

S. 1941

A. 2136

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

January 14, 2011

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Aging

AN ACT to amend the real property law, in relation to planned retirement communities in Suffolk county

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

1 Section 1. Legislative intent. The legislature hereby finds a need to  
2 provide adequate housing for senior citizens in Suffolk county wishing  
3 to retire and locate in a planned retirement community.

4 The legislature also finds that developers in Suffolk county have  
5 begun selling factory manufactured homes in so-called "retirement commu-  
6 nities" in which a large parcel of land is subdivided into many smaller  
7 plots. In these communities, the home purchaser buys and owns only the  
8 home, and rents the plot on which the home is installed from the devel-  
9 oper. The developer retains ownership and control of the roads, side-  
10 walks, and common areas in the community.

11 This legislature further finds that the nature of this type of enter-  
12 prise, that is, the purchaser buying only the home and the developer  
13 retaining ownership of the land on which the home is installed, tends to  
14 lend itself to abuse and possibly illegal acts to the prejudice and  
15 detriment of the purchaser.

16 This legislature determines that adults of retirement age are a disad-  
17 vantaged group, and as such, require special protection.

18 Therefore, the purpose of this act is to extend to the owners or occu-  
19 pants of homes in planned retirement communities at the minimum, (a) the  
20 right to sell their homes including the incidental right to use any and  
21 all methods common to sales of residential property, and (b) a long term  
22 lease for no less than ninety-nine years with the sole option to cancel

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

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1 said lease on ninety days written notice to the owner or operators of  
2 the planned retirement communities.

3 S 2. The real property law is amended by adding a new section 238-a to  
4 read as follows:

5 S 238-A. PLANNED RETIREMENT COMMUNITY; SUFFOLK COUNTY. 1. DEFINITIONS.  
6 AS USED IN THIS SECTION: (A) A "PLANNED RETIREMENT COMMUNITY" SHALL  
7 MEAN A CONTIGUOUS PARCEL OF PRIVATELY OWNED REAL PROPERTY IN SUFFOLK  
8 COUNTY CONTAINING TWO HUNDRED OR MORE LOTS WHICH ARE LEASED TO OWNERS OF  
9 YEAR-ROUND HOMES ERECTED THEREON AND AFFIXED THERETO WHEREIN THE PERMA-  
10 NENT OCCUPATION IS RESTRICTED TO TENANTS FIFTY-FIVE YEARS OF AGE OR  
11 OLDER.

12 A "PLANNED RETIREMENT COMMUNITY" SHALL NOT INCLUDE A MOBILE HOME PARK,  
13 OR CONDOMINIUM, AS DEFINED IN THIS CHAPTER OR REAL PROPERTY OWNED BY A  
14 CORPORATION FORMED PURSUANT TO THE COOPERATIVE CORPORATIONS LAW.

15 (B) "HOME OWNER" SHALL MEAN ONE WHO HOLDS TITLE TO A HOME.

16 (C) "TENANT" SHALL MEAN ONE WHO OCCUPIES A HOME IN A PLANNED RETIRE-  
17 MENT COMMUNITY.

18 2. LEASES. (A) ANY PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR IN  
19 SUFFOLK COUNTY SHALL OFFER EVERY HOME OWNER OR TENANT THE OPPORTUNITY TO  
20 SIGN A LONG TERM LEASE FOR NINETY-NINE YEARS, WITH THE SOLE OPTION OF  
21 THE HOME OWNER OR TENANT TO CANCEL SAID LEASE ON NINETY DAYS WRITTEN  
22 NOTICE TO SAID OWNER OR OPERATOR.

23 (B) A COPY OF SUCH PLANNED RETIREMENT COMMUNITY'S RULES AND REGU-  
24 LATIONS, IF ANY, SHALL BE ATTACHED TO AND BECOME A PART OF THE LEASE  
25 PROVIDED FOR BY THIS SECTION, AS IF FULLY SET FORTH THEREIN AND THAT  
26 SAID RULES AND REGULATIONS MAY NOT BE CHANGED, ALTERED, AMENDED OR MODI-  
27 FIED WITHOUT THE WRITTEN CONSENT OF THREE-FOURTHS OF ALL HOME OWNERS OR  
28 TENANTS THEN IN RESIDENCE.

29 (C) NO RULES OR REGULATIONS SHALL BE INCONSISTENT WITH THE LEASE  
30 PROVISIONS IN EFFECT AT THE COMMENCEMENT OF SUCH LEASE.

31 (D) A COPY OF THE LEASE SHALL BE DELIVERED BY SUCH PLANNED RETIREMENT  
32 COMMUNITY OWNER OR OPERATOR IN SUFFOLK COUNTY TO ALL HOME OWNERS OR  
33 TENANTS AT THE TIME OF THE FIRST DEPOSIT MADE PAYABLE TO SAID PLANNED  
34 RETIREMENT COMMUNITY OWNER OR OPERATOR.

35 3. RULES AND REGULATIONS. (A) THE PLANNED RETIREMENT COMMUNITY OWNER  
36 OR OPERATOR IN SUFFOLK COUNTY MAY PROMULGATE RULES OR REGULATIONS  
37 GOVERNING THE RENT AND USE OR OCCUPATION OF THE HOME LOT, PROVIDED THAT  
38 SUCH RULES OR REGULATIONS SHALL NOT BE UNREASONABLE, ARBITRARY OR CAPRI-  
39 CIOUS.

40 (B) A COPY OF ALL RULES AND REGULATIONS SHALL BE DELIVERED BY THE  
41 PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR IN SUFFOLK COUNTY TO ALL  
42 HOME OWNERS OR TENANTS AT THE TIME OF THE FIRST DEPOSIT MADE PAYABLE TO  
43 SAID PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR.

44 (C) A COPY OF ALL RULES AND REGULATIONS SHALL BE POSTED IN A CONSPICU-  
45 OUS PUBLIC LOCATION UPON THE GROUNDS OF THE PLANNED RETIREMENT COMMUNITY  
46 IN SUFFOLK COUNTY.

47 (D) IF A RULE OR REGULATION IS NOT APPLIED UNIFORMLY TO ALL HOME  
48 OWNERS OR TENANTS, THERE SHALL BE A REBUTTABLE PRESUMPTION THAT SUCH  
49 RULE OR REGULATION IS UNREASONABLE, ARBITRARY OR CAPRICIOUS.

50 (E) ANY RULE OR REGULATION WHICH DOES NOT CONFORM TO THE REQUIREMENTS  
51 OF THIS SECTION OR WHICH HAS NOT BEEN SUPPLIED OR POSTED AS REQUIRED BY  
52 THIS SECTION, SHALL NOT BE ENFORCEABLE.

53 (F) NO RULE OR REGULATION MAY BE ADDED, AMENDED, REPEALED OR CHANGED  
54 BY THE PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR WITHOUT THE WRIT-  
55 TEN CONSENT OF ALL OF THE THEN RESIDING HOME OWNERS OR TENANTS.

1 4. FEES. (A) NO PLANNED RETIREMENT COMMUNITY HOME OWNER OR TENANT IN  
2 SUFFOLK COUNTY SHALL BE CHARGED A FEE, CHARGE, OR ASSESSMENT, EXCEPT FOR  
3 RENT AND UTILITIES UNLESS AGREED TO BY THREE-FOURTHS OF ALL OF THE HOME  
4 OWNERS.

5 (B) ALL SUCH CHARGES FOR RENT AND UTILITIES MUST BE REASONABLY RELATED  
6 TO THE VALUE OF THE FACILITY AVAILABLE OR THE SERVICES ACTUALLY  
7 RENDERED.

8 (C) A PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR IN SUFFOLK COUNTY  
9 MUST FULLY DISCLOSE ALL CHARGES FOR RENT AND UTILITIES TO ALL HOME  
10 OWNERS OR TENANTS AT THE TIME OF THE FIRST DEPOSIT MADE PAYABLE TO SAID  
11 COMMUNITY OWNER OR OPERATOR.

12 (D) FAILURE ON THE PART OF THE PLANNED RETIREMENT COMMUNITY OWNER OR  
13 OPERATOR IN SUFFOLK COUNTY TO FULLY DISCLOSE ALL CHARGES FOR RENT OR  
14 UTILITIES SHALL PREVENT THE SAID COMMUNITY OWNER OR OPERATOR FROM  
15 COLLECTING SUCH CHARGES.

16 (E) NO CHARGES FOR RENT OR UTILITIES MAY BE INCREASED EXCEPT AS SET  
17 FORTH IN THE LEASE.

18 5. PROHIBITION. NO PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR IN  
19 SUFFOLK COUNTY SHALL:

20 (A) REQUIRE A HOME OWNER OR TENANT TO PURCHASE GOODS OR SERVICES FROM  
21 SAID PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR, OR FROM ANY VENDOR  
22 DESIGNATED BY SAID COMMUNITY OWNER OR OPERATOR.

23 (B) RESTRICT THE INSTALLATION, MAINTENANCE OR REPAIR OF ANY PROPERTY  
24 OF THE HOME OWNER OR TENANT TO SPECIFIC VENDORS INCLUDING, BUT NOT  
25 LIMITED TO, EMPLOYEES, AGENTS OR OTHER PERSONS ACTING FOR OR ON BEHALF  
26 OF THE PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR.

27 (C) CHARGE A FEE OR IMPOSE OTHER CHARGES ON A HOME OWNER OR TENANT  
28 WHO CHOOSES TO INSTALL ANY PROPERTY INCLUDING APPLIANCES AND/OR  
29 FIXTURES.

30 (D) IMPOSE ANY CHARGE FOR, OR RESTRICT THE INGRESS OR EGRESS TO THE  
31 PLANNED RETIREMENT COMMUNITY OF, ANY PERSON EMPLOYED, RETAINED, OR  
32 INVITED BY THE HOME OWNER OR TENANT, WHETHER TO PROVIDE A COMMODITY OR  
33 SERVICE OR OTHERWISE.

34 (E) RESTRICT THE PURCHASE AND/OR INSTALLATION OF ANY COMMODITIES,  
35 GOODS OR SERVICES BY THE HOME OWNER OR TENANT TO SPECIFIC VENDORS,  
36 INCLUDING EMPLOYEES, AGENTS OR OTHER PERSONS ACTING FOR OR ON BEHALF OF  
37 THE PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR.

38 (F) RESTRICT THE MAKING OF ANY INTERIOR INSTALLATION, FURNISHING OR  
39 IMPROVEMENT TO THE PLANNED RETIREMENT COMMUNITY HOME, SO LONG AS SUCH  
40 INSTALLATION, FURNISHING OR IMPROVEMENT IS IN COMPLIANCE WITH APPLICABLE  
41 BUILDING CODES AND OTHER PROVISIONS OF LAW.

42 6. SALE OF HOMES. (A) THE HOME OWNER HAS THE UNRESTRICTED RIGHT TO  
43 SELL HIS OR HER HOME IN SUCH PLANNED RETIREMENT COMMUNITY IN SUFFOLK  
44 COUNTY.

45 (B) THE RIGHT TO SELL A PLANNED RETIREMENT COMMUNITY HOME INCLUDES THE  
46 INCIDENTAL RIGHT TO USE ANY AND ALL METHODS COMMON TO SALES OF RESIDEN-  
47 TIAL PROPERTY.

48 (C) THE PLANNED RETIREMENT COMMUNITY HOME OWNER'S LEASE AGREEMENT IS  
49 ASSIGNABLE TO A SUBSEQUENT PURCHASER, WITHOUT CONDITIONS OR RESTRICTIONS  
50 BY THE PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR.

51 (D) THE PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR IN SUFFOLK  
52 COUNTY SHALL NOT EXACT A COMMISSION OR FEE WITH RESPECT TO THE PRICE  
53 REALIZED BY THE SELLER UNLESS THE COMMUNITY OWNER OR OPERATOR HAS ACTED  
54 AS AGENT FOR THE SAID HOME OWNER IN THE SALE PURSUANT TO A WRITTEN  
55 CONTRACT.

1 7. EMERGENCIES. (A) A PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR  
2 IN SUFFOLK COUNTY MAY ENTER A PLANNED RETIREMENT COMMUNITY HOME ONLY IN  
3 CASE OF EMERGENCY.

4 (B) A PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR SHALL DESIGNATE  
5 AN AGENT ON THE PREMISES WHO CAN BE CONTACTED ON A TWENTY-FOUR HOUR  
6 BASIS TO INSURE THE AVAILABILITY OF EMERGENCY RESPONSE IN MATTERS  
7 AFFECTING THE HEALTH, SAFETY, WELL-BEING, AND/OR GENERAL WELFARE OF  
8 PLANNED RETIREMENT COMMUNITY TENANTS. THE DESIGNATED AGENT'S NAME,  
9 ADDRESS AND TELEPHONE NUMBER SHALL BE POSTED IN A CONSPICUOUS PUBLIC  
10 LOCATION IN THE PLANNED RETIREMENT COMMUNITY, GIVEN IN WRITING TO EACH  
11 TENANT, AND REGISTER WITH APPROPRIATE MUNICIPAL LAW ENFORCEMENT, HEALTH  
12 AND FIRE OFFICIALS.

13 8. RETALIATION. NO PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR IN  
14 SUFFOLK COUNTY MAY THREATEN REPRISAL, OVERTLY OR COVERTLY, AGAINST ANY  
15 OF SUCH HOME OWNERS OR TENANTS AS A RESULT OF THEIR LAWFUL PURSUITS AND  
16 ACTIVITIES.

17 9. REFUSAL TO FURNISH SERVICE. ANY PLANNED RETIREMENT COMMUNITY OWNER  
18 OR OPERATOR WHO HAS AGREED TO PROVIDE HOT OR COLD WATER, HEAT, LIGHT,  
19 POWER, OR ANY OTHER SERVICE OR FACILITY TO AN OCCUPANT OF THE PLANNED  
20 RETIREMENT COMMUNITY, WHO WILLFULLY OR INTENTIONALLY FAILS TO FURNISH  
21 SUCH WATER, HEAT, LIGHT, POWER OR OTHER SERVICE OR FACILITY, OR WHO  
22 INTERFERES WITH THE QUIET ENJOYMENT OF THE LEASED PREMISES SHALL BE  
23 GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED FIVE HUNDRED  
24 DOLLARS AND/OR IMPRISONMENT NOT TO EXCEED SIX MONTHS.

25 10. RECEIPTS. UPON RECEIPT OF RENT, FEES, CHARGES OR OTHER ASSESS-  
26 MENTS, IN THE FORM OF CASH OR ANY INSTRUMENT OTHER THAN THE PERSONAL  
27 CHECK OF THE TENANT, IT SHALL BE THE DUTY OF THE PLANNED RETIREMENT  
28 COMMUNITY OWNER OR OPERATOR IN SUFFOLK COUNTY TO PROVIDE THE PAYOR WITH  
29 A WRITTEN RECEIPT CONTAINING THE FOLLOWING:

30 (A) THE DATE;

31 (B) THE AMOUNT;

32 (C) THE IDENTITY OF THE PREMISES AND THE PERIOD FOR WHICH PAID;

33 (D) THE SIGNATURE AND TITLE OF THE PERSON RECEIVING PAYMENT.

34 11. REMEDIES. (A) ANY PLANNED RETIREMENT COMMUNITY HOME OWNER OR  
35 TENANT IN SUFFOLK COUNTY INJURED OR DAMAGED IN WHOLE OR IN PART AS A  
36 RESULT OF A VIOLATION OF ANY OF THE PROVISIONS OF THIS SECTION MAY BRING  
37 AN ACTION FOR RECOVERY OF DAMAGES IN AN AMOUNT NOT TO EXCEED THREE TIMES  
38 THE ACTUAL DAMAGES OR FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER, PLUS  
39 REASONABLE ATTORNEY'S FEES. THE REMEDY SHALL BE IN ADDITION TO AND SHALL  
40 NOT PRECLUDE OR DIMINISH ANY ACTION THAT AN INDIVIDUAL MAY HAVE UNDER  
41 COMMON LAW OR ANY LOCAL, STATE OR FEDERAL LAW OR REGULATION.

42 (B) THE COUNTY ATTORNEY MAY COMMENCE AN ACTION TO RESTRAIN, PREVENT,  
43 AND/OR ENJOIN A VIOLATION OF THIS SECTION OR A CONTINUANCE OF SUCH  
44 VIOLATION OF THIS SECTION OR A CONTINUANCE OF SUCH VIOLATION BY A  
45 PLANNED RETIREMENT COMMUNITY OWNER OR OPERATOR.

46 S 3. Separability. If any part or provision of this act or the appli-  
47 cation thereof to a person or circumstance is adjudged invalid by any  
48 court of competent jurisdiction, such judgment shall be confined in its  
49 operation to the part or the provision or application directly involved  
50 in the controversy in which such judgment shall have been rendered and  
51 shall not affect or impair the validity of the remainder of this act or  
52 application thereof to other persons or circumstances.

53 S 4. This act shall take effect on the first of October next succeed-  
54 ing the date on which it shall have become a law and shall apply to  
55 sales, actions, or leases involving planned retirement community homes  
56 occurring or entered into on or after such date.