

STATE OF NEW YORK

5031

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the
Committee on Housing

AN ACT to amend the real property law, in relation to limiting the amount of rent increases for residential ground lease cooperative apartment buildings and establishing certain rights upon expiration of such leases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The real property law is amended by adding a new section
2 233-c to read as follows:

3 § 233-c. Residential ground lease cooperative apartment buildings. 1.
4 Wherever used in this section:

5 (a) The term "residential ground lease cooperative apartment building"
6 means any and all buildings, improvements and/or other structures
7 located in the state of New York occupied, owned and/or leased by a
8 ground lease residential cooperative (or any subsidiary or affiliate
9 thereof) pursuant to a subject residential cooperative ground lease.

10 (b) The term "ground lease residential cooperative" means a New York
11 corporation organized and/or operating as a housing development fund
12 corporation, New York cooperative corporation and/or cooperative housing
13 corporation, including any entity meeting the definition thereof for
14 federal income tax purposes, and which is, directly or indirectly
15 through a subsidiary or affiliate thereof, a party or otherwise subject
16 to a subject residential cooperative ground lease.

17 (c) The term "subject residential cooperative ground lease" means the
18 lease agreement, together with any amendments or other related agree-
19 ments including any forbearance, settlement or other similar agreements
20 related thereto, pursuant to which a ground lease residential cooper-
21 ative leases, occupies and/or otherwise uses the ground lease real prop-
22 erty from one or more subject ground lease landlords.

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

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1 (d) The term "ground lease real property" means all real property
2 (including improvements thereon) leased, rented, licensed or otherwise
3 provided for use to a ground lease residential cooperative pursuant to a
4 subject residential ground lease (including any portion thereof that may
5 be subleased or otherwise used for commercial purposes).

6 (e) The term "subject ground lease landlords" means any and all
7 persons or entities (whether natural persons, estates, trusts, corpo-
8 rations, partnerships or other entities), other than any excepted ground
9 lease owner, that holds title to and/or is the owner (whether by the
10 entirety, as tenants in common or otherwise) of ground lease real prop-
11 erty and/or is otherwise the landlord under any subject residential
12 cooperative ground lease.

13 (f) The term "excepted ground lease owner" means the United States
14 federal government, the state of New York, and any agency, municipality
15 or political subdivision of any of the foregoing thereof, any entity
16 owned or controlled by any of the foregoing (including, without limita-
17 tion, the Battery Park city authority), any charity approved under
18 section 501(c) of the Internal Revenue Code which acquired its interest
19 as the owner and/or landlord of a ground lease real property prior to
20 January first, two thousand twenty-three, and any Indian nation, tribe
21 or band as defined under title twenty-five of the United States Code,
22 but shall exclude any "private foundation" within the meaning of section
23 five hundred nine of the Internal Revenue Code.

24 (g) The term "base rent" means for any year the payments, including
25 any consumer price index or other similar adjustment payments, other
26 than additional rent, required to be made to the subject ground lease
27 landlords for such year pursuant to a subject residential cooperative
28 ground lease.

29 (h) The term "additional rent" means, for any year, the amounts spent
30 or borne by the ground lease residential cooperative during such year
31 pursuant to, or in order to comply with, the subject residential cooper-
32 ative ground lease for the payment of real estate taxes, insurance,
33 repair, maintenance (including, without limitation, maintenance as may
34 be required pursuant to any facade inspection safety program implemented
35 by any city, municipality or other government entity within the state of
36 New York) and/or other capital improvements for or with respect to the
37 residential ground lease cooperative apartment building.

38 (i) "Commissioner" means the commissioner of the division of housing
39 and community renewal.

40 2. Annual increases in base rent payable by any ground lease residen-
41 tial cooperative shall, when taken together with the amount of any addi-
42 tional rent paid by the ground lease residential cooperative during the
43 prior year, in no event exceed three percent of the base rent payable by
44 the ground lease residential cooperative in the prior year. In the event
45 the subject residential cooperative ground lease provides for increases
46 in base rent on a periodic basis less frequently than annually, the
47 increase in base rent for any period, when taken together with the
48 amount of any additional rent paid by the ground lease residential coop-
49 erative during such period, may not represent more than a three percent
50 annual compound increase above the base rent for the prior base rent in
51 effect. The provisions of this subdivision shall apply regardless of the
52 methodology for determining the base rent or any increases therein as
53 set forth in the subject residential cooperative ground lease instru-
54 ment. In the event the amount of any additional rent during any year
55 exceeds three percent of the base rent for such year, such excess amount
56 shall be carried forward to reduce the amount of any increase in base

1 rent otherwise permitted hereunder in any future period until such
2 excess amounts have been fully applied.

3 3. Upon the expiration or termination of any subject residential coop-
4 erative ground lease for any reason whatsoever, the residential ground
5 lease cooperative shall have the right, exercisable at any time prior to
6 or within one-year after such expiration or termination, to renew such
7 subject residential cooperative ground lease for a renewal term equal to
8 the greater of, at the option of the residential ground lease cooper-
9 ative, the term of such subject residential cooperative ground lease
10 prior to such expiration or termination and/or ninety-nine years.

11 4. A residential ground lease cooperative shall, notwithstanding
12 anything to the contrary set forth in a subject residential cooperative
13 ground lease, have the authority, right and power to incur indebtedness
14 or otherwise borrow money, and to grant a first mortgage and/or other
15 similar security interest on or in the ground lease real property and/or
16 the ground lease apartment building with respect to such indebtedness or
17 borrowed money, if the primary purpose of such indebtedness and/or
18 borrowed money is to provide proceeds or other credit support to pay or
19 fund additional rent or otherwise perform repairs, maintenance or other
20 capital improvements on or with respect to the ground lease real proper-
21 ty and/or the ground lease apartment building. Any mortgage or lien
22 filed by a lender or counterparty to a residential ground lease cooper-
23 ative in accordance with the foregoing shall be effective regardless of
24 whether or not any related documents have been executed by the subject
25 ground lease landlords so long as duly executed by the residential
26 ground lease cooperative.

27 5. A residential ground lease cooperative shall have the right, upon
28 ninety days prior written notice to the subject ground lease landlords,
29 to elect to purchase from the subject ground lease landlords the ground
30 lease real property in fee simple, and any such purchase shall be imple-
31 mented and carried out pursuant to procedures adopted by the commission-
32 er for such purpose. The price to be paid by the residential ground
33 lease cooperative to the subject ground lease landlords shall be the
34 fair market value of the ground lease real property (which shall be
35 determined after deducting the amount of any indebtedness or other
36 liens, including the subject residential cooperative ground lease,
37 encumbering such ground lease real property) as determined by the
38 commissioner. Such procedures shall include the authority to provide for
39 the purchase price to be paid by way of mortgage financing provided by
40 the subject ground lease landlords or payment by way of installments,
41 distribution of the sales proceeds among the subject ground lease land-
42 lords, the requirement for the subject ground lease landlords to deliver
43 a full bargain and sale deed with covenants against grantor's acts, a
44 power of attorney vested with the commissioner to bind and act in the
45 stead of the subject ground lease landlords, and the authority to condi-
46 tion such purchase on the residential ground lease cooperative irrevoca-
47 bly covenanting and agreeing to pay to its flip-tax in an amount of up
48 to two percent of the sales price or other similar revenue to any agency
49 of the state as directed by the commissioner. The commissioner shall
50 adopt the procedures required pursuant to this subdivision no later than
51 one year after the effective date of this section.

52 § 2. This act shall take effect immediately.