

1105

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

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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The real property law is amended by adding a new section  
2     291-i to read as follows:

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

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

11    (I) A LIMITATION, ON THE BASIS OF RELIGION, ON THE USE OF REAL PROPER-  
12    TY HELD BY A RELIGIOUS INSTITUTION OR ORGANIZATION OR BY ANY RELIGIOUS  
13    OR CHARITABLE ORGANIZATION, OPERATED, SUPERVISED OR CONTROLLED BY A  
14    RELIGIOUS INSTITUTION OR ORGANIZATION AND USED FOR RELIGIOUS OR CHARITA-  
15    BLE PURPOSES; AND

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

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

24    (B) SUBJECT TO RENT CONTROL OR RENT STABILIZATION PURSUANT TO CHAPTER  
25    FIVE HUNDRED SEVENTY-SIX OF THE LAWS OF NINETEEN HUNDRED SEVENTY-FOUR,

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

LBD02157-01-1

1 CONSTITUTING THE EMERGENCY TENANT PROTECTION ACT OF NINETEEN  
2 SEVENTY-FOUR, CHAPTER TWO HUNDRED SEVENTY-FOUR OF THE LAWS OF NINETEEN  
3 HUNDRED FORTY-SIX, CONSTITUTING THE EMERGENCY HOUSING RENT CONTROL LAW,  
4 OR THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

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

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

22 3. A RESTRICTIVE COVENANT DECLARATION SHALL:

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

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

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

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

34 (E) BE FILED AND RECORDED WITH THE DOCUMENT CONTAINING THE UNLAWFUL  
35 RESTRICTIVE COVENANT AT THE TIME OF FILING AND RECORDING OF SUCH DOCU-  
36 MENT; AND

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

41 4. THE COUNTY RECORDER SHALL MAKE AVAILABLE TO THE PUBLIC FORMS FOR  
42 PREPARATION OF A RESTRICTIVE COVENANT DECLARATION. ALL RESTRICTIVE  
43 COVENANT DECLARATIONS SHALL BE ACCEPTED FOR FILING BY THE COUNTY RECORD-  
44 ER WITHOUT PAYMENT OF A FILING FEE.

45 5. DEFINITIONS. AS USED IN THIS SECTION:

46 (A) "PROVISION" MEANS ALL CLAUSES, STIPULATIONS, RESTRICTIONS, PROHI-  
47 BITIONS, COVENANTS AND CONDITIONS OF ANY KIND OR CHARACTER, INCLUDING A  
48 RIGHT OF ENTRY OR A POSSIBILITY OF REVERTER, WHICH DIRECTLY OR INDIRECT-  
49 LY LIMIT THE USE OR OCCUPANCY OF REAL PROPERTY; AND

50 (B) "WRITTEN INSTRUMENT" OR "INSTRUMENT" MEANS EVERY WRITING THAT  
51 RELATES TO OR AFFECTS ANY RIGHT, TITLE, INTEREST IN REAL PROPERTY,  
52 INCLUDING, BUT NOT LIMITED TO, DEEDS, MORTGAGES, LEASES, LIENS, MAPS AND  
53 PLATS.

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

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

9 (A) REPRESENTS OR ATTEMPTS TO REPRESENT THAT SUCH RESTRICTIVE COVEN-  
10 ANTS ARE VALID AND ENFORCEABLE; OR

11 (B) HONORS OR EXERCISES OR ATTEMPTS TO HONOR OR EXERCISE SUCH RESTRIC-  
12 TIVE COVENANTS.

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