

S. 3660

A. 4769

2013-2014 Regular Sessions

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

February 8, 2013

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 lease-hold retirement communities

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
2 238-a to read as follows:
3 S 238-A. LEASE-HOLD RETIREMENT COMMUNITY. 1. DEFINITIONS. AS USED IN
4 THIS SECTION:
5 (A) A "LEASE-HOLD RETIREMENT COMMUNITY" SHALL MEAN A CONTIGUOUS PARCEL
6 OF PRIVATELY OWNED REAL PROPERTY CONTAINING TWO HUNDRED OR MORE LOTS
7 WHICH ARE LEASED TO OWNERS OF YEAR-ROUND HOMES ERECTED THEREON AND
8 AFFIXED THERETO WHEREIN THE OCCUPATION IS RESTRICTED TO INDIVIDUALS
9 BASED ON AGE PURSUANT TO PARAGRAPH (H) OF SUBDIVISION THREE OF THIS
10 SECTION.
11 A "LEASE-HOLD RETIREMENT COMMUNITY" SHALL NOT INCLUDE A MOBILE HOME
12 PARK, OR CONDOMINIUM, AS DEFINED IN THIS CHAPTER OR REAL PROPERTY OWNED
13 BY A CORPORATION FORMED PURSUANT TO THE COOPERATIVE CORPORATIONS LAW.
14 (B) "HOME OWNER" SHALL MEAN ONE WHO HOLDS TITLE TO A HOME.
15 (C) "TENANT" SHALL MEAN ONE WHO OCCUPIES A HOME IN A LEASE-HOLD
16 RETIREMENT COMMUNITY FOR THIRTY DAYS OR MORE, AND WHOSE OCCUPATION OF
17 THE HOME IN THE LEASE-HOLD RETIREMENT COMMUNITY IS KNOWN TO THE
18 LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR.
19 2. LEASES. (A) ANY LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR
20 SHALL OFFER EVERY HOME OWNER THE OPPORTUNITY TO SIGN A LONG TERM LEASE
21 FOR NINETY-NINE YEARS, WITH AN OPTION OF THE HOME OWNER TO CANCEL SAID
22 LEASE ON NINETY DAYS WRITTEN NOTICE TO SAID OWNER OR OPERATOR.

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

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1 (B) A COPY OF SUCH LEASE-HOLD RETIREMENT COMMUNITY'S RULES AND REGU-
2 LATIONS, IF ANY, SHALL BE ATTACHED TO AND BECOME A PART OF THE LEASE
3 PROVIDED FOR BY THIS SECTION, AS IF FULLY SET FORTH THEREIN.

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

6 (D) A COPY OF THE LEASE SHALL BE DELIVERED BY SUCH LEASE-HOLD RETIRE-
7 MENT COMMUNITY OWNER OR OPERATOR TO ALL HOME OWNERS OR TENANTS AT THE
8 TIME OF THE FIRST DEPOSIT MADE PAYABLE TO SAID LEASE-HOLD RETIREMENT
9 COMMUNITY OWNER OR OPERATOR.

10 3. RULES AND REGULATIONS. (A) THE LEASE-HOLD RETIREMENT COMMUNITY
11 OWNER OR OPERATOR MAY PROMULGATE RULES OR REGULATIONS GOVERNING THE RENT
12 AND USE OR OCCUPATION OF THE HOME LOT, PROVIDED THAT SUCH RULES OR REGU-
13 LATIONS SHALL NOT BE UNREASONABLE, ARBITRARY OR CAPRICIOUS.

14 (B) A COPY OF ALL RULES AND REGULATIONS SHALL BE DELIVERED BY THE
15 LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR TO ALL HOME OWNERS OR
16 TENANTS AT THE TIME OF THE FIRST DEPOSIT MADE PAYABLE TO SAID LEASE-HOLD
17 RETIREMENT COMMUNITY OWNER OR OPERATOR.

18 (C) A COPY OF ALL RULES AND REGULATIONS SHALL BE POSTED IN A CONSPICU-
19 OUS PUBLIC LOCATION UPON THE GROUNDS OF THE LEASE-HOLD RETIREMENT COMMU-
20 NITY.

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

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

27 (F) NO RULE OR REGULATION MAY BE ADDED, AMENDED, REPEALED OR CHANGED
28 BY THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR WITHOUT THE
29 WRITTEN CONSENT OF SIXTY PERCENT OF THE HOME OWNERS.

30 (G) RULES AND REGULATIONS SHALL NOT TAKE EFFECT UNTIL SUPPLIED AND
31 POSTED PURSUANT TO THIS SUBDIVISION.

32 (H) SUCH RULES AND REGULATIONS MAY ESTABLISH A MINIMUM AGE FOR INDIV-
33 IDUALS TO OCCUPY A HOME WITHIN THE LEASE-HOLD RETIREMENT COMMUNITY
34 SUBJECT TO ANY APPLICABLE LAW.

35 4. FEES. (A) NO LEASE-HOLD RETIREMENT COMMUNITY HOME OWNER OR TENANT
36 SHALL BE CHARGED A FEE, CHARGE, OR ASSESSMENT THAT IS NOT ALREADY SPECI-
37 FIED IN THEIR CURRENT LEASE AGREEMENT, EXCEPT FOR RENT, UTILITIES, AND
38 FEES FOR SERVICES NECESSARY FOR THE OPERATION OF THE LEASE-HOLD RETIRE-
39 MENT COMMUNITY, UNLESS AGREED TO BY SIXTY PERCENT OF ALL OF THE HOME
40 OWNERS, SUCH AS FOR FACILITIES AVAILABLE TO THE HOMEOWNERS AND TENANTS.

41 (B) ALL SUCH CHARGES FOR RENT, UTILITIES, SERVICES NECESSARY FOR THE
42 OPERATION OF THE LEASE-HOLD RETIREMENT COMMUNITY, AND FACILITIES AVAIL-
43 ABLE TO THE HOMEOWNERS AND TENANTS MUST BE REASONABLY RELATED TO THE
44 VALUE OF THE FACILITY AVAILABLE OR THE SERVICES ACTUALLY RENDERED.

45 (C) A LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR MUST FULLY
46 DISCLOSE ALL CHARGES FOR RENT, UTILITIES, SERVICES NECESSARY FOR THE
47 OPERATION OF THE LEASE-HOLD RETIREMENT COMMUNITY, AND FACILITIES AVAIL-
48 ABLE TO THE HOMEOWNERS AND TENANTS TO ALL HOME OWNERS AT THE TIME OF THE
49 FIRST DEPOSIT MADE PAYABLE TO SAID COMMUNITY OWNER OR OPERATOR. A NEW
50 FEE, CHARGE, OR ASSESSMENT THAT IS NOT SPECIFIED IN A HOMEOWNER'S LEASE
51 AGREEMENT SHALL NOT BE COLLECTABLE UNTIL THE LEASE-HOLD RETIREMENT
52 COMMUNITY OWNER OR OPERATOR PROVIDES THE HOMEOWNER WITH A WRITTEN COPY
53 DETAILING SUCH FEE, CHARGE, OR ASSESSMENT.

54 (D) FAILURE ON THE PART OF THE LEASE-HOLD RETIREMENT COMMUNITY OWNER
55 OR OPERATOR TO FULLY DISCLOSE ALL CHARGES FOR RENT, UTILITIES, SERVICES
56 NECESSARY FOR THE OPERATION OF THE LEASE-HOLD RETIREMENT COMMUNITY, AND

FACILITIES AVAILABLE TO THE HOMEOWNERS AND TENANTS PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION SHALL PREVENT THE SAID COMMUNITY OWNER OR OPERATOR FROM COLLECTING SUCH CHARGES.

5. PROHIBITION. NO LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR SHALL:

(A) RESTRICT THE PURCHASE AND/OR INSTALLATION OF ANY COMMODITIES, GOODS OR SERVICES BY THE HOME OWNER OR AGENT THEREOF TO SPECIFIC VENDORS, INCLUDING, BUT NOT LIMITED TO, EMPLOYEES, AGENTS OR OTHER PERSONS ACTING FOR OR ON BEHALF OF THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR.

(B) RESTRICT THE IMPROVEMENT, INCLUDING BUT NOT LIMITED TO, THE INSTALLATION OF APPLIANCES, TO ANY PROPERTY OF THE HOMEOWNER OR TENANT, SO LONG AS SUCH IMPROVEMENT IS IN COMPLIANCE WITH APPLICABLE BUILDING CODES, OTHER PROVISIONS OF LAW, AND THE RULES AND REGULATIONS OF THE LEASE-HOLD RETIREMENT COMMUNITY.

(C) RESTRICT THE INSTALLATION, MAINTENANCE OR REPAIR OF ANY PROPERTY OF THE HOME OWNER OR TENANT TO SPECIFIC VENDORS INCLUDING, BUT NOT LIMITED TO, EMPLOYEES, AGENTS OR OTHER PERSONS ACTING FOR OR ON BEHALF OF THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR.

(D) CHARGE A FEE OR IMPOSE OTHER CHARGES ON A HOME OWNER OR TENANT WHO CHOOSES TO INSTALL APPLIANCES AND/OR FIXTURES. THIS SHALL NOT RESTRICT THE ABILITY OF THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR TO COLLECT INCREASED UTILITY CHARGES RESULTING FROM THE INSTALLATION OF ANY APPLIANCE OR FIXTURE.

(E) IMPOSE ANY CHARGE FOR OR RESTRICT THE INGRESS OR EGRESS TO THE LEASE-HOLD RETIREMENT COMMUNITY OF, ANY PERSON EMPLOYED, RETAINED, OR INVITED BY THE HOME OWNER OR TENANT.

6. SALE OF HOMES. (A) A LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR SHALL NOT PLACE RESTRICTIONS ON THE SALE OF A HOME IN THE LEASE-HOLD RETIREMENT COMMUNITY.

(B) THE RIGHT TO SELL A LEASE-HOLD RETIREMENT COMMUNITY HOME INCLUDES THE INCIDENTAL RIGHT TO USE ANY AND ALL METHODS COMMON TO SALES OF RESIDENTIAL PROPERTY.

(C) THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR SHALL ENTER INTO A LEASE AGREEMENT WITHIN A REASONABLE TIME FROM THE COMPLETION OF THE SALE PURSUANT TO SUBDIVISION TWO OF THIS SECTION WITH THE SUBSEQUENT PURCHASER OF A HOME IN THE LEASE-HOLD RETIREMENT COMMUNITY.

(D) THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR SHALL NOT EXACT A COMMISSION OR FEE WITH RESPECT TO THE PRICE REALIZED BY THE SELLER UNLESS THE COMMUNITY OWNER OR OPERATOR HAS ACTED AS AGENT FOR THE SAID HOME OWNER IN THE SALE PURSUANT TO A WRITTEN CONTRACT.

7. (A) THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR MAY RESERVE THE RIGHT TO APPROVE ANY TENANTS WHO LEASE OR SUBLEASE REAL PROPERTY AND ANY IMPROVEMENTS THEREON FROM A HOMEOWNER WITHIN THE LEASE-HOLD RETIREMENT COMMUNITY. THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR MAY ONLY WITHHOLD APPROVAL IF THE PROPOSED TENANT OR PROPOSED LEASE OR SUBLEASE IS NOT IN CONFORMITY WITH THE ESTABLISHED RULES AND REGULATIONS OF SUCH LEASE-HOLD RETIREMENT COMMUNITY.

(B) IF A HOMEOWNER WISHES TO LEASE OR SUBLEASE REAL PROPERTY AND ANY IMPROVEMENTS THEREON WITHIN A LEASE-HOLD RETIREMENT COMMUNITY:

(1) THE HOMEOWNER MUST INFORM THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR NO LESS THAN THIRTY DAYS PRIOR TO THE PROPOSED EFFECTIVE DATE OF SUCH LEASE OR SUBLEASE.

(2) THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR MAY REQUEST ADDITIONAL INFORMATION FROM THE HOMEOWNER WITHIN TEN DAYS. IF SUCH ADDITIONAL INFORMATION IS NOT UNDULY BURDENSOME, FAILURE TO PROVIDE SUCH

1 ADDITIONAL INFORMATION WILL ALLOW THE LEASE-HOLD RETIREMENT COMMUNITY
2 OWNER OR OPERATOR TO WITHHOLD THEIR APPROVAL OF THE PROPOSED TENANT OR
3 PROPOSED LEASE OR SUBLEASE.

4 (3) IF THE LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR DOES NOT
5 RESPOND BY APPROVING OR WITHHOLDING APPROVAL OF THE PROPOSED TENANT OR
6 PROPOSED LEASE OR SUBLEASE WITHIN THIRTY DAYS OF THE INITIAL REQUEST BY
7 THE HOMEOWNER, THE PROPOSED TENANT OR PROPOSED LEASE OR SUBLEASE SHALL
8 BE DEEMED APPROVED.

9 8. EMERGENCIES. A LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR
10 SHALL DESIGNATE A PHONE NUMBER THAT IS AVAILABLE ON A TWENTY-FOUR HOUR
11 BASIS TO INSURE THE AVAILABILITY OF EMERGENCY RESPONSE IN MATTERS
12 AFFECTING THE HEALTH, SAFETY, WELL-BEING, AND/OR GENERAL WELFARE OF
13 LEASE-HOLD RETIREMENT COMMUNITY TENANTS. THE TELEPHONE NUMBER SHALL BE
14 POSTED IN A CONSPICUOUS PUBLIC LOCATION IN THE LEASE-HOLD RETIREMENT
15 COMMUNITY, GIVEN IN WRITING TO EACH HOMEOWNER AND TENANT, AND REGISTERED
16 WITH APPROPRIATE MUNICIPAL LAW ENFORCEMENT, HEALTH AND FIRE OFFICIALS.

17 9. RETALIATION. NO LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR
18 MAY THREATEN REPRISAL AGAINST ANY OF SUCH HOME OWNERS OR TENANTS AS A
19 RESULT OF THEIR LAWFUL PURSUITS AND ACTIVITIES.

20 10. REFUSAL TO FURNISH SERVICE. ANY LEASE-HOLD RETIREMENT COMMUNITY
21 OWNER OR OPERATOR WHO HAS AGREED TO PROVIDE HOT OR COLD WATER, HEAT,
22 LIGHT, POWER, OR ANY OTHER SERVICE OR FACILITY TO AN OCCUPANT OF THE
23 LEASE-HOLD RETIREMENT COMMUNITY SHALL NOT WILLFULLY OR INTENTIONALLY
24 FAIL TO FURNISH SUCH WATER, HEAT, LIGHT, POWER OR OTHER SERVICE OR
25 FACILITY, OR INTERFERE WITH THE QUIET ENJOYMENT OF THE LEASED PREMISES.

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

31 (A) THE DATE;

32 (B) THE AMOUNT;

33 (C) THE IDENTITY OF THE PREMISES AND THE PURPOSE FOR WHICH PAID;

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

35 12. REMEDIES. (A) ANY LEASE-HOLD RETIREMENT COMMUNITY HOME OWNER OR
36 TENANT INJURED OR DAMAGED IN WHOLE OR IN PART AS A RESULT OF A VIOLATION
37 OF ANY OF THE PROVISIONS OF THIS SECTION MAY BRING AN ACTION FOR RECOV-
38 ERY OF ACTUAL DAMAGES PLUS REASONABLE ATTORNEY'S FEES OR INJUNCTIVE
39 RELIEF AS APPROPRIATE. THE REMEDY SHALL BE IN ADDITION TO AND SHALL NOT
40 PRECLUDE OR DIMINISH ANY ACTION THAT AN INDIVIDUAL MAY HAVE UNDER COMMON
41 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 LEASE-HOLD RETIREMENT COMMUNITY OWNER OR OPERATOR.

46 S 2. 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 3. 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 lease-hold retirement community
56 homes occurring or entered into on or after such date.