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

34

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. FARRELL -- read once and referred to the Committee on Housing

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:

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

ARTICLE 49-C

OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN

SECTION 996. SHORT TITLE.
996-A. LEGISLATIVE DECLARATION.
996-B. DEFINITIONS.
996-C. OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN.
996-D. FUNCTIONS, POWERS AND DUTIES OF THE OFFICE.
996-E. PRINCIPAL OFFICE AND SATELLITE OFFICES.
996-F. ASSISTANCE OF OTHER STATE AGENCIES.
996-G. REPORTS TO THE GOVERNOR, ATTORNEY GENERAL AND THE LEGISLATURE.
996-H. CONTRACT AUTHORITY.
996-I. SEPARABILITY.

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

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

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

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

THIS ARTICLE IS NECESSARY TO PROVIDE A NEUTRAL, INFORMATIVE AND ACCESSIBLE RESOURCE AVAILABLE TO ALL PARTIES INVOLVED IN RESIDENTIAL COOPERATIVE AND CONDOMINIUM OWNERSHIP AND GOVERNANCE. THE OMBUDSMAN APPOINTED PURSUANT TO THIS ARTICLE WILL CONDUCT OUTREACH PROGRAMS TO EDUCATE UNIT OWNERS AND BOARD MEMBERS AS TO THEIR LEGAL RIGHTS AND RESPONSIBILITIES. THE OMBUDSMAN WILL ENCOURAGE ALTERNATIVE DISPUTE RESOLUTION WHEN DISPUTES DO ARISE. THE OMBUDSMAN WILL BE AVAILABLE TO PROVIDE DISPUTE RESOLUTION SERVICES ON CONSENT OF THE PARTIES. THE OMBUDSMAN WILL ALSO PROVIDE MONITORING AND SUPERVISION OF COOPERATIVE AND CONDOMINIUM ELECTIONS.

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

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

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

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

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

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

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

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

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

4. THE OMBUDSMAN SHALL BE AN ATTORNEY WITH EXTENSIVE EXPERIENCE IN REAL ESTATE, COOPERATIVE AND CONDOMINIUM LAW AND IN CONFLICT AND ALTERNATIVE DISPUTE RESOLUTION.

5. THE OMBUDSMAN SHALL DIRECT THE WORK OF THE OFFICE AND SHALL BE THE CHIEF EXECUTIVE OFFICER OF THE OFFICE. THE OMBUDSMAN MAY APPOINT SUCH OFFICERS AND EMPLOYEES AS HE OR SHE MAY DEEM NECESSARY, PRESCRIBE THEIR POWERS AND DUTIES, FIX THEIR COMPENSATION AND PROVIDE FOR THE REIMBURSEMENT OF THEIR EXPENSES, ALL WITHIN AMOUNTS MADE AVAILABLE THEREFOR BY APPROPRIATION. SUCH OFFICERS AND EMPLOYEES SHALL INCLUDE ATTORNEYS AND OTHER PROFESSIONALS WITH EXTENSIVE EXPERIENCE IN REAL ESTATE, COOPERATIVE AND CONDOMINIUM LAW AND IN CONFLICT AND ALTERNATIVE DISPUTE RESOLUTION.

6. THE OMBUDSMAN AND OFFICERS AND EMPLOYEES OF THE OFFICE SHALL ADHERE TO A CODE OF ETHICS IN ORDER TO INSPIRE PUBLIC CONFIDENCE AND TRUST IN THE FAIRNESS AND IMPARTIALITY OF THE OFFICE. THE OMBUDSMAN SHALL PRESCRIBE SUCH CODE OF ETHICS. SUCH CODE SHALL REQUIRE THAT THE OMBUDSMAN AND OFFICERS AND EMPLOYEES OF THE OFFICE RESPECT AND COMPLY WITH THE LAW; THAT THEY NOT USE OR ATTEMPT TO USE THEIR POSITIONS TO SECURE PRIVILEGES OR EXEMPTIONS FOR THEMSELVES OR OTHERS; THAT THEY NOT SOLICIT, ACCEPT OR AGREE TO ACCEPT ANY GIFTS OR GRATUITIES FROM PERSONS HAVING OR LIKELY TO HAVE ANY OFFICIAL TRANSACTION WITH THE OFFICE; THAT THEY NOT REQUEST OR ACCEPT ANY PAYMENT IN ADDITION TO THEIR REGULAR COMPENSATION FOR ASSISTANCE GIVEN AS PART OF THEIR OFFICIAL DUTIES; AND THAT THEY SHALL NOT PERFORM ANY FUNCTION IN A MANNER THAT IMPROPERLY FAVORS ANY PERSON OR PARTY.

7. THE OMBUDSMAN AND OFFICERS AND EMPLOYEES OF THE OFFICE SHALL NOT SERVE AS OFFICERS OR EMPLOYEES OF A POLITICAL PARTY OR A CLUB OR ORGANIZATION RELATED TO A POLITICAL PARTY, RECEIVE REMUNERATION FOR ACTIVITIES ON BEHALF OF ANY CANDIDATE FOR PUBLIC OFFICE OR PARTY POSITION OR ENGAGE IN SOLICITING VOTES OR OTHER ACTIVITIES ON BEHALF OF A CANDIDATE FOR PUBLIC OFFICE OR PARTY POSITION.

8. THE SECRETARY TO THE GOVERNOR SHALL ASSURE THAT ALL STATE AGENCIES PROVIDE THE OMBUDSMAN WITH ASSISTANCE IN ADVANCING THE PURPOSES OF THE OFFICE AND TO ASSURE THAT THE ACTIVITIES OF THE OFFICE ARE FULLY COORDINATED WITH THE ACTIVITIES OF STATE AGENCIES PROVIDING RELATED SERVICES.

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

1. TO EDUCATE AND INFORM SHAREHOLDERS OF COOPERATIVES AND UNIT OWNERS OF CONDOMINIUMS, THEIR BOARDS OF DIRECTORS AND BOARDS OF MANAGERS, PROPERTY MANAGERS, PROFESSIONALS WORKING WITH AND FOR SUCH BOARDS AND OTHER INTERESTED PARTIES OF THEIR LEGAL RIGHTS AND RESPONSIBILITIES UNDER THE FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS APPLICABLE TO COOPERATIVE AND CONDOMINIUM HOUSING IN THE STATE OF NEW YORK AND UNDER THE COOPERATIVE AND CONDOMINIUM DOCUMENTS GOVERNING THE RESPECTIVE PROPERTIES.

2. TO COORDINATE AND ASSIST IN THE PREPARATION AND PUBLICATION OF EDUCATIONAL AND REFERENCE MATERIALS ABOUT RESIDENTIAL COOPERATIVES AND CONDOMINIUMS, TO MAKE SUCH RESOURCES KNOWN AND AVAILABLE TO THE WIDEST POSSIBLE AUDIENCE.

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

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

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

6. TO ENGAGE WITH THE HOUSING COURTS, OTHER TRIAL COURTS, STATE AND LOCAL AGENCIES AND WITH ALTERNATIVE DISPUTE RESOLUTION PROGRAMS MAINTAINED BY THE OFFICE OF COURT ADMINISTRATION IN ORDER TO PROVIDE SPECIALIZED EXPERTISE IN THE RESOLUTION OF COOPERATIVE AND CONDOMINIUM DISPUTES AS AN ALTERNATIVE TO LITIGATION.

7. TO OFFER PROCEDURES, MONITORS AND VOTE COUNTING SERVICES TO ASSURE FAIR ELECTIONS FOR MEMBERS OF COOPERATIVE BOARDS OF DIRECTORS AND CONDOMINIUM BOARDS OF MANAGERS. FIFTEEN PERCENT OF THE TOTAL VOTING INTERESTS IN A COOPERATIVE OR CONDOMINIUM OR SHAREHOLDERS OR OWNERS OF SIX RESIDENTIAL UNITS, WHICHEVER IS GREATER, MAY PETITION THE OFFICE TO ATTEND AND CONDUCT AN ELECTION OF DIRECTORS OR MANAGERS. ALL COSTS ASSOCIATED WITH THE ELECTION MONITORING PROCESS SHALL BE PAID BY THE COOPERATIVE OR CONDOMINIUM.

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

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

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

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

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

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

S 996-I. SEPARABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO

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

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

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

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

S 81. OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN FUND. 1. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE "OFFICE OF THE COOPERATIVE AND CONDOMINIUM OMBUDSMAN FUND".

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

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

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