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

6229

2009-2010 Regular Sessions

I N A S S E M B L Y

February 26, 2009

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

AN ACT to amend the real property law, in relation to orders to cease and desist real property solicitations

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

Section 1. Subdivision 3 of section 442-h of the real property law, as amended by chapter 505 of the laws of 2001, is amended to read as follows:

3. (a) If the secretary of state determines that some owners of residential real property within a defined geographic area are subject to intense and repeated solicitation by real estate brokers and salespersons to place their property for sale with such real estate brokers or salespersons, or are subject to intense and repeated solicitation by other persons regularly engaged in the trade or business of buying and selling real estate to sell their real estate, the secretary of state may adopt a rule establishing a cease and desist zone, which zone shall be bounded or otherwise specifically defined in the rule. After the secretary of state has established a cease and desist zone, the owners of residential real property located within the zone may file an owner's statement with the secretary of state expressing their wish not to CONTINUE TO be solicited by real estate brokers, salespersons or other persons regularly engaged in the trade or business of buying and selling real estate AND TO OPT OUT OF THE CEASE AND DESIST ORDER. The form and content of the statement shall be prescribed by the secretary of state. After a cease and desist zone has been established by the secretary of state, [no] A real estate broker, salesperson or other person regularly engaged in the trade or business of buying and selling real estate [shall] MAY solicit a listing ONLY from any owner who has filed a statement with the secretary of state if such owner's name appears on the current cease and desist OPT OUT list prepared by the secretary of

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

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state. The prohibition on solicitation shall apply to direct forms of solicitation such as the use of the telephone, the mail, personal contact and other forms of direct solicitation as may be specified by the secretary of state.

(b) The secretary of state shall compile a cease and desist OPT OUT list for each zone established pursuant to paragraph (a) of this subdivision. In addition to such other information as the secretary of state may deem appropriate, each cease and desist OPT OUT list shall contain the name of each owner who has filed an owner's statement with the secretary, as well as the address of the property within the zone to which the owner's statement applies. The secretary of state shall send to each owner who has filed an owner's statement a written acknowledgement of the secretary of state's receipt thereof and a pamphlet explaining to the owner his or her rights in connection therewith and the procedures and time limits applicable to the filing of complaints for violations. The secretary of state shall allow an owner who files, or on behalf of whom is filed, a complaint or other report of a violation of a cease and desist rule ninety days in which to perfect a complaint by submitting such other or further information or documents as the secretary of state may require. The secretary of state shall print a list for each zone. Each list shall be revised and reprinted at least annually on or before December thirty-first and shall be made available to the public and to real estate brokers at a reasonable price to be set by the secretary of state and approved by the director of the division of the budget. Additions or deletions shall be made to each list only at the time the list is reprinted, and the secretary of state shall not issue amendments or addenda to any printed list.

(c) No rule establishing a cease and desist zone shall be effective for longer than five 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 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 2. This act shall take effect immediately.