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THE EFFECT OF TITLE I OF THE 1949 FEDERAL HOUSING ACT ON NEW YORK CITY COOPERATIVE AND CONDOMINIUM CONVERSION PLANS

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I. Introduction

Many New York City apartment complexes were built with government aid under Title I of the 1949 Federal Housing Act (the Housing Act).[1] The purpose of Title I, entitled "Slum Clearance and Community Development and Redevelopment," was to induce private investors to clear slum areas and increase residential housing.[2] Title I is the only significant part of the Housing Act for which no prior legislative action had been taken on the federal level.[3] Although the 1937 Housing Act mentioned slum clearance,[4] the 1949 Housing Act was the first government legislation to recognize "slums"[5] as a national problem.[6]

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1. Pub. L. No. 171, 63 Stat. 413, 414 (1949).

2. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1552 (1949). *See generally* Comment, *The Housing Act of 1949—A Federal Program for Public Housing and Slum Clearance*, 44 ILL. L. REV. 685 (1949) (discussion on slum clearance programs) [hereinafter cited as *Act of 1949*].

3. The United States Housing Act of 1937, Pub. L. No. 412, ch. 896 (1937). The 1937 Act, the predecessor housing act of the 1949 Act, did not effectively govern the national slum problem. *See* Lashly, *Government and Urban Redevelopment: A Fresh Start for the "Ill-Housed,"* 37 A.B.A. J. 881, 882 (1951) [hereinafter cited as Lashly].

4. The United States Housing Act of 1937, Pub. L. No. 412, ch. 896 (1937). The 1937 Housing Act mentioned slum clearance, but was not sufficient to bring the community through plans of redevelopment. *See generally* Lashly, *supra* note 3, at 882 (discussion of slum clearance).

5. A slum is "a highly congested urban residential area characterized by deteriorated unsanitary buildings, poverty and social disorganization. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2147 (4th ed. 1976). "Slums" are areas which foster delinquency, disease and crime. *See* H.R. No. 590, 81st Cong., 1st Sess. 1, 13 (1949). Slum areas are "evidence of the extravagant wastes of human and other resources." *Id.*; *see also* Johnstone, *The Federal Urban Renewal Program*, 25 U. CHI. L. REV. 301, 303 (1957) (discussion of slums) [hereinafter cited as Johnstone].

6. The 1949 Housing Act was the first "firm national housing policy" to have an impact on slum clearance. S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1558 (1949).

> On the basis of . . . the findings of previous congressional investigations during the past 5 years, it seems clearly established that only through an effective program of Federal aid can real progress be made in the clearance of slums. This is amply supported by the testimony presented

Under Title I, the federal government provided grants to local public agencies for the purpose of clearing away slum areas.[7] The Housing Act provided for a loan fund of $1 billion to become available over a five year period[8] and for a $500 million capital grant program.[9] Grants were made available to local public agencies to finance the initial costs of planning a project; acquiring, clearing or preparing the land for sale; and selling or leasing the land.[10]

Title I required each project to be constructed pursuant to a specific redevelopment agreement and plan, which were to be drafted by the appropriate local agency.[11] In New York City, each Title I redevelopment agreement[12] included one paragraph that comprised

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> on behalf of the United States Conference of Mayors and the American Municipal Association. Moreover, the testimony presented by the Surgeon General of the United States indicates that there is ample justification for such a Federal program in light of the serious impact of slum conditions on the lives and development of millions of American families and their children.

Id. at 1561; *see also* Note, *Slum Clearance and Public Housing*, 3 J. PUB. L. 261, 261-62 (1954) (discussion of slum problem) [hereinafter cited as *Slum Clearance and Public Housing*].

7. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562 (1949). *See generally* Jacobs & Levine, *Redevelopment: Making Misused and Disused Land Available and Usable*, 8 HASTINGS L.J. 241 (1957) (discussion of redevelopment efforts made to fight the slum problem) [hereinafter cited as Jacobs]. "Slum clearance" refers to the "destruction of overpopulated, unsanitary housing areas in which the structures are deteriorated beyond hope of reclamation. [I]n a more limited sense, this term refers to clearance of deteriorated areas for the purpose of using the land for constructing low-rent public housing." *Id.* at 246.

8. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562 (1949). This $1 billion loan authorization became available over a 5-year period, starting with $25,000,000 on July 1, 1949, and increasing by $225,000,000 on July 1, 1950 and by further amounts of $250,000,000 on July 1 of each of the three succeeding years. *Id.*

9. *Id.* See *infra* notes 53-54 and accompanying text for a discussion of the Housing Act's capital grant program.

10. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562 (1949).

11. 42 U.S.C. § 1441 (1949). Title I stated:

> Appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, intergrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life . . . .

Id.

12. Each Title I project had a separate redevelopment agreement. This Note is concerned with the redevelopment agreements of three different New York City properties: (1) Kips Bay Towers, *see infra* notes 71-89 and accompanying text; (2) Coliseum Park Apartments, *see infra* notes 90-108 and accompanying text; and (3) Park West Village, *see infra* notes 109-22 and accompanying text.

a covenant, running with the land, which provided that "for the period of forty (40) years from the completion of the housing project *no change* shall be made in the project as set forth in the Redevelopment Plan . . . without the consent of the City Planning Commission and the Board of Estimate of the City . . . ."[13]

Currently, the three Manhattan housing projects built pursuant to Title I which are involved in litigation[14] are the only three Title I actions pending in the United States that address the issue of a housing project's conversion plan.[15] The three developments, which argue that city approval of a conversion is unnecessary, have expressed intentions of converting their units from rental to condominium or cooperative ownership.[16] However, if such action constitutes

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13. *See supra* note 12 and accompanying text. This provision is found in the following sections of the three projects' redevelopment agreements: (1) § 510(c) of the Kips Bay redevelopment agreement; (2) § 510(b) of the Coliseum redevelopment agreement; and (3) § 509(b) of the Park West redevelopment agreement (emphasis added in text).

14. These three Title I projects have been involved in litigation concerning the issue of whether a conversion to ownership status is permitted. *See* Kramer v. Kips Bay Towers Assoc., No. 15696-83 (Sup. Ct. N.Y. County 1983); Coliseum Park Apartments Co. v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Park West Village Assocs. v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

15. *See* letter of Oliver A. Rosengart, Assistant New York State Attorney General, April 2, 1985 (on reserve at Fordham Law Library). Mr. Rosengart states that:

> [T]o the best of my knowledge there are no cases in the United States concerning the conversion of properties built on Title I . . . sites to cooperative or condominium ownership other than the cases involving Park West Village, Coliseum Park Apartments and Kips Bay Towers. I am the Assistant Attorney General who has been primarily responsible for these cases and I am fully familar with the case law on this subject.

Id.; *see also* N.Y. Times, July 29, 1984, at RE7, col. 1; N.Y. Times, Mar. 2, 1984, at B4, col. 1. Currently, these are the only Title I projects involved in litigation. However, it is possible for other Title I projects throughout the United States to become involved in similar litigation provided that the local redevelopment agreement included the "forty-year change" provision. This provision is found in the following sections of the three projects' redevelopment agreements: (1) § 510(c) of the Kips Bay redevelopment agreement; (2) § 510(b) of the Coliseum redevelopment agreement; and (3) § 509(b) of the Park West redevelopment agreement. New York City is unique because its housing laws, such as rent control and stabilization, are more involved and detailed than most jurisdictions. *See, e.g.*, N.Y. City's rent control laws. For history and discussion of rent controls in N.Y. City, see Note, *The ABC's of MBR: How to Spell Trouble in Landlord/Tenant Relations (Up Against the Crumbling Walls)*, 10 COLUM. J.L. & SOC. PROBS. 113 (1974); Note, *Residential Rent Control in New York City*, 3 COLUM. J.L. & SOC. PROBS. 30 (1967); Note, *Emergency Tenant Protection in New York: Ten Years of Rent Stabilization*, 7 FORDHAM URB. L.J. 305 (1979).

16. N.Y. Times, Mar. 2, 1984, at B4, col. 1.

a "change" for purposes of the covenant in the redevelopment agreement, Board of Estimate and City Planning Commission approval would be required for a conversion to take effect, in which case, these conversion plans may be in jeopardy.

This Note analyzes whether the conversion of rental units built under Title I to ownership units[17] constitutes a "change" as interpreted by the New York courts.[18] The interpretation of the term "change" under the Title I redevelopment agreements will be analyzed from both the City of New York's[19] and the private developer's views.[20] In addition, the legislative purposes behind Title I's enactment will be examined from the perspectives of both the City of New York[21] and the private developer.[22] Finally, the current status of Title I will be discussed.[23] This Note concludes that a "change,"

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17. Condominiums and cooperatives are two forms of ownership.

> Condominium is [a] system of separate ownership of individual units in a multiple-unit building. A single real property parcel with all the unit owners having a right in common to use the common elements with separate ownership confined to the individual units which are serially designated . . . . A condominium is an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office or store.

BLACK'S LAW DICTIONARY 267 (5th ed. 1979).

"Cooperative apartments [are] dwelling units in a multiple-unit complex in which each owner has an interest in the entire complex and a lease of his own apartment, though he does not own his apartment as in the case of a condominium." *Id.* at 302 (5th ed. 1979). *See generally* Castle, *Legal Phases of Cooperative Buildings*, 2 S. CAL. L. REV. 1, 2 (1928) (discussion concerning condominiums); Flamm, *Housing Co-operatives*, 6 LAW. GUILD REV. 590, 590-95 (1946) (same) [hereinafter cited as Flamm]; Garfinkel, *The Uniform Condominium Act*, PRAC. LAW. 43 (No. 8 1982) (same) [hereinafter cited as Garfinkel]; Yourman, *Some Legal Aspects of Cooperative Housing*, 12 LAW & CONTEMP. PROBS. 126, 129 (1947) (same) [hereinafter cited as Yourman].

18. Title I of the Housing Act is defined as the "Slum Clearance and Community Development" section. *See* 42 U.S.C. §§ 1441-1469 (1949). See *infra* notes 26-66 and accompanying text for a discussion of the history of Title I and the 1949 Federal Housing Act.

19. *See infra* notes 129-59 and accompanying text.

20. *See infra* notes 160-94 and accompanying text. The use of the term "owner/sponsor" is synonymous with the term "private developer." The Administrative Code of New York defines a sponsor as any "person . . . who makes or takes part in a public offering or sale . . . of securities consisting primarily of shares or participation interests or investments in real estate including cooperative interests in realty." N.Y. ADMIN. CODE tit. 13, § 18.1(c)(1) (1983).

21. *See infra* notes 199-212 and accompanying text.

22. *See infra* notes 213-39 and accompanying text.

23. *See infra* notes 240-54 and accompanying text.

for purposes of New York City redevelopment agreements drafted pursuant to Title I, refers only to land use and density and does not relate to the form of ownership.[24] Therefore, city approval should not be required for a Title I building to convert to condominium or cooperative status.[25]

II. Title I of the 1949 Federal Housing Act

A. The Need for Federal Government Participation

One of the essential purposes of government is to protect and foster the general welfare of the public.[26] The housing problem, which threatened the well-being of the populace, became especially critical in 1949.[27] On the basis of 1947 Census Bureau figures, there were over six million non-farm dwelling units in the United States which did not meet generally accepted standards for adequate housing.[28]

Because of the high cost of land, the difficulties in assembling tracts of land of adequate size, and in "writing down"[29] the cost

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24. There is a conflict between the City of New York and the owners as to the meaning of the language of Title I. See *infra* notes 240-54 and accompanying text for a discussion of the current status of Title I and a proposal for a new city resolution.

25. *See infra* notes 255-56 and accompanying text.

26. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1550-52 (1949); *see also* Lashly, *supra* note 3 (discussion of federal government's housing objectives). "A new political philosophy was beginning to emerge to the effect that a hungry man was not free, that a homeless family and a jobless man were slaves already, denied the blessings of liberty which our Government was founded to secure." *Id.* at 881; *see also* O. BROWDER, JR., R. CUNNINGHAM, J. JULIN & A. SMITH, BASIC PROPERTY LAW 1121-22 n.3, 1326-31 (3d ed. 1979).

27. The reasons for the housing inadequacies during 1949 included: the wartime necessity of curtailing new home construction; the fact that the industry always had underbuilt for the middle and lower income groups; and the constant annual drain through condemnation, fire, storm and flood. For discussions of problems during the 1940's in housing and slum conditions, see H.R. REP. No. 590, 81st Cong., 1st Sess. 1 (1949); S. REP. No. 84, 81st Cong., 1st Sess. 1550 (1949); CONF. REP. No. 975, 81st Cong., 1st Sess. 1586 (1949). *See generally* Lashly, *supra* note 3 (discussion of U.S. housing problem in 1949).

28. The housing inventory made in April, 1947 noted that over 2,000,000 new and converted units had been added to the housing supply. *See* U.S. BUREAU OF THE CENSUS; CURRENT POPULATION REPORTS, HOUSING CHARACTERISTICS OF THE U.S. series P-70, No. 1 (1947). The effective nonfarm housing inventory at the beginning of 1949 was about 34,829,000 units, of which 6,100,000 units were considered unacceptable. *Id.*

29. *See infra* note 44 and accompanying text.

of the land, cities experienced difficulties in effectuating slum clearance and urban redevelopment.[30] The struggle with city environments, the problems of property values, and the human consequences of delinquency, infant mortality and poor health highlighted the need for a more comprehensive housing and slum clearance policy.[31]

The Housing Act[32] was implemented by Congress in the wake of a severe post-war housing shortage to meet the evolving problems of slums and blighted areas.[33] The Housing Act attacked the national housing crisis by providing assistance for the establishment of programs to remedy problems in public and farm housing and to facilitate slum clearance and housing research.[34] The objective of national housing was for the "realization . . . of the goal of a

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30. Wachs, *Slum Clearance and Redevelopment*, 39 KY. L.J. 22 (1950) [hereinafter cited as Wachs].

31. *See* H.R. REP. No. 590, 81st Cong., 1st Sess. 8-10 (1949); *see also Act of 1949*, *supra* note 2, at 685 (discussion of contemporary problems in housing and slum conditions during 1940's). *See generally Slum Clearance and Public Housing*, *supra* note 6 (same).

32. Pub. L. No. 171, 1 U.S. CODE CONG. SERV. 408 (1949); *see* S. REP. No. 84, 81st Cong., 1st Sess. 1550 (1949). *See generally Act of 1949*, *supra* note 2 (discussion of housing shortage present during 1940's).

33. *See supra* notes 26-27 and accompanying text.

> [T]he general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family . . . .

42 U.S.C. § 1441 (1949). *See generally* Hauser & Jaffe, *The Extent of the Housing Shortage*, 12 LAW & CONTEMP. PROBS. 3 (1947) (discussion of housing problems during 1940's).

34. 42 U.S.C. § 1441 (1949). The statute provides:

> (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and
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> (5) governmental assistance for decent, safe and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill.

decent home and a suitable living environment for every American family . . . ."[35]

The drafters of the Housing Act determined that this goal would be attained only with the assistance of private enterprise and the government.[36] Congressional testimony indicated that the growth and persistence of urban blight had resulted, in large measure, from the inability of private enterprise to rebuild deteriorating parts of the city without financial assistance.[37] The problem of organizing several parcels under diverse ownership coupled with the high cost of such projects[38] created insuperable obstacles to private development.[39]

B. The Operation of Title I in a Particular Locality

In conjunction with private enterprise, local agencies were encouraged to provide assistance in the development of communities.[40] Title I authorized financial assistance for a local public agency to undertake a project consisting of the assembly, clearance, site preparation and sale of land for rebuilding in accordance with the area's redevelopment plan[41] and to make federal grants for as much as

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See Act of 1949, supra note 2, at 691-92. *See generally* Lashly, *supra* note 3 (discussion of Housing Act's objectives).

35. 42 U.S.C. § 1441 (1949); *see also* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1559 (1949). *See generally Slum Clearance and Public Housing, supra* note 6 (discussion of slum clearance program).

36. 42 U.S.C. § 1441 (1949); *see also* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1559 (1949). *See generally* Hillman, *Public Housing, Planning and Conservation*, 22 N.Y.U. L.Q. REV. 673, 673-76 (1947) (discussion of participation of private enterprise and local government) [hereinafter cited as Hillman]. The Committee on Banking and Currency was responsible for establishing a national housing objective and policy to provide federal aid to assist slum clearance projects and low-rent public housing projects. S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1550 (1949). The drafter of the farm housing portion of the Housing Act was the Secretary of the Agriculture. *Id.* at 1575.

37. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1559, 1560-61 (1949). *See generally* Note, *The General Housing Act of 1946*, 6 LAW. GUILD REV. 543 (1946) (discussion of contemporary slum problems during 1940's) [hereinafter cited as *General Act of 1946*].

38. The costs of such a project includes social and economic costs, land costs, demolition and relocation expenses. *See* H.R. REP. No. 590, 81st Cong., 1st Sess. 1, 13 (1949).

39. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1559, 1561 (1949); *see also General Act of 1946, supra* note 37, at 543 (discussion of housing problems of private development).

40. *See supra* note 36 and accompanying text.

41. 42 U.S.C. § 1441 (1949); *see* Hillman, *supra* note 36, at 674.

two-thirds of the net loss incurred.[42] The locality absorbed the remaining one-third of the loss.[43] Specifically, capital grants were authorized to help meet a city's losses[44] in connection with the project.[45] To provide the leverage necessary for a city to embark on these redevelopment programs, Title I attacked the obstacles of large capital outlays and high write-down costs associated with preparing slum lands for reuse.[46]

After an area had been prepared, it was to be sold or leased for uses consistent with its redevelopment plan.[47] Federal aid was to be used only to acquire and prepare the land and was not available for the actual rebuilding of an area.[48] The variety of uses permitted under local redevelopment plans[49] generally involved significantly lower land costs than would be entailed in the acquisition and clearing

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42. 42 U.S.C. § 1453, Pub. L. No. 81-171, 63 Stat. 413, 416 (1949). *See generally* Note, *Nondiscrimination Implications of Federal Involvement in Housing*, 19 VAND. L. REV. 865, 871-72 (1966) (discussion of redevelopment in particular locality) [hereinafter cited as *Nondiscrimination Implications*].

43. 42 U.S.C. § 1453, Pub. L. No. 81-171, 63 Stat. 413, 416 (1949). *See generally Nondiscrimination Implications, supra* note 42, at 871-72 (discussion concerning redevelopment in particular locality).

44. These losses, the "write-downs," consisted of the difference between the costs of acquiring the property by eminent domain, of clearing the site and of relocating site tenants and the income received at a sale to the private developer. *See generally Nondiscrimination Implications, supra* note 42, at 871-72 (discussion concerning redevelopment in particular locality).

45. 42 U.S.C. § 1452b, Pub. L. No. 81-171, 63 Stat. 413 (1949). "The Secretary is authorized, through the utilization of local public and private agencies where feasible, to make loans as herein provided to the owners and tenants of property to finance the rehabilitation of such property." *Id.*

46. 42 U.S.C. § 1453, Pub. L. No. 81-171, 63 Stat. 413 (1949).

47. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562 (1949). *See generally* Jacobs, *supra* note 7 (discussion concerning redevelopment).

48. *Id.* The only time when federal aid could be used to acquire and prepare land would be for loans to municipalities for facilities necessary to support the new uses of the land. *Act of 1949, supra* note 2, at 701. *See generally* Russell, *Federal Aid to Housing: Argument For and Against Voting Federal Funds*, 34 A.B.A. J. 89 (1948) (discussion of federal government's participation in local redevelopment program).

49. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1563-64 (1949).

> The pending bill limits Federal financial assistance to the assembly and clearance of areas which either are predominantly residential or which will be redeveloped primarily for residential use. This limitation is fully justified in view of the fact that the primary purpose of Federal aid in this field is to help remove the impact of the slums on human lives rather than simply to assist in the redevelopment or rebuilding of cities. At the same time this requirement will not interfere with the carrying out of effective local programs which will combine the clearance of slums

costs of slum areas.[50] The operation inevitably involved a loss known as the "net project cost."[51] The net project cost coupled with the need for funds to finance the initial costs of a project made it uneconomical for a private developer to complete the project on his own.[52] In addition to a $1 billion loan fund,[53] the Housing Act authorized $500 million for capital grants to compensate in part for this net loss.[54]

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with sound local plans for the development and redevelopment of communities. Most slums and blighted areas are predominantly residential in character and, in these cases, the bill would permit their redevelopment for whatever new uses are considered most appropriate by the locality. It is to be noted, of course, that here the test is whether the area is predominantly residential in "character" rather than predominantly residential in "use." Where blighted commercial or industrial areas are isolated from residential slum areas and hence must be redeveloped separately, Federal financial assistance also would be authorized for their assembly and clearance where they are to be redeveloped for predominantly residential uses. This does not mean that cases of isolated blighted areas of business, industrial or commercial use, or open land, cannot be developed for an appropriate combination of uses under the provisions of the bill . . . .

Id.

50. The evidence is also clear that the reuse value of cleared slum land will generally be substantially less than the costs of acquisition, clearance, and preparation for redevelopment, if the land is to be rebuilt at appropriate densities and in accordance with sound redevelopment plans which will prevent the recurrence of slum conditions. Experience has shown that state and local governments lack the financial resources to absorb the full cost of this necessary write-down in anything like the volume needed for the clearance of any substantial proportion of existing slums. States and cities are increasingly aware of the social costs of the slums, of threats to municipal solvency arising from the spread of slums and from the increasing spread of new building to the outskirts of cities, and of the heavy municipal outlays for city services in slum areas which greatly exceed the tax revenues derived from those areas.

Id. at 1561.

51. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1563 (1949).

52. *See supra* notes 40-46 and accompanying text; *see also* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1559, 1560-61 (1949) (discussion concerning the inability of private enterprise in coping with the slum problem). Data gathered in 1947 indicated that the U.S. had to build or rehabilitate an average of at least 1,300,000 nonfarm dwelling units, and between 200,000 and 300,000 farm units a year over the next 12 years, if substantial progress is to be made in bettering the U.S. housing conditions. U.S. BUREAU OF THE CENSUS; CURRENT POPULATION REPORTS, HOUSING CHARACTERISTICS OF THE U.S., series P-70, No. 1 (1947).

53. U.S. BUREAU OF THE CENSUS; CURRENT POPULATION REPORTS, HOUSING CHARACTERISTICS OF THE U.S., series P-70, No. 1 (1947).

54. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562 (1949). *See generally* Act of 1949, *supra* note 2; *supra* notes 48-50 (discussion of Title I's federal loan program).

To receive federal aid under Title I, a community had to meet certain statutory requirements.[55] The community had to have an authorized local agency[56] with the power to carry out the functions of a slum clearance program.[57] In addition, Title I required a detailed plan, approved by the local governing body, for the development of a project in accordance with a general community plan.[58]

The Title I projects in Manhattan were constructed pursuant to the redevelopment plan of the City of New York, which was designed to eliminate substandard housing and to provide for a suitable residential environment as required by the Housing Act.[59] Under a city's slum clearance program,[60] a committee selected a site and prepared a comprehensive plan containing all pertinent information for the redevelopment of the site.[61] The committee obtained the approval for the redevelopment plan from the City Planning Commission,[62]

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55. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562-63 (1949).

56. See *supra* note 11 for discussion of the local agency's participation in a slum clearance program.

57. The Program's goal is not only to eliminate present slums, but also to prevent their recurrence. *Id.*; *see also* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1564 (1949) (discussion of locality's participation in slum clearance program). *See generally Act of 1949, supra* note 2. The local responsibilities include: (1) the slum clearance projects are to be locally planned and executed; (2) the projects must conform with comprehensive city plans for the locality as a whole; and (3) consideration is to be given to local codes and regulations with respect to land use and minimum standards of health, safety and sanitation. S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1564 (1949).

58. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1564-65 (1949). In addition, Title I required findings that federal assistance was needed to enable the project area to be redeveloped and that a feasible method for the temporary relocation of families displaced from the project area was achieved. *Id.* at 1564; *See* Wachs, *supra* note 30. *See generally* Hillman, *supra* note 36, at 673-76 (discussion of problem of relocating families displaced by clearance of slums and construction of public improvements).

59. Each housing project had its own specific Redevelopment Plan. Each plan described the specific housing project, surrounding area and other provisions necessary to meet state and local requirements. *See Act of 1949, supra* note 2, at 701.

60. *See* H.R. REP. No. 590, 81st Cong., 1st Sess. 1, 13-14 (1949). See also *Act of 1949*, *supra* note 2, at 700-07 for a discussion involving slum clearance.

61. *See* Brief of Petitioners-Respondents at 5, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); *see also* H.R. REP. No. 590, 81st Cong., 1st Sess. 1, 17 (1949). *See generally Slum Clearance and Public Housing, supra* note 6 (discussion concerning redevelopment).

62. *See* N.Y. CITY CHARTER § 197-c (1976 & Supp. 1984). The City of New York specifically delegates to the City Planning Commission the responsibility to review "proposals and applications by any person or agency for changes, approvals, contracts, consents, permits or authorizations thereof, respecting the use, development or improvement of real property subject to City regulation . . . ." *Id.*

the Board of Estimate,[63] and the Administrator of the United States Housing and Home Finance Agency.[64] The private developer who made the highest bid for the property entered into a contract with the city,[65] which contained the restrictions and covenants necessary to carry out the purpose of the locality's slum clearance program.[66]

III. The Procedural History of Three New York City Title I Housing Projects

In recent years, many Manhattan developers have been converting their residential buildings from rental to ownership status.[67] Whether conversion was a "change"[68] in the property and thus restricted by Title I, became a critical issue on September 15, 1983 when the Board of Estimate adopted a resolution stating that its consent was required for the conversion of any property developed under Title I.[69] Prior to the adoption of the Board's resolution, three Manhattan

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63. *See* N.Y. CITY CHARTER § 67(4) (1976 & Supp. 1984). The Board of Estimate is New York City's local public agency vested with final decision-making authority concerning any changes in the use or development of city property. *Id.*

64. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1583 (1949). The Administrator of the Housing and Home Finance Administration is authorized to undertake a program of loan and subsidy assistance to communities. *Id.*

65. *See* Brief of Petitioners-Respondents, Coliseum v. Abrams, Att'y Gen., No. 15672-83 at 5 (Sup. Ct. N.Y. County 1983); *see also* Hill, *Housing—Legislative Proposals*, 12 LAW & CONTEMP. PROBS. 173, 179 (1947) (discussion concerning need of private enterprise in slum clearance programs). *See generally* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1560-61 (1949).

66. *See* Brief of Petitioners-Respondents at 5, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); *see also* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1560-61 (1949). *See generally Slum Clearance and Public Housing, supra* note 6 (discussion of guidelines implemented in slum clearance programs).

67. N.Y. Times, Mar. 2, 1984, at B4, col. 1 (discussion of the three Manhattan conversions); N.Y. Times, July 29, 1984, RE7, col. 1 (same).

68. This Note is concerned with the varying interpretations of the "change" provision in each project's redevelopment agreement. The essential question is whether a conversion from rental to ownership status constitutes a change requiring prior city approval.

69. Board of Est. Res. 76 (Sept. 15, 1983). Borough President Andrew Stein introduced the resolution stating that the Board of Estimate should hold a hearing concerning its powers of approval of condominium or cooperative conversions. The Board decided that it should have the authority to approve such conversions.

Prior to the passing of its resolution, the Board of Estimate had taken the position that no government approval or consent was required for the conversion of a project developed by a private developer without city funds or tax exemption. *See* Affirmation of Special Assistant Corp. Counsel Jeffrey E. Glen at 2, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (1983). It should be noted that in response to the position taken by the Attorney General, the City submitted the detailed

projects commenced litigation in the New York courts.[70]

A. Kips Bay Towers

Kips Bay Towers, located between First and Second Avenues and Thirtieth and Thirty-third Streets in Manhattan, consists of two twenty-story residential buildings.[71] The project was built[72] pursuant to Title I of the Housing Act and section 72-k of the New York General Municipal Law,[73] which provided the framework for slum clearance in New York.[74]

When the Board of Estimate's resolution was passed, the Kips Bay conversion plan[75] already had been commenced. Moreover, a non-resident purchaser of a Kips Bay unit had begun an action against the owners of Kips Bay alleging Title I violations.[76] Subsequently, the New York State Attorney General barred future sales

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Affirmation of Special Assistant Corp. Counsel Glen ("The Glen Affirmation"), dated Aug. 2, 1983. The Glen Affirmation stated that the City's position and opinion were to be that the "proposed change, from rental to cooperative ownership is not a 'change in land use' and thus the mandatory reference in the Redevelopment Plan is not triggered." *Id.* Nonetheless, the City, upon some reflection and subsequent to the Sept. 15, 1983 Board of Estimate resolution, reversed its position and joined the Attorney General. Brief of Petitioners-Respondents at 3-4, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983).

70. *See infra* note 14 and accompanying text. The three projects are: (1) Kips Bay Towers, (2) Coliseum Park Apartments, and (3) Park West Village. In the *Kips Bay* action, the plaintiff submitted his first complaint on June 23, 1983, and in July, 1983, both *Coliseum Park* and *Park West* commenced petitions challenging the Attorney General's determinations.

71. Kips Bay Towers Offering Plan, at 1 (May 4, 1981); *see* Affidavit of Louis A. Siegel in Support of Motion to Dismiss at 2, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983).

72. The Kips Bay Towers were built as part of the Slum Clearance Program entitled New York University-Bellevue. Third Amended Redevelopment Plan, City of New York (Sept. 22, 1964). The original agreement was entered into between University Center, Inc. and the City of New York on September 23, 1954. *Id.*

73. 42 U.S.C. §§ 1450-1469 (1949). Section 72-k of the General Municipal Law has been repealed. GENERAL MUNICIPAL LAW § 525 repealed § 72-k in 1961. The subject matter of § 72-k is now found in Article 15 of the GENERAL MUNICIPAL LAW. When it was used, § 72-k specifically provided that it could be utilized in conjunction with Title I. *See* N.Y. GEN. MUN. LAW § 72-k(3) (1949) (repealed 1961).

74. See generally *Slum Clearance and Public Housing, supra* note 6 for a discussion involving slum clearance.

75. *See infra* notes 79-89 and accompanying text.

76. *See* First Amended Verified Complaint, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983). Plaintiff, a real estate attorney, was a non-resident ("outsider") purchaser of a Kips Bay unit. The plaintiff brought suit alleging that a specific covenant running with the property, prevented a conversion from rental to cooperative status. *Id.*

at Kips Bay until the case was resolved.[77] The New York County Supreme Court held for the defendant owner, stating that condominium sales did not constitute a "change" for purposes of the Title I redevelopment agreements.[78]

The Kips Bay redevelopment agreement[79] was entered into between University Center, Inc.[80] and the City of New York.[81] Additionally,

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77. N.Y. Times, July 29, 1984, at RE7, col. 1.

78. *Kips Bay*, No. 15696-83 at 6. The issue is whether a conversion from residential rental status to residential ownership constitutes a "change" as defined by Title I. If it is found to be a "change," then the conversion, by law (Title I), should be void. *See generally* Kamer, *Conversion of Rental Housing to Unit Ownership—A Noncrisis*, 10 REAL EST. L.J. 187 (1982) (discussion concerning conversions from rental housing to residential ownership) [hereinafter cited as Kamer].

79. Section 510 of the Kips Bay redevelopment agreement provides for the rights and obligations of the Kips Bay developer.

> Any deed of conveyance executed by the City in pursuance of this Agreement shall, in addition to any other provisions and covenants, contain covenants on the part of the grantee for itself, its successors and assigns of the land conveyed or any part thereof, and any lessee of the land conveyed or any part thereof, which covenants shall be covenants running with the land, to effectuate the following:
>
> (a) a covenant that the grantee, its successors and assigns of the land conveyed or any part thereof and any lessee of the land conveyed or any part thereof will and shall carry out the housing project as in this Agreement provided, and will and shall devote such land to the uses specified in the Redevelopment Plan contained in Schedule A of this Agreement as said Plan may exist from time to time. Said covenant is to run for a period of forty (40) years from the completion of the housing project. . . .
>
> (b) a covenant that for a period of forty (40) years from the completion of the housing project . . ., the land conveyed shall not be used for any use other than the uses specified therefor in the Redevelopment Plan contained in Schedule A attached to this Agreement or contrary to any limitations or requirements of said Redevelopment Plan.
>
> (c) a covenant that for the period of forty (40) years from the completion of the housing project no change shall be made in the housing project as set forth in the Redevelopment Plan contained in Schedule A of this Agreement, without the consent of the City Planning Commission and the Board of Estimate of the City or of the respective successors of said Commission and Board . . . .

Kips Bay Redevelopment Agreement, § 510.

80. University Center, Inc. was the initial sponsor of the Kips Bay Property. Third Amended Redevelopment Plan, City of New York, No. U R N.Y. 4-12 (Sept. 22, 1964).

81. The original agreement between the Kips Bay developer and the City of New York was entered into on Sept. 23, 1954. *See* Hillman, *supra* note 36, at 674 (discussion of local public housing authority).

a corresponding agreement relating to Kips Bay was entered into between the City of New York and the federal government.[82] This agreement, which set forth the framework of the federal government's participation in the Kips Bay project[83] according to the Housing Act, provided that no federal money would be used to construct the buildings themselves; federal funds were to be used only for land acquisition, slum clearance and minor site improvements.[84]

The present owners purchased the Kips Bay Towers property in 1980[85] pursuant to section 505 of the amended redevelopment agreement,[86] which permitted a sale without the Board of Estimate's consent.[87] In 1981, the Attorney General of New York State accepted

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82. The federal agreement was entered into by the City of New York and the federal government on Sept. 23, 1954. *See generally* Robinson & Weinstein, *The Federal Government and Housing*, 1952 WIS. L. REV. 581 (1952) (discussion concerning federal government's participation in local housing programs) [hereinafter cited as Robinson].

83. Section 4 of the federal agreement sets forth the framework of the federal government's participation in Kips Bay under Title I and defines the "housing project" as consisting of:

> (1) The acquisition by the Local Public Agency [defined as the City of New York] of all such land in the Project Area as shall be necessary to carry out the Project Redevelopment Plan. . . . (2) the demolition and removal of any buildings and improvements in the Project Area to the extent necessary. . . . (3) the installation, construction and reconstruction of streets, utilities, and other site improvements essential to the preparation of sites in the Project Area for uses in accordance with the Project Redevelopment Plan; and (4) the making by the Local Public Agency of Project Land available for development or redevelopment by private enterprise or public agencies . . . at its fair value for uses in accordance with the Project Redevelopment Plan: Provided, That the Project shall not include the construction of any of the buildings contemplated by the Project Redevelopment Plan.

Id.

84. *See supra* notes 26-66 and accompanying text. *See generally Act of 1949, supra* note 2 (discussion concerning guidelines of use of federal funds for slum clearance).

85. N.Y. Times, July 29, 1984, at RE7, col. 1.

86. *See* Third Amended Agreement of the Initial Kips Bay Redevelopment Agreement, City of New York (Dec. 9, 1966). The City of New York and the Kips Bay developer were parties to the redevelopment agreement. *Id.*; *see also* Affidavit of Louis A. Siegel in Support of Motion to Dismiss, Kramer v. Kips Bay, No. 15696-83 at 12 (Sup. Ct. N.Y. County 1983).

87. The original redevelopment agreement has been amended three times since 1954: first in 1960, second in 1962, and for the third time in 1966. The Dec. 9, 1966 amendment revoked the second agreement which was in effect. Affidavit of Louis A. Siegel in Support of Motion to Dismiss, *Kips Bay*, No. 15696-83 at 12 (Sup. Ct. N.Y. County 1983).

An essential change of the third amended agreement involved the substitution of Section 505 which listed the circumstances in which the sponsor could make

the condominium conversion plan for filing.[88] Since the conversion was to be accomplished pursuant to a non-eviction plan, any tenants of Kips Bay at the time the plan became effective could remain as tenants indefinitely and would not have to purchase their units. After the lower court ruling was upheld in favor of the owners, the Kips Bay conversion plan resumed.[89]

B. Coliseum Park Apartments

The second conversion plan currently involved in Title I litigation involves the Coliseum Park Apartments, which are located at West 58th and West 60th Streets between Eighth and Ninth Avenues. The Board of Estimate, pursuant to its 1983 resolution,[90] prevented Coliseum Park's conversion plan from commencing.[91] The sponsor of

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changes *without* the Board of Estimate's consent. The new section 505 provided:

> [T]he Sponsor may, without consent or approval of the Board of Estimate: (a) after obtaining a certificate of occupancy for each of the two apartment buildings and two store buildings to be constructed on the Housing Site, sell its interest in any or all of said buildings and/or in the land on which same have been constructed. . . .

Third Amended Agreement of the Initial Kips Bay Redevelopment Agreement, City of New York (Dec. 9, 1966).

88. The two twenty-story towers were converted to condominiums in December, 1981 under a non-eviction plan which protected rental tenants not wishing to purchase their apartments. Kips Bay Towers Offering Plan (May 4, 1981). Under a non-eviction plan, existing tenants remain in occupancy and are not obliged to purchase their apartment units. Those not purchasing retain all the rights of tenants as if ownership had never been changed and those purchasing may elect to remain in occupancy or sell or rent their units. *Id.*; *See* N.Y. GEN. BUS. LAW § 352-eeee(1)(b) (McKinney Supp. 1983-84). The statute defines a non-eviction plan as one that:

> may not be declared effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units in the building . . . by bona fide tenants in occupany or bona fide purchasers who represent that they intend that they or one or more members of their immediate family intend to occupy the unit when it becomes vacant. As to tenants who were in occupancy on the date a letter was issued by the attorney general accepting a plan for filing, the purchase agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements.

Id. Compare this definition with the definition of an eviction plan quoted in note 104 *infra*.

89. To date, no appeal has been brought before the New York courts. Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983); *see also* N.Y. Times, July 29, 1984, at RE7, col. 1; Real Estate Weekly, Oct. 1, 1984, at 1, col. 1.

90. *See supra* note 69 and accompanying text.

91. N.Y. Times, Mar. 2, 1984, at B4, col. 1.

the conversion sued to overturn the Board of Estimate's ruling requiring the owner to seek city approval for the conversion of the project from a Title I rental to cooperative apartments.[92] The New York County Supreme Court held for the owners and permitted the conversion to begin.[93] The decision was unanimously affirmed in the Appellate Division, First Department.[94] Presently, the *Coliseum* litigation is pending in the Court of Appeals for consideration of "questions of law."[95]

In the 1950's, the Columbus Circle area, which consisted of deteriorating and overcrowded tenement houses, parking lots and commercial and miscellaneous buildings in various stages of decay, was viewed as a slum area desperately in need of redevelopment.[96] The Coliseum Park Apartments were constructed pursuant to a redevelopment plan as part of the Columbus Circle Slum Clearance Project.[97] The redevelopment plan[98] also provided for the construction of two modern apartment buildings, a civic center, now the New York Coliseum, to house conventions, exhibitions and other public functions, and a public garage to ease the parking problem in the area.[99] In December, 1952, the Columbus Circle Slum Clearance

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92. *See supra* note 69 and accompanying text; *see also* N.Y. Times, Mar. 2, 1984, at B4, col. 1. The issue in the case was whether there was a prohibited change in "land use" or an "increase in density." *See generally* Garfinkel, *supra* note 17 (discussion concerning condominiums); Note, *Co-operative Apartment Housing*, 61 HARV. L. REV. 1407 (1948) (discussion involving cooperatives).

93. *Coliseum*, No. 15672-83 (Sup. Ct. N.Y. County 1983). The New York County Supreme Court held that there was no change; the use was to remain residential. *Id.* at 5

94. Coliseum v. Abrams, Att'y Gen., No. 15672-83 (App. Div. 1st Dep't 1984).

95. The questions of law concerned whether a conversion from rental to ownership status constituted a "change" as interpreted by the N.Y. City redevelopment agreements drafted pursuant to Title I. *See* Brief for Appellant City of New York, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Ct. App. 1985).

96. Brief of Petitioners-Respondents at 5-6, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983). The Columbus Circle Slum Clearance project is a local program. For a discussion concerning a similar program, see Siegel, *Slum Prevention—A Public Purpose*, 35 CHI. B. REC. 151 (1954) [hereinafter cited as Siegel].

97. Brief of Petitioners-Respondents at 5, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983).

98. The redevelopment plan was instituted to effectuate the clearance, replanning, reconstruction and rehabilitation of substandard housing in the area. S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562-63. *See* H.R. REP. No. 590, 81st Cong., 1st Sess. 1, 11-13 (1949). *See generally* Hill, *Recent Slum Clearance and Urban Redevelopment Laws*, 9 WASH. & LEE L. REV 173 (1952) (discussion of effect of redevelopment laws on local slum clearance programs) [hereinafter cited as Hill].

99. Brief of Petitioners-Respondents at 6, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983).

Redevelopment Plan was approved by the Board of Estimate.[100] The plan presented details relating to location, boundary map, land use map, proposed zoning, proposed site plan, tenant relocation, cost estimates and a financial plan.[101]

On April 5, 1983, the New York State Attorney General[102] accepted a plan for cooperative conversion of the Coliseum buildings.[103] The plan provided that, on the closing date, Coliseum Park would convey its leasehold interest in the land and buildings to its tenants.[104] On June 7, 1983, Coliseum Park was informed that the redevelopment plan would require approval by the Board of Estimate and the City Planning Commission.[105] In addition, the Attorney General stated

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100. *Id.* at 8; *see also* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1564-65 (1949) (discussion of local responsibility to redevelopment plan). *See generally* Jacobs, *supra* note 7 (discussion concerning redevelopment and urban renewal); *Nondiscrimination Implications, supra* note 42 (same).

101. Brief of Petitioners-Respondents at 8, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); *see* redevelopment plan of Coliseum Park Apartments, City of New York (1952). *See generally* Jacobs, *supra* note 7; *Nondiscrimination Implications, supra* note 42.

102. N.Y. GEN. BUS. LAW § 352-e(6)(a) (McKinney 1968) authorizes the Attorney General to promulgate regulations to implement the statutory requirements of disclosure in the prospectus including regulations providing for the "method, contents and filing procedures" of the offering. *Id.*

103. *See* Brief of Petitioners-Respondents, Coliseum v. Abrams, Att'y Gen., No. 15672-83 at 11 (Sup. Ct. N.Y. County 1983); *see also* N.Y. Times, July 29, 1984, at RE7, col. 1; N.Y. Daily News, Apr. 27, 1984, at CL1, col. 1.

104. The Coliseum tenants comprised the proposed apartment corporation. The Plan was presented to the tenants on April 8, 1983. The Redevelopment Plan would become effective if, within fifteen months after such presentation to the tenants, at least fifty-one percent of such tenants committed themselves to purchase such shares of Coliseum Tenants as were allocated to their respective apartments. Brief of Petitioners-Respondents at 11, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983). The Coliseum plan was an eviction plan. N.Y. GEN. BUS. LAW § 352-eeee(1)(c) (McKinney Supp. 1983-1984) defines an eviction plan as one that:

> can result in the eviction of a non-purchasing tenant by reason of the tenant failing to purchase . . . and which may not be declared effective until at least fifty-one percent of the bona fide tenants in occupancy . . . on the date the offering statement or prospectus was accepted for filing by the attorney general (excluding, for the purpose of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and eligible disabled persons) shall have executed and delivered written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory inducements.

Id. Compare this definition with the definition of a non-eviction plan quoted in note 88 *supra*. Thus, if 51% of all bona fide tenants in occupancy desire to purchase apartments under an eviction plan, the conversion should take place.

105. *See supra* note 69 and accompanying text; *see also* Brief of Petitioners-

that he intended to revoke his acceptance of the Coliseum Plan within ten days unless Coliseum Park filed an amendment which agreed to provide these approvals.[106] As the plaintiff had alleged in *Kips Bay*, the Attorney General based his position on a provision of the redevelopment agreement, which provided that no change would be made on the land for forty years without the City's approval.[107] No agreement between the Coliseum sponsor and the City of New York relating to the Coliseum Park conversion plan was achieved, and the present lawsuit was commenced.[108]

C. Park West Village

The third housing project currently consumed in Title I litigation is Park West Village,[109] which is situated between Ninety-sixth and One-hundredth Streets and between Central Park West and Amsterdam Avenue.[110] Park West Village, which consists of seven residential buildings, was completed in the early 1960's[111] pursuant to a redevelopment plan dated June 25, 1964.[112] The objective of the plan was to rehabilitate this slum area, which was overcrowded with deteriorated tenements.[113] The plan called for construction of a

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Respondents, Coliseum v. Abrams, Att'y Gen., No. 15672-83 at 1-2 (Sup. Ct. N.Y. County 1983); N.Y. Times, Mar. 2, 1984, at B4, col. 1; N.Y. Daily News, Apr. 27, 1984, at CL1, col.1.

106. Brief of Petitioners-Respondents, Coliseum v. Abrams, Att'y Gen., No. 15672-83 at 11-12 (Sup. Ct. N.Y. County 1983); *see also* N.Y. Times, Mar. 2, 1984, at B4, col. 1; N.Y. Daily News, Apr. 27, 1984, at CL1, col. 1.

107. See *supra* note 79 and accompanying text for a discussion of § 510 of the Kips Bay redevelopment agreement. This section is identical to § 510 of the Coliseum redevelopment agreement, on which the Attorney General based his position.

108. Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983).

109. Like the Coliseum Park plan, the Park West conversion agreement was prohibited from commencing without prior Board of Estimate approval. N.Y. City Dept. of Law Resolution letter (June 10, 1983). This letter was sent to the *Park West* sponsor. The letter stated that "the Offering Plans for the conversion of the [Park West] buildings from rental status to condominim ownership could not be accepted for filing without the prior written approval, or a waiver thereof, of the Board of Estimate and the City Planning Commission of the City of New York." *Id.* See Oct. 13, 1983 letter to Kips Bay conversion sponsor which is virtually identical to the letter sent to the Park West and Coliseum sponsors.

110. *See* Redevelopment Plan of Park West Village, City of New York (1952).

111. *Id.*

112. The June 25, 1964 plan was an amended redevelopment plan. The original plan was passed on February 1, 1952. Brief of Petitioners-Respondents at 4, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

113. *Id.* at 3. For a discussion concerning slums, see Johnstone, supra note 5.

residential housing development which would be privately built.[114]

On May 17, 1983, Park West's owners submitted their non-eviction plan[115] to the Attorney General for filing.[116] On June 10, 1983, the Attorney General informed Park West that its conversion plan could not be accepted without the City's prior approval.[117] The Park West sponsors brought suit to overturn the City's resolution.[118] The New York County Supreme Court rejected the Attorney General's determination and held for the sponsor.[119] The court stated that neither the terms of the redevelopment agreement nor the plan required City consent prior to conversion.[120] The decision was unanimously affirmed by the Appellate Division, First Department.[121] Presently, the *Park West* litigation is in the Court of Appeals for determinations of "questions of law."[122]

IV. The Interpretation of "Change" Under New York City Redevelopment Agreements Pursuant to Title I

The language of the three conversion plans suggests that city approval is necessary for any change made in the property during a forty-year period.[123] At issue is whether a conversion from rental

114. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1551 (1949); *see also* Siegel, *Real Property Law and Mass Housing Needs*, 12 LAW & CONTEMP. PROBS. 30, 35-7 (1947) (discussion of general redevelopment programs).

115. See *supra* note 88 and accompanying text for a discussion of non-eviction plans. *See generally* Garfinkel, *supra* note 17 (discussion of condominiums).

116. See *supra* note 88 for a discussion concerning non-eviction plans. *See* N.Y. Times, Mar. 2, 1984, at B4, col. 1; N.Y. Daily News, Apr. 27, 1984, at CL1, col. 1; *see also* Brief of Petitioners-Respondents at 5, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

117. *See supra* note 116 and accompanying text.

118. *Id.*

119. *Id.*

120. The *Park West* court noted: "[I]t seems clear that the 'changes' requiring prior approval, as specified by the Agreement to which both the City of New York, and Manhattantown, Inc. [the original developer] were parties, and which controls the rights and responsibilities of [Park West] as a successor to Manhattantown, were the changes set forth in the general statement . . . of the Redevelopment Plan." Park West v. Abrams, Att'y Gen., No. 16526-83, at 14 (Sup. Ct. N.Y. County 1983).

121. Park West v. Abrams, Att'y Gen., No. 16526-83 (App. Div. 1st Dep't 1984).

122. The questions of law concerned whether a conversion from rental to ownership status constituted a "change" as interpreted by the N.Y. City redevelopment agreements drafted pursuant to Title I. *See* Brief of Appellant City of New York, Park West v. Abrams, Att'y Gen., No. 16526-83 (Ct. App. 1985).

123. See *supra* note 79 and accompanying text for a discussion of the critical redevelopment agreement section. The respective sections are: (1) Kips Bay Towers-§ 510c; (2) Coliseum-§ 510b; and (3) Park West-§ 509b.

to cooperative or condominium ownership constitutes a "change" requiring prior city approval under Title I.[124] Interpreting this provision to include a change in ownership status would effectively disallow thousands of New York City apartment unit conversions about to be or already completed.[125]

The City of New York contends that the term "change" refers to any changes in ownership status.[126] Private developers, who are the sponsors of the conversions of these Title I projects, argue that "change" specifically refers to differences in land use and density and is not concerned with ownership status.[127] The lower court decisions in the three Title I projects have stated that "change" has a restricted definition concerned only with modifications in land use and density.[128]

A. Attorney General/City of New York View

The Attorney General and the City argue that Title I was intended to subsidize a locality's acquisition of slum parcels which were subsequently sold to private developers at moderate or below market costs.[129] The City believed that private developers could not develop such parcels profitably on their own.[130] Title I authorized a locality to require a developer to demonstrate that a government subsidy[131] was necessary to undertake profitably the clearance of a particular housing project.[132] The City claimed that had these buildings orig-

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124. *See* Kamer, *supra* note 78 (discussion concerning conversions from rental housing to ownership units); *see also infra* notes 129-94 and accompanying text.

125. N.Y. Times, July 29, 1984, at RE7, col. 1.

126. See *infra* notes 129-59 and accompanying text for discussion of the Attorney General's and the City of New York's argument. Specifically, their argument is based on the premise that a conversion from rental to ownership status is a "change" as defined under Title I.

127. *See infra* notes 160-94 and accompanying text. *See generally* Lehmann, *Are Condominium projects subject to local land use codes?*, 55 WIS. B. BULL. 19 (No. 5 1982) [hereinafter cited as Lehmann].

128. *See* Kramer v. Kips Bay Towers Assoc., No. 15696-83 (Sup. Ct. N.Y. County 1983); Coliseum Park v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

129. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562-63, 64-65, 66-71 (1949). *See generally* Hill, *supra* note 98 (discussion of mechanics of local redevelopment programs).

130. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562-63, 64-65, 66-71 (1949). *See generally* Lashly, *supra* note 3 (discussion of government aid to local redevelopment programs).

131. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562-63 (1949).

132. 42 U.S.C. § 1441a (1949) (discussion of Housing Act's objective of aiding "deteriorating" areas); *see* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1566-67

inally been designated as condominiums or cooperatives,[133] the projects would have been ineligible for government subsidies because they would have resulted in huge profits to the developers who would not have needed the government aid.[134] Therefore, the nature of the ownership of each apartment was a fundamental component of each project, and the conversion of the property interests from rental to condominium constituted a "change" in the project.[135] Because of this change in ownership status, the City and Attorney General alleged that the housing projects would not have been eligible for federal funds in the first instance.[136]

In the *Kips Bay* litigation, for example, the plaintiff alleged that the redevelopment plan contained numerous references to rental housing and no mention of cooperatively-owned housing.[137] The plaintiff also argued that the entire agreement, including the redevelopment plan, should be considered[138] in determining the validity of the "change" provision.[139] The *Kips Bay* plaintiff opposed the conversion because, in his words, "Title I was people-oriented and was not primarily concerned with land use and density."[140]

(1949). *See generally* Hill, *supra* note 98 (discussion of requirements for locality to receive federal aid).

133. See *supra* note 17 and accompanying text for a definition of a condominium and a cooperative.

134. *See* Brief of Appellant City of New York at 18, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983) (discussion of City's and Attorney General's argument that Title I projects were intended to be rental buildings).

135. *See* Whalen v. Lefkowitz, 36 N.Y.2d 75, 324 N.E.2d 536, 365 N.Y.S.2d 150 (1975). The New York State Court of Appeals characterized a conversion to condominium status as "an extensive change of operation." *Id.* at 77, 324 N.E.2d at 538, 365 N.Y.S.2d at 152. *See generally* Yourman, *supra* note 17 (discussion involving cooperatives).

136. The City applied this argument in its brief. *See* Brief of Appellant City of New York at 18, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); *see also* H.R. REP. No. 590, 81st Cong., 1st Sess. 1, 15-16 (1949) (discussion of federal loan assistance).

137. *See supra* note 76 and accompanying text. *See generally* Yourman, *supra* note 17 (discussion involving cooperatives).

138. This point was made by David A. Goldstein, plaintiff Kramer's attorney. *See* Argument of Motions at 32, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983).

139. In contrast, the Kips Bay owners took the position that one need only look to the redevelopment plan. They contended that the redevelopment agreements did not involve the question of rental versus condominium ownership, but only involved the issues of land use and density. *See* Reply Affidavit of Louis A. Siegel in Support of Motion to Dismiss, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983).

140. Argument of Motions at 35, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct.

The City's arguments in *Coliseum* and *Park West* are analogous to the *Kips Bay* plaintiff's argument.[141] In both cases, the City argued for a broad construction of the statute[142] maintaining that the Board of Estimate contemplated that only rental housing would be built at the three property sites.[143] According to the Attorney General and the City, the references to "rent" support the contention that the housing projects were to be operated only as rental developments[144] designed to meet the needs of low and middle income people.[145] This argument has been recognized by the New York courts.[146]

The City and the Attorney General suggest that the covenant concerning "change" should be broadly interpreted to require mu-

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N.Y. County 1983). David A. Goldstein, plaintiff's attorney, stated:

> I say . . . that the National Housing Act and the slum clearance legislation under it for this particular project was people-oriented, not building oriented, as an end. The number of buildings, the number of apartments was a means to an end. The end was to provide housing in an emergency situation with a terrific shortage after World War II for people. The majority of the people that this project was designed to house was people earning between $3500 and $6500 a year, not exactly the type of people that are able to buy luxury expensive condominiums.

Id.

141. *See* Brief of Appellant City of New York, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Brief of Appellant City of New York, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

142. See *infra* note 148 and accompanying text for discussion of contract principle that states that a contract should be interpreted in a way which gives each provision meaning.

143. *See* Brief of Appellant City of New York at 10-12, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983). *See generally* Day & Fogel, *The Condominium Crisis: A Problem Unresolved*, 21 URB. LAW ANN. 3 (1981) (discussion of background history of condominiums).

144. *See* Brief for Appellant City of New York, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Ct. App. 1985). *See generally* Kamer, *supra* note 78 (discussion of rental unit conversions into cooperatives and condominiums).

145. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1555-57 (1949) (discussion concerning housing needs). *See generally* Lashly, *supra* note 3 (discussion of slum clearance programs to benefit the poor).

146. *See* Dowsey v. Village of Kensington, 257 N.Y. 221, 225, 177 N.E. 427, 428 (1931) (court invalidated zoning ordinance intended to prevent "intrusion of . . . apartment buildings" and to preserve rural quiet of village); *see also* Berenson v. Town of New Castle, 38 N.Y.2d 102, 341 N.E.2d 236, 378 N.Y.S.2d 672 (1975) (court invalidated local zoning ordinance that excluded multi-family residential housing from affluent suburb of New York City). In proceedings to enforce the New York State Court of Appeal's decision in *Berenson*, the Appellate Division, First Department, held that zoning changes mandated by the special term were inconsistent with the New York State Court of Appeal's decision because they "cannot and [do] not insure that any of the multi-family units to be constructed will be anything other than luxury condominiums." 67 A.D.2d 506, 521, 415 N.Y.S.2d 669, 678 (2d Dep't 1979).

nicipal consent for any attempt by a sponsor to alter its predecessor's contractual obligation to "carry out the housing project" as agreed, including profitable conversions.[147] Basic contract law dictates that all provisions of a contract be interpreted in a way which gives each provision meaning.[148] The favored interpretation is the one which will make every part of the contract effective.[149]

In these cases, the Attorney General and the City allege that the entire agreement, including the deed and the redevelopment plan, come under the authority of the City.[150] Therefore, the City believes that the lower court decisions in the conversion cases, that only the subparagraph of the redevelopment plans explicitly requiring approval for changes in land use and density be given effect,[151] conflict with the intent of the parties to the contracts.[152] The redevelopment plans do make clear that changes in land use and density are changes which require approval.[153] However, the Attorney General and the

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147. *See infra* note 148 and accompanying text.

148. *See* Fleischman v. Furgueson, 233 N.Y. 235, 119 N.E. 400 (1918). In *Fleischman*, the lower court interpreted a separation agreement in a way which rendered certain phrases meaningless. The New York State Court of Appeals reversed and held that such a "conclusion violates a well known rule of construction applicable to instruments of doubtful meaning . . . ." 223 N.Y. at 239, 119 N.E. at 401; *see also* Muzak Corp. v. Hotel Taft Corp., 1 N.Y.2d 42, 133 N.E.2d 688, 150 N.Y.S.2d 171 (1956) (dispute concerning interpretation of rental agreement). *See generally* J. CALAMARI AND J. PERILLO, CONTRACTS 1-3 (2d ed. 1977) (contract is legally enforceable agreement; it is a given complex of words and acts which are legally enforceable); CORBIN, CORBIN ON CONTRACTS 1-6 (1st ed. 1952) (same); FARNSWORTH, CONTRACTS 3-6 (1st ed. 1982) (same).

149. *Fleischman*, 223 N.Y. at 239, 119 N.E. at 401.

150. The City and the Attorney General make this conclusion by utilizing the principle of contract construction that all provisions of a contract should be interpreted in a way which gives each provision meaning; *see supra* note 148. *See* Brief of Petitioners-Respondents, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Brief of Petitioners-Respondents, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

151. See *supra* note 79 and accompanying text for a discussion of § 510 of the Kips Bay redevelopment agreement. Section 510 of Coliseum's agreement and § 509 of Park Wests' agreement are identical to that of Kips Bay. *See generally* Lehmann, *supra* note 127, (discussion analyzing land use requirements).

152. The basis of the Attorney General's and City's argument was that the "change" provision in each redevelopment agreement was not to be restrictive. See *supra* note 79 for the text of the "change" provision. *See* Brief of Appellant City of New York, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Brief of Appellant City of New York, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983). Plaintiff takes an identical position. *See* Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983).

153. *See supra* note 79 and accompanying text. *See generally* Lehmann, *supra* note 127 (discussion concerning land use requirements).

City of New York argue that to limit the application of the "change" provision in each agreement to land use and density is contrary to the well-settled rule that a contract should be interpreted in a way which gives each provision meaning.[154]

The City alleged that a transfer of the entire property from one landlord to another does not constitute a "change" of the housing plan because the status of the tenants and the housing project could remain unaffected by such transfer.[155] For example, if the building's managing agent remained the same and rental payments were made directly to the managing agent, the tenants would have no idea that a transfer between two landlords had taken place.[156] The City argued that conveyances of Title I projects, as in the above hypothetical, could occur without Board of Estimate approval and that this result would not be contrary to the intentions of the Title I statute.[157]

The City claims that the conversion of the ownership status of property from a landlord to numerous individual condominium owners is a fundamentally different transaction.[158] As such, the housing project would be fundamentally changed if the conversion plan were

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154. *See supra* notes 148-50 and accompanying text (discussion of principles of contract construction).

155. The City made this contention in its argument. *See* Brief of Appellant City of New York at 21, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Brief of Appellant New York State Attorney General at 36-37, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983). The *Kips Bay* plaintiff also made this argument. *See* Plaintiff's Memorandum of Law in Opposition to Motion to Dismiss, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983). *See generally* Note, *Conversion into Condominiums of Governmentally-Assisted Multi-Family Projects*, 16 REAL PROP. PROB. & TR. J. 644 (1981) (discussion of condominium conversions).

156. The New York State Attorney General raised this argument. *See* Brief of Appellant Attorney General at 36, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

157. *See supra* note 155 and accompanying text. The City alleges that Board of Estimate approval is essential for a condominium or cooperative conversion to take effect. *See* Brief of Appellant City of New York at 21, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Brief of Appellant City of New York at 36-37, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983). The Board of Estimate is New York City's local public agency vested with final decision-making authority concerning any changes in the property. *See* N.Y. CITY CHARTER § 67(b).

158. Brief of Appellant Attorney General at 36, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983). *See generally* Kamer, *supra* note 78 (discussion concerning condominium conversions). Among the distinguishing characteristics are the following:

> 1) A conversion of residential rental property to [condominium] ownership is closely regulated by statute. A transfer from one landlord to another is not. 2) The conversion to condominium ownership often results in

put into effect. Therefore, they claim that city approval is a prerequisite to the conversion.[159]

B. The Owner/Sponsors' View

The conversion sponsors' argument is based on the premise that the "change" covenant is unambiguous and clear on its face.[160] They argue that the agreement concerns land use and not the form of ownership.[161] Thus, the sponsors allege that the redevelopment agreement of each housing project is not affected by a conversion from rental to ownership status.

Furthermore, the owners claim that the law does not favor restrictive covenants which interfere with the free use of real property.[162] It has long been held that restrictive covenants are to be construed strictly against those who seek to enforce them.[163] The owners allege

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> recapitalization of the building at a much higher amount. 3) A conversion to condominium ownership results in a change in the form of ownership of the land. A single owner of the entire apartment building is replaced by numerous owners of individual apartments, each of whom also owns an undivided interest in the common areas. 4) Separate tax lot numbers must be issued for each individual apartment in a condominium. 5) Each apartment in a [condominium] is subject to [separate] financing arrangements. 6) A Board of Managers, made up of elected unit owners, manages the common areas of the building. 7) The building functions with rules and regulations, and covenants in each unit owner's deed, in addition to or instead of the landlord-tenant laws.

Brief of Appellant Attorney General at 36-37, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

159. *See supra* note 155, 157 and accompanying text. *See generally* Garfinkel, *supra* note 17 (discussion concerning requirements of conversion plan).

160. Memorandum in Support of Defendant's Motion to Dismiss Complaint at 11, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983).

161. *Id. See generally* Lehmann, *supra* note 127 (discussion concerning local land use regulation on condominiums).

162. Memorandum in Support of Defendant's Motion to Dismiss Complaint at 11, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983); *see* Huggins v. Castle Estates, Inc., 36 N.Y.2d 427, 330 N.E.2d 48, 369 N.Y.S.2d 80 (1975); Single v. Whitmore, 307 N.Y. 575, 122 N.E.2d 918 (1954); Premium Point Park Ass'n v. Polar Bar, Inc., 306 N.Y. 507, 119 N.E.2d 360 (1954); Buffalo Academy of Sacred Heart v. Boehm Bros., Inc., 267 N.Y. 242, 196 N.E. 42 (1935); Etkin v. Hyney, 32 A.D.2d 704, 299 N.Y.S.2d 862 (3d Dep't 1969). *See generally* BOYER, SURVEY OF THE LAW OF PROPERTY 556 (3d ed. 1981) (discussion concerning restrictive covenants) [hereinafter cited as BOYER]; BURBY, REAL PROPERTY 97-108 (3d ed. 1965) (same) [hereinafter cited as BURBY].

163. In *Huggins*, the New York State Court of Appeals stated:

> At the outset we note that the policy of the law is to favor the free and unobstructed use of realty and that covenants restricting the use of property will be strictly construed against those seeking to enforce them.

that the City of New York cannot meet this burden since the covenant does not clearly prohibit conversion to condominium ownership.[164] Such covenants must not be given a construction beyond the literal meaning of the terms.[165]

The owners contend that the meaning of the provision is limited to land use.[166] After examining the meaning of a "housing project,"[167] the owners claim that not only is the covenant concerned with changes of land use rather than the form of ownership but also that the context in which it appears in the respective redevelopment agreements eliminates any possible argument to the contrary.[168] The sponsor is required to develop the housing project only for the uses

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> The burden of proof is on the party endeavoring to enforce a restrictive covenant and must be met by more than a doubtful right. Only where it has been established by clear and convincing proof will our court impose such a restriction.

36 N.Y.2d at 430, 330 N.E.2d at 51, 369 N.Y.S.2d at 84; *see* BOYER, *supra* note 162, at 546-50 (discussion concerning restrictive covenants); BURBY, *supra* note 162, at 72 (same).

164. 36 N.Y.2d at 430, 330 N.E.2d at 51, 369 N.Y.S.2d at 84.

165. Buffalo Academy of Sacred Hearts v. Boehm Bros., Inc, 267 N.Y. at 249, 196 N.E. at 44; *see also* Single v. Whitmore, 307 N.Y. at 583, 122 N.E.2d at 923. *See generally* BOYER, *supra* note 162, at 539-43; BURBY, *supra* note 162, at 100-02.

166. *See* Brief of Petitioners-Respondents at 22-27, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Brief of Petitioners-Respondents at 23-27, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983); Reply Memorandum in Further Support of Defendant's Motion to Dismiss the Complaint at 13-16, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983). *See generally* Lehmann, *supra* note 127 (discussion concerning land use restrictions on condominiums).

167. The definition of each housing project (e.g. the description of the building and its surrounding area) is located in each property's redevelopment plan.

168. *See supra* note 79 and accompanying text. The three redevelopment agreements require the sponsor to devote the land "to the uses specified in the Redevelopment Plan" and for the land to "not be used for any use other than the uses specified . . . in the Redevelopment Plan." *See* Kips Bay Redevelopment Agreement § 510; Coliseum Redevelopment Agreement § 510; Park West Redevelopment Agreement § 509; *see also* Premium Point Park Ass'n v. Polar Bar, Inc., 306 N.Y. 507, 119 N.E.2d 360 (1954). In *Premium Point Park*, the defendant opened a refreshment stand on a lot. The stand utilized only a small portion of the lot, and the remainder was used as parking spaces for customers. The lot was subject to a restrictive covenant which prohibited it from being used for "a commercial garage, or automobile parking lot." 306 N.Y. at 510, 119 N.E.2d at 361. Despite these facts, the court held that the covenant was not violated by the use of the space for parking, relying on the context in which the words appeared in the covenant:

> While the term "parking lot" taken by itself may be ambiguous, it may not be so regarded when considered in its present context. When read, as it must be, in conjunction with the term "commercial garage" and

specified.[169] These uses include the construction of fireproof multiple dwellings, retail stores and office space.[170]

A restriction on land use[171] is entirely different from one affecting the form of land ownership.[172] The New York State Court of Appeals has held that zoning deals with land use and not with the person who owns or occupies it.[173] Although the present situation does not involve a zoning question, the owners make the argument by analogy that Title I is not relevant to forms of ownership.[174]

Several Title I provisions strongly support the view that the covenant is concerned solely with changes in land use. Section 110, Title I's definitional section, describes a redevelopment plan as one

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> in the light and against the background of the covenant as a whole, its significance is plain and unambiguous. By prohibiting a "commercial garage," the parties clearly indicated their intent that the property should not be used for the *business* of storing automobiles for a stipulated rental . . . . By parity of reasoning, the parking lot prohibited is one conducted and operated in and of itself as a commercial venture, as an independent enterprise, apart from the business of selling comestibles.

Id. at 511, 119 N.E.2d at 361-62.

169. See *supra* notes 166-68 and accompanying text for a discussion on land uses. *See also Kips Bay* § 510; *Coliseum* § 510; *Park West* § 509.

170. See *supra* notes 166-69 and accompanying text for a discussion of specific land uses.

171. *See supra* note 166 and accompanying text. *See generally* Garfinkel, *supra* note 17 (discussion of land use requirements); Lehmannn, *supra* note 127 (same).

172. *See, e.g.,* Dexter v. Town Bd. of Town of Gates, 36 N.Y.2d 102, 324 N.E.2d 870, 365 N.Y.S.2d 506 (1975); Weinrib v. Weisler, 33 A.D.2d 923, 307 N.Y.S.2d 603 (2d Dep't), *aff'd,* 27 N.Y.2d 592, 261 N.E.2d 406, 313 N.Y.S.2d 407 (1970); Bernstein v. Bd. of Appeals of Village of Matinecock, 60 Misc. 2d 470, 302 N.Y.S.2d 141 (Sup. Ct. Nassau County 1969). *See generally* BOYER, *supra* note 162, at 539 (restriction of land use is one that runs with land; in contrast, restriction concerned with forms of ownership would not bind subsequent land owner); BURBY, *supra* note 162, at 97-108 (same).

173. The *Dexter* court went on to say:

> While it is proper for a zoning board to impose appropriate conditions and safeguards in conjunction with a change of zone or a grant of a variance or special permit, such conditions and safeguards must be reasonable and relate only to the real estate involved without regard to the person who owns or occupies it.

36 N.Y.2d at 105, 324 N.E.2d at 871, 365 N.Y.S.2d at 508.

174. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550 (1949); H.R. REP. No. 590, 81st Cong., 1st Sess. 1 (1949); CONF. REP. No. 975, 81st Cong., 1st Sess. 1586 (1949). Zoning laws regulate the structure and use of a housing project. Title I specifically excludes regulations of structure and use, as it concerns only the clearance of an area. However, Title I is analagous to zoning in that it *specifically concerns land use. See generally Lehmann, supra* note 127 (discussion concerning relationship between slum clearance and public housing); *Slum Clearance and Public Housing, supra* note 6 (same).

which will "sufficiently . . . indicate its relationship to definite local objectives as to appropriate land uses. . . ."[175] Additional support is derived from section 105(b), which states that when Title I land is sold by the local public agency[176] to a sponsor, "the purchasers or lessees shall be obligated to devote such land to the uses specified in the Redevelopment Plan for the project . . . ."[177] Section 102 authorized loans from the federal government to local public agencies "[to] assist local communities in eliminating their slums and blighted areas and in providing maximum opportunity for the redevelopment of project areas by private enterprise . . . ."[178] The owners claim that section 102 contained no requirement that the redevelopment entail any particular type of housing.[179]

Further support for the sponsors' argument is found by examining the City Planning Commission's involvement. Generally, the Board of Estimate is the city agency vested with final decision-making authority with respect to the use, development and improvement of city land.[180] It must determine whether the City's interests are best served by a change in ownership before completion of the buildings.[181] On the other hand, the City Planning Commission normally will become involved only where there are changes in land use.[182]

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175. Federal Housing Act of 1949, Pub. L. No. 81-171, § 110, 63 Stat. 413 (1949). Section 110 provides a complete definition:

> (b) "Redevelopment plan" means a plan, as it exists from time to time, for the development or redevelopment of . . . a project area, which plan shall be sufficiently complete:
> (1) to indicate its relationship to definite local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements; and
> (2) to indicate proposed land uses and building requirements in the project area . . . .

Federal Housing Act of 1949, Pub. L. No. 81-171, § 110, 63 Stat. 413, 420 (1949).

176. In the present situation, the local public agency is the City of New York.

177. Federal Housing Act of 1949, Pub. L. No. 81-171, § 105(b), 63 Stat. 413 (1949). See *supra* note 175 and accompanying text for a discussion of specific land use requirements. In addition to stating the land uses for each of the Title I projects, the initial redevelopment plans also set forth the city's "objectives" as to traffic, transportation, utilities, recreation and other improvements, all as required by the definition of "Redevelopment Plan" as set forth in Title I.

178. Federal Housing Act of 1949, Pub. L. No. 81-171, § 102, 63 Stat. 413, 414 (1949).

179. *Id.*

180. See *supra* note 63 and accompanying text for a discussion on the Board of Estimate.

181. *Id. See generally* Kamer, *supra* note 78 (discussion of ramifications of conversion from rental housing to ownership status).

182. See N.Y. CITY CHARTER §§ 192, 197(c) for a discussion of the City Planning

In these conversion situations, the additional requirement of the City Planning Commission's approval for any changes made in the property lends credence to the view that the "change" provision concerned only modifications in land use and density.[183] As a general rule, the City Planning Commission's authority extends only to modifications involving land use and physical alterations of the property.[184] Had the City Planning Commission been empowered to rule on *any* changes, the redevelopment agreements of each conversion plan would have so provided.[185] Therefore, the owners assert that based on the explicit terms of each agreement, changes in ownership and land use were contemplated as distinct concepts to be regulated differently.[186]

Significantly, the Department of Housing and Urban Development (HUD), the federal body responsible for administering and interpreting the national housing laws,[187] strongly urged, in *Boston Five Cents Savings Bank v. Pierce,*[188] that a change in ownership[189] is not a change in use. The plaintiff in *Boston Five Cents* argued that a change from rental units to cooperative ownership was a change in use in violation of a covenant in a mortgage which proscribed

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Commission's duties concerning real property. Section 197 is entitled "Uniform land use review procedure." See also Child v. Moses, 178 Misc. 828, 36 N.Y.S.2d 574 (1942), *aff'd,* 265 A.D. 353, 38 N.Y.S.2d 704 (1942), *aff'd without opinion,* 290 N.Y. 828, 50 N.E.2d 235 (1943) for a discussion of the relationship between the City Planning Commission and the Board of Estimate.

183. This requirement was upheld in the lower court decisions. *See* Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983); Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983). *See generally* Lehmann, *supra* note 127 (discussion examining land use requirements).

184. See *supra* note 182 and accompanying text for a discussion of the duties of the City Planning Commission.

185. See *supra* note 79 and accompanying text for a dicussion of the language of the redevelopment agreement.

186. The redevelopment agreements explicitly state that approval is required from both the Board of Estimate and the City Planning Commission. *See Kips Bay* § 510; *Coliseum* § 510; *Park West* § 509. *See generally* Garfinkel, *supra* note 17 (discussion on how federal government regulates conversion plans); Lashly, *supra* note 3 (same).

187. 42 U.S.C. § 1441 (1949) (discussion of HUD's housing duties and functions).

188. Boston Five Cents Sav. Bank v. Pierce, Civ. Action No. 81-34-T (D.C. Mass 1981). *See generally* Comment, *HUD's Authority to Mandate Effective Housing,* 50 J. PUB. L. 79 (1972) (discussion concerning HUD's authority over public housing) [hereinafter cited as *HUD's Authority*].

189. Boston Five Cents Sav. Bank v. Pierce, Civ. Action No. 81-34-T (D.C. Mass 1981). HUD's argument concerned a change in ownership from rental to condominium ownership status. *Id.*

such a change.[190] HUD echoed the sponsors' view that the use of the property was residential before and during conversion and remained residential after conversion; thus, no change in land use occurred.[191]

In sum, the owners' argument is based on the premise that the respective redevelopment plans detail the land use and physical characteristics of the project, without imposing any requirement as to the character or form of ownership.[192] As the New York State Court of Appeals has stated, "before a serious interference with one's right of property is justified, something more than a doubtful right must be shown by the one seeking to impose such limitation."[193] The owners argue that the absence of an explicit restriction requiring the premises to be maintained as a rental property means that the parties intended to impose no such restriction upon the form or transfer of ownership.[194]

V. The Legislative Purposes Behind Title I

The owners claim that where words of a statute are free from ambiguity and their meaning is unequivocal, the legislative intent is determined by a literal reading of the legislative history.[195] They argue that a fundamental rule of statutory construction is that the court must take the entire act into consideration, and all sections of the law must be read together to determine the fair meaning of

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190. *Id.*

191. *Id.* HUD claimed that "[the occupants] will continue to eat, sleep and otherwise occupy the building for residential purposes. Thus, by no stretch of the imagination has a change in 'use' occurred, nor will such a change occur." *Id. See generally* HUD's Authority, *supra* note 188 (discussion concerning HUD's interpretation of residential conversion).

192. See *supra* notes 160-91 and *infra* notes 193-94 and accompanying text for a discussion of the owners' interpretation of the "change" provision.

193. Further, the owners argue that the agreements were drafted by the City, and since it is established law that, to the extent any ambiguity exists in a document, it is to be construed against the maker of the document. Single v. Whitmore, 307 N.Y. at 581, 122 N.E.2d at 922. This rule is based on the principle of equity that one cannot be permitted to take advantage of a surprise which one has created by oneself. *Id.*

194. *See supra* note 172 and accompanying text. *See generally* Lehmann, *supra* note 127 (discussion examining land use requirements).

195. Roth v. Michelson, 55 N.Y.2d 278, 283, 434 N.E.2d 228, 231, 449 N.Y.S.2d 159, 162, *motion to amend remittitur denied,* 56 N.Y.2d 807 (1982). *See* J. CALAMARI & J. PERILLO, CONTRACTS 116-17 (2d ed. 1977).

the provision in question.[196] In contrast, the City and the Attorney General argue that construction under Title I was to be limited to low-rent housing.[197] In addition, they allege that the conversion of Title I projects to condominium or cooperative ownership violated this requirement.[198]

A. Attorney General/City of New York Interpretation

The Attorney General's and the City's argument is based on their interpretation of the contractual provisions requiring the Board of Estimate to approve any change in ownership for forty years after completion of the project.[199] They argue that this view is consistent with: (1) the government's interest in ensuring that private developers are not enriched at the government's expense; and (2) the city's interest in ensuring compliance with its comprehensive scheme of redevelopment for the city as a whole.[200]

The Attorney General and the City argue that the legislative purpose of Title I is to stimulate low-rent housing.[201] They contend that, although Title I does not state that the new housing project

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196. Gaden v. Gaden, 29 N.Y.2d 80 (1971); *see also* N.Y. STATUTES § 97 (McKinney 1971). *See generally* J. CALAMARI & J. PERILLO, CONTRACTS 116-17 (2d ed. 1977).

197. *See* Joint Brief of Appellant City of New York, Coliseum v. Abrams, Att'y Gen., No. 15672-83; Park West v. Abrams, Att'y Gen., No. 16526-83 at 20 (App. Div. 1st Dep't. 1984); *see also* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1552 (1949). *See generally* Friedman, *Public Housing and the Poor: An Overview*, 54 CALIF. L. REV. 642 (1966) (discussion of low-income housing) [hereinafter cited as Friedman]; Lashly, *supra* note 3 (same).

198. *See* Joint Brief of Appellant City of New York, Coliseum v. Abrams, Att'y Gen., No. 15672-83; Park West v. Abrams, Att'y Gen., No. 16526-83, at 22 (App. Div. 1st Dep't 1984); *see also supra* note 197 and accompanying text.

199. Reply Brief of Appellant New York State Attorney General, Park West v. Abrams, Att'y Gen., No. 16526-83 at 3 (App. Div. 1st Dep't 1984). See *supra* note 13 and accompanying text for a discussion of the "change" provision.

200. Joint Brief of Appellant City of New York, Coliseum v. Abrams, Att'y Gen., No. 15672-83; Park West v. Abrams, Att'y Gen., No. 16526-83, at 21 (Ct. App. 1985). *See generally* Johnstone, *supra* note 5 (discussion of federal government's participation in redevelopment programs); Note, *Urban Renewal: Problems of Eliminating and Preventing Urban Deterioration*, 72 HARV. L. REV. 504 (1958) (same) [hereinafter cited as *Urban Renewal*].

201. *See* Brief of Appellant N.Y. State Attorney General at 25-34, Park West v. Abrams, Att'y Gen., No. 16526-83 (App. Div. 1st Dep't 1984). *See generally* H.R. REP. No. 590, 81st Cong., 1st Sess. 1, 17-19 (1949); Hill, *supra* note 98 (discussion of local redevelopment programs); Hillman, *supra* note 36 (same); *Act of 1949, supra* note 2 (same); *Slum Clearance and Public Housing, supra* note 6 (discussion examining relationship between slum clearance and low-rent housing).

must be "replacement housing,"[202] the inference is clear that the legislation was intended to apply to low-rent housing.[203] This powerful equity argument[204] was voiced by Congressman James Wright, who spoke in opposition to a proposed housing amendment:[205]

> I do not think we are in the business now of trying to approve that which the administration is attempting to do in turning low rent projects, once they are paid out, into condominiums so that they can be sold at higher and higher prices. And those people who have been the beneficiaries of the reasonable rents are thrown out to fend for themselves. That it seems to me is an outrageously unresponsible position for us to take.[206]

The concept of a locally-designed comprehensive plan for slum clearance and urban renewal was mandated by federal housing laws.[207] In fact, the federal statute conditioned the approval of federal grants on the requirement that such programs "conform in the determination of the governing body of the locality as a whole."[208] In New York City, there was a general "Master Plan" in existence,[209] which was designed in accordance with the objectives of the federal housing laws.[210] The City contends that each redevelopment plan is only a

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202. *See generally* Note, *Relocation Assistance: An Open Door Policy to Equal Housing Opportunity*, 21 CATH. U.L. REV. 639 (1972) (discussion of relocation assistance for tenants) [hereinafter cited as *Relocation Assistance*].

203. *See generally* Friedman, *supra* note 197 (discussion of low-income housing); *Urban Renewal, supra* note 200 (same).

204. In the *Kips Bay* decision, Judge Ascione stated:

> This court has no quarrel with plaintiff's public policy arguments and may even agree with them, except that Title I had a different purpose than that which plaintiff had suggested it should have. Perhaps, in hindsight, plaintiff's suggestions should have been the policy. Indeed, some of our elected officials have now come to accept that view.

Kramer v. Kips Bay, No. 15696-83, at 8 (Sup. Ct. N.Y. County 1983).

205. 129 CONG. REC. H5034 (daily ed. July 12, 1983).

206. *Id.*

207. *See* 42 U.S.C. § 1441(b) (1949).

208. *See* 42 U.S.C. §§ 1453(d)(5), 1455(a)(iii), Pub. L. No. 81-171, 63 Stat. 413 (1949).

209. *See* N.Y. CITY CHARTER § 197a. "Plans—a. the city planning commission shall be responsible for the conduct of a planning relating to the orderly growth and improvement and future development of the city including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, comfort, convenience, health and welfare of its population." *Id.* See *infra* notes 210-12 and accompanying text for a discussion of the City's General Master Plan. *See generally* Hillman, *supra* note 36 (discussion concerning New York local agency participation in public housing programs).

210. Specifically, the New York City Master Plan was set up to comply with the Federal Housing Act of 1949. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1562 (1949).

small part of a broader, more comprehensive scheme of neighborhood redevelopment formulated for the entire city.[211] There is legislative support that the locally governed master plan was intended to emphasize low-rent housing.[212]

B. The Owner/Sponsors' Interpretation

The owners argue that the language of the Housing Act and its legislative history make clear that Congress intended Title I to be applied to slum clearance only.[213] The owners argue that any construction done on land cleared pursuant to Title I was a matter of agreement between the local government[214] and the particular developer.[215]

The sponsors claim that there are no income limitations stated in any of the Title I redevelopment agreements.[216] Nothing in the language of Title I suggests any income limitations for residential construction on Title I land. Moreover, Title I states "that money provided pursuant to it cannot be used for housing construction, but only for slum clearance and related matters."[217] The agreement between New York City and the federal government did not impose any restrictions on the character of the buildings to be constructed,

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211. Joint Brief of Appellant City of New York, Coliseum v. Abrams, Att'y Gen., No. 15672-83; Park West v. Abrams, Att'y Gen., No. 16526-83, at 21 (Ct. App. 1985).

212. In *Kips Bay*, the minutes of the August 12, 1953 meeting of the New York City Planning Commission (Cal #201) (CP-10127) reflect the fact that the proposed redevelopment area, Kips Bay, is located wholly within Section M9 of the Master Plan of sections containing areas for clearance, redevelopment and low-rent housing. *See generally* Lashly, *supra* note 3 (discussion of local participation in redevelopment program).

213. *See infra* note 214-39 and accompanying text. *See generally Act of 1949, supra* note 2 (discussion concerning slum clearance); Siegel, *supra* note 96 (same).

214. In the present situation, the local government is the City of New York.

215. *See* Reply Memorandum in Further Support of Defendant's Motion to Dismiss the Complaint at 11-12, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983).

216. This argument was made by the owners in all three cases. *See* Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983); Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

217. Section 110(c) of Title I provides that a Title I "'project' shall not include the construction of any of the buildings contemplated by the redevelopment plan." Federal Housing Act of 1949, Pub. L. No. 81-171, § 110(c), 63 Stat. 413 (1949). This limitation on the use of federal funds was incorporated into the Title I agreement between the federal government and the City of New York. See *supra* notes 82-84 and accompanying text for a discussion of the federal agreement. The Kips Bay, Coliseum and Park West redevelopment agreements set forth the framework of the federal government's participation in the respective housing project

except that they be consistent with the project's redevelopment plan.[218] Since Title I money could not be used for residential construction, federally imposed income limitations on housing projects constructed pursuant to Title I would be inconsistent with the statute's objectives.

The federal government has enacted other statutes to mandate income limitations on housing.[219] The Housing Act, of which Title I was a part, included Title III—Low Rent Public Housing.[220] Title III contains income limitations and restrictions similar to those that the City alleges were in Title I.[221] The owners argued that Kips Bay, Coliseum and Park West were developed pursuant to Title I exclusively[222] and that Title III's restrictions are irrelevant.[223]

Congress specifically stated that Title I, the slum clearance section, should be distinct from Title III, the low-rent public housing program section.[224] The Congressional Joint Committee recommendation of March, 1948 concerning Title I stated:

> [A] provision should be made now for federal aid to local communities to enable them to undertake the clearance of their slums and blighted areas so as to make such areas available for

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under Title I. The agreement between the City and the federal government specifically provided that no federal money would be used to construct the buildings themselves. The federal government's participation is to concern only land acquisition, slum clearance and minor site improvements. *See* Federal Housing Act of 1949, Pub. L. No. 81-171, § 110, 63 Stat. 413, 420 (1949).

218. *See* Affidavit of Louis A. Siegel in Support of Motion to Dismiss at 7, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983). *See generally* Hill, *supra* note 98 (discussion concerning redevelopment); Johnstone, *supra* note 5 (same).

219. Besides Title I, the other five titles of the Federal Housing Act are: Title II—Amendment to the National Housing Act, Title III—Low-Rent Public Housing, Title IV—Housing Research, Title V—Farm Housing, and Title VI—Miscellaneous Provisions.

220. *See* 42 U.S.C. §§ 1441-1469 (1949). Title III, entitled "Low-Rent Housing," is a section distinct from Title I, which involves "Slum Clearance and Community Development."

221. *Id. See generally Act of 1949, supra* note 2, at 692-700 (discussion of Title III concerning low-rent housing).

222. This argument was made by the owners in all three cases. *See* Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983); Coliseum v. Abrams, Att'y Gen, No. 15672-83 (Sup. Ct. N.Y. County 1983); Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

223. *See supra* note 220 and accompanying text. *See generally Slum Clearance and Public Housing, supra* note 6 (discussion concerning differences between public housing and slum clearance legislation).

224. See S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1552 (1949) for a discussion of the intended "scope" of the Housing Act. Slum clearance and low-rent housing were mentioned as separate and distinct "areas." *Id.*

> redevelopment with the active participation of private enterprise. For this purpose, the Housing and Home Finance Administrator should be authorized to undertake a program of loan and subsidy assistance to communities. This program should be wholly distinct and separate from the low-rent public housing program.[225]

Therefore, the sponsors argue that the City's and Attorney General's claim that Title I projects were intended for low or moderate income residents and that the conversions violated that intent is without any basis.[226]

The sponsors argue that the redevelopment plans of the Title I housing projects are consonant with Title I's purpose.[227] It was not Title I's purpose that public money be used to provide housing for a certain class of persons at restricted or limited rents.[228] Title I and the Slum Clearance Program on which it is based were enacted to encourage and promote private enterprise to relieve unsanitary conditions, clear out slums and develop and beautify an area.[229] The goal was to remedy the serious housing shortage, eliminate substandard and other inadequate housing through the clearance of slums and blighted areas and to provide a decent home and suitable living environment for every American family.[230]

Legislative reports support the sponsors' view that Title I contains neither explicit language nor implications that construction should be limited to rental housing. Robert Moses, Chairman of the Slum Clearance Committee of the City of New York, stated that "low cost housing was the responsibility of the federal, state and city governments under programs *other* than Title I."[231] The Senate

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225. *Id.* at 1583.

226. This argument was made by the owners in all three cases. *See* Reply Memorandum in Further Support of Defendant's Motion to Dismiss the Complaint at 18, Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983); Brief of Petitioners-Respondents at 41, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Brief of Petitioners-Respondents at 55-56, Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

227. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1551-52, 1558-60 (1949). *See generally* Urban Renewal, *supra* note 200, at 505 (discussion of Title I's redevelopment objectives).

228. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550 (1949).

229. *Id.* at 1560-65. *See generally Act of 1949, supra* note 2, at 691-708 (discussion of objectives of Title I's Slum Clearance Program).

230. S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1559 (1949); *see also* 42 U.S.C. § 1441 (1949).

231. Robert Moses, the chairman of the Slum Clearance Committee of the City of New York, made this statement in 1956. *See* Brief of Petitioners-Respondents at 42, Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983).

Committee which was involved with slum clearance said that it is apparent that the elimination of residential slums in central city areas and their redevelopment in accord with a plan for the most appropriate use of the land makes necessary a dispersion of the families now living in such slums.[232] While the blighted areas may be redeveloped in accordance with an appropriate plan, adequate provisions must be made for the tenants displaced from the area.[233] However, the Senate Committee concluded that this did not mean that the displaced residents must be housed on the redeveloped site.[234]

Congress recognized that government assistance was necessary to facilitate the clearance of slums because of "the high prices commanded by land in the central areas of cities, even when those areas are blighted or deteriorated."[235] New York courts have found that the existence of a Title I subsidy did not impact on the form of ownership of the project to be developed.[236] Moreover, Title I provides that development pursuant to the Housing Act could include moderate to higher priced residential housing—whether privately owned or rented.[237] The owners argue that terms such as "dwelling units," "homes," "residential housing," and "housing" were used interchangeably, confirming that Congress' intent was to maximize residential housing by encouraging the rehabilitation of slum areas.[238] The language of the statute did not limit the form of ownership.[239]

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232. 95 CONG. REC. 12090 (daily ed. Aug. 23, 1949); *see also Federal Housing Act of 1949,* ch. 338, § 1460, 63 Stat. 413, 420 (1949).

233. 95 CONG. REC. 12090 (daily ed. Aug. 23, 1949); *see also Federal Housing Act of 1949,* ch. 338, § 1460, 63 Stat. 413, 420 (1949). *See generally Relocation Assistance, supra* note 202 (discussion concerning relocation facilitation).

234. *See supra* note 233 and accompanying text.

235. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1560-61 (1949). *See generally* Robinson, *supra* note 82 (discussion concerning federal government's participation in slum clearance program).

236. The *Park West* court stated that "the purpose of Title I was to enable communities to restore needed housing, but it did not concern itself with the type of housing, or with the nature of the occupancy." *See* Park West v. Abrams, Att'y Gen., No. 16526-83, at 3 (Sup. Ct. N.Y. County 1983).

237. *See* H.R. REP. No. 84, 81st Cong., 1st Sess. 1, 11-13 (1949). *See generally Act of 1949, supra* note 2 (discussion of Title I and 1949 Housing Act); *Slum Clearance and Public Housing, supra* note 6 (same).

238. *See* 42 U.S.C. § 1452b(c) (1949); *see also* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1560-61 (1949). *See generally* Hill, *supra* note 98 (discussion concerning Congress' objective of encouraging rehabilitation of slum areas).

239. See *supra* notes 216-38 and accompanying text for a discussion of Title I's restrictions on forms of ownership.

VI. Recommendations

At the time of its enactment, Title I's legislative history reflected the increasing dimensions of the housing shortage for people with low incomes.[240] The original tenants of the low-rent projects have been the beneficiaries of the Title I legislation for over thirty years. If the lower court rulings are upheld, these people will be displaced from their homes. Following the *Coliseum* and *Park West* rulings, City Council President, Carol Bellamy, who supports the tenants groups, stated that "the decision strikes a blow against the city's [low and] middle income tenants."[241]

Despite the merit of the City's statement, it is irrelevant to the cases involved here. Courts are constrained to construe and interpret the law and the parties' agreements as written.[242] As the attorneys for the Park West sponsors stated, "the city condemned properties and then sold them at auction to developers, who could have built luxury apartments had they pleased. These were not federal subsidies earmarked for middle income housing. . . ."[243] There were no rental limitations either. In all three redevelopment plans under Title I, there were no limitations specifying what rental fees were to be charged.[244]

The key to understanding the issue is to examine the forty year change provision in the project's redevelopment agreement, together with the sole reference to changes in the redevelopment plan of the area.[245] By looking at these two provisions along with each redevelopment plan's definition of the specific housing project,[246] it is clear that these covenants concern only land use and density and

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240. *See* S. REP. No. 84, 81st Cong., 1st Sess. 1550, 1555 (1949).

241. Real Estate Weekly, Oct. 1, 1984, at 13, col. 1.

242. *See* Kramer v. Kips Bay, No. 15696-83, at 8-9, (Sup. Ct. N.Y. County 1983).

243. Real Estate Weekly, Oct. 1, 1984, at 13, col. 2.

244. See *supra* note 79 and accompanying text for a discussion of § 510 of the Kips Bay redevelopment agreement. § 510 of the Coliseum redevelopment agreement and § 509 of the Park West redevelopment agreement are virtually identical to the Kips Bay provision.

245. See *supra* note 79 and accompanying text for a discussion of the critical "change" provision contained in the *Kips Bay*, *Coliseum* and *Park West* Redevelopment Agreements.

246. Each redevelopment agreement required that the deed of conveyance was to contain a covenant, running with the land, to effectuate "a covenant that for the period of forty (40) years from the completion of the project no change shall be made in the project as set forth in the Redevelopment Plan of the area without the consent of the City Planning Commission and the Board of Estimate . . ." and the sole reference in the area's redevelopment plan to changes is the following:

do not represent forms of ownership.[247] Moreover, in the three projects concerned, it is clear that the proposed changes in the form of ownership[248] are neither "increases in density" nor "changes in land use."[249] The use will remain residential, and as no new construction or increased occupancy is proposed, the density will not increase.[250]

In September, 1983, the Board of Estimate adopted a resolution mandating prior city approval for all proposed Title I conversion plans.[251] In light of the lower court decisions of *Kips Bay, Coliseum Park*, and *Park West*,[252] the Board of Estimate should adopt a new resolution permitting Title I conversions to take effect without prior approval by the Board of Estimate or City Planning Commission. The definitional section of the Housing Act[253] states the grounds upon which federal assistance will be given: "financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly *residential* in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly *residential purposes.*"[254] The proposed resolution should include only the restriction that the project remain residential. Any further restriction, such as maintaining the building for rental purposes only, would be contrary to Title I's objective.

VII. Conclusion

The purpose of Title I was to enable communities to restore needed housing, but was not concerned with the type of housing

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Limitations on Change: "No increase of density or change in land use shall be made for a period of forty years except upon approval of the Board of Estimate of the City of New York." See *supra* note 79 and accompanying text for a discussion of the "change" provision contained in the *Kips Bay*, *Coliseum* and *Park West* redevelopment agreements. Each housing project was defined in its redevelopment plan. Each plan described the specific housing project, surrounding area and other provisions necessary to meet state and local requirements.

247. *See* Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983); Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

248. The proposed changes concern changes from rental to cooperative or condominium ownership.

249. *See supra* note 247 and accompanying text.

250. *See* Coliseum v. Abrams, Att'y Gen., No. 15672-83, at 5 (Sup. Ct. N.Y. County 1983).

251. *See supra* note 69 and accompanying text.

252. *See* Kramer v. Kips Bay, No. 15696-83 (Sup. Ct. N.Y. County 1983); Coliseum v. Abrams, Att'y Gen., No. 15672-83 (Sup. Ct. N.Y. County 1983); Park West v. Abrams, Att'y Gen., No. 16526-83 (Sup. Ct. N.Y. County 1983).

253. *See* 42 U.S.C. ch. 338, § 1460, 63 Stat. 413, 420 (1949).

254. *Id.*

established or with the nature of the occupancy of the premises.[255] Neither was Title I concerned with the question of whether the units were to be occupied by renters or by their owners.[256] Since the covenants contained in the redevelopment agreements regulate only land use and density, not forms of ownership, the Board of Estimate and the City Planning Commission should not have the authority to approve Title I property conversions. If such approval were required, the outcome would be to throw the entire question of real estate into the political machinations of the local city agencies.

Steven C. Forest

255. *See* Coliseum v. Abrams, Att'y Gen., No. 15672-83, at 3 (Sup. Ct. N.Y. County 1983).

256. *Id.*