

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:

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

3 S 291-J. 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:

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

LBD02157-02-2

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

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

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

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

26 3. A RESTRICTIVE COVENANT DECLARATION SHALL:

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

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

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

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

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

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

45 4. THE COUNTY RECORDER SHALL MAKE AVAILABLE TO THE PUBLIC FORMS FOR  
46 PREPARATION OF A RESTRICTIVE COVENANT DECLARATION. ALL RESTRICTIVE  
47 COVENANT DECLARATIONS SHALL BE ACCEPTED FOR FILING BY THE COUNTY RECORD-  
48 ER WITHOUT PAYMENT OF A FILING FEE.

49 5. DEFINITIONS. AS USED IN THIS SECTION:

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

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

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

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

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

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

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

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