

6921

I N S E N A T E

February 25, 2010

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

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:

1 Section 1. Legislative findings. The legislature finds and declares
2 that:
3 (a) Factors unique to home ownership in manufactured home parks
4 require that the owners of such manufactured homes be protected from
5 involuntary forfeiture of their homes due to unreasonable increases in
6 lot rent.
7 (b) Homeownership in manufactured home parks differs from other forms
8 of homeownership as well as from the traditional landlord-tenant
9 relationship. Unlike other homeowners, because the manufactured homeown-
10 ers 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, and the cost of relocating a manufactured home, even if
15 such a vacancy exists, is prohibitively high and threatens the struc-
16 tural 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 manufac-
19 tured 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
5 amended by adding a new paragraph 4 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 COURTS SHALL EMPLOY OR CONTRACT WITH A PERSON TO SERVE AS THE DIRECTOR
2 OF THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE. THE CHIEF ADMINIS-
3 TRATOR OF THE COURTS SHALL PROVIDE OTHER NECESSARY STAFF AND CLERICAL
4 ASSISTANCE TO THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE, WITHIN
5 THE LIMITS OF FUNDS AVAILABLE.

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

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

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

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

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

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

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

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

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

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

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

43 9. RULES. THE COURT OF APPEALS SHALL ADOPT RULES TO GOVERN THE REFER-
44 RAL OF CASES TO THE COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE.

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

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

49 (B) A LAND USE MEDIATION FUND IS ESTABLISHED AS A NONLAPSING, DEDI-
50 CATED FUND WITHIN THE OFFICE OF THE CHIEF ADMINISTRATOR OF THE COURTS.
51 FEES COLLECTED FOR MEDIATION SERVICES MUST BE DEPOSITED IN THE FUND. THE
52 CHIEF ADMINISTRATOR OF THE COURTS SHALL USE THE RESOURCES IN THE FUND TO
53 COVER THE COSTS OF PROVIDING MEDIATION SERVICES.

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