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

5245--A

2013-2014 Regular Sessions

I N S E N A T E

May 15, 2013

Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to ground leases

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

Section 1. The real property law is amended by adding a new section 220-a to read as follows:

S 220-A. GROUND LEASES. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION ONLY, A "GROUND LEASE" SHALL BE DEFINED AS A RENTAL AGREEMENT THAT:

(A) HAS A TERM OF AT LEAST TEN YEARS;

(B) IS FOR THE USE OF REAL PROPERTY, WHICH MAY OR MAY NOT INCLUDE ANY IMPROVEMENTS OR STRUCTURES, BUT SHALL NOT APPLY TO REAL PROPERTY OWNED AS THE COMMON PROPERTY OF ANY INDIAN NATION, TRIBE, OR BAND AS SUCH LANDS ARE DESCRIBED UNDER AND PROTECTED BY INDIAN LAW AND/OR TITLE 25 OF THE UNITED STATES CODE; AND

(C) ALLOWS A TENANT TO CONSTRUCT OR SUBSTANTIALLY IMPROVE, RENOVATE, OR REHABILITATE STRUCTURES OR IMPROVEMENTS UPON SUCH REAL PROPERTY.

2. REFINANCING. (A) IF ANY GROUND LEASE DOES NOT CONTAIN EXPRESS PROVISIONS PROHIBITING A LESSEE FROM ENCUMBERING ITS INTEREST IN A GROUND LEASE, A LESSEE MAY ENCUMBER UP TO AND INCLUDING ITS ENTIRE INTEREST IN SUCH GROUND LEASE. IF SUCH GROUND LEASE CONTAINS PROVISIONS RESTRICTING THE LESSEE'S ABILITY TO ENCUMBER ITS INTEREST, THE LESSEE MUST OBTAIN THE LESSOR'S WRITTEN PERMISSION PRIOR TO SUCH ENCUMBRANCE.

(B) IF THE LESSEE IS REQUIRED TO OBTAIN THE LESSOR'S PERMISSION TO ENCUMBER THE LESSEE'S INTEREST, THE LESSOR MAY ONLY REFUSE TO GRANT SUCH PERMISSION FOR REASONABLE CAUSE AND MUST PROVIDE THE LESSEE WITH A WRITTEN STATEMENT THAT SETS FORTH THE BASIS FOR THE REFUSAL WITHIN FIFTEEN DAYS OF A WRITTEN REQUEST FOR PERMISSION FROM THE LESSEE.

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

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(C) ANY GROUND LEASE PROVISION THAT LIMITS THE AMOUNT A LESSEE COULD ENCUMBER ITS INTEREST, UP TO AND INCLUDING ITS ENTIRE INTEREST IN SUCH GROUND LEASE, SHALL ALSO ADJUST SUCH AMOUNT ANNUALLY ON THE FIRST DAY OF OCTOBER OF EACH YEAR BY THE CHANGE IN THE REGIONAL CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS, NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND, NY-NJ-CT-PA, AS ESTABLISHED THE PRECEDING AUGUST.

IF A LESSEE HAS ENCUMBERED ITS INTEREST IN A GROUND LEASE, NO ADJUSTMENT PURSUANT TO THIS PARAGRAPH THAT REDUCES THE AMOUNT SUCH LESSEE COULD RECEIVE SHALL BE CONSIDERED A BREACH OF THE GROUND LEASE. ANY AGREEMENT BY A LESSEE WAIVING OR MODIFYING THE PROVISIONS AS SET FORTH IN THIS PARAGRAPH SHALL BE VOID AS CONTRARY TO PUBLIC POLICY.

S 2. This act shall take effect immediately.