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

1105--A

2011-2012 Regular Sessions

I N S E N A T E

January 5, 2011

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to the preparation and recording of restrictive covenant declarations

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 section 291-j to read as follows:

S 291-J. PROHIBITED RESTRICTIVE COVENANTS. 1. (A) ANY PROVISION IN A WRITTEN INSTRUMENT RELATING TO OR AFFECTING REAL PROPERTY THAT PURPORTS TO FORBID OR RESTRICT CONVEYING, MORTGAGING, ENCUMBERING OR LEASING OF SUCH REAL PROPERTY TO ANY PERSON ON THE BASIS OF RACE, COLOR, RELIGION, GENDER OR ANY OTHER CRITERIA IN VIOLATION OF APPLICABLE FEDERAL OR STATE LAW, SHALL BE VOID.

(B) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, THE FOLLOWING PROVISIONS ARE NOT PROHIBITED BY THIS SECTION:

(I) A LIMITATION, ON THE BASIS OF RELIGION, ON THE USE OF REAL PROPERTY HELD BY A RELIGIOUS INSTITUTION OR ORGANIZATION OR BY ANY RELIGIOUS OR CHARITABLE ORGANIZATION, OPERATED, SUPERVISED OR CONTROLLED BY A RELIGIOUS INSTITUTION OR ORGANIZATION AND USED FOR RELIGIOUS OR CHARITABLE PURPOSES; AND

(II) A LIMITATION, IN ACCORDANCE WITH THE PROVISIONS OF STATE OR FEDERAL LAW, ON THE BASIS OF SOURCE OF INCOME OR SOCIO-ECONOMIC STATUS, ON THE USE OF REAL PROPERTY DESIGNATED AS HOUSING ACCOMMODATIONS FOR PERSONS IN LOW INCOME CATEGORIES, WHICH LIMITATION RESTRICTS USE OR OCCUPANCY OF SUCH PROPERTY TO PERSONS IN SUCH CATEGORIES, INCLUDING, BUT NOT LIMITED TO LIMITATIONS ON PROPERTY:

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

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(A) DESIGNATED AS PUBLICLY-ASSISTED HOUSING ACCOMMODATIONS AS PROVIDED IN SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE LAW; OR

(B) SUBJECT TO RENT CONTROL OR RENT STABILIZATION PURSUANT TO CHAPTER FIVE HUNDRED SEVENTY-SIX OF THE LAWS OF NINETEEN HUNDRED SEVENTY-FOUR, CONSTITUTING THE EMERGENCY TENANT PROTECTION ACT OF NINETEEN SEVENTY-FOUR, CHAPTER TWO HUNDRED SEVENTY-FOUR OF THE LAWS OF NINETEEN HUNDRED FORTY-SIX, CONSTITUTING THE EMERGENCY HOUSING RENT CONTROL LAW, OR THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

(C) THE VOIDING OF A PROVISION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT AFFECT THE VALIDITY OF THE INSTRUMENT, AND THE INSTRUMENT SHALL HAVE FULL FORCE AND EFFECT IN ALL OTHER RESPECTS, AND SHALL BE CONSTRUED AS IF NO SUCH PROVISION WERE CONTAINED THEREIN.

2. NO WRITTEN INSTRUMENT HEREAFTER MADE, RELATING TO OR AFFECTING REAL PROPERTY, SHALL BE FILED OR RECORDED IN A FORM CONTAINING ANY PROVISION IN VIOLATION OF THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION UNLESS SUCH INSTRUMENT IS ACCOMPANIED BY A RESTRICTIVE COVENANT DECLARATION. UPON THE TRANSFER OR SALE OF REAL PROPERTY, OR UPON THE OCCURRENCE OF ANY OTHER CIRCUMSTANCES ENTAILING THE FILING OF A NEW DEED PERTAINING TO REAL PROPERTY, WHICHEVER OCCURS FIRST, OR UPON THE FILING OF A LEASE PERTAINING TO REAL PROPERTY, THE ATTORNEY, TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT PREPARING THE NEW DEED OR LEASE SHALL PREPARE A RESTRICTIVE COVENANT DECLARATION AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION, TO BE SIGNED BY THE PROSPECTIVE PURCHASER OR LESSOR OF THE PROPERTY, AND SHALL FILE THE SAME AT THE TIME THE NEW DEED OR LEASE IS FILED.

3. A RESTRICTIVE COVENANT DECLARATION SHALL:

(A) BEAR THE HEADING "UNLAWFUL RESTRICTIVE COVENANT DECLARATION";

(B) INCLUDE A COMPLETE COPY OF THE ORIGINAL DOCUMENT CONTAINING THE UNLAWFUL RESTRICTIVE COVENANT AND REFERENCE SUCH DOCUMENT BY BOOK AND PAGE OR INSTRUMENT NUMBER AND THE DATE OF RECORDING, AND SET FORTH THE NAMES OF THE SIGNATORIES TO THE ORIGINAL DOCUMENT, IF ANY;

(C) IDENTIFY THE LANGUAGE OF THE UNLAWFUL RESTRICTIVE COVENANT;

(D) SET FORTH THE FOLLOWING STATEMENT IN AT LEAST EIGHTEEN-POINT BOLD FACED TYPE: "THIS DOCUMENT CONTAINS ONE OR MORE ILLEGAL RESTRICTIONS THAT VIOLATE STATE AND/OR FEDERAL LAW. TO THE EXTENT THAT THESE PROVISIONS VIOLATE STATE OR FEDERAL LAW, THEY ARE DEEMED TO BE VOID AND UNENFORCEABLE";

(E) BE FILED AND RECORDED WITH THE DOCUMENT CONTAINING THE UNLAWFUL RESTRICTIVE COVENANT AT THE TIME OF FILING AND RECORDING OF SUCH DOCUMENT; AND

(F) BE INDEXED IN THE SAME MANNER AS ANY PREVIOUSLY RECORDED DOCUMENT OR DOCUMENTS TO WHICH THE RESTRICTIVE COVENANT DECLARATION REFERS AND SHALL REFERENCE THE ORIGINAL DOCUMENT BY BOOK AND PAGE OR INSTRUMENT NUMBER AND THE DATE OF RECORDING.

4. THE COUNTY RECORDER SHALL MAKE AVAILABLE TO THE PUBLIC FORMS FOR PREPARATION OF A RESTRICTIVE COVENANT DECLARATION. ALL RESTRICTIVE COVENANT DECLARATIONS SHALL BE ACCEPTED FOR FILING BY THE COUNTY RECORDER WITHOUT PAYMENT OF A FILING FEE.

5. DEFINITIONS. AS USED IN THIS SECTION:

(A) "PROVISION" MEANS ALL CLAUSES, STIPULATIONS, RESTRICTIONS, PROHIBITIONS, COVENANTS AND CONDITIONS OF ANY KIND OR CHARACTER, INCLUDING A RIGHT OF ENTRY OR A POSSIBILITY OF REVERTER, WHICH DIRECTLY OR INDIRECTLY LIMIT THE USE OR OCCUPANCY OF REAL PROPERTY; AND

(B) "WRITTEN INSTRUMENT" OR "INSTRUMENT" MEANS EVERY WRITING THAT RELATES TO OR AFFECTS ANY RIGHT, TITLE, INTEREST IN REAL PROPERTY,

INCLUDING, BUT NOT LIMITED TO, DEEDS, MORTGAGES, LEASES, LIENS, MAPS AND PLATS.

6. APPLICATION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT THE INCLUSION IN WRITTEN INSTRUMENTS OF PROVISIONS NECESSARY TO GIVE EFFECT TO STATE OR FEDERAL STATUTES.

7. LIABILITY. NOTWITHSTANDING ANY LAW TO THE CONTRARY, ANY PERSON WHO, IN GOOD FAITH AND IN THE USUAL COURSE OF BUSINESS, DELIVERS ANY DEED, CONTRACT, SECURITY INSTRUMENT, OR OTHER INSTRUMENT AFFECTING THE TRANSFER OR SALE OF, OR ANY INTEREST IN, REAL PROPERTY WHICH CONTAINS A RESTRICTIVE COVENANT AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, SHALL BE IMMUNE FROM CIVIL LIABILITY. IN ADDITION, SUCH DELIVERY SHALL NOT CONSTITUTE AN UNFAIR HOUSING PRACTICE. THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO ANY PERSON WHO:

(A) REPRESENTS OR ATTEMPTS TO REPRESENT THAT SUCH RESTRICTIVE COVENANTS ARE VALID AND ENFORCEABLE; OR

(B) HONORS OR EXERCISES OR ATTEMPTS TO HONOR OR EXERCISE SUCH RESTRICTIVE COVENANTS.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.