statutory approach to this problem is exemplified by the . . . Massachusetts act authorizing the construction and sale of condominiums “designed primarily for dwelling purposes.” This statute recognizes unit ownership as a real property interest and delineates the manner in which land recording and registration laws shall apply to such interests. It further provides for separate assessment and taxation of each unit, thereby permitting the unit owners to obtain mortgages insured by the Federal Housing Administration and to deduct state real estate taxes on their federal income tax returns. Finally, the enactment seeks to preserve the continuity and harmony of condominium projects by expressly prohibiting suit for partition of the common areas and by approving the exercise by the condominium organization of a right of first refusal, provided such right is not used to discriminate against purchasers on the basis of race, creed, color, or

Administration.⁴⁰ The Saint-Tropez was the first condominium in New York City and was built in 1965 on East 64th Street.⁴¹

Today, condominiums are the most dominant form of communal ownership in the United States, except in New York City.⁴² In 1999, close to nine out of ten common-interest communities⁴³ in the United States were condominiums.⁴⁴ However, in New York City, condominiums make up fewer than two out of ten common-interest communities,⁴⁵ detaching New York City from the rest of the nation in this regard.⁴⁶ New York City is an outlier mainly because of “historical happenstance.”⁴⁷ While co-ops date back to the late nineteenth century and could be formed without legislation,⁴⁸ condominium law was not passed until 1964, leaving sponsors restricted to the cooperative form for many years.⁴⁹ Additionally, the early co-ops were expensive and elite, and therefore held an aura of exclusivity.⁵⁰ In today’s real estate community,

national origin. Absent these statutory provisions, the courts might have held an agreement not to partition to be an unreasonable restraint on alienation and the right of first refusal to be a long-term option to purchase in violation of the Rule Against Perpetuities.

Property—Condominiums—Massachusetts Passes Condominium Enabling Legislation, 77 HARV. L. REV. 777, 777–78 (1964) (footnotes omitted).

40. Schill, *supra* note 11, at 278.

Although the condominium concept can be traced back at least to medieval times, it did not become popular in the United States until 1961, when Congress amended the National Housing Act to authorize the Federal Housing Administration to insure mortgages on condominiums in states that had statutorily authorized this form of ownership. (Considerable doubt existed whether, without such enabling legislation, an ownership unit described only as a cube dangling in space could be legally conveyed and mortgaged in fee simple.) . . . [B]y 1969, every state had enacted a condominium statute.

KORNGOLD & GOLDSTEIN, *supra* note 1, at 537.

41. Schill, *supra* note 11, at 278. “The St. Tropez has hardly had the smoothest of histories, in part because it was one of the earliest condominiums. It did not sell readily when it was built, during a period when there was a glut of new rental housing on the market in the city.” Alan S. Oser, *A ‘Pioneer’ Condominium Buyer in City Fires Parting Shots*, N.Y. TIMES, July 5, 1981.

42. See Schill, *supra* note 11, at 280.

43. A common-interest community is defined as a real estate-development or neighborhood where individuals own their lots or units but are burdened by a servitude that imposes an obligation to pay for the use of property that is shared by individual owners and to pay dues to an association that provides services to the common property. RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 1.8 (2000).

44. Schill, *supra* note 11, at 280.

45. *Id.*

46. *Id.*

47. See *id.* at 277–78.

48. *Id.*

49. See Matthew J. Leeds & Joel E. Miller, *Condominium Act Addition Gives New York Boards of Managers Effective Borrowing Ability*, 73 ST. JOHN’S L. REV. 135, 136 (1999).

50. See Schill, *supra* note 11, at 276.

ownership in a cooperative still holds far more flair than ownership in a condominium.⁵¹

B. Evolution of Tenant Protections Under the Martin Act

The Martin Act did not give non-purchasing tenants any protections before 1974.⁵² Unless the building and its tenants were protected under rent control laws, sponsors could buy a rental building, convert it into a condo or co-op, and evict all non-purchasing tenants in the process.⁵³ As a result, non-purchasing tenants were without bargaining power and units were being sold at excessive prices.⁵⁴

In 1974, Harry Helmsley converted a 12,200-unit apartment building that housed 50,000 people in the Bronx into a cooperative building.⁵⁵ Helmsley purchased the building for \$90 million and, without having to make any alterations or renovations, sold it for approximately \$390 million after the conversion.⁵⁶ Because this conversion affected so many tenants and the excessive price of each unit garnered great publicity, the famous Helmsley conversion spurred Assemblyman John C. Dearie to change the law.⁵⁷

In 1974, the Goodman-Dearie Law amended the Martin Act, barring all conversions unless thirty-five percent of the tenants agreed to purchase a unit.⁵⁸ As a result, conversions dropped dramatically.⁵⁹ Spearheaded by mass media, opponents of the Act were in an uproar over the conversion standstill.⁶⁰

The number of conversion plans dramatically increased when the Goodman-Dearie Law expired in 1977.⁶¹ However, tenants living in the suburbs surrounding New York City had growing concerns because they had few protections for continued

51. *See id.* at 312–13.

52. *Langdale Owners Corp. v. Lane*, 636 N.Y.S.2d 577, 578–79 (2d Dep't 1995).

53. *See id.*

54. *See* Vincent Di Lorenzo, *Legislative Chaos: An Explanatory Study*, 12 YALE L. & POL'Y REV. 425, 470 (1994).

55. *Id.* at 453. Harry Helmsley was the founder of one of the biggest property holding companies in the United States—his property portfolio included at one time the Empire State Building and the Helmsley Building. Lesley Friedman Rosenthal, “Redeveloping” Corporate Governance Structures: Not-For-Profit Governance During Major Capital Projects: A Case Study at Lincoln Center for the Performing Arts, 76 FORDHAM L. REV. 929, 940 (2007).

56. Di Lorenzo, *supra* note 54, at 453.

57. *Id.* at 452–54.

58. *Lane*, 636 N.Y.S.2d at 578–79.

59. *Id.* at 579.

60. Di Lorenzo, *supra* note 54, at 456.

61. *Lane*, 636 N.Y.S.2d at 579; Di Lorenzo, *supra* note 54, at 455–56. “According to a survey published by the Department of Housing and Urban Development (“HUD”) in 1980, 260,000 units were converted between 1977 and 1979 alone, the conversion boom years.” FREEDMAN & ALTER, *supra* note 3, at 26.

occupancy.⁶² Yet opponent interest groups such as the New York State Board of Realtors and the New York State Bar Association Condominium Commission contested any legislation, including the Goodman-Dearie Law, that discouraged conversions.⁶³

Ultimately, the legislature developed a compromise. The suburban law amended the Martin Act in 1978 to create a dual system.⁶⁴ It required fifteen percent of the tenants to purchase a non-eviction-plan unit and thirty-five percent of the tenants to purchase an eviction-plan unit.⁶⁵ This compromise gave corporations the “freedom to convert with minimal interference” and tenants the protection of “continued occupancy.”⁶⁶ In 1982, the legislature amended the Martin Act to include New York City and raised the purchase requirement for eviction plans to fifty-one percent.⁶⁷ As it stands today, the Martin Act grants permanent protection from evictions and unconscionable rent increases to all non-purchasing tenants in non-eviction plans and senior and disabled individuals in eviction plans.⁶⁸

The Martin Act states that under a non-eviction plan, “[n]o eviction proceedings will be commenced at any time against non-purchasing tenants for failure to purchase or any other reason applicable to expiration of tenancy.”⁶⁹ The Act permits eviction for “non-payment of rent, illegal uses of the apartment, or refusal of access to the owner.”⁷⁰ Expiration of the lease term is not a permissible cause for eviction.⁷¹ Thus, non-purchasing tenants are granted indefinite rights of occupancy and the sponsor is on notice of his inability to sell the apartment for a potentially long period of time.⁷² The Act defines a non-purchasing tenant as “[a] person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared

62. *Lane*, 636 N.Y.S.2d at 579; Di Lorenzo, *supra* note 54, at 455–56.

63. Di Lorenzo, *supra* note 54, at 455.

64. *See Lane*, 636 N.Y.S.2d at 579.

65. *Id.*

66. Di Lorenzo, *supra* note 54, at 456.

67. *Id.* at 445.

68. *See Lane*, 636 N.Y.S.2d at 579. The Martin Act provides a number of protections to existing tenants in buildings undergoing conversions under a non-eviction plan, including, but not limited to: (1) the right to purchase one's apartment or the shares allocated thereto, (2) the corresponding right to be free from eviction in the event one chooses not to purchase their dwelling or for any other reason applicable to “expiration of tenancy,” and (3) protection from unconscionable rent increases, harassment, and other conduct which substantially interferes with the use and occupancy of one's dwelling. *See N.Y. GEN. BUS. LAW* § 352-eeee(2)(c). Additionally, “[i]n 1983, § 352-eee, the suburban law, was repealed and a new § 352-eee paralleling § 352-eeee[, the current law applicable to New York City,] was enacted.” *Lane*, 636 N.Y.S.2d at 579.

69. N.Y. GEN. BUS. LAW § 352-eeee(2)(c)(ii).

70. *Resolution Trust Corp. v. Diamond*, 801 F. Supp. 1152, 1159 (S.D.N.Y. 1992).

71. *Id.*

72. *See id.*

effective or a person to whom a dwelling unit is rented subsequent to the effective date.”⁷³ The Act expressly excludes from the definition of a non-purchasing tenant any “person who sublets a dwelling unit from a purchaser under the plan.”⁷⁴

III. PROBLEM

In the First Department, post-effective-date tenants are not considered non-purchasing tenants, and therefore are not afforded protections by the Martin Act. By taking that position, the First Department undercuts the Martin Act and oversteps its role in the judicial process.

A. First Department

In 2000, in *Park West Village Associates v. Nisboika*, the First Department found the defendant tenant was not a non-purchasing tenant because she entered into her lease five years after the effective date of conversion.⁷⁵ The court noted that the fundamental purpose of the statute should prevail over formalism.⁷⁶ By enacting the Martin Act, the legislature sought to avoid the imminent eviction of tenants in possession during the conversion process.⁷⁷ The court concluded that the legislative purpose of the statute did not include protection of evicted post-effective-date tenants.⁷⁸ In an attempt to square its decision with the plain language of the statute, the court explained:

[I]t is generally the rule that the literal meaning of the words used must yield when necessary to give effect to the intention of the Legislature. In the interpretation of statutes, the spirit and purpose of the acts and the objects to be accomplished must be considered and given effect, and the literal meanings of words are not to be adhered to or suffered to defeat the general purpose and manifest policy intended to be promoted.⁷⁹

In the same year *Park West Village* was decided, the First Department came to a similar conclusion in *Parkchester Preservation Company L.P. v. Hanks*.⁸⁰ Similar to *Park West Village*, the *Parkchester* tenants were not renting when the conversion took place.⁸¹ However, they did not enter into a lease with the sponsor corporation.⁸² The unit had already been converted and the tenants entered into a lease with the unit’s

73. N.Y. GEN. BUS. LAW § 352-eeee(1)(e) (emphasis added).

74. *Id.*

75. *See Park West Village*, 721 N.Y.S.2d at 460.

76. *Id.* at 461.

77. *See id.*

78. *See id.*

79. *Id.* (quoting N.Y. STAT. LAW § 111); *see also* *Turner v. Dep’t of Fin.*, 673 N.Y.S.2d 428 (1st Dep’t 1998).

80. *Parkchester Preservation Co. v. Hanks*, 714 N.Y.S.2d 399 (N.Y. Civ. Ct. 2000).

81. *See id.* at 402.

82. *See id.* at 400.

owner.⁸³ Thus, the landlord in *Parkchester* squarely fell within the exception to the statute as a “purchaser under the plan.”⁸⁴

B. Second Department

In 1999, the Second Department decided *Paikoff v. Harris*, which held that the plaintiff tenants were non-purchasing tenants even though they entered into their lease subsequent to the effective date of conversion.⁸⁵ The court looked to the language of the statute, which provides that a non-purchasing tenant includes “person[s] to whom a dwelling unit is rented subsequent to the effective date” and does include the language, “prior to the closing date.”⁸⁶ Moreover, the court looked to the statute’s purpose: the promotion of conversions while simultaneously protecting tenants from forced eviction.⁸⁷ Thus, for the purposes of the Martin Act, the court made it clear that no distinction exists between tenants in possession at the time of conversion and those who rent from the sponsor subsequent to the effective date.⁸⁸

In 2001, the Second Department reaffirmed its position, albeit in dicta, in *Geiser v. Maran*.⁸⁹ In *Geiser*, the court found the holding from *Park West Village* to be flawed, and disagreed with the premise that a sponsor is a “purchaser under the plan,” and therefore falls within the exception.⁹⁰ A “purchaser under the plan” is defined as “[a] person who owns the shares allocated to a dwelling unit.”⁹¹ In light of the practice the Martin Act was meant to regulate, the court found that a sponsor is a seller, not a purchaser.⁹² If the holding from *Park West Village* were to be followed literally, no tenant who rented after the closing date would be protected under the statute, thus rendering the statute’s exception superfluous.⁹³

Three years later in *Arkansas Leasing Company v. Gabriel*, the Second Department supported the *Paikoff* decision, but not without an adamant dissent.⁹⁴ In *Gabriel*, the

83. *Id.* at 403.

84. *See id.*; *see also* N.Y. GEN. BUS. LAW § 352-eeee(1)(d) (defining “purchaser under the plan” as “[a] person who owns the shares allocated to a dwelling unit or who owns such dwelling unit itself”).

85. *See Paikoff*, 713 N.Y.S.2d at 112–13.

86. *Id.* at 112.

87. *Id.*

88. *Id.* at 113.

89. *Geiser v. Maran*, 732 N.Y.S.2d 825 (2d Dep’t 2001) (finding that the Martin Act did not apply since the building was converted prior to the effective date of the Martin Act).

90. *See id.* at 826–27. The exception is that tenants who sublet from “purchasers under the plan” are not considered non-purchasing tenants. N.Y. GEN. BUS. LAW § 352-eeee(1)(e).

91. N.Y. GEN. BUS. LAW § 352-eeee(1)(d).

92. *Geiser*, 732 N.Y.S.2d at 826.

93. *Id.* at 827.

94. *See Ark. Leasing Co. v. Gabriel*, 779 N.Y.S.2d 710 (2d Dep’t 2004).

tenant entered into a lease with the sponsor almost four years after the effective date.⁹⁵ Although the majority concluded that the tenant was a non-purchasing tenant, the dissent sided with the position held by the First Department.⁹⁶ The dissent argued that the literal interpretation of the statute would produce an absurd result and would defeat the general purpose of the statute.⁹⁷ Since the purpose of the statute was to increase protections to those tenants already living in the building during the conversion, the dissent noted that the legislature never intended to protect tenants entering into post-conversion leases.⁹⁸ The dissent thus agreed with the First Department's reasoning.

The First Department was incorrect. Beginning with *Paikoff*, the Second Department reached the correct and legally sound conclusion in its line of cases. However, the Second Department is beginning to lose ground, as evinced by the strong dissent in *Gabriel*. When prompted, the Court of Appeals must resolve this issue in favor of the Second Department. Should it fail to act, the Court of Appeals would miss the opportunity to attach certainty to a somewhat ambiguous dilemma for New York County residents. Siding with the First Department would represent a massive indiscretion on the court's part that would unquestionably affect all New York County tenants negatively.

IV. CANONS OF CONSTRUCTION

Canons of construction are tools of interpretation that assist the court in determining the meaning of legislation.⁹⁹ With the principal aim of resolving legislative intent, the canons focus on the broader context of a given statute.¹⁰⁰

A. Plain Meaning

It is "elementary" that a statute's meaning must be ascertained by the language of the act, and if that language is plain, the only function of the court is to enforce the act according to its terms.¹⁰¹ The court's duty of interpretation does not arise where the language of the act is plain and allows for only one meaning.¹⁰² In such instances, "the rules which are to aid [in construing] doubtful meanings need no discussion."¹⁰³ The term "non-purchasing tenant" is defined in the Martin Act as "[a] person who has not purchased under the plan and who is a tenant entitled to possession at the

95. See *id.* at 713 (Patterson, J., dissenting).

96. *Id.* at 714.

97. See *id.*

98. *Id.*

99. 73 AM. JUR. 2d *Statutes* § 62 (2008).

100. *Id.*

101. *Caminetti v. United States*, 242 U.S. 470, 485 (1917).

102. *Id.*

103. *Id.*

time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date.”¹⁰⁴ This definition clearly includes post-effective-date tenants—a proposition not even challenged by the First Department.¹⁰⁵ Reaching an opposite conclusion would require a court to change the language of the Act and effectively legislate from the bench. Thus, the court’s only remaining function is to enforce the Act’s terms.

However, the *Gabriel* dissent argued that where the literal interpretation of a statute would produce an absurd result, such an interpretation should not be followed.¹⁰⁶ But this principle, often referred to as the “soft” plain meaning rule,¹⁰⁷ should be applied “only under rare and exceptional circumstances.”¹⁰⁸ Specifically, “the absurdity must be so gross as to shock the general moral or common sense.”¹⁰⁹ The *Gabriel* dissent further argued that a literal reading of the statute would afford all tenants the protections of the Act, “including those who enter into leases years beyond the conversion.”¹¹⁰ The relevant question then becomes whether this can be said to reach the extremely difficult standard that the soft plain meaning rule requires. Given that reasonable minds have disagreed on the meaning of the Act, evinced by the split between the First and Second Departments, it cannot be said that its application would shock the general moral or common sense.

Furthermore, it is not clear whether the soft plain meaning rule gives the court the power to completely bypass the language of a given statute. In the landmark case *Holy Trinity Church v. United States*, the defendant church contracted with a foreign pastor in England to come into its employ in the United States.¹¹¹ The church was convicted of violating a federal law that prevented an employer from contracting with foreign laborers so as to bring them into the United States for employment.¹¹² The Supreme Court thoroughly analyzed the statute in question and concluded that the

104. N.Y. GEN. BUS. LAW § 352-eeee(1)(e).

105. See *Park West Village*, 721 N.Y.S.2d at 461; *Gabriel*, 779 N.Y.S.2d at 714 (Patterson, J., dissenting) (“The statute, as written, appears to confer protections to tenants who enter into leases ‘subsequent to’ a conversion.”).

106. *Gabriel*, 779 N.Y.S.2d at 714 (Patterson, J., dissenting).

107. See William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 626 (1990).

108. *Crooks v. Harrelson*, 282 U.S. 55, 59–60 (1930).

109. *Id.* at 60.

110. *Gabriel*, 779 N.Y.S.2d at 714 (Patterson, J., dissenting). The dissent does not take into account the fact that once the property has been completely converted, meaning all units have been sold, all Martin Act protections are distinguished. See discussion *infra* Part IV.B.

111. *Holy Trinity Church v. United States*, 143 U.S. 457, 457–58 (1892).

112. *Id.* The federal law at issue in *Holy Trinity Church* read, in relevant part:

Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, that from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration, of any alien or aliens, any foreigner or foreigners, into the United States, its

statute had more than one possible meaning.¹¹³ The Court held that to include the foreign pastor in the statute's prohibitions would produce an absurd result, since the meaning and plain language of the statute was to include only cheap, unskilled labor.¹¹⁴ However, this conclusion reached by the Supreme Court is starkly different from that of the First Department. In *Holy Trinity Church*, the Court found that the federal statute lent itself to multiple meanings and settled on a definition that still fit the language of the statute.¹¹⁵ In contrast, the First Department in *Park West Village* admittedly bypassed the clear language of the Martin Act and reached a result that does not fit the Act's terms.¹¹⁶

B. Legislative Intent

The general rule in New York is that the literal meaning of a statute must yield when contrary to the intention of the Legislature.¹¹⁷ In other words, “[t]he essential purpose of the statute should prevail over pure formalism.”¹¹⁸ The purpose of section 352-eeee(1)(e) of the Martin Act is to restrict rent increases and evictions during the process of conversion from rental to cooperative or condominium status.¹¹⁹ The Act seeks to protect those “tenants in possession who do not desire or who are unable to purchase the units in which they reside from being coerced into vacating . . . or into purchasing such units under the threat of imminent eviction.”¹²⁰ The First Department has held that giving post-effective-date tenants the protections of the Act cuts against the Act's purpose.¹²¹ Quoting one commentator, the *Park West Village* court noted, “[i]t is difficult to understand why . . . a statute designed to regulate conversions . . . should be twisted to afford post-conversion tenants . . . a windfall benefit at the expense of the seller and purchaser principals.”¹²²

territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its territories, or the District of Columbia.

Id. at 458.

113. *See id.* at 472.

114. *See id.* at 465.

115. *See id.* at 472.

116. *See Park West Village*, 721 N.Y.S.2d at 461; *Gabriel*, 779 N.Y.S.2d at 713–14 (Patterson, J., dissenting).

117. *See* N.Y. STAT. LAW § 111; *Park West Village*, 721 N.Y.S.2d at 461; *see also Turner*, 673 N.Y.S.2d at 429.

118. *Park West Village*, 721 N.Y.S.2d at 461 (quoting *Ebert v. New York City Health & Hosps. Corp.*, 82 N.Y.2d 863, 866 (1993)) (internal quotation marks omitted).

119. *See Paikoff*, 713 N.Y.S.2d at 112.

120. *Park West Village*, 721 N.Y.S.2d at 460–61 (quoting legislative findings to 1982 N.Y. LAWS ch. 555, § 1) (internal quotation marks omitted).

121. *See id.*

122. *Id.* at 461 (internal quotation marks omitted).

However, the First Department has misused the term “post-conversion.” The First Department’s argument is based on the premise that “post-conversion date” is tantamount to “post-effective date,”¹²³ but in actuality the two are not the same. Although neither term is defined anywhere in the Act,¹²⁴ the logical meaning of the effective date is the moment the sponsor has obtained written purchase agreements executed and delivered for at least fifteen percent of all dwelling units in the building.¹²⁵ The logical meaning of the conversion date is the point in time when the rental apartment at issue has been sold and *converted* into a condominium or cooperative unit.¹²⁶ Therefore, the legislative intent behind the Act, which is to restrict rent increases and evictions during the process of conversion, is followed by the Second Department, while thwarted by the First Department. In essence, it is impossible for a sponsor to rent out a converted unit since the sponsor no longer has the legal right to do so. Therefore, it logically follows that whenever a sponsor rents one of its units, the tenant will always be a non-purchasing tenant, regardless of timing.

A statute’s legislative history provides additional evidence of the statute’s intended scope.¹²⁷ The rationale behind the creation of the non-eviction plan was to provide tenants with the bargaining power they so desperately needed in order to avoid the Helmsley situation.¹²⁸ However, requiring a majority of the tenants to purchase was excessive and resulted in a tremendous downturn in conversions.¹²⁹ Today, the Martin Act serves as a compromise between two competing interests: to provide tenants with the bargaining power and protection of continued occupancy and to give sponsors the freedom to convert with minimal interference.¹³⁰

Following the position of the First Department would destroy this compromise, giving sponsors more freedom to convert and tenants less bargaining power and protection of continued occupancy. The nature of conversions requires the scales to be artificially balanced. The conversion process is a transition between two separate and distinct markets—the renters’ market and the buyers’ market. Switching between markets presents a drastic change for renters. Since eviction creates a distressing situation, renters are left with minimal bargaining power.¹³¹ To avoid being forced

123. *See id.* at 460–61.

124. *See* N.Y. GEN. BUS. LAW § 352-eeee.

125. *Cf. id.* § 352-eeee(2)(c)(i).

126. *See* THE AMERICAN HERITAGE COLLEGE DICTIONARY 304 (3d ed. 2000). Conversion is defined as “[t]he state of being converted.” *Id.* Convert is defined as “[t]o change (something) from one use, function, or purpose to another.” *Id.* It then follows that the unit at issue must have changed from some form or function before there can be a conversion date. The only change sought in the conversion process is to turn the rental apartment into a condo or co-op unit.

127. *See* N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 530 (1982).

128. *See* discussion *supra* Part II.B.

129. *See* discussion *supra* Part II.B.

130. *See* discussion *supra* Part II.B.

131. *See* FREEDMAN & ALTER, *supra* note 3, at 27. It tends to be very difficult for renters to find a replacement home in a comparable neighborhood at a competitive rental price. *Id.*

into the buyers' market, the tenant needs the protections of the Martin Act. It makes no difference whether the tenant rented before or after the effective date of conversion; both tenants need assurance that the sponsor will not impulsively evict them because the market favors selling their units.

The difference between renting from a sponsor and renting from a unit owner is evident by the exception carved out by the legislature. This exception provides that a person who sublets a dwelling unit from a purchaser under the plan is not considered a non-purchasing tenant.¹³² When the exception applies, the unit has already been converted into a condo or co-op, and the sponsor is no longer involved. The agreement, unlike the sponsor-tenant circumstance, is like any other landlord-tenant relationship. If the market sways in favor of selling, the subletter does not have an incentive to evict the subtenant, and the tenant is not faced with having to switch markets.

C. Noscitur a Sociis (It is known from its associates)

“It is a well-settled principle of statutory construction that a statute or ordinance must be construed as a whole and that its various sections must be considered together and with reference to each other.”¹³³ The *Geiser* court accurately noted that based on the First Department’s determination that the sponsor corporation is a “purchaser under the plan,” no tenant that rents after the closing date is protected under the statute.¹³⁴ Therefore, the exception to the term “non-purchasing tenant,” would be rendered superfluous.¹³⁵ Conversely, following the holding of the Second Department, all sections of the statute have a purpose, including the exception. The legislature would not have included the exception unless it had a function.¹³⁶

V. THE FUTURE OF NEW YORK CITY RENTERS

The Martin Act is more germane today, due to the weakened economy. City vacancy rates are rising,¹³⁷ average asking rents are falling,¹³⁸ and buyers are finding it hard to

132. N.Y. GEN. BUS. LAW § 352-eeee(1)(e).

133. *N.Y. v. Mobil Oil Corp.*, 48 N.Y.2d 192, 199 (1979) (citing N.Y. STAT. LAW §§ 97, 98, 130).

134. *Geiser*, 732 N.Y.S.2d at 827.

135. *Id.*

136. See N.Y. STAT. LAW § 74 (“A court cannot by implication supply in a statute a provision which it is reasonable to suppose the Legislature intended intentionally to omit; and the failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended.”); see also *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 188 (1978) (“[T]here are no exemptions in the Endangered Species Act for federal agencies, meaning that under the maxim *expressio unius est exclusio alterius*, we must presume that these were the only ‘hardship cases’ Congress intended to exempt.”).

137. Compare Citi Habitats, Rental Market Analysis: January 2008, <http://www.citi-habitats.com/media/pdf/1-2008-mra.pdf> (noting the vacancy rate in January 2008 was 1.34 percent), with Citi Habitats, Rental Market Analysis: January 2009, <http://www.citi-habitats.com/media/pdf/2009-1-mra.pdf> (noting the vacancy rate in January 2009 was 2.24 percent).

138. Compare Citi Habitats, The Black & White Report: A Comprehensive Analysis of the 2007 Manhattan Residential Real Estate Market, <http://www.citi-habitats.com/media/pdf/bw2007.pdf> (noting the average

secure financing.¹³⁹ Undoubtedly, we are entering a renter's market¹⁴⁰ and sponsors are now more prone to lease out vacant units.¹⁴¹ If the First Department's position is adopted by the Court of Appeals or the Second Department, all New York City residents, especially those in Manhattan and the Bronx, will be adversely affected.¹⁴²

A. Middle- to Lower-Income Families

The tenants most at risk are those of middle to lower incomes. If the market shifts in favor of selling, the tenant must purchase or face eviction. But for middle- to lower-income tenants, it is difficult to purchase the unit since "the majority of tenants rent because they [cannot] afford to buy."¹⁴³

For evicted tenants, it is extremely difficult to locate a replacement home in a comparable neighborhood at a competitive rental price.¹⁴⁴ In effect, these families are forced out of the city.¹⁴⁵ Today, the middle class makes up far less of the city's population than it once did, with the numbers decreasing every year.¹⁴⁶ Much of the middle class is made up of service men and women, such as police officers, firefighters, school teachers, bus drivers, and small business owners who are vital to the city's prosperity.¹⁴⁷ Who will do these jobs if the city houses only high income individuals?

monthly rental price for a two bedroom apartment in January 2007 was \$3792), *with* Citi Habitats, Rental Market Analysis: January 2009, <http://www.citi-habitats.com/media/pdf/2009-1-mra.pdf> (noting the average monthly rental price for a two bedroom apartment in January 2009 was \$3534).

139. Daniel Geiger, *Office Condos Enjoying Their Time in the Sun*, REAL EST. WKLY., Jan. 9, 2008.

140. See Elizabeth A. Harris, *A Month Free? Rents Are Falling Fast*, N.Y. TIMES, Feb. 1, 2009, at RE 1; Dana Mattioli, *Finally, Renters Have Some Pull*, WALL ST. J., Jan. 21, 2009, at B7.

141. See Mattioli, *supra* note 140.

142. There is a strong possibility that the Second Department will eventually adopt the position held by the First Department. This is made especially clear by the adamant dissent in *Gabriel*—the most recent case on the subject. See *Gabriel*, 779 N.Y.S.2d at 712–15 (Patterson, J., dissenting).

143. Christine C. Quinn, Speaker, New York City Council, State of the City Address (Feb. 15, 2007), *available at* <http://www.gothamgazette.com/article/searchlight/20070215/203/2105> [hereinafter Quinn Speech].

144. FREEDMAN & ALTER, *supra* note 3, at 27.

145. For very low income tenants the next step down might be homelessness, which in turn, could spiral into a life of crime. See ANDREA SOLARZ, AN EXAMINATION OF CRIMINAL BEHAVIOR AMONG THE HOMELESS (1985), *available at* http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/2f/41/fd.pdf. Research has revealed high rates of arrest among the homeless. *Id.* at 3. Some reports have indicated between fifty-two and fifty-eight percent of their sample populations had a history of arrest. *Id.* It has been found that the majority of the arrests are for trivial offenses and victimless crimes, like violation of park rules or disorderly conduct. *Id.* at 4. Therefore, those individuals that would generally not violate the law would be more likely to do so if they became homeless out of necessity or frustration.

146. Quinn Speech, *supra* note 143 ("In 1970, [the middle class] made up nearly 50% of the City; in 2000, it was 30%. And the numbers are decreasing every year.")

147. See Quinn Speech, *supra* note 143.

There is a growing sense across the boroughs that the day is coming when the men and women who protect us, who teach our children, who take care of our parents, and who serve our coffee won't be able to afford to live in New York City. . . . [A]ll of us must

Moreover, the cultural mosaic that once breathed life and excitement into the city is in danger of extinction. Middle- and lower-income families make up most of the minority population of the city. If these individuals leave, what would happen to the city once coined “the melting pot of the world?”¹⁴⁸

B. Supply and Demand

Following precedent established by the First Department would also eliminate a large portion of rental property from the market. Tenants are unlikely to rent a post-effective-date unit because of the underlying uncertainties. The obvious result would be an increase in demand and an inflation of rental prices for all New York City tenants.¹⁴⁹

New York City has one of the tightest housing markets in the country.¹⁵⁰ The housing market is even tighter for those looking for low rent.¹⁵¹ As the population in the city increases, housing units are not being built at a proportional rate.¹⁵² As a result, the city is packed and people have no place to go.¹⁵³ Removing this chunk of rental property from the market gives landlords even more leverage. With fewer apartments on the market for rent, landlords can be more selective in the tenants they choose and can afford to hold out for the best applicants and highest bidders. The rent burden on city residents is already severe,¹⁵⁴ especially for low-income

work together to keep the middle class and those striving to get there from being squeezed out of our city—a city that desperately needs them.

Id. See generally NYPD, Benefits & Salary Overview, http://www.nypdrecruit.com/NYPD_benefitsoverview.aspx (last visited Jan. 22, 2010) (stating that the New York Police Department pays its officers a base salary of \$43,062 straight out of the Police Academy); Yahoo!, NYC Department of Education, Salary, <http://schools.nyc.gov/TeachNYC/Salary/default.htm> (last visited Jan. 22, 2010) (stating that starting teacher salaries in New York City range from \$45,530 to \$74,796).

148. See Quinn Speech, *supra* note 143 (“Generation after generation has built New York into an amazing melting pot of human, economic, and cultural power.”).

149. This conclusion is based on a simple supply and demand analysis. As the supply of rental property decreases, the demand for such property increases.

150. New York City Habitat for Humanity, New York City Housing Statistics, http://www.habitatnyc.org/advocate_nycstats.html (last visited Oct. 13, 2009) [hereinafter Housing Statistics] (“As of April 2005, the rental vacancy rate in New York City was 3.3%, making it one of the tightest housing markets in the United States. (A vacancy rate under 5% is considered an official housing emergency under New York state law. Nationally the rental vacancy rate is approximately 10%.).”).

151. See Housing Statistics, *supra* note 150 (“For units renting from \$500 to \$700 a month, the 2002 vacancy rate was just 1.42%,” lower than the 3.3% city average.).

152. See *id.* (“Between 1990 and 2000, the official population of New York City grew by 686,000, but only 81,000 new housing units were built.”).

153. See *id.* (“It is estimated that 120,000 families are living doubled up, which puts them at high risk of becoming homeless. In 2002, 11.1% of rental units were officially counted as crowded, with more than 1 person per room. The rate of severe crowding (more than 1.5 persons per room) was 3.9%.”).

154. See *id.* Nearly a million households in the City had a rent burden over thirty percent in 2002. *Id.* “The generally accepted definition of affordability is a gross rent burden of 30%.” *Id.* Twenty-three percent of City renters spend more than 50 percent of their income on rent and utilities. *Id.*

residents,¹⁵⁵ but this policy would make it much worse. Thus, the First Department's position affects all New York City residents, not just non-purchasing tenants.

C. *Slippery Slope*

Unquestionably, following the First Department's precedent will benefit sponsors and hurt tenants. Sponsors will likely push even further to attempt to exclude other groups of tenants from the shield of the Martin Act.¹⁵⁶ This would lessen, and may ultimately open the door to completely eliminating, the difference between an eviction and a non-eviction plan.

As it stands today, all non-purchasing tenants are protected if the sponsor converts through a non-eviction plan, while only seniors and disabled persons are protected if the sponsor converts through an eviction plan.¹⁵⁷ This significant difference stems from the pre-condition attached to each plan. In order to implement an eviction plan, the sponsor needs fifty-one percent of the tenants to purchase. However, in a non-eviction plan, the sponsor needs only fifteen percent.¹⁵⁸ The non-eviction plan extends strong protections to non-purchasing tenants and gives the sponsor an incredibly easy and sure-fire way to convert, since fifteen percent is an easy mark to reach through turnover alone.¹⁵⁹ On the other hand, the eviction plan is difficult to implement, but it allows the sponsor to evict everyone except seniors and the disabled. Therefore, these plans are on the extreme opposite ends of the spectrum. The New York State Legislature created this dual system against the backdrop of the Goodman-Dearie Law, which was a more middle-ground approach that turned out to have a stagnating effect on the conversion market.¹⁶⁰

By moving the non-eviction plan toward the middle of the spectrum, non-purchasing tenants are given less protection. Therefore, city tenants must fight to prevent the slippery slope that will lead to the eventual destruction of the non-eviction plan.

VI. CONCLUSION

The First Department misinterpreted the Martin Act. Misplaced notions of fairness have persuaded the court to overlook its judicial function. The term "non-purchasing tenant" is defined as "a person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a

155. *See id.* ("Housing represents the single largest monthly expense for low-income households, and the oppressive cost burden can leave families unable to pay for other necessities. . . . For poor renters not living in subsidized housing, the median rent burden was more than 60% of household income.").

156. For example, tenants with short-term leases, or all non-senior and non-disabled persons.

157. N.Y. GEN. BUS. LAW §§ 352-eeee(2)(c)-(2)(d).

158. *Id.* §§ 352-eeee(1)(b)-(1)(c).

159. *See Oser, supra* note 27 and accompanying text ("The sponsor does need 15 percent in a non-eviction plan, but through turnover this is easy to obtain.").

160. *See supra* Part II.B.

person to whom a dwelling unit is rented subsequent to the effective date.”¹⁶¹ This definition clearly encompasses post-effective-date tenants. Because the language of the Act is clear and unambiguous, the court must enforce its terms.

The purpose of the Act is to restrict rent increases and evictions during the process of conversion from rental to cooperative or condominium status. The conversion process is not complete until the rental unit has been converted into a co-op or condo unit. Thus, there can be no mistaking that the legislature intended to protect those individuals who rent before the conversion date, regardless of whether it is before or after the effective date.

Moreover, the Act must be construed as a whole, with its sections considered together and in reference to each other. The Act exempts those who sublet a unit from a purchaser under the plan.¹⁶² Following the First Department’s position renders this exception meaningless. By contrast, the Second Department’s inclusion of post-effective-date tenants as non-purchasing tenants would give the exception meaning.

The First Department’s position harms the interests of New York City tenants—particularly middle- to lower-income residents. It is generally difficult for evicted tenants to find comparable homes.¹⁶³ Renting such a unit is undesirable for prospective renters. In turn, demand rises in conventional apartment buildings. Asking rents then increase for all city renters in accordance with the laws of supply and demand. Moreover, an adoption of the First Department’s position would likely lead to even less protection for tenants in the future.

Although the stories of Michael and Deborah from the beginning of this note were fictional, they demonstrate the distressing circumstances of forced dislocation that is all too real for many New York City tenants. The relevant question is whether the laws of New York should protect Michael, but not Deborah, solely because one began renting subsequent to the effective date of conversion. It is clear, however, that Michael and Deborah should not be treated differently just because they chose to rent at different times. The law must be applied uniformly throughout the state in order to protect the interests of all New York City residents. The drafters of section 352-eeee(1)(e) of the Martin Act never intended to protect Michael while implicitly informing Deborah that she had overstayed her welcome.

161. N.Y. GEN. BUS. LAW § 352-eeee(1)(e).

162. *Id.*

163. FREEDMAN & ALTER, *supra* note 3, at 27.