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

3456

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. MENG, COLTON, GORDON, MAISEL, COOK -- Multi-Sponsored by -- M. of A. GOTTFRIED -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property law, in relation to recording of restrictive covenant modification documents

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 291-i to read as follows:

S 291-I. PROHIBITED RESTRICTIVE COVENANTS. 1. PROHIBITED RESTRICTIONS. (A) ANY PROVISION IN A WRITTEN INSTRUMENT RELATING TO OR AFFECTING REAL PROPERTY THAT PURPORTS TO FORBID OR RESTRICT CONVEYING, MORTGAGING, ENCUMBERING OR LEASING OF SUCH REAL PROPERTY TO ANY PERSON ON THE BASIS OF RACE, COLOR, RELIGION, GENDER, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, SOURCE OF INCOME OR SOCIOECONOMIC STATUS, NATIONAL ORIGIN OR ANCESTRY, OR HUMAN IMMUNODEFICIENCY VIRUS, OR ANY OTHER CRITERIA IN VIOLATION OF APPLICABLE FEDERAL OR STATE LAW, SHALL BE VOID.

(B) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, THE FOLLOWING PROVISIONS ARE NOT PROHIBITED BY THIS SECTION:

(I) A LIMITATION, ON THE BASIS OF RELIGION, ON THE USE OF REAL PROPERTY HELD BY A RELIGIOUS INSTITUTION OR ORGANIZATION OR BY ANY RELIGIOUS OR CHARITABLE ORGANIZATION, OPERATED, SUPERVISED OR CONTROLLED BY A RELIGIOUS INSTITUTION OR ORGANIZATION AND USED FOR RELIGIOUS OR CHARITABLE PURPOSES; AND

(II) A LIMITATION, IN ACCORDANCE WITH THE PROVISIONS OF STATE OR FEDERAL LAW, ON THE BASIS OF SOURCE OF INCOME OR SOCIO-ECONOMIC STATUS, ON THE USE OF REAL PROPERTY DESIGNATED AS HOUSING ACCOMMODATIONS FOR PERSONS IN LOW INCOME CATEGORIES, WHICH LIMITATION RESTRICTS USE OR OCCUPANCY OF SUCH PROPERTY TO PERSONS IN SUCH CATEGORIES, INCLUDING, BUT NOT LIMITED TO LIMITATIONS ON PROPERTY:

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

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(A) DESIGNATED AS PUBLICLY-ASSISTED HOUSING ACCOMMODATIONS AS PROVIDED IN SECTION TWO HUNDRED NINETY-TWO OF THE HUMAN RIGHTS LAW; OR

(B) SUBJECT TO RENT CONTROL OR RENT STABILIZATION PURSUANT TO CHAPTER FIVE HUNDRED SEVENTY-SIX OF THE LAWS OF NINETEEN HUNDRED SEVENTY-FOUR, CONSTITUTING THE EMERGENCY TENANT PROTECTION ACT OF NINETEEN SEVENTY-FOUR, CHAPTER TWO HUNDRED SEVENTY-FOUR OF THE LAWS OF NINETEEN HUNDRED FORTY-SIX, CONSTITUTING THE EMERGENCY HOUSING RENT CONTROL LAW, OR THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

(C) THE VOIDING OF A PROVISION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT AFFECT THE VALIDITY OF THE INSTRUMENT, AND THE INSTRUMENT SHALL HAVE FULL FORCE AND EFFECT IN ALL OTHER RESPECTS, AND SHALL BE CONSTRUED AS IF NO SUCH PROVISION WERE CONTAINED THEREIN.

2. PROSPECTIVE DOCUMENTS. SUBJECT TO THE PROVISIONS OF SUBDIVISION FIVE OF THIS SECTION, NO WRITTEN INSTRUMENT HEREAFTER MADE, RELATING TO OR AFFECTING REAL PROPERTY, SHALL CONTAIN ANY PROVISION IN VIOLATION OF THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION. UPON THE TRANSFER OR SALE OF REAL PROPERTY, OR UPON THE OCCURRENCE OF ANY OTHER CIRCUMSTANCES ENTAILING THE FILING OF A NEW DEED PERTAINING TO REAL PROPERTY, WHICHEVER OCCURS FIRST, THE ATTORNEY, TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT PREPARING THE NEW DEED SHALL REMOVE FROM SUCH DEED ALL PROVISIONS OR LANGUAGE PROHIBITED BY SUBDIVISION ONE OF THIS SECTION, AND SHALL ALSO REMOVE ALL SUCH PROVISIONS OR LANGUAGE FROM ANY ASSOCIATED CONTRACTS, SECURITY INSTRUMENTS OR OTHER DOCUMENTS INVOLVED IN THE TRANSACTION. SUCH ATTORNEY, TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT SHALL, IF NECESSARY TO GIVE EFFECT TO THIS SECTION, PREPARE A MODIFICATION DOCUMENT AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION, TO BE SIGNED BY THE OWNER OF RECORD OR THE PROSPECTIVE PURCHASER OF THE PROPERTY, AS APPLICABLE, AND SHALL FILE THE SAME AT THE TIME THE NEW DEED IS FILED.

3. EXISTING DOCUMENTS. SUBJECT TO THE PROVISIONS OF SUBDIVISION FIVE OF THIS SECTION, A PERSON WHO HOLDS AN OWNERSHIP INTEREST OF RECORD IN REAL PROPERTY HE OR SHE BELIEVES IS THE SUBJECT OF A PROHIBITED RESTRICTIVE COVENANT IN VIOLATION OF THE PROVISIONS OF THIS SECTION MAY, AT ANY TIME PRIOR TO THE SALE OF THE PROPERTY, RECORD A DOCUMENT, AS DESCRIBED IN THIS SUBDIVISION, MODIFYING THE INSTRUMENT CONTAINING THE PROHIBITED RESTRICTIVE COVENANT.

(A) THE MODIFICATION DOCUMENT SHALL BEAR THE HEADING "RESTRICTIVE COVENANT MODIFICATION", AND SHALL BE FILED WITH THE CLERK OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED, INDEXED IN THE SAME MANNER AS ANY PREVIOUSLY RECORDED DOCUMENT OR DOCUMENTS TO WHICH THE MODIFICATION DOCUMENT REFERS.

(B) THE MODIFICATION DOCUMENT SHALL:

(I) DISPLAY ON THE FIRST PAGE THE NOTATION "THIS DOCUMENT MODIFIES A DOCUMENT THAT CONTAINS ILLEGAL RESTRICTIONS BASED ON RACE, COLOR, RELIGION, GENDER, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, SOURCE OF INCOME OR SOCIO-ECONOMIC STATUS, NATIONAL ORIGIN OR ANCESTRY, OR HUMAN IMMUNODEFICIENCY VIRUS, THAT VIOLATE STATE AND/OR FEDERAL LAW, AND IS EXECUTED FOR THE PURPOSE OF REMOVING SUCH RESTRICTIONS.";

(II) REFERENCE THE ORIGINAL DOCUMENT TO BE MODIFIED BY BOOK AND PAGE OR INSTRUMENT NUMBER AND THE DATE OF RECORDING, AND SET FORTH THE NAMES OF THE SIGNATORIES TO THE ORIGINAL DOCUMENT, IF ANY;

(III) INCLUDE A COMPLETE COPY OF THE ORIGINAL DOCUMENT CONTAINING THE UNLAWFULLY RESTRICTIVE LANGUAGE WITH THE UNLAWFULLY RESTRICTIVE LANGUAGE STRICKEN; AND

(IV) SET FORTH THE NAME AND ADDRESS OF THE PERSON PREPARING THE MODIFICATION DOCUMENT; AND

(V) BE DULY EXECUTED IN THE MANNER AS A DEED BY ALL OWNERS OF RECORD OF THE REAL PROPERTY, AND SIGNED UNDER PENALTY OF LAW.

(C) THE OWNER OF THE PROPERTY SHALL BE RESPONSIBLE FOR ANY FILING FEE, IF ANY, ASSOCIATED WITH THE FILING OF SUCH DOCUMENT.

4. FORM. THE COUNTY CLERK SHALL MAKE AVAILABLE TO THE PUBLIC RESTRICTIVE COVENANT MODIFICATION FORMS AND INSTRUCTIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. NOTWITHSTANDING THE FOREGOING, A PROPERTY OWNER MAY ELECT TO HAVE AN ATTORNEY PREPARE THE MODIFICATION DOCUMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

5. COMMON INTEREST DEVELOPMENTS. MODIFICATION OF THE PROVISIONS OF GENERAL ASSOCIATION DOCUMENTS PERTAINING TO COMMON INTEREST DEVELOPMENTS, INCLUDING CONDOMINIUM OR COOPERATIVE ASSOCIATION DOCUMENTS, FOR THE PURPOSE OF REMOVING PROHIBITED RESTRICTIVE COVENANTS AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION SHALL REQUIRE THE WRITTEN APPROVAL OF A MAJORITY OF ALL OF THE OWNERS OF REAL PROPERTY LOCATED WITHIN THE DEVELOPMENT. UPON GOOD FAITH DELIVERY OF WRITTEN NOTIFICATION TO ALL OWNERS OF REAL PROPERTY LOCATED WITHIN A SUBDIVISION, AS INDICATED ON THE RECORDS OF THE CLERK OF THE COUNTY IN WHICH THE SUBDIVISION IS LOCATED, A MEETING MAY BE HELD NOT LESS THAN TEN DAYS AFTER SUCH NOTIFICATION HAS BEEN GIVEN, CONCERNING THE MODIFICATION OF ANY PROHIBITED RESTRICTIVE COVENANTS. FOLLOWING APPROVAL OF THE MAJORITY OF OWNERS, A MODIFICATION DOCUMENT PREPARED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION SHALL BE FILED WITH THE COUNTY CLERK. A COPY OF THE MODIFICATION DOCUMENT SHALL BE DELIVERED BY MAIL TO ALL OWNERS OF RECORD OF REAL PROPERTY LOCATED WITHIN THE SUBDIVISION.

6. REVIEW. PRIOR TO RECORDING A MODIFICATION DOCUMENT, THE COUNTY CLERK SHALL SUBMIT THE MODIFICATION DOCUMENT TO THE COUNTY ATTORNEY WHO SHALL DETERMINE WHETHER THE ORIGINAL DOCUMENT CONTAINS A RESTRICTION PROHIBITED BY SUBDIVISION ONE OF THIS SECTION. THE COUNTY ATTORNEY SHALL RETURN THE DOCUMENTS AND SHALL ADVISE THE COUNTY CLERK OF ITS DETERMINATION. IF THE COUNTY ATTORNEY DETERMINES THAT THE ORIGINAL DOCUMENT DOES NOT CONTAIN PROVISIONS IN VIOLATION OF SUBDIVISION ONE OF THIS SECTION, THE COUNTY CLERK SHALL NOT RECORD THE MODIFICATION DOCUMENT, BUT SHALL RETURN THE DOCUMENT TO THE PROPERTY OWNER.

7. EFFECT. SUBJECT TO COVENANTS, CONDITIONS, AND RESTRICTIONS RECORDED AFTER THE ORIGINAL DOCUMENT CONTAINING UNLAWFUL RESTRICTIONS, AND SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED AFTER THE RESTRICTIVE COVENANT MODIFICATION DOCUMENT, THE RESTRICTIVE COVENANT MODIFICATION, ONCE RECORDED, SHALL BE DEEMED THE ONLY RESTRICTIONS HAVING EFFECT ON THE PROPERTY.

8. RESPONSIBILITY. IF THE HOLDER OF AN OWNERSHIP INTEREST IN PROPERTY CAUSES TO BE RECORDED A RESTRICTIVE COVENANT MODIFICATION DOCUMENT PURSUANT TO THIS SECTION WHICH CONTAINS LANGUAGE NOT AUTHORIZED BY THIS SECTION, ANY LIABILITY THAT DERIVES FROM SUCH RECORDING SHALL BE THE SOLE RESPONSIBILITY OF THE HOLDER OF THE OWNERSHIP INTEREST OF RECORD AND THE COUNTY CLERK SHALL NOT INCUR ANY LIABILITY FOR RECORDING SUCH DOCUMENT.

9. DEFINITIONS. AS USED IN THIS SECTION:

(A) "PROVISION" MEANS ALL CLAUSES, STIPULATIONS, RESTRICTIONS, PROHIBITIONS, COVENANTS AND CONDITIONS OF ANY KIND OR CHARACTER, INCLUDING A RIGHT OF ENTRY OR A POSSIBILITY OF REVERTER, WHICH DIRECTLY OR INDIRECTLY LIMIT THE USE OR OCCUPANCY OF REAL PROPERTY;

(B) "WRITTEN INSTRUMENT" OR "INSTRUMENT" MEANS EVERY WRITING THAT RELATES TO OR AFFECTS ANY RIGHT, TITLE, INTEREST IN REAL PROPERTY,

INCLUDING, BUT NOT LIMITED TO, DEEDS, MORTGAGES, LEASES, LIENS, MAPS AND PLATS;

(C) "SOURCE OF INCOME" MEANS THE COMBINED SOURCES OF ALL LAWFUL, VERIFIABLE INCOME PAID DIRECTLY TO A PERSON OR TO HIS OR HER REPRESENTATIVE, WHICH INCOME IS REPORTED IN ACCORDANCE WITH APPLICABLE FEDERAL AND STATE LAW; AND

(D) "RESTRICTIVE COVENANT MODIFICATION" OR "MODIFICATION DOCUMENT" MEANS A DOCUMENT PREPARED AND FILED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION FOR THE PURPOSE OF MODIFYING AN INSTRUMENT CONTAINING A PROHIBITED RESTRICTIVE COVENANT AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION.

10. APPLICATION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT THE INCLUSION IN WRITTEN INSTRUMENTS OF PROVISIONS NECESSARY TO GIVE EFFECT TO STATE OR FEDERAL STATUTES.

11. LIABILITY. NOTWITHSTANDING ANY LAW TO THE CONTRARY, ANY PERSON WHO, IN GOOD FAITH AND IN THE USUAL COURSE OF BUSINESS, DELIVERS ANY DEED, CONTRACT, SECURITY INSTRUMENT, OR OTHER INSTRUMENT AFFECTING THE TRANSFER OR SALE OF, OR ANY INTEREST IN, REAL PROPERTY WHICH CONTAINS A RESTRICTIVE COVENANT AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, SHALL BE IMMUNE FROM CIVIL LIABILITY. IN ADDITION, SUCH DELIVERY SHALL NOT CONSTITUTE AN UNFAIR HOUSING PRACTICE. THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO ANY PERSON WHO:

(A) REPRESENTS OR ATTEMPTS TO REPRESENT THAT SUCH RESTRICTIVE COVENANTS ARE VALID AND ENFORCEABLE; OR

(B) HONORS OR EXERCISES OR ATTEMPTS TO HONOR OR EXERCISE SUCH RESTRICTIVE COVENANTS.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.