

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. KRUEGER, MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to creating the office of the cooperative and condominium ombudsman; to amend the tax law, in relation to authorizing the residential unit fee; and to amend the state finance law, in relation to establishing the office of the cooperative and condominium ombudsman fund

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

1 Section 1. The executive law is amended by adding a new article 49-C
2 to read as follows:

3 ARTICLE 49-C

4 OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN

5 SECTION 996. SHORT TITLE.

6 996-A. LEGISLATIVE DECLARATION.

7 996-B. DEFINITIONS.

8 996-C. OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN.

9 996-D. FUNCTIONS, POWERS AND DUTIES OF THE OFFICE.

10 996-E. PRINCIPAL OFFICE AND SATELLITE OFFICES.

11 996-F. ASSISTANCE OF OTHER STATE AGENCIES.

12 996-G. REPORTS TO THE GOVERNOR, ATTORNEY GENERAL AND THE LEGIS-
13 LATURE.

14 996-H. CONTRACT AUTHORITY.

15 996-I. SEPARABILITY.

16 S 996. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
17 THE "COOPERATIVE AND CONDOMINIUM OMBUDSMAN ACT".

18 S 996-A. LEGISLATIVE DECLARATION. THE LEGISLATURE FINDS AND DETERMINES
19 AS FOLLOWS:

20 COOPERATIVE AND CONDOMINIUM HOUSING CONSTITUTES A SIGNIFICANT PORTION
21 OF NEW YORK STATE'S RESIDENTIAL HOUSING STOCK. IT IS AND HAS BEEN THE

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

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1 PUBLIC POLICY OF THIS STATE TO ENCOURAGE SUCH FORMS OF HOME OWNERSHIP. A
2 WIDE VARIETY OF LAWS HAVE BEEN ENACTED TO PROVIDE FAIRNESS IN THE
3 CONVERSION OF RENTAL PROPERTIES TO COOPERATIVE AND CONDOMINIUM OWNERSHIP
4 AND IN THE REGULATION AND TAXATION OF COOPERATIVES AND CONDOMINIUMS.
5 STATE AND LOCAL LAWS AND REGULATIONS ARE ALSO DESIGNED TO INSURE THAT
6 THE RESIDENTS OF SUCH HOUSING ARE PROVIDED WITH SAFE AND HABITABLE
7 ACCOMMODATIONS.

8 INEVITABLY, DISPUTES HAVE ARISEN AMONG COOPERATIVE AND CONDOMINIUM
9 SPONSORS AND DEVELOPERS, COOPERATIVE SHAREHOLDERS AND CONDOMINIUM UNIT
10 OWNERS, PROSPECTIVE SHAREHOLDERS AND UNIT OWNERS, BOARDS OF DIRECTORS
11 AND BOARDS OF MANAGERS. SUCH DISPUTES OFTEN RESULT IN LENGTHY AND COSTLY
12 LITIGATION AND UNCERTAINTY AS TO THE RIGHTS OF THE PARTIES PENDING THE
13 OUTCOME OF LITIGATION. SUCH LITIGATION DIVERTS RESOURCES THAT COULD BE
14 BETTER UTILIZED TO PROVIDE AFFORDABLE AND WELL-MAINTAINED BUILDINGS AND
15 GROUNDS FOR THE COMMON GOOD OF THE OWNERS.

16 THIS ARTICLE IS NECESSARY TO PROVIDE A NEUTRAL, INFORMATIVE AND ACCES-
17 SIBLE RESOURCE AVAILABLE TO ALL PARTIES INVOLVED IN RESIDENTIAL COOPER-
18 ATIVE AND CONDOMINIUM OWNERSHIP AND GOVERNANCE. THE OMBUDSMAN APPOINTED
19 PURSUANT TO THIS ARTICLE WILL CONDUCT OUTREACH PROGRAMS TO EDUCATE UNIT
20 OWNERS AND BOARD MEMBERS AS TO THEIR LEGAL RIGHTS AND RESPONSIBILITIES.
21 THE OMBUDSMAN WILL ENCOURAGE ALTERNATIVE DISPUTE RESOLUTION WHEN
22 DISPUTES DO ARISE. THE OMBUDSMAN WILL BE AVAILABLE TO PROVIDE DISPUTE
23 RESOLUTION SERVICES ON CONSENT OF THE PARTIES. THE OMBUDSMAN WILL ALSO
24 PROVIDE MONITORING AND SUPERVISION OF COOPERATIVE AND CONDOMINIUM
25 ELECTIONS.

26 S 996-B. DEFINITIONS. 1. "COOPERATIVE" MEANS A CORPORATION ORGANIZED
27 AND OPERATING PURSUANT TO THE GENERAL BUSINESS LAW OR THE COOPERATIVE
28 CORPORATIONS LAW FOR THE PRIMARY PURPOSE OF PROVIDING RESIDENTIAL HOUS-
29 ING TO ITS SHAREHOLDERS.

30 2. "CONDOMINIUM" MEANS A HOMEOWNERS ASSOCIATION OR ANY ASSOCIATION
31 ORGANIZED AND OPERATING PURSUANT TO ARTICLE NINE-B OF THE REAL PROPERTY
32 LAW FOR THE PRIMARY PURPOSE OF PROVIDING RESIDENTIAL HOUSING TO ITS UNIT
33 OWNERS.

34 3. "OFFICE" MEANS THE OFFICE OF THE COOPERATIVE AND CONDOMINIUM
35 OMBUDSMAN CREATED BY THIS ARTICLE.

36 4. "OMBUDSMAN" MEANS THE CHIEF ADMINISTRATIVE OFFICER OF THE OFFICE OF
37 THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN.

38 5. "STATE AGENCY" MEANS ANY DEPARTMENT, BOARD, BUREAU, COMMISSION,
39 DIVISION, OFFICE, COUNCIL OR AGENCY OF THE STATE, OR A PUBLIC BENEFIT
40 CORPORATION OR AUTHORITY AUTHORIZED BY THE LAWS OF THE STATE.

41 6. "LOCAL AGENCY" MEANS ANY DEPARTMENT, BOARD, BUREAU, COMMISSION,
42 DIVISION, OFFICE, COUNCIL, OFFICER OR AGENCY OF A CITY, TOWN OR VILLAGE.

43 S 996-C. OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN. 1. THE
44 OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN IS HEREBY CREATED
45 WITHIN THE DEPARTMENT OF LAW TO HAVE AND EXERCISE THE FUNCTIONS, POWERS
46 AND DUTIES PROVIDED BY THE PROVISIONS OF THIS ARTICLE AND ANY OTHER
47 PROVISION OF LAW. THE ATTORNEY GENERAL SHALL BE RESPONSIBLE FOR OVER-
48 SIGHT OF THE OFFICE.

49 2. THE HEAD OF THE OFFICE SHALL BE THE COOPERATIVE AND CONDOMINIUM
50 OMBUDSMAN WHO SHALL BE APPOINTED BY THE ATTORNEY GENERAL. THE OMBUDSMAN
51 SHALL HOLD OFFICE UNTIL THE END OF THE TERM OF THE ATTORNEY GENERAL BY
52 WHOM HE OR SHE WAS APPOINTED AND UNTIL HIS OR HER SUCCESSOR IS APPOINTED
53 AND HAS QUALIFIED. THE OMBUDSMAN MAY BE REMOVED BY THE ATTORNEY GENERAL
54 FOR CAUSE, AFTER BEING GIVEN AN OPPORTUNITY TO BE HEARD. A VACANCY SHALL
55 BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

1 3. THE OMBUDSMAN SHALL RECEIVE AN ANNUAL SALARY TO BE FIXED BY THE
2 ATTORNEY GENERAL WITHIN THE AMOUNT MADE AVAILABLE THEREFOR BY AN APPRO-
3 PRIATION AND SHALL BE ALLOWED HIS OR HER ACTUAL AND NECESSARY EXPENSES
4 IN THE PERFORMANCE OF HIS OR HER DUTIES. THE OMBUDSMAN'S SALARY SHALL BE
5 NO LESS THAN THE SALARIES OF CERTAIN STATE OFFICERS HOLDING THE POSI-
6 TIONS INDICATED IN PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION ONE
7 HUNDRED SIXTY-NINE OF THIS CHAPTER.

8 4. THE OMBUDSMAN SHALL BE AN ATTORNEY WITH EXTENSIVE EXPERIENCE IN
9 REAL ESTATE, COOPERATIVE AND CONDOMINIUM LAW AND IN CONFLICT AND ALTER-
10 NATIVE DISPUTE RESOLUTION.

11 5. THE OMBUDSMAN SHALL DIRECT THE WORK OF THE OFFICE AND SHALL BE THE
12 CHIEF EXECUTIVE OFFICER OF THE OFFICE. THE OMBUDSMAN MAY APPOINT SUCH
13 OFFICERS AND EMPLOYEES AS HE OR SHE MAY DEEM NECESSARY, PRESCRIBE THEIR
14 POWERS AND DUTIES, FIX THEIR COMPENSATION AND PROVIDE FOR THE REIMBURSE-
15 MENT OF THEIR EXPENSES, ALL WITHIN AMOUNTS MADE AVAILABLE THEREFOR BY
16 APPROPRIATION. SUCH OFFICERS AND EMPLOYEES SHALL INCLUDE ATTORNEYS AND
17 OTHER PROFESSIONALS WITH EXTENSIVE EXPERIENCE IN REAL ESTATE, COOPER-
18 ATIVE AND CONDOMINIUM LAW AND IN CONFLICT AND ALTERNATIVE DISPUTE RESOL-
19 UTION.

20 6. THE OMBUDSMAN AND OFFICERS AND EMPLOYEES OF THE OFFICE SHALL ADHERE
21 TO A CODE OF ETHICS IN ORDER TO INSPIRE PUBLIC CONFIDENCE AND TRUST IN
22 THE FAIRNESS AND IMPARTIALITY OF THE OFFICE. THE OMBUDSMAN SHALL
23 PRESCRIBE SUCH CODE OF ETHICS. SUCH CODE SHALL REQUIRE THAT THE OMBUDS-
24 MAN AND OFFICERS AND EMPLOYEES OF THE OFFICE RESPECT AND COMPLY WITH THE
25 LAW; THAT THEY NOT USE OR ATTEMPT TO USE THEIR POSITIONS TO SECURE PRIV-
26 ILEGES OR EXEMPTIONS FOR THEMSELVES OR OTHERS; THAT THEY NOT SOLICIT,
27 ACCEPT OR AGREE TO ACCEPT ANY GIFTS OR GRATUITIES FROM PERSONS HAVING OR
28 LIKELY TO HAVE ANY OFFICIAL TRANSACTION WITH THE OFFICE; THAT THEY NOT
29 REQUEST OR ACCEPT ANY PAYMENT IN ADDITION TO THEIR REGULAR COMPENSATION
30 FOR ASSISTANCE GIVEN AS PART OF THEIR OFFICIAL DUTIES; AND THAT THEY
31 SHALL NOT PERFORM ANY FUNCTION IN A MANNER THAT IMPROPERLY FAVORS ANY
32 PERSON OR PARTY.

33 7. THE OMBUDSMAN AND OFFICERS AND EMPLOYEES OF THE OFFICE SHALL NOT
34 SERVE AS OFFICERS OR EMPLOYEES OF A POLITICAL PARTY OR A CLUB OR ORGAN-
35 IZATION RELATED TO A POLITICAL PARTY, RECEIVE REMUNERATION FOR ACTIV-
36 ITIES ON BEHALF OF ANY CANDIDATE FOR PUBLIC OFFICE OR PARTY POSITION OR
37 ENGAGE IN SOLICITING VOTES OR OTHER ACTIVITIES ON BEHALF OF A CANDIDATE
38 FOR PUBLIC OFFICE OR PARTY POSITION.

39 8. THE SECRETARY TO THE GOVERNOR SHALL ASSURE THAT ALL STATE AGENCIES
40 PROVIDE THE OMBUDSMAN WITH ASSISTANCE IN ADVANCING THE PURPOSES OF THE
41 OFFICE AND TO ASSURE THAT THE ACTIVITIES OF THE OFFICE ARE FULLY COORDI-
42 NATED WITH THE ACTIVITIES OF STATE AGENCIES PROVIDING RELATED SERVICES.

43 S 996-D. FUNCTIONS, POWERS AND DUTIES OF THE OFFICE. THE OFFICE SHALL
44 HAVE THE FOLLOWING FUNCTIONS, POWERS AND DUTIES:

45 1. TO EDUCATE AND INFORM SHAREHOLDERS OF COOPERATIVES AND UNIT OWNERS
46 OF CONDOMINIUMS, THEIR BOARDS OF DIRECTORS AND BOARDS OF MANAGERS, PROP-
47 erty managers, professionals working with and for such boards and other
48 interested parties of their legal rights and responsibilities under the
49 federal, state and local laws and regulations applicable to cooperative
50 and condominium housing in the state of New York and under the cooper-
51 ative and condominium documents governing the respective properties.

52 2. TO COORDINATE AND ASSIST IN THE PREPARATION AND PUBLICATION OF
53 educational and reference materials about residential cooperatives and
54 condominiums, to make such resources known and available to the widest
55 possible audience.

1 3. TO ORGANIZE AND CONDUCT MEETINGS, WORKSHOPS, CONFERENCES, PUBLIC
2 HEARINGS AND FORUMS AND TO UTILIZE ALL FORMS OF COMMUNICATIONS MEDIA TO
3 DISSEMINATE ACCURATE AND TIMELY INFORMATION OF INTEREST TO PERSONS
4 RESIDING IN, OWNING AND MANAGING COOPERATIVE AND CONDOMINIUM HOUSING.

5 4. TO PROVIDE MEETINGS, MEDIATION, ARBITRATION AND OTHER FORMS OF
6 ALTERNATIVE DISPUTE RESOLUTION SERVICES TO COOPERATIVE AND CONDOMINIUM
7 SPONSORS AND DEVELOPERS, COOPERATIVE SHAREHOLDERS, CONDOMINIUM OWNERS,
8 THEIR BOARDS OF DIRECTORS AND MANAGERS, PROSPECTIVE SHAREHOLDERS AND
9 UNIT OWNERS AND OTHER PARTIES SO AS TO AVOID COSTLY AND LENGTHY LITI-
10 GATION AND REDUCE EXPENSES FOR THOSE INVOLVED IN DISPUTES.

11 5. TO SUBPOENA AND ENFORCE THE ATTENDANCE OF WITNESSES, ADMINISTER
12 OATHS OR AFFIRMATIONS AND EXAMINE WITNESSES UNDER OATH AND REQUIRE THE
13 PRODUCTION OF ANY BOOKS AND PAPERS DEEMED RELEVANT OR MATERIAL TO THE
14 RESOLUTION OF ANY DISPUTE PENDING BEFORE THE OFFICE.

15 6. TO ENGAGE WITH THE HOUSING COURTS, OTHER TRIAL COURTS, STATE AND
16 LOCAL AGENCIES AND WITH ALTERNATIVE DISPUTE RESOLUTION PROGRAMS MAIN-
17 TAINED BY THE OFFICE OF COURT ADMINISTRATION IN ORDER TO PROVIDE
18 SPECIALIZED EXPERTISE IN THE RESOLUTION OF COOPERATIVE AND CONDOMINIUM
19 DISPUTES AS AN ALTERNATIVE TO LITIGATION.

20 7. TO OFFER PROCEDURES, MONITORS AND VOTE COUNTING SERVICES TO ASSURE
21 FAIR ELECTIONS FOR MEMBERS OF COOPERATIVE BOARDS OF DIRECTORS AND CONDO-
22 MINIUM BOARDS OF MANAGERS. FIFTEEN PERCENT OF THE TOTAL VOTING INTER-
23 ESTS IN A COOPERATIVE OR CONDOMINIUM OR SHAREHOLDERS OR OWNERS OF SIX
24 RESIDENTIAL UNITS, WHICHEVER IS GREATER, MAY PETITION THE OFFICE TO
25 ATTEND AND CONDUCT AN ELECTION OF DIRECTORS OR MANAGERS. ALL COSTS ASSO-
26 CIATED WITH THE ELECTION MONITORING PROCESS SHALL BE PAID BY THE COOPER-
27 ATIVE OR CONDOMINIUM.

28 8. TO REFER ANY COMPLAINT RECEIVED TO THE APPROPRIATE LAW ENFORCEMENT
29 AGENCY FOR PROSECUTION, IF DEEMED APPROPRIATE BY THE OFFICE.

30 9. TO PERFORM ANY OTHER FUNCTIONS THAT ARE NECESSARY OR APPROPRIATE TO
31 FULFILL THE DUTIES AND RESPONSIBILITIES OF THE OFFICE.

32 S 996-E. PRINCIPAL OFFICE AND SATELLITE OFFICES. THE OFFICE SHALL
33 MAINTAIN ITS PRINCIPAL OFFICE IN THE CITY OF NEW YORK AND SHALL HAVE
34 SATELLITE OFFICES IN OTHER LOCATIONS WITHIN THE STATE OF NEW YORK WHERE
35 THERE ARE SIGNIFICANT CONCENTRATIONS OF COOPERATIVE OR CONDOMINIUM HOUS-
36 ING.

37 S 996-F. ASSISTANCE OF OTHER STATE AGENCIES. TO EFFECTUATE THE
38 PURPOSES OF THIS ARTICLE, THE OMBUDSMAN MAY REQUEST AND SHALL BE ENTI-
39 TLED TO RECEIVE FROM ANY STATE AGENCY, AND THE SAME ARE AUTHORIZED TO
40 PROVIDE, SUCH ASSISTANCE, SERVICES, FACILITIES, AND DATA AS WILL ENABLE
41 THE OFFICE TO CARRY OUT ITS FUNCTIONS, POWERS AND DUTIES, AND SUCH
42 TEMPORARILY OR PERMANENTLY ASSIGNED PERSONNEL AS THE DIRECTOR OF THE
43 BUDGET MAY APPROVE.

44 S 996-G. REPORTS TO THE GOVERNOR, ATTORNEY GENERAL AND THE LEGISLA-
45 TURE. THE OFFICE SHALL MAKE AN ANNUAL REPORT, TO BE RECEIVED ON OR
46 BEFORE JANUARY FIRST, TO THE GOVERNOR, ATTORNEY GENERAL AND THE LEGISLA-
47 TURE CONCERNING THE ACTIVITIES UNDERTAKEN BY THE OFFICE, RECOMMENDATIONS
48 FOR LEGISLATIVE PROPOSALS, DATA CONCERNING PROGRAM ACTIVITIES AND OTHER
49 PERTINENT INFORMATION AS MAY BE REQUIRED.

50 S 996-H. CONTRACT AUTHORITY. THE OFFICE IS HEREBY EMPOWERED TO ENTER
51 INTO ANY AGREEMENT OR CONTRACT WITH ANY STATE OR LOCAL AGENCY NECESSARY
52 OR CONVENIENT TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

53 S 996-I. SEPARABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR
54 PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURIS-
55 DICTION TO BE INVALID, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDI-
56 DATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO

1 THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART THEREOF DIRECTLY
2 INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN
3 RENDERED.

4 S 2. The tax law is amended by adding a new section 186-g to read as
5 follows:

6 S 186-G. RESIDENTIAL UNIT FEE. A COOPERATIVE HOUSING CORPORATION OR A
7 HOMEOWNERS ASSOCIATION, AS SUCH TERMS ARE DEFINED IN SECTION TWO HUNDRED
8 TEN OF THIS CHAPTER, SHALL PAY AN ANNUAL FEE OF SIX DOLLARS PER YEAR FOR
9 EACH RESIDENTIAL UNIT LOCATED IN A BUILDING OR BUILDINGS OWNED OR OPER-
10 ATED BY SUCH CORPORATION OR ASSOCIATION. SUCH FEE SHALL BE PAYABLE TO
11 THE DEPARTMENT. ALL REVENUE FROM THE FEE IMPOSED PURSUANT TO THIS
12 SECTION SHALL BE PAID BY THE DEPARTMENT TO THE STATE COMPTROLLER TO BE
13 DEPOSITED TO AND CREDITED TO THE OFFICE OF THE COOPERATIVE AND CONDOMIN-
14 IUM OMBUDSMAN FUND, ESTABLISHED PURSUANT TO SECTION EIGHTY-ONE OF THE
15 STATE FINANCE LAW.

16 S 3. The state finance law is amended by adding a new section 81 to
17 read as follows:

18 S 81. OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN FUND. 1.
19 THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE STATE COMPTROLLER A
20 SPECIAL FUND TO BE KNOWN AS THE "OFFICE OF THE COOPERATIVE AND CONDOMIN-
21 IUM OMBUDSMAN FUND".

22 2. THE OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN FUND SHALL
23 CONSIST OF MONIES APPROPRIATED THERETO, FUNDS TRANSFERRED FROM ANY OTHER
24 FUND OR SOURCES, AND MONIES DEPOSITED THEREIN PURSUANT TO SECTION ONE
25 HUNDRED EIGHTY-SIX-G OF THE TAX LAW.

26 3. THE MONIES IN THE OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDS-
27 MAN FUND SHALL BE KEPT SEPARATE FROM AND SHALL NOT BE COMMINGLED WITH
28 ANY OTHER MONIES IN THE CUSTODY OF THE STATE COMPTROLLER. SUCH MONIES
29 SHALL BE ALLOCATED TO AND EXPENDED BY THE DEPARTMENT OF LAW SOLELY FOR
30 THE STAFFING AND ADMINISTRATION OF THE OFFICE OF THE COOPERATIVE AND
31 CONDOMINIUM OMBUDSMAN OF SUCH DEPARTMENT.

32 S 4. This act shall take effect on the one hundred eightieth day after
33 it shall have become a law.