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

S. 3177 A. 5029

2011-2012 Regular Sessions

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

February 10, 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, LOSQUADRO -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property law, in relation to providing recourse for manufactured homeowners in manufactured home parks, who are confronted with unjustifiable rent increases

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

Section 1. Legislative findings. The legislature finds and declares that:

(a) Factors unique to home ownership in manufactured home parks in New York state require that the owners of such manufactured homes be protected from involuntary forfeiture of their homes due to unreasonable increases in lot rent.

(b) Homeownership in such manufactured home parks differs from other forms of homeownership as well as from the traditional landlord-tenant relationship. Unlike other homeowners, because the manufactured homeowners do not control the land on which their manufactured homes exist, they have no control over this substantial portion of their housing costs.

(c) Vacant lots on which to place an existing manufactured home are extremely rare in New York state, and the cost of relocating a manufactured home, even if such a vacancy exists, is prohibitively high and threatens the structural integrity of many manufactured homes.

(d) The manufactured homeowners' total lack of bargaining power disrupts the normal operation of market forces and renders such manufactured homeowners captive to whatever terms a manufactured home park owner may choose to impose. Although many manufactured home park owners choose not to take advantage of their superior bargaining power, many

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

LBD07661-01-1

do. This often results in manufactured homeowners being evicted because of manufactured home park rents they can no longer afford, and as a result, losing their manufactured home altogether because there is no alternative site on which to place such home.

(e) Under current law, manufactured homeowners who rent lots in manufactured home parks have no legal remedy for an unjustifiable and unreasonable rent increase.

S 2. Subdivision e of section 233 of the real property law is amended by adding a new paragraph 4 to read as follows:

4. ALL RENT INCREASES, INCLUDING ALL FEES, RENTS, CHARGES, ASSESSMENTS AND UTILITIES, SHALL BE SUBJECT TO JUDICIAL CHALLENGE PURSUANT TO SECTION TWO HUNDRED THIRTY-THREE-B OF THIS ARTICLE FOR MANUFACTURED HOMEOWNERS.

S 3. Paragraph 2 of subdivision g of section 233 of the real property law, as amended by chapter 566 of the laws of 1996, is amended to read as follows:

2. A manufactured home park owner or operator shall be required to fully disclose in writing all fees, charges, assessments, including rental fees, rules and regulations prior to [a manufactured home tenant assuming occupancy] ENTERING INTO A RENTAL AGREEMENT WITH A PROSPECTIVE TENANT in the manufactured home park.

S 4. The real property law is amended by adding a new section 233-b to read as follows:

S 233-B. UNJUSTIFIED RENT INCREASES IN MANUFACTURED HOME PARKS. 1. LOCAL OPTION. THE PROVISIONS OF THIS SECTION SHALL APPLY IN ANY COUNTY IN WHICH THE GOVERNING BOARD OF SUCH COUNTY HAS PASSED A LOCAL LAW ADOPTING THE PROVISIONS OF THIS SECTION.

2. SCOPE. TO BE ELIGIBLE FOR THIS REMEDY, THE MANUFACTURED HOME MUST BE THE PRIMARY RESIDENCE OF THE MANUFACTURED HOMEOWNER.

3. PRIMA FACIE CASE. AN INCREASE IN RENT WHICH EXCEEDS THE PERCENTAGE INCREASE IN THE CONSUMER PRICE INDEX SINCE THE CURRENT LOT RENT BECAME EFFECTIVE MAY BE CHALLENGED BY AN AGGRIEVED MANUFACTURED HOMEOWNER AS UNJUSTIFIED. THE TERM "CONSUMER PRICE INDEX" MEANS THE INDEX PUBLISHED MONTHLY BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, FOR THE APPLICABLE NEW YORK REGION. IN THIS SECTION, "INCREASE IN LOT RENT" INCLUDES ALL COST INCREASES, INCLUDING ALL INCREASED RENT, FEES, CHARGES, ASSESSMENTS AND UTILITIES.

4. JOINDER. MULTIPLE AGGRIEVED MANUFACTURED HOMEOWNERS MAY JOIN IN THE SAME ACTION WHERE THERE IS A COMMON QUESTION OF LAW OR FACT.

5. VENUE AND STATUTE OF LIMITATION. WITHIN NINETY DAYS OF THE NOTICE OF THE PROPOSED INCREASE, AN AGGRIEVED MANUFACTURED HOMEOWNER MAY CHALLENGE SUCH INCREASE BY FILING AN ACTION IN THE COUNTY WHERE THE REAL PROPERTY IS LOCATED SEEKING A DECLARATORY JUDGMENT THAT THE RENT INCREASE IS UNJUSTIFIABLE.

6. PRESUMPTION. IN ANY PROCEEDINGS UNDER THIS SECTION THERE SHALL BE AN IRREBUTTABLE PRESUMPTION THAT A RENT INCREASE IS JUSTIFIABLE WHEN THE AMOUNT OF SUCH INCREASE DOES NOT EXCEED THE TENANT'S PRO-RATA SHARE IN OPERATING COSTS AND PROPERTY TAXES FOR THE MANUFACTURED HOME PARK IN WHICH THE TENANT RESIDES.

7. STANDARD FOR JUDICIAL REVIEW. IN DETERMINING WHETHER THE PROPOSED RENT INCREASE IS UNJUSTIFIABLE, THE COURT SHALL CONSIDER:

(A) INCREASES IN THE MANUFACTURED HOME PARK OWNER'S OPERATING EXPENSES.

(B) INCREASES IN THE MANUFACTURED HOME PARK OWNER'S PROPERTY TAXES ON SUCH PARK.

(C) INCREASES IN THE COST OF DEBT SERVICE WHICH IS DIRECTLY RELATED TO ACQUISITION OR CAPITAL IMPROVEMENTS IN THE MANUFACTURED HOME PARK.

(D) THE RETURN ON THE MANUFACTURED HOME PARK OWNER'S EQUITY INVESTMENT OVER THE PAST THREE YEARS, AND THE REASONS OFFERED BY THE OWNER FOR SEEKING AN INCREASE IN THE RETURN ON HIS OR HER INVESTMENT.

(E) A SAMPLING OF CURRENT LOT RENTS IN THE REGION IN WHICH THE PARK IS LOCATED.

(F) ANY OTHER COSTS ASSERTED BY THE MANUFACTURED HOME PARK OWNER WHICH ARE RELEVANT AND PROBATIVE OF THE NEED FOR AN INCREASE.

8. CONDITIONAL APPROVAL. THE COURT MAY CONDITION ITS APPROVAL OF ANY JUSTIFIED INCREASE UPON THE REDRESS OF CONDITIONS IN THE MANUFACTURED HOME PARK WHICH THREATEN THE HEALTH AND SAFETY OF THE MANUFACTURED HOME PARK TENANTS.

9. ESCROW. WHILE A CHALLENGE TO A RENT INCREASE PURSUANT TO THIS SECTION IS PENDING, MANUFACTURED HOME PARK TENANTS SHALL PAY THE AMOUNT OF THE RENT INCREASE TO THE MANUFACTURED HOME PARK OWNER, WHO SHALL HOLD SUCH AMOUNTS IN ESCROW PENDING A MEDIATED AGREEMENT BETWEEN THE PARTIES OR A FINAL DECISION FROM THE COURT, PROVIDED, HOWEVER, THAT NO MANUFACTURED HOME PARK TENANT SHALL BE EVICTED FOR NON-PAYMENT OF THE RENT INCREASE PRIOR TO A FINAL DISPOSITION OF THE MATTER BY THE COURT IN THE COUNTY WHERE THE MANUFACTURED HOME PARK IS LOCATED. FAILURE BY THE MANUFACTURED HOME PARK OWNER TO PLACE SUCH CHALLENGED RENT INCREASE IN ESCROW SHALL BE PUNISHABLE BY A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS. IF THE PETITIONERS APPEAL, THE MANUFACTURED HOME PARK OWNER MAY REMOVE THE RENT INCREASE FUNDS FROM ESCROW, MINGLE SUCH FUNDS WITH ANY OTHER FUNDS, AND EVICT A TENANT WHO HAS NOT PAID THE INCREASE FOR NON-PAYMENT OF RENT. IF THE COURT ENTERS A FINAL JUDGMENT DECLARING THE RENT INCREASES OR ANY PART THEREOF UNJUSTIFIABLE, THE MANUFACTURED HOME PARK OWNER SHALL REFUND THE AMOUNT OF UNJUSTIFIABLE INCREASE TO EACH TENANT HOUSEHOLD.

10. EFFECT. WHERE ONE OR MORE MANUFACTURED HOMEOWNER BRINGS A SUCCESSFUL JUDICIAL CHALLENGE THAT A RENT INCREASE IS UNJUSTIFIABLE PURSUANT TO THIS SECTION RESULTING IN THE REDUCTION OF RENT, SAID REMEDY SHALL APPLY TO ALL MANUFACTURED HOMEOWNERS IN THE MANUFACTURED HOME PARK AFFECTED BY SAID RENT INCREASE, REGARDLESS OF WHETHER OR NOT THE MANUFACTURED HOME IS A PRIMARY RESIDENCE.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.