S T A T E O F N E W Y O R K

1379--A

2015-2016 Regular Sessions

I N S E N A T E

January 12, 2015

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to designating the county of Queens a cease and desist zone and establishing an affirmative defense to violations of nonsolicitation orders and cease and desist zones

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The real property law is amended by adding a new section 442-hh to read as follows:

S 442-HH. DESIGNATING THE COUNTY OF QUEENS A CEASE AND DESIST ZONE. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY, THE COUNTY OF QUEENS SHALL BE INCLUDED ON THE CEASE AND DESIST LIST COMPILED BY THE SECRETARY OF STATE PURSUANT TO SECTION FOUR HUNDRED FORTY-TWO-H OF THIS ARTICLE.

S 2. Paragraph (a) of subdivision 2 and paragraph (c) of subdivision 3 of section 442-h of the real property law, as amended by chapter 505 of the laws of 2001, are amended to read as follows:

(a) If, after a public hearing and a reasonable investigation, the secretary of state determines that the owners of residential real property within a defined geographic area are subject to intense and repeated solicitations by real estate brokers and salespersons or others to place their property for sale with such real estate brokers or salespersons, or otherwise to sell their property, and that such solicitations have caused owners to reasonably believe that property values may decrease because persons of different race, ethnic, social, or religious backgrounds are moving or are about to move into the neighborhood or geographic area, the secretary of state may adopt a rule, to be known as

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD01582-02-5

a nonsolicitation order, directing all real estate brokers, salespersons and other persons regularly engaged in the trade or business of buying and selling real estate to refrain from soliciting residential real estate listings or otherwise soliciting the sale of residential real estate within the subject area. Each area subject to such an order shall be bounded or otherwise specifically defined in the order. The nonsolicitation order shall be subject to such terms and conditions as the secretary of state may determine are, on balance, in the best interest of the public, including but not limited to the affected owners and licensees. A nonsolicitation order may prohibit any or all types of solicitation directed towards particular home-owners, including but not limited to letters, postcards, telephone calls, door-to-door calls, and handbills. Every nonsolicitation order shall contain a provision setting forth the day, month and year that the order shall become effective, as well as the day, month and year that the order shall expire. A nonsolicitation order shall not be effective for more than [five] TEN years. However, a nonsolicitation order and the boundaries of the area where it applies may be re-adopted or amended from time to time in accordance with the procedures set forth herein.

(c) No rule establishing a cease and desist zone shall be effective for longer than [five] TEN years. However, the secretary of state may re-adopt the rule to continue the cease and desist zone for additional periods not to exceed [five] TEN years each. Whenever a rule establishing a cease and desist zone shall have expired or shall have been repealed, all owner's statements filed with the secretary of state pursuant to that rule shall also expire. However, an owner may file a new statement with the secretary of state if a new rule is adopted establishing a cease and desist zone containing the owner's property. Once the boundaries of a cease and desist zone have been established by rule of the secretary of state, the boundaries may not be changed except by repeal of the existing rule and adoption of a new rule establishing the new boundaries.

S 3. Section 442-h of the real property law is amended by adding a new subdivision 4 to read as follows:

4. IN ANY ACTION ALLEGING A VIOLATION OF THIS SECTION, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE OWNER OF RESIDENTIAL REAL PROPERTY INCLUDED IN A NONSOLICITATION ORDER OR CEASE AND DESIST ZONE PUBLICIZED THAT SUCH PROPERTY WAS FOR SALE THROUGH MEANS INCLUDING BUT NOT LIMITED TO ADVERTISEMENTS OR REAL ESTATE LISTINGS.

S 4. This act shall take effect on the thirtieth day after it shall have become a law and shall apply to all nonsolicitation orders issued on and after such effective date.