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

7534

2009-2010 Regular Sessions

I N A S S E M B L Y

April 14, 2009

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

AN ACT to amend the real property law and the judiciary law, in relation to providing recourse for homeowners in manufactured home parks who are confronted with unjustifiable rent increases

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

Section 1. Legislative findings. The legislature finds and declares that:

(a) Factors unique to home ownership in manufactured home parks require that the owners of such manufactured homes be protected from involuntary forfeiture of their homes due to unreasonable increases in lot rent.

(b) Homeownership in manufactured home parks differs from other forms of homeownership as well as from the traditional landlord-tenant relationship. Unlike other homeowners, because the manufactured homeowners do not control the land on which their manufactured homes exist, they have no control over this substantial portion of their housing costs.

(c) Vacant lots on which to place an existing manufactured home are extremely rare, and the cost of relocating a manufactured home, even if such a vacancy exists, is prohibitively high and threatens the structural integrity of many manufactured homes.

(d) The manufactured homeowners' total lack of bargaining power disrupts the normal operation of market forces and renders such manufactured homeowners captive to whatever terms a manufactured home park owner may choose to impose. Although many manufactured home park owners choose not to take advantage of their superior bargaining power, many do. This often results in manufactured homeowners being evicted because of manufactured home park rents they can no longer afford, and as a result, losing their manufactured home altogether because there is no alternative site on which to place such home.

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

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(e) Under current law, manufactured homeowners who rent lots in manufactured home parks have no legal remedy for an unjustifiable and unreasonable rent increase.

S 2. Subdivision (e) of section 233 of the real property law is amended by adding a new paragraph 4 to read as follows:

4. A MANUFACTURED HOME PARK OWNER OR OPERATOR SHALL FULLY DISCLOSE IN WRITING ALL TERMS AND CONDITIONS OF THE TENANCY INCLUDING, BUT NOT LIMITED TO, RENTAL, UTILITY AND SERVICE CHARGES, PRIOR TO ENTERING INTO A RENTAL AGREEMENT WITH A PROSPECTIVE TENANT. NO CHARGES SO DISCLOSED MAY BE INCREASED BY THE MANUFACTURED HOME PARK OWNER OR OPERATOR WITHOUT A SPECIFIC EXPLANATION FOR A JUSTIFIABLE INCREASE AND SPECIFYING THE DATE OF IMPLEMENTATION OF SUCH INCREASE, WHICH DATE SHALL BE NO LESS THAN SIXTY DAYS AFTER WRITTEN NOTICE TO THE TENANT, AND SUBJECT TO THE RECOURSE PROVIDED UNDER SECTION TWO HUNDRED THIRTY-THREE-B OF THIS ARTICLE. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PERMIT A MANUFACTURED HOME PARK OWNER OR OPERATOR TO VARY THE TERMS OF A WRITTEN OR ORAL RENTAL AGREEMENT WITHOUT THE EXPRESS WRITTEN CONSENT OF THE TENANT.

S 3. The real property law is amended by adding a new section 233-b to read as follows:

S 233-B. RECOURSE FOR CERTAIN RENT INCREASES; SUFFOLK COUNTY. 1. ANY NOTICE OF AN INCREASE IN LOT RENT WHICH EXCEEDS THE PERCENTAGE INCREASE IN THE CONSUMER PRICE INDEX SINCE THE CURRENT LOT RENT BECAME EFFECTIVE MAY BE CHALLENGED ACCORDING TO THE PROCEDURES SET FORTH IN THIS SECTION. THE TERM "CONSUMER PRICE INDEX" MEANS THE INDEX PUBLISHED MONTHLY BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, FOR THE APPLICABLE NEW YORK REGION. IN THIS SECTION, "INCREASE IN LOT RENT" INCLUDES THE COST OF ANY UTILITY OR OTHER ONGOING SERVICE THE RESPONSIBILITY FOR WHICH IS TRANSFERRED FROM THE MANUFACTURED HOME PARK OWNER TO THE MANUFACTURED HOMEOWNER.

2. WITHIN THIRTY DAYS OF THE RECEIPT OF NOTICE OF AN INCREASE IN LOT RENT UNDER THIS SECTION, ONE-THIRD OF MANUFACTURED HOMEOWNERS IN THE PARK, ONE VOTE PER MANUFACTURED HOME UNIT, MAY BRING A PETITION REQUESTING THAT THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE PURSUANT TO SECTION THIRTY-NINE-C OF THE JUDICIARY LAW, CONDUCT A MEDIATION IN AN ATTEMPT TO ASSIST THE PARTIES IN REACHING AN AGREEMENT REGARDING THE AMOUNT OF THE RENT INCREASE. IF NO PETITION IS FILED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBDIVISION, NO CHALLENGE MAY BE MADE TO THE PROPOSED RENT INCREASE.

3. IF AFTER SIXTY DAYS FROM THE FILING OF THE PETITION THE PARTIES HAVE NOT REACHED AN AGREEMENT, ANY FIVE SIGNATORIES TO THE PETITION, OR FIFTY PERCENT OF THE SIGNATORIES IN A MANUFACTURED HOME PARK CONTAINING FEWER THAN TEN OCCUPIED HOMES, MAY FILE AN ACTION IN THE SUFFOLK COUNTY COURT SEEKING A DECLARATORY JUDGMENT THAT THE RENT INCREASE IS UNJUSTIFIABLE.

4. A HEARING ON THE PETITION SHALL BE HELD WITHIN NINETY DAYS OF THE FILING OF THE PETITION AND THE COURT SHALL ISSUE A DECISION WITHIN SIXTY DAYS.

5. IN ANY PROCEEDINGS UNDER THIS SECTION THERE SHALL BE AN IRREBUTTABLE PRESUMPTION THAT A RENT INCREASE IS JUSTIFIABLE WHEN THE AMOUNT OF SUCH INCREASE DOES NOT EXCEED THE TENANT'S PRO-RATA SHARE IN OPERATING COSTS AND PROPERTY TAXES FOR THE MANUFACTURED HOME PARK IN WHICH THE TENANT RESIDES.

6. IN DETERMINING WHETHER THE PROPOSED RENT INCREASE IS UNJUSTIFIABLE, THE COURT SHALL CONSIDER:

(A) INCREASES IN THE MANUFACTURED HOME PARK OWNER'S OPERATING EXPENSES.

(B) INCREASES IN THE MANUFACTURED HOME PARK OWNER'S PROPERTY TAXES ON SUCH PARK.

(C) INCREASES IN THE COST OF DEBT SERVICE WHICH IS DIRECTLY RELATED TO ACQUISITION OR CAPITAL IMPROVEMENTS IN THE MANUFACTURED HOME PARK.

(D) THE RETURN ON THE MANUFACTURED HOME PARK OWNER'S EQUITY INVESTMENT OVER THE PAST THREE YEARS, AND THE REASONS OFFERED BY THE OWNER FOR SEEKING AN INCREASE IN THE RETURN ON HIS OR HER INVESTMENT.

(E) A SAMPLING OF CURRENT LOT RENTS IN THE REGION IN WHICH THE PARK IS LOCATED.

7. IF THE COURT FINDS THAT THERE ARE DETERIORATING CONDITIONS IN THE PARK RELATIVE TO ROADS, WATER SUPPLY, SEWAGE DISPOSAL, ELECTRIC SERVICE, OR OTHER CONDITIONS WHICH THREATEN THE HEALTH AND SAFETY OF THE MANUFACTURED HOME PARK TENANTS, IT MAY CONDITION ITS APPROVAL OF ANY OTHERWISE JUSTIFIABLE RENT INCREASES UPON A SHOWING BY THE MANUFACTURED HOME PARK OWNER THAT HE OR SHE HAS MADE SPECIFIC APPROPRIATE PLANS FOR REPAIR OF THE DEFECTIVE CONDITIONS.

8. WHILE A CHALLENGE TO A RENT INCREASE PURSUANT TO THIS SECTION IS PENDING, MANUFACTURED HOME PARK TENANTS SHALL PAY THE AMOUNT OF THE RENT INCREASE TO THE MANUFACTURED HOME PARK OWNER, WHO SHALL HOLD SUCH AMOUNTS IN ESCROW PENDING A MEDIATED AGREEMENT BETWEEN THE PARTIES OR A FINAL DECISION FROM THE COURT, PROVIDED, HOWEVER, THAT NO MANUFACTURED HOME PARK TENANT SHALL BE EVICTED FOR NON-PAYMENT OF THE RENT INCREASE PRIOR TO A FINAL DISPOSITION OF THE MATTER BY THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE OR THE SUFFOLK COUNTY COURT. FAILURE BY THE MANUFACTURED HOME PARK OWNER TO PLACE SUCH CHALLENGED RENT INCREASE IN ESCROW SHALL CONSTITUTE A VIOLATION. IF THE PETITIONERS APPEAL THE SUFFOLK COUNTY COURT DECISION TO THE SUPREME COURT, THE MANUFACTURED HOME PARK OWNER MAY REMOVE THE RENT INCREASE FUNDS FROM ESCROW, MINGLE SUCH FUNDS WITH ANY OTHER FUNDS, AND EVICT A TENANT WHO HAS NOT PAID THE INCREASE FOR NON-PAYMENT OF RENT. IF THE COURT ENTERS A FINAL JUDGMENT DECLARING THE RENT INCREASES OR ANY PART THEREOF UNJUSTIFIABLE, THE MANUFACTURED HOME PARK OWNER SHALL REFUND THE AMOUNT OF UNJUSTIFIABLE INCREASE TO EACH TENANT HOUSEHOLD.

S 4. The judiciary law is amended by adding a new section 39-c to read as follows:

S 39-C. COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE. 1. COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE. THERE IS ESTABLISHED WITHIN THE COURTS A COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE TO PROVIDE ALTERNATIVE DISPUTE RESOLUTION, REFERRED TO IN THIS SECTION AS "ADR," SERVICES IN THE COURTS THROUGHOUT THE STATE.

2. ADR PROVIDERS. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL CONTRACT FOR THE SERVICES OF QUALIFIED PERSONS OR ORGANIZATIONS TO SERVE AS PROVIDERS OF ADR SERVICES TO PARTIES. THE ADR PROVIDERS ARE NOT EMPLOYEES OF THE STATE FOR ANY PURPOSE. THE ADR PROVIDERS ARE ENTITLED TO BE PAID A REASONABLE PER DIEM FEE PLUS REIMBURSEMENT OF THEIR ACTUAL, NECESSARY AND REASONABLE EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES, CONSISTENT WITH POLICIES ESTABLISHED BY THE CHIEF ADMINISTRATOR OF THE COURTS.

3. IMMUNITY FROM CIVIL LIABILITY. A PERSON SERVING AS AN ADR PROVIDER UNDER CONTRACT WITH THE CHIEF ADMINISTRATOR OF THE COURTS OR AS THE DIRECTOR OF THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE IS IMMUNE FROM ANY CIVIL LIABILITY, AS ARE EMPLOYEES OF GOVERNMENTAL ENTITIES, FOR ACTS PERFORMED WITHIN THE SCOPE OF THE PROVIDER'S OR THE DIRECTOR'S DUTIES.

4. STAFF. WITH THE ADVICE AND APPROVAL OF THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE COMMITTEE, THE CHIEF ADMINISTRATOR OF THE

COURTS SHALL EMPLOY OR CONTRACT WITH A PERSON TO SERVE AS THE DIRECTOR OF THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL PROVIDE OTHER NECESSARY STAFF AND CLERICAL ASSISTANCE TO THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE, WITHIN THE LIMITS OF FUNDS AVAILABLE.

5. FACILITIES. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL PROVIDE A PRINCIPAL OFFICE FOR THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE AND SHALL ARRANGE FOR FACILITIES THROUGHOUT THE STATE AS NECESSARY AND ADEQUATE FOR THE CONDUCT OF ADR SESSIONS, WITHIN THE LIMITS OF FUNDS AVAILABLE.

6. COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE COMMITTEE. THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE COMMITTEE, OR "COMMITTEE," IS ESTABLISHED TO SET POLICY FOR AND MONITOR THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE. THE COMMITTEE CONSISTS OF:

(A) THE CHIEF JUSTICE OF THE COURT OF APPEALS OR A DESIGNEE;

(B) THE CHIEF ADMINISTRATOR OF THE COURTS OR A DESIGNEE;

(C) A JUSTICE OF THE SUPREME COURT, WHO IS APPOINTED BY AND SERVES AT THE PLEASURE OF THE CHIEF JUSTICE OF THE COURT OF APPEALS;

(D) A JUDGE OF THE DISTRICT COURT, WHO IS APPOINTED BY AND SERVES AT THE PLEASURE OF THE CHIEF JUSTICE OF THE COURT OF APPEALS; AND

(E) ANY ADDITIONAL MEMBERS APPOINTED BY THE CHIEF JUSTICE OF THE COURT OF APPEALS THAT THE CHIEF JUSTICE CONSIDERS NECESSARY TO THE COMMITTEE'S OPERATION.

7. FEES. WHEN A COURT REFERS PARTIES TO THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE, THE COURT SHALL ASSESS THE PARTIES A FEE TO BE APPORTIONED EQUALLY AMONG THE PARTIES, UNLESS THE COURT OTHERWISE DIRECTS. THE FEE MUST BE DEPOSITED IN THE DEDICATED ACCOUNT CREATED IN SUBDIVISION EIGHT OF THIS SECTION.

A PARTY MAY FILE AN IN FORMA PAUPERIS APPLICATION FOR WAIVER OF FEE. IF THE COURT FINDS THAT THE PARTY DOES NOT HAVE SUFFICIENT FUNDS TO PAY THE FEE, IT SHALL ORDER THE FEE WAIVED.

8. COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE FUND. THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE FUND IS ESTABLISHED AS A NONLAPSING, DEDICATED FUND WITHIN THE OFFICE OF THE CHIEF ADMINISTRATOR. FEES COLLECTED FOR ADR SERVICES PROVIDED PURSUANT TO THIS SECTION MUST BE DEPOSITED IN THE FUND.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL USE ONE HUNDRED PERCENT OF THE RESOURCES IN THE FUNDS FROM NONDESIGNATED CASES TO COVER THE COSTS OF PROVIDING ADR SERVICES AS REQUIRED UNDER THIS SECTION. ALL FUNDS FROM CASES HANDLED BY THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE MUST BE USED FOR THE COSTS OF PROVIDING ADR SERVICES AS REQUIRED UNDER THIS SECTION.

9. RULES. THE COURT OF APPEALS SHALL ADOPT RULES TO GOVERN THE REFERRAL OF CASES TO THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE.

10. LAND USE MEDIATION. THE LAND USE MEDIATION PROGRAM IS A PROGRAM WITHIN THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE.

(A) THE DIRECTOR OF THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE SHALL ADMINISTER THE LAND USE MEDIATION PROGRAM.

(B) A LAND USE MEDIATION FUND IS ESTABLISHED AS A NONLAPSING, DEDICATED FUND WITHIN THE OFFICE OF THE CHIEF ADMINISTRATOR OF THE COURTS. FEES COLLECTED FOR MEDIATION SERVICES MUST BE DEPOSITED IN THE FUND. THE CHIEF ADMINISTRATOR OF THE COURTS SHALL USE THE RESOURCES IN THE FUND TO COVER THE COSTS OF PROVIDING MEDIATION SERVICES.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.