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I N   S E N A T E

February 25, 2010

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Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to providing recourse for manufactured 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:

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

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

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

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

17    (d) The manufactured homeowners' total lack of bargaining power  
18    disrupts the normal operation of market forces and renders such manufactured  
19    homeowners captive to whatever terms a manufactured home park  
20    owner may choose to impose. Although many manufactured home park owners  
21    choose not to take advantage of their superior bargaining power, many  
22    do. This often results in manufactured homeowners being evicted because  
23    of manufactured home park rents they can no longer afford, and as a  
24    result, losing their manufactured home altogether because there is no  
25    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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1 (e) Under current law, manufactured homeowners who rent lots in manu-  
2 factured home parks have no legal remedy for an unjustifiable and unrea-  
3 sonable rent increase.

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

6 4. ALL RENT INCREASES, INCLUDING ALL FEES, RENTS, CHARGES, ASSESSMENTS  
7 AND UTILITIES, SHALL BE SUBJECT TO JUDICIAL CHALLENGE PURSUANT TO  
8 SECTION TWO HUNDRED THIRTY-THREE-B OF THIS ARTICLE FOR MANUFACTURED  
9 HOMEOWNERS.

10 S 3. Paragraph 2 of subdivision g of section 233 of the real property  
11 law, as amended by chapter 566 of the laws of 1996, is amended to read  
12 as follows:

13 2. A manufactured home park owner or operator shall be required to  
14 fully disclose in writing all fees, charges, assessments, including  
15 rental fees, rules and regulations prior to [a manufactured home tenant  
16 assuming occupancy] ENTERING INTO A RENTAL AGREEMENT WITH A PROSPECTIVE  
17 TENANT in the manufactured home park.

18 S 4. The real property law is amended by adding a new section 233-b to  
19 read as follows:

20 S 233-B. UNJUSTIFIED RENT INCREASES IN MANUFACTURED HOME PARKS. 1.  
21 LOCAL OPTION. THE PROVISIONS OF THIS SECTION SHALL APPLY IN ANY COUNTY  
22 IN WHICH THE GOVERNING BOARD OF SUCH COUNTY HAS PASSED A LOCAL LAW  
23 ADOPTING THE PROVISIONS OF THIS SECTION.

24 2. SCOPE. TO BE ELIGIBLE FOR THIS REMEDY, THE MANUFACTURED HOME MUST  
25 BE THE PRIMARY RESIDENCE OF THE MANUFACTURED HOMEOWNER.

26 3. PRIMA FACIE CASE. AN INCREASE IN RENT WHICH EXCEEDS THE PERCENTAGE  
27 INCREASE IN THE CONSUMER PRICE INDEX SINCE THE CURRENT LOT RENT BECAME  
28 EFFECTIVE MAY BE CHALLENGED BY AN AGGRIEVED MANUFACTURED HOMEOWNER AS  
29 UNJUSTIFIED. THE TERM "CONSUMER PRICE INDEX" MEANS THE INDEX PUBLISHED  
30 MONTHLY BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR  
31 STATISTICS, FOR THE APPLICABLE NEW YORK REGION. IN THIS SECTION,  
32 "INCREASE IN LOT RENT" INCLUDES ALL COST INCREASES, INCLUDING ALL  
33 INCREASED RENT, FEES, CHARGES, ASSESSMENTS AND UTILITIES.

34 4. JOINDER. MULTIPLE AGGRIEVED MANUFACTURED HOMEOWNERS MAY JOIN IN THE  
35 SAME ACTION WHERE THERE IS A COMMON QUESTION OF LAW OR FACT.

36 5. VENUE AND STATUTE OF LIMITATION. WITHIN NINETY DAYS OF THE NOTICE  
37 OF THE PROPOSED INCREASE, AN AGGRIEVED MANUFACTURED HOMEOWNER MAY CHAL-  
38 LENGE SUCH INCREASE BY FILING AN ACTION IN THE COUNTY WHERE THE REAL  
39 PROPERTY IS LOCATED SEEKING A DECLARATORY JUDGMENT THAT THE RENT  
40 INCREASE IS UNJUSTIFIABLE.

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

46 7. STANDARD FOR JUDICIAL REVIEW. IN DETERMINING WHETHER THE PROPOSED  
47 RENT INCREASE IS UNJUSTIFIABLE, THE COURT SHALL CONSIDER:

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

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

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

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

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

3 (F) ANY OTHER COSTS ASSERTED BY THE MANUFACTURED HOME PARK OWNER WHICH  
4 ARE RELEVANT AND PROBATIVE OF THE NEED FOR AN INCREASE.

5 8. CONDITIONAL APPROVAL. THE COURT MAY CONDITION ITS APPROVAL OF ANY  
6 JUSTIFIED INCREASE UPON THE REDRESS OF CONDITIONS IN THE MANUFACTURED  
7 HOME PARK WHICH THREATEN THE HEALTH AND SAFETY OF THE MANUFACTURED HOME  
8 PARK TENANTS.

9 9. ESCROW. WHILE A CHALLENGE TO A RENT INCREASE PURSUANT TO THIS  
10 SECTION IS PENDING, MANUFACTURED HOME PARK TENANTS SHALL PAY THE AMOUNT  
11 OF THE RENT INCREASE TO THE MANUFACTURED HOME PARK OWNER, WHO SHALL HOLD  
12 SUCH AMOUNTS IN ESCROW PENDING A MEDIATED AGREEMENT BETWEEN THE PARTIES  
13 OR A FINAL DECISION FROM THE COURT, PROVIDED, HOWEVER, THAT NO MANUFAC-  
14 TURED HOME PARK TENANT SHALL BE EVICTED FOR NON-PAYMENT OF THE RENT  
15 INCREASE PRIOR TO A FINAL DISPOSITION OF THE MATTER BY THE COURT IN THE  
16 COUNTY WHERE THE MANUFACTURED HOME PARK IS LOCATED. FAILURE BY THE MANU-  
17 FACTURED HOME PARK OWNER TO PLACE SUCH CHALLENGED RENT INCREASE IN  
18 ESCROW SHALL BE PUNISHABLE BY A CIVIL PENALTY OF NOT MORE THAN FIVE  
19 HUNDRED DOLLARS. IF THE PETITIONERS APPEAL, THE MANUFACTURED HOME PARK  
20 OWNER MAY REMOVE THE RENT INCREASE FUNDS FROM ESCROW, MINGLE SUCH FUNDS  
21 WITH ANY OTHER FUNDS, AND EVICT A TENANT WHO HAS NOT PAID THE INCREASE  
22 FOR NON-PAYMENT OF RENT. IF THE COURT ENTERS A FINAL JUDGMENT DECLARING  
23 THE RENT INCREASES OR ANY PART THEREOF UNJUSTIFIABLE, THE MANUFACTURED  
24 HOME PARK OWNER SHALL REFUND THE AMOUNT OF UNJUSTIFIABLE INCREASE TO  
25 EACH TENANT HOUSEHOLD.

26 10. EFFECT. WHERE ONE OR MORE MANUFACTURED HOMEOWNER BRINGS A SUCCESS-  
27 FUL JUDICIAL CHALLENGE THAT A RENT INCREASE IS UNJUSTIFIABLE PURSUANT TO  
28 THIS SECTION RESULTING IN THE REDUCTION OF RENT, SAID REMEDY SHALL APPLY  
29 TO ALL MANUFACTURED HOMEOWNERS IN THE MANUFACTURED HOME PARK AFFECTED BY  
30 SAID RENT INCREASE, REGARDLESS OF WHETHER OR NOT THE MANUFACTURED HOME  
31 IS A PRIMARY RESIDENCE.

32 S 5. This act shall take effect on the first of January next succeed-  
33 ing the date on which it shall have become a law.