

STATE OF NEW YORK

S. 3818--A

A. 3145--A

2017-2018 Regular Sessions

SENATE - ASSEMBLY

January 27, 2017

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Aging -- recommitted to the Committee on Aging in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 § 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, a continuing care
13 retirement community authorized under article forty-six or forty-six-a
14 of the public health law, or a cooperative housing corporation created
15 pursuant to the business corporation law.

16 (b) "Home owner" shall mean one who holds title to a home.

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

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1 (c) "Tenant" shall mean one who occupies a home in a lease-hold
2 retirement community for thirty days or more, and whose occupation of
3 the home in the lease-hold retirement community is known to the lease-
4 hold retirement community owner or operator.

5 2. Leases. (a) Any lease-hold retirement community owner or operator
6 shall offer every home owner the opportunity to sign a long term lease
7 for ninety-nine years, with an option of the home owner to cancel said
8 lease on ninety days written notice to said owner or operator.

9 (b) A copy of such lease-hold retirement community's rules and regu-
10 lations, if any, shall be attached to and become a part of the lease
11 provided for by this section, as if fully set forth therein.

12 (c) No rules or regulations shall be inconsistent with the lease
13 provisions in effect at the commencement of such lease.

14 (d) A copy of the lease shall be delivered by such lease-hold retire-
15 ment community owner or operator to all home owners or tenants at the
16 time of the first deposit made payable to said lease-hold retirement
17 community owner or operator.

18 3. Rules and regulations. (a) The lease-hold retirement community
19 owner or operator may promulgate rules or regulations governing the rent
20 and use or occupation of the home lot, provided that such rules or regu-
21 lations shall not be unreasonable, arbitrary or capricious.

22 (b) A copy of all rules and regulations shall be delivered by the
23 lease-hold retirement community owner or operator to all home owners or
24 tenants at the time of the first deposit made payable to said lease-hold
25 retirement community owner or operator.

26 (c) A copy of all rules and regulations shall be posted in a conspicu-
27 ous public location upon the grounds of the lease-hold retirement commu-
28 nity.

29 (d) If a rule or regulation is not applied uniformly to all home
30 owners or tenants, there shall be a rebuttable presumption that such
31 rule or regulation is unreasonable, arbitrary or capricious.

32 (e) Any rule or regulation which does not conform to the requirements
33 of this section or which has not been supplied or posted as required by
34 this section, shall not be enforceable.

35 (f) No rule or regulation may be added, amended, repealed or changed
36 by the lease-hold retirement community owner or operator without the
37 written consent of sixty percent of the home owners.

38 (g) Rules and regulations shall not take effect until supplied and
39 posted pursuant to this subdivision.

40 (h) Such rules and regulations may establish a minimum age for indi-
41 viduals to occupy a home within the lease-hold retirement community
42 subject to any applicable law.

43 4. Fees. (a) No lease-hold retirement community home owner or tenant
44 shall be charged a fee, charge, or assessment that is not already speci-
45 fied in their current lease agreement, except for rent, utilities, and
46 fees for services necessary for the operation of the lease-hold retire-
47 ment community, unless agreed to by sixty percent of all of the home
48 owners, such as for facilities available to the homeowners and tenants.

49 (b) All such charges for rent, utilities, services necessary for the
50 operation of the lease-hold retirement community, and facilities avail-
51 able to the homeowners and tenants must be reasonably related to the
52 value of the facility available or the services actually rendered.

53 (c) A lease-hold retirement community owner or operator must fully
54 disclose all charges for rent, utilities, services necessary for the
55 operation of the lease-hold retirement community, and facilities avail-
56 able to the homeowners and tenants to all home owners at the time of the

1 first deposit made payable to said community owner or operator. A new
2 fee, charge, or assessment that is not specified in a homeowner's lease
3 agreement shall not be collectable until the lease-hold retirement
4 community owner or operator provides the homeowner with a written copy
5 detailing such fee, charge, or assessment.

6 (d) Failure on the part of the lease-hold retirement community owner
7 or operator to fully disclose all charges for rent, utilities, services
8 necessary for the operation of the lease-hold retirement community, and
9 facilities available to the homeowners and tenants pursuant to paragraph
10 (c) of this subdivision shall prevent the said community owner or opera-
11 tor from collecting such charges.

12 5. Prohibition. No lease-hold retirement community owner or operator
13 shall:

14 (a) Restrict the purchase and/or installation of any commodities,
15 goods or services by the home owner or agent thereof to specific
16 vendors, including, but not limited to, employees, agents or other
17 persons acting for or on behalf of the lease-hold retirement community
18 owner or operator.

19 (b) Restrict the improvement, including but not limited to, the
20 installation of appliances, to any property of the homeowner or tenant,
21 so long as such improvement is in compliance with applicable building
22 codes, other provisions of law, and the rules and regulations of the
23 lease-hold retirement community.

24 (c) Restrict the installation, maintenance or repair of any property
25 of the home owner or tenant to specific vendors including, but not
26 limited to, employees, agents or other persons acting for or on behalf
27 of the lease-hold retirement community owner or operator.

28 (d) Charge a fee or impose other charges on a home owner or tenant who
29 chooses to install appliances and/or fixtures. This shall not restrict
30 the ability of the lease-hold retirement community owner or operator to
31 collect increased utility charges resulting from the installation of any
32 appliance or fixture.

33 (e) Impose any charge for or restrict the ingress or egress to the
34 lease-hold retirement community of, any person employed, retained, or
35 invited by the home owner or tenant.

36 6. Sale of homes. (a) A lease-hold retirement community owner or oper-
37 ator shall not place restrictions on the sale of a home in the lease-
38 hold retirement community.

39 (b) The right to sell a lease-hold retirement community home includes
40 the incidental right to use any and all methods common to sales of resi-
41 dential property.

42 (c) The lease-hold retirement community owner or operator shall enter
43 into a lease agreement within a reasonable time from the completion of
44 the sale pursuant to subdivision two of this section with the subsequent
45 purchaser of a home in the lease-hold retirement community.

46 (d) The lease-hold retirement community owner or operator shall not
47 exact a commission or fee with respect to the price realized by the
48 seller unless the community owner or operator has acted as agent for the
49 said home owner in the sale pursuant to a written contract.

50 7. (a) The lease-hold retirement community owner or operator may
51 reserve the right to approve any tenants who lease or sublease real
52 property and any improvements thereon from a homeowner within the lease-
53 hold retirement community. The lease-hold retirement community owner or
54 operator may only withhold approval if the proposed tenant or proposed
55 lease or sublease is not in conformity with the established rules and
56 regulations of such lease-hold retirement community.

1 (b) If a homeowner wishes to lease or sublease real property and any
2 improvements thereon within a lease-hold retirement community:

3 (1) The homeowner must inform the lease-hold retirement community
4 owner or operator no less than thirty days prior to the proposed effec-
5 tive date of such lease or sublease.

6 (2) The lease-hold retirement community owner or operator may request
7 additional information from the homeowner within ten days. If such addi-
8 tional information is not unduly burdensome, failure to provide such
9 additional information will allow the lease-hold retirement community
10 owner or operator to withhold their approval of the proposed tenant or
11 proposed lease or sublease.

12 (3) If the lease-hold retirement community owner or operator does not
13 respond by approving or withholding approval of the proposed tenant or
14 proposed lease or sublease within thirty days of the initial request by
15 the homeowner, the proposed tenant or proposed lease or sublease shall
16 be deemed approved.

17 8. Emergencies. A lease-hold retirement community owner or operator
18 shall designate a phone number that is available on a twenty-four hour
19 basis to insure the availability of emergency response in matters
20 affecting the health, safety, well-being, and/or general welfare of
21 lease-hold retirement community tenants. The telephone number shall be
22 posted in a conspicuous public location in the lease-hold retirement
23 community, given in writing to each homeowner and tenant, and registered
24 with appropriate municipal law enforcement, health and fire officials.

25 9. Retaliation. No lease-hold retirement community owner or operator
26 may threaten reprisal against any of such home owners or tenants as a
27 result of their lawful pursuits and activities.

28 10. Refusal to furnish service. Any lease-hold retirement community
29 owner or operator who has agreed to provide hot or cold water, heat,
30 light, power, or any other service or facility to an occupant of the
31 lease-hold retirement community shall not willfully or intentionally
32 fail to furnish such water, heat, light, power or other service or
33 facility, or interfere with the quiet enjoyment of the leased premises.

34 11. Receipts. Upon receipt of rent, fees, charges or other assess-
35 ments, in the form of cash or any instrument other than the personal
36 check of the tenant, it shall be the duty of the lease-hold retirement
37 community owner or operator to provide the payor with a written receipt
38 containing the following:

39 (a) The date;

40 (b) The amount;

41 (c) The identity of the premises and the purpose for which paid;

42 (d) The signature and title of the person receiving payment.

43 12. Remedies. (a) Any lease-hold retirement community home owner or
44 tenant injured or damaged in whole or in part as a result of a violation
45 of any of the provisions of this section may bring an action for recov-
46 ery of actual damages plus reasonable attorney's fees or injunctive
47 relief as appropriate. The remedy shall be in addition to and shall not
48 preclude or diminish any action that an individual may have under common
49 law or any local, state or federal law or regulation.

50 (b) The county attorney may commence an action to restrain, prevent,
51 and/or enjoin a violation of this section or a continuance of such
52 violation of this section or a continuance of such violation by a lease-
53 hold retirement community owner or operator.

54 § 2. Separability. If any part or provision of this act or the appli-
55 cation thereof to a person or circumstance is adjudged invalid by any
56 court of competent jurisdiction, such judgment shall be confined in its

1 operation to the part or the provision or application directly involved
2 in the controversy in which such judgment shall have been rendered and
3 shall not affect or impair the validity of the remainder of this act or
4 application thereof to other persons or circumstances.

5 § 3. This act shall take effect on the first of October next succeed-
6 ing the date on which it shall have become a law and shall apply to
7 sales, actions, or leases involving lease-hold retirement community
8 homes occurring or entered into on or after such date.