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

4955

2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. V. LOPEZ -- read once and referred to the Committee on Judiciary

AN ACT to amend the general business law, in relation to a private right of action for any violation of section 352-e of such law involving real estate securities

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

Section 1. Section 352-e of the general business law is amended by adding a new subdivision 10 to read as follows:

10. (A) ANY PURCHASER OR SELLER OF ANY REAL ESTATE SECURITY AS DEFINED IN THIS SECTION MAY BRING AN ACTION OR PROCEEDING FOR DAMAGES OR RESTITUTION, OR BOTH, AND SUCH OTHER RELIEF AS THE COURT MAY DEEM APPROPRIATE, FOR ANY VIOLATION OF THIS ARTICLE, SUBJECT TO THE REQUIREMENTS SET FORTH IN THIS SUBDIVISION.

(B) PRIOR TO THE COMMENCEMENT OF SUCH ACTION, THE PURCHASER OR SELLER OF THE SECURITY OR THE ATTORNEY FOR SUCH PURCHASER OR SELLER MUST FORWARD A COPY OF THE PROPOSED COMPLAINT TO THE ATTORNEY GENERAL, TOGETHER WITH A REQUEST FOR THE CERTIFICATION OF SUCH COMPLAINT. THE ATTORNEY GENERAL MAY REQUIRE THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY TO PROVIDE SUCH FACTUAL INFORMATION AS THE ATTORNEY GENERAL MAY REQUIRE.

(C) THE ATTORNEY GENERAL SHALL REVIEW THE COMPLAINT, AND MAY ISSUE AN ORDER PROHIBITING THE COMMENCEMENT OF THE ACTION IF THE ATTORNEY GENERAL DETERMINES THAT THE COMPLAINT LACKS A SUBSTANTIAL FACTUAL OR LEGAL BASIS. IF IT IS DETERMINED THAT SUCH A SUBSTANTIAL BASIS EXISTS, THE ATTORNEY GENERAL SHALL ISSUE A CERTIFICATION AUTHORIZING THE COMMENCEMENT OF THE ACTION.

(D) UNDER NO CIRCUMSTANCES MAY AN ACTION BE COMMENCED UNDER THIS SUBDIVISION UNLESS THE ATTORNEY GENERAL HAS ISSUED THE REQUIRED CERTIFICATION OR THE ATTORNEY GENERAL HAS NOT ACTED WITHIN THE LATER OF: (I) SIXTY DAYS FOLLOWING THE SUBMISSION OF THE COMPLAINT OR (II) THIRTY DAYS

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

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FOLLOWING THE RECEIPT OF THE PLAINTIFF'S RESPONSE TO A REQUEST BY THE ATTORNEY GENERAL FOR ADDITIONAL FACTUAL INFORMATION.

(E) AN ACTION BROUGHT BY A PURCHASER OR SELLER OF A REAL ESTATE SECURITY PURSUANT TO THIS SUBDIVISION SHALL BE COMMENCED WITHIN SIX YEARS OF THE DATE THE ACTS OR OMISSIONS COMPLAINED OF WERE COMMITTED, OR WITHIN TWO YEARS OF THE DISCOVERY OF THE FRAUD, WHICHEVER OCCURS LATER.

(F) THE FILING OF A REQUEST FOR CERTIFICATION SHALL BE DEEMED TO TOLL AN OTHERWISE UNEXPIRED STATUTE OF LIMITATIONS FOR THE COMMENCEMENT OF AN ACTION BROUGHT UNDER THIS ARTICLE FOR A PERIOD OF ONE HUNDRED TWENTY DAYS FROM THE DATE THAT SUCH REQUEST FOR CERTIFICATION IS FILED WITH THE ATTORNEY GENERAL.

(G) IF THE ATTORNEY GENERAL SO REQUESTS, THE PARTIES TO ANY ACTION COMMENCED PURSUANT TO THIS SUBDIVISION SHALL SERVE THE ATTORNEY GENERAL WITH COPIES OF ALL PAPERS FILED IN THE ACTION AND WITH COPIES OF ALL DEPOSITION TRANSCRIPTS AND DOCUMENTS PRODUCED IN DISCOVERY, AT THE EXPENSE OF THE STATE.

(H) IN ANY SUCH ACTION OR PROCEEDING BROUGHT PURSUANT TO THIS SUBDIVISION, THE COURT MAY AWARD A PREVAILING PLAINTIFF REASONABLE COSTS AND ATTORNEY'S FEES FOR ANY CLAIM ARISING UNDER THIS ARTICLE.

(I) NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED TO AFFECT OR LIMIT THE ABILITY OF THE ATTORNEY GENERAL TO INTERVENE IN ANY PROCEEDING COMMENCED PURSUANT TO THIS SUBDIVISION, OR TO COMMENCE A SEPARATE ACTION BASED UPON THE SAME FACTS AND CIRCUMSTANCES THAT RESULTED IN THE ACTION COMMENCED PURSUANT TO THIS SUBDIVISION, OR TO PURSUE ANY OTHER REMEDY AVAILABLE TO THE STATE.

(J) NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED TO AFFECT THE VALIDITY OF ANY PROVISION OF A WRITTEN AGREEMENT, OTHERWISE ENFORCEABLE, TO ARBITRATE ANY DISPUTE OR CLAIM, INCLUDING ANY CLAIM THAT MAY ARISE UNDER THIS ARTICLE, OR TO ABRIDGE ANY OTHER REMEDY THAT MAY BE AVAILABLE PURSUANT TO LAW.

S 2. This act shall take effect immediately.