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

5301

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. SQUADRON, PADAVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to providing certification and registration requirements for property managers of cooperatives and condominiums

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

Section 1. The real property law is amended by adding a new article 12-D to read as follows:

ARTICLE 12-D

RESIDENTIAL REALTY MANAGEMENT

SECTION 448. RESIDENTIAL REALTY MANAGEMENT.

S 448. RESIDENTIAL REALTY MANAGEMENT. 1. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "CERTIFICATION" SHALL MEAN A DESIGNATION BY THE SECRETARY OF STATE THAT AN INDIVIDUAL HAS MET THE PREDETERMINED QUALIFICATIONS WHICH ARE DEEMED TO CONSTITUTE A LEVEL OF PROFICIENCY ADEQUATE TO PERFORM THE DAY-TO-DAY MANAGEMENT AND OPERATION OF REAL PROPERTY USED FOR RESIDENTIAL PURPOSES AND OWNED AS A COOPERATIVE OR CONDOMINIUM.

(B) "PROPERTY MANAGER" SHALL MEAN ANY PERSON WHO, IN RETURN FOR REMUNERATION OR COMPENSATION OF ANY KIND, PERFORMS RESIDENTIAL REALTY MANAGEMENT FOR REAL PROPERTY OWNED AS A CONDOMINIUM OR COOPERATIVE. PROPERTY MANAGER SHALL NOT MEAN OR INCLUDE:

(1) A SHAREHOLDER OR OWNER OF THE COOPERATIVE OR CONDOMINIUM ACTING AS A PROPERTY MANAGER WITHOUT REMUNERATION OR COMPENSATION OF ANY KIND; OR

(2) ANY DEVELOPER OR SPONSOR OF A COOPERATIVE OR CONDOMINIUM DURING THE PERIOD THAT THE DEVELOPER OR SPONSOR RETAINS CONTROL OF THE COOPERATIVE OR CONDOMINIUM; PROVIDED THAT THE DEVELOPER OR SPONSOR HAVE IN ITS EMPLOY OR HAVE RETAINED A PROPERTY MANAGER CERTIFIED UNDER THIS ARTICLE.

(C) "RESIDENTIAL REALTY MANAGEMENT" SHALL MEAN EITHER:

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

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(1) THE PERFORMANCE OF PRINCIPAL MANAGERIAL RESPONSIBILITIES FOR A COOPERATIVE OR CONDOMINIUM; AND THE AUTHORITY FOR POLICY OR FINANCIAL DECISION MAKING FOR ANY ONE OF THE FOLLOWING SERVICES: MAINTENANCE, SECURITY, ENERGY CONSERVATION, CODE COMPLIANCE, LABOR RELATIONS, FISCAL BUDGETARY RESPONSIBILITIES, TENANT RELATIONS, GOVERNMENTAL RELATIONS, JANITORIAL SERVICES OR ANY OTHER PROVIDED SERVICE; OR

(2) THE RESPONSIBILITY FOR THE COLLECTION AND EXPENDITURE OF MONIES FOR AND ON BEHALF OF SUCH COOPERATIVE OR CONDOMINIUM, ITS OWNERS AND/OR MANAGING BOARD, UNDER WHATEVER NAME KNOWN.

2. NO PERSON SHALL PERFORM RESIDENTIAL REALTY MANAGEMENT UNLESS SUCH PERSON SHALL HAVE FILED A PROPERTY MANAGER REGISTRATION STATEMENT WITH THE SECRETARY OF STATE AS REQUIRED BY THIS SECTION AND HAS BEEN ISSUED BY THE SECRETARY OF STATE A CERTIFICATE DEMONSTRATING THAT SUCH REGISTRANT HAS SATISFIED ALL THE REQUIREMENTS FOR CERTIFICATION AS A PROPERTY MANAGER AS SET FORTH BY THIS ARTICLE.

NO COOPERATIVE OR CONDOMINIUM BOARD SHALL EMPLOY ANY PERSON FOR THE PURPOSE OF PERFORMING RESIDENTIAL REALTY MANAGEMENT UNLESS SUCH PERSON HAS BEEN CERTIFIED BY THE OFFICE OF THE SECRETARY OF STATE. NOR SHALL THE COOPERATIVE OR CONDOMINIUM BOARD EMPLOY ANY FIRM, PARTNERSHIP, CORPORATION OR OTHER ENTITY UNLESS ITS PROPERTY MANAGERS ARE CERTIFIED BY THE OFFICE OF THE SECRETARY OF STATE.

3. THE SECRETARY OF STATE SHALL PROMULGATE THE FORM OF THE REGISTRATION STATEMENT TO BE KNOWN AS THE "PROPERTY MANAGER REGISTRATION STATEMENT." THE PROPERTY MANAGER REGISTRATION STATEMENT FORM SHALL REQUIRE, BUT NEED NOT BE LIMITED TO, THE FOLLOWING INFORMATION:

(A) THE NAME AND ADDRESS OF THE PERSON FILING THE REGISTRATION TO OBTAIN CERTIFICATION PURSUANT TO THIS ARTICLE;

(B) THE NAME AND ADDRESS OF THE CORPORATION, FIRM, ASSOCIATION, PARTNERSHIP OR OTHER ENTITY THAT CURRENTLY EMPLOYS THE APPLICANT;

(C) THE NAME AND ADDRESS OF ALL PARTNERS, OFFICERS, DIRECTORS AND PRINCIPALS OF SUCH CORPORATION, FIRM, ASSOCIATION, PARTNERSHIP OR OTHER ENTITY THAT CURRENTLY EMPLOYS THE APPLICANT;

(D) A STATEMENT INDICATING WHETHER THE APPLICANT HAS:

(1) BEEN CONVICTED OF ANY CRIME INVOLVING FRAUD OR DISHONESTY OR HAD ANY CIVIL JUDGMENTS RELATING TO WORK AS A REAL PROPERTY MANAGER;

(2) EVER HAD A REAL ESTATE BROKER'S LICENSE, AND IF SO, WHETHER SUCH LICENSE WAS EVER REVOKED OR SUSPENDED;

(3) AT ANY TIME IN THE PAST BEEN ISSUED A CERTIFICATION PURSUANT TO THIS SECTION, AND IF SO, WHETHER SUCH CERTIFICATION WAS EVER REVOKED OR SUSPENDED;

(E) THE LENGTH OF TIME THAT THE APPLICANT HAS BEEN ENGAGED IN RESIDENTIAL REALTY MANAGEMENT WHERE APPLICABLE AND A LIST OF EACH BUILDING FOR WHICH THE REGISTRANT HAS PERFORMED RESIDENTIAL REALTY MANAGEMENT AND THE DATES AND ADDRESSES THEREOF;

(F) THE NAME AND ADDRESS OF THE APPROVED PROPERTY MANAGER TRAINING PROGRAM THAT THE APPLICANT HAS SATISFACTORILY COMPLETED AND THE DATE OF SUCH COMPLETION, IF REQUIRED; AND

(G) A SWORN STATEMENT BY THE PROPERTY MANAGER THAT THE INFORMATION SET FORTH IN THE STATEMENT IS CURRENT AND ACCURATE.

4. EVERY CERTIFICATION ISSUED PURSUANT TO THIS SECTION SHALL BE RENEWED AS SET FORTH BY THE SECRETARY OF STATE BUT IN NO EVENT SHALL THE TERM OF SUCH CERTIFICATION EXCEED TWO YEARS. THE SECRETARY OF STATE SHALL COLLECT A FEE OF FIFTY DOLLARS FOR EACH CERTIFICATION AND EACH RENEWAL PURSUANT TO THIS SECTION.

5. A CERTIFIED PROPERTY MANAGER SHALL GIVE THE SECRETARY OF STATE WRITTEN NOTIFICATION WITHIN FORTY-FIVE DAYS OF ANY MATERIAL CHANGE OF

CIRCUMSTANCES WHICH VARIES FROM THE INFORMATION CONTAINED IN HIS OR HER SWORN PROPERTY MANAGER REGISTRATION STATEMENT PREVIOUSLY PROVIDED TO THE SECRETARY OF STATE INCLUDING, BUT NOT LIMITED TO, CHANGES IN EMPLOYMENT, RETIREMENT, RESIGNATION OR TERMINATION.

6. THE SECRETARY OF STATE, UPON THE RECEIPT AND REVIEW OF A SATISFACTORILY COMPLETED PROPERTY MANAGER REGISTRATION STATEMENT, MAY ISSUE A CERTIFICATION TO ANY APPLICANT WHO HAS:

(A) (1) SUCCESSFULLY COMPLETED A PROPERTY MANAGER TRAINING PROGRAM APPROVED BY THE SECRETARY OF STATE WHICH PROVIDES THE APPLICANT WITH THE REQUISITE SKILLS, KNOWLEDGE AND TRAINING NECESSARY TO PERFORM RESIDENTIAL REALTY MANAGEMENT AS DEFINED BY PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION, OR (2) BEEN GAINFULLY EMPLOYED AS A PROPERTY MANAGER AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION FOR THE FIVE YEARS IMMEDIATELY PRECEDING ENACTMENT OF THIS SECTION; AND

(B) HAS MET ANY OTHER CRITERIA ESTABLISHED BY THE SECRETARY OF STATE IN ORDER TO BE ELIGIBLE TO RECEIVE CERTIFICATION AS A PROPERTY MANAGER; OR

(C) HAS DEMONSTRATED, IN THE CASE OF A CERTIFIED PROPERTY MANAGER APPLYING FOR RECERTIFICATION, THE COMPETENCY AND INTEGRITY TO CONTINUE TO PERFORM THE DUTIES OF A PROPERTY MANAGER AND HAS NOT HAD SUCH CERTIFICATION REVOKED.

THE SECRETARY OF STATE MAY REFUSE TO ISSUE A CERTIFICATE TO ANY PERSON WHO HE OR SHE FINDS, AFTER NOTICE AND HEARING, HAS BEEN CONVICTED OF ANY CRIME INVOLVING FRAUD OR DISHONESTY, OR WHERE REFUSAL WILL IN HIS OR HER JUDGMENT, BEST PROMOTE THE INTERESTS OF THE PEOPLE OF THIS STATE.

7. THE SECRETARY OF STATE SHALL ESTABLISH PROCEDURES AND CRITERIA, AND SHALL PROMULGATE REGULATIONS, FOR: (A) APPROVING OR DISAPPROVING APPLICATIONS FOR CERTIFICATIONS TO ACT AS A PROPERTY MANAGER; AND (B) THE APPROVAL OF AND THE PERIODIC REVIEW OF CERTIFICATION TRAINING PROGRAMS. ANY COMPLAINT IN CONNECTION WITH AN ACTION TAKEN OR INACTION BY THE SECRETARY OF STATE PURSUANT TO THIS ARTICLE SHALL BE WITHIN THE PURVIEW OF THE SECRETARY OF STATE. IN ESTABLISHING THE PROCEDURES REQUIRED BY THIS SUBDIVISION, THE SECRETARY OF STATE MAY PROVIDE THAT ANY ORGANIZATION WHICH HAS BEEN DESIGNATED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AS AN APPROVED CERTIFICATION TRAINING PROGRAM MAY ACT AS SUCH PURSUANT TO THIS ARTICLE.

8. THE SECRETARY OF STATE MAY REFUSE TO RENEW, OR MAY REVOKE OR SUSPEND THE CERTIFICATION OF ANY PROPERTY MANAGER, IF, AFTER NOTICE AND HEARING, HE OR SHE FINDS THAT SUCH PROPERTY MANAGER HAS FAILED TO COMPLY WITH ANY OF THE REQUIREMENTS IMPOSED BY THE PROVISIONS HEREIN AND IF IN HIS OR HER JUDGMENT SUCH SUSPENSION OR REVOCATION IS REASONABLY NECESSARY TO PROTECT THE INTERESTS OF THE PEOPLE OF THIS STATE. THE SECRETARY OF STATE MAY IN HIS OR HER DISCRETION REINSTATE SUCH CERTIFICATION WHERE SUCH GROUNDS FOR SUSPENSION OR REVOCATION NO LONGER EXISTS.

9. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PROPERTY MANAGER OR ANY FIRM, ASSOCIATION, PARTNERSHIP, ENTITY AND ANY AFFILIATE OF SUCH FIRM, ASSOCIATION, PARTNERSHIP OR ENTITY EMPLOYING A PROPERTY MANAGER, CONTRACTING WITH A PROPERTY MANAGER OR CONTRACTING TO PROVIDE A PROPERTY MANAGER, IF ALL THE CONDOMINIUMS OR COOPERATIVES FOR WHICH SUCH PROPERTY MANAGER, FIRM, ASSOCIATION, PARTNERSHIP, ENTITY AND ANY AFFILIATE OF SUCH FIRM, ASSOCIATION, PARTNERSHIP OR ENTITY PERFORMS SERVICES COMPRISES LESS THAN TWENTY-FIVE RESIDENTIAL UNITS.

10. ANY PROPERTY MANAGER OR ANY FIRM, ASSOCIATION, PARTNERSHIP, CORPORATION OR OTHER ENTITY, OTHER THAN A COOPERATIVE OR CONDOMINIUM BOARD, EMPLOYING A PROPERTY MANAGER, CONTRACTING WITH A PROPERTY MANAGER OR CONTRACTING TO PROVIDE A PROPERTY MANAGER THAT FAILS TO COMPLY WITH THE

REQUIREMENTS OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS FOR A FIRST VIOLATION, TWO THOUSAND FIVE HUNDRED DOLLARS FOR A SECOND VIOLATION, AND FIVE THOUSAND DOLLARS FOR A THIRD OR SUBSEQUENT VIOLATION.

ANY COOPERATIVE OR CONDOMINIUM BOARD WHICH KNOWINGLY HIRES AN UNREGISTERED PROPERTY MANAGER MAY BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS.

11. ALL MONIES COLLECTED WHILE PERFORMING RESIDENTIAL REALTY MANAGEMENT SHALL BE SEGREGATED AND SEPARATE ACCOUNTS SHALL BE MAINTAINED FOR EACH CONDOMINIUM OR COOPERATIVE BEING MANAGED. ANY VIOLATION OF THIS PROVISION SHALL CONSTITUTE A MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED FIVE THOUSAND DOLLARS.

12. WHEN A PROPERTY MANAGER CEASES TO PERFORM RESIDENTIAL REALTY MANAGEMENT SERVICES FOR A COOPERATIVE OR CONDOMINIUM, THE PROPERTY MANAGER WITHIN TEN BUSINESS DAYS SHALL BE REQUIRED TO TURN OVER ALL BUILDING RECORDS AND ALL FUNDS, WHICH HAVE BEEN PLACED INTO HIS OR HER CARE OR ARE IN HIS OR HER POSSESSION, TO THE BOARD OF DIRECTORS OF THE COOPERATIVE OR BOARD OF MANAGERS OF THE CONDOMINIUM OR THEIR DESIGNEE. NEVERTHELESS, SUCH FUNDS AND/OR RECORDS REQUIRING BANK RECONCILIATION SHALL BE TURNED OVER WITHIN FORTY-FIVE DAYS OF TERMINATION.

13. THE ATTORNEY GENERAL SHALL HAVE THE POWER TO ENFORCE THE PROVISIONS OF THIS ARTICLE.

S 2. This act shall take effect on the ninetieth day after it shall have become a law, except that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date; provided, however, that subdivision 2 of section 448 of the real property law, as added by section one of this act, shall take effect January 1, 2010.