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

2734

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

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

AN ACT to amend the executive law and the real property law, in relation to prompt and fair disclosure of consent in the sale of cooperatively held housing units

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

Section 1. Legislative findings. The legislature hereby finds that there is wide spread resistance on the part of cooperative corporations to provide reasons when such corporations withhold consent to the sale of cooperatively owned apartments. The unwillingness to provide reasons has frequently served to conceal both arbitrary refusals to consent to sales and discriminatory refusals to consent to sales. The wide spread failure to provide reasons for withholding consent has interfered with economic transactions, limited mobility, exacerbated housing shortages by impeding the optimal efficiency of the housing market and has reinforced economic, racial and other forms of segregation in housing.

Therefore, the legislature finds that it is in the public interest that the withholding of consent to a sale of apartments on a discriminatory basis be prohibited and to require cooperative corporations to disclose, in a timely manner, lawful reasons for withholding consent to the sale of cooperatively owned apartments.

S 2. Subdivision 5 of section 296 of the executive law is amended by adding a new paragraph (h) to read as follows:

(H) IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR A COOPERATIVE CORPORATION BOARD TO: (1) REFUSE TO CONSENT TO THE SALE OF A COOPERATIVELY OWNED APARTMENT TO ANY PERSON OR GROUP OF PERSONS BECAUSE OF THE RACE, CREED, COLOR, NATIONAL ORIGIN, SEXUAL ORIENTATION, MILITARY STATUS, SEX, AGE, DISABILITY, MARITAL STATUS, OR FAMILIAL STATUS OF SUCH PERSON OR PERSONS, OR (2) REPRESENT THAT ANY SUCH APARTMENT IS NOT AVAILABLE FOR INSPECTION OR SALE, WHEN IN FACT SUCH APARTMENT IS SO

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

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AVAILABLE; OR (3) FAIL TO PROVIDE A NON-DISCRIMINATORY REASON FOR WITHHOLDING CONSENT TO THE SALE OF A COOPERATIVELY HELD HOUSING UNIT, AS PROVIDED IN SECTION TWO HUNDRED SEVENTY-EIGHT-B OF THE REAL PROPERTY LAW.

S 3. The real property law is amended by adding a new section 278-b to read as follows:

S 278-B. COOPERATIVE CORPORATIONS; WITHHOLDING CONSENT TO SALE. 1. (A) WHENEVER A COOPERATIVE CORPORATION WITHHOLDS CONSENT TO THE SALE OR PROPOSED SALE OF STOCK IN THE COOPERATIVELY HELD HOUSING UNIT, SUCH CORPORATION SHALL PROVIDE THE PROSPECTIVE BUYER WITH A WRITTEN STATEMENT OF EACH AND EVERY REASON FOR WITHHOLDING CONSENT NO LATER THAN FIVE BUSINESS DAYS AFTER SUCH CORPORATION HAS MADE SUCH DECISION TO WITHHOLD CONSENT. A SINGLE EXTENSION OF SUCH TIME OF NOT LONGER THAN TWENTY BUSINESS DAYS MAY BE REQUESTED IN WRITING.

(B) THE STATEMENT REQUIRED BY THIS SECTION MUST SET FORTH EACH REASON FOR WITHHOLDING CONSENT WITH SPECIFICITY. SUCH SPECIFICITY REQUIRES THAT EACH ELEMENT OF SUCH BUYER'S APPLICATION THAT FAILED TO MEET A SPECIFIC POLICY, STANDARD OR REQUIREMENT OF THE COOPERATIVE CORPORATION MUST BE SET FORTH, WITH THE SOURCE OF THE DEFICIENCY. THE STATEMENT SHALL PROVIDE THE PROSPECTIVE BUYER WITH ENOUGH INFORMATION TO REMEDY SUCH DEFICIENCY IN SUCH BUYER'S APPLICATION.

(C) THE STATEMENT SHALL SET FORTH THE TOTAL NUMBER OF APPLICATIONS THAT HAVE BEEN RECEIVED BY THE COOPERATIVE CORPORATION WITHIN THE THREE YEARS IMMEDIATELY PRECEDING THE DATE OF THE SUBJECT APPLICATION AND THE NUMBER OF SUCH APPLICATIONS WHERE CONSENT WAS WITHHELD.

(D) THE STATEMENT SHALL INCLUDE A CERTIFICATION BY AN OFFICER OF THE COOPERATIVE CORPORATION, SWORN TO OR AFFIRMED UNDER PENALTY OF PERJURY, THAT:

(I) THE STATEMENT CONTAINS TRUE, COMPLETE AND SPECIFIC REASONS FOR WITHHOLDING CONSENT;

(II) EACH DIRECTOR WHO PARTICIPATED IN THE DECISION TO WITHHOLD CONSENT HAS STATED TO THE CERTIFYING OFFICER THAT HE OR SHE HAD NO UNLAWFUL REASONS, AS PROVIDED IN PARAGRAPH (H) OF SUBDIVISION FIVE OF SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW, FOR WITHHOLDING CONSENT; AND

(III) THE STATEMENT CONTAINS TRUE AND ACCURATE DATA AS REQUIRED BY PARAGRAPH (C) OF THIS SUBDIVISION.

2. AMENDMENTS OR SUPPLEMENTS TO STATEMENTS SHALL BE CONSIDERED TIMELY IF SUCH AMENDMENTS OR SUPPLEMENTS ARE PROVIDED TO THE CORPORATION BY THE PROSPECTIVE BUYER WITHIN TEN DAYS AFTER RECEIPT OF THE COOPERATIVE CORPORATION'S STATEMENT WITHHOLDING CONSENT, AS REQUIRED BY SUBDIVISION ONE OF THIS SECTION.

3. IN LIEU OF COMMENCING AN ACTION AS PROVIDED IN THIS SECTION, ANY PARTY MAY COMMENCE A PROCEEDING AS PROVIDED IN ARTICLE FIFTEEN OF THE EXECUTIVE LAW.

4. ANY PARTY MAY COMMENCE AN ACTION IN ANY COURT OF COMPETENT JURISDICTION ALLEGING A FAILURE TO COMPLY WITH THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION. SUCH ACTION MUST BE COMMENCED WITHIN ONE YEAR OF WHEN SUCH COMPLIANCE WAS REQUIRED. THE PREVAILING PARTY MAY BE AWARDED COSTS AND REASONABLE ATTORNEY'S FEES AND SHALL BE AWARDED APPROPRIATE EQUITABLE RELIEF. A COURT SHALL CONSIDER THE SCOPE OF NON-COMPLIANCE AND MAY IMPOSE PUNITIVE DAMAGES FOR A FINDING OF WILLFUL NON-COMPLIANCE. THE COURT SHALL ALSO CONSIDER THE RESOURCES OF THE COOPERATIVE CORPORATION IN DETERMINING THE APPROPRIATE SANCTION TO BE IMPOSED, AS PROVIDED IN SUBDIVISION FIVE OF THIS SECTION.

5. IN ANY ACTION COMMENCED AGAINST A COOPERATIVE CORPORATION WHICH SETS FORTH ALLEGATIONS THAT THE CORPORATION ENGAGED IN UNLAWFUL DISCRIMINATORY PRACTICE, AS DEFINED IN PARAGRAPH (H) OF SUBDIVISION FIVE OF SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW, NEITHER THE COOPERATIVE CORPORATION NOR ANY OF ITS DIRECTORS SHALL BE PERMITTED TO INTRODUCE EVIDENCE OF NON-DISCRIMINATORY REASONS FOR WITHHOLDING CONSENT THAT WERE NOT SET FORTH WITH SPECIFICITY IN THE CORPORATIONS STATEMENT.

6. IN ADDITION TO ANY OTHER PENALTIES OR SANCTION WHICH MAY BE IMPOSED BY THIS SECTION OR ANY OTHER LAW, ANY COOPERATIVE CORPORATION THAT FAILS TO COMPLY WITH THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION SHALL BE LIABLE TO EACH PARTY WHO COMMENCES OR JOINS IN AN ACTION OR PROCEEDING ALLEGING A FAILURE TO HAVE TIMELY COMPLIED WITH SUCH REQUIREMENTS IN THE AMOUNT OF:

(A) NOT LESS THAN ONE THOUSAND DOLLARS NOR MORE THAN FIFTEEN THOUSAND DOLLARS FOR AN INITIAL VIOLATION;

(B) NOT LESS THAN FIVE THOUSAND DOLLARS NOR MORE THAN TWENTY THOUSAND DOLLARS FOR A SECOND VIOLATION; AND

(C) NOT LESS THAN TEN THOUSAND DOLLARS NOR MORE THAN TWENTY-FIVE THOUSAND DOLLARS FOR A THIRD OR SUBSEQUENT VIOLATION.

7. A JUDGMENT OBTAINED UNDER THIS SECTION SHALL NOT BE DEEMED AN ADJUDICATION OF ANY FACT AT ISSUE OR FOUND THEREIN IN ANY OTHER ACTION OR COURT; EXCEPT THAT A SUBSEQUENT JUDGMENT OBTAINED IN ANOTHER ACTION OR COURT INVOLVING THE SAME FACTS, ISSUES AND PARTIES SHALL BE REDUCED BY THE AMOUNT OF A JUDGMENT AWARDED UNDER THIS ARTICLE.

8. THE PROVISIONS OF THIS SECTION SHALL BE CONSTRUED IN A MANNER TO ENSURE THAT A PROSPECTIVE PURCHASER HAS BEEN PROVIDED WITH LAWFUL REASONS FOR THE WITHHOLDING OF CONSENT TO SUCH SALE AND TO DETER ATTEMPTS TO EVADE THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION. NO PROVISION OF THIS SECTION SHALL BE CONSTRUED OR INTERPRETED TO RESTRICT OR EXPAND THE LAWFUL REASONS FOR WHICH A COOPERATIVE CORPORATION MAY WITHHOLD CONSENT TO A SALE OF STOCK.

S 4. This act shall take effect on the thirtieth day after it shall have become a law and apply to all applications for purchase of cooperatively held housing units filed on or after such effective date.