

STATE OF NEW YORK

6177

2017-2018 Regular Sessions

IN SENATE

May 11, 2017

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the real property law, in relation to lease to own contracts in manufactured home communities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 233 of the real property law is amended by adding a
2 new subdivision y to read as follows:

3 y. Lease to own contracts. 1. Definitions. For purposes of this subdivi-
4 vision:

5 (a) "Commercial communication" means any written or oral statement,
6 illustration or depiction, whether in English or any other language,
7 that is designed to effect a sale or create interest in purchasing goods
8 or services, whether it appears on or in a label, package, package
9 insert, radio, television, cable television, brochure, newspaper, maga-
10 zine, pamphlet, leaflet, circular, mailer, book insert, free standing
11 insert, letter, catalogue, poster, chart, billboard, public transit
12 card, point of purchase display, film, slide, audio program transmitted
13 over a telephone system, telemarketing script, on-hold script, upsell
14 script, training materials provided to telemarketing firms, program-
15 length commercial ("infomercial"), the internet, cellular network, or
16 any other medium. Promotional materials and items, and web pages shall
17 be included in the term commercial communication.

18 (b) "Lease to own contract" shall mean an agreement between a manufac-
19 tured home park owner or operator, or other entity certified as a manu-
20 factured home retailer pursuant to article twenty-one-B of the executive
21 law, and a manufactured home tenant whereby the manufactured home tenant
22 leases a home located in a manufactured home park and, whether in the
23 lease to own agreement or in a separate agreement, leases the lot upon
24 which the home is located, and the manufactured home tenant receives an
25 option to purchase the manufactured or mobile home upon payment of spec-

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

LBD11654-02-7

1 ified payments over a specified period of time, and upon the expiration
2 of the time period, and payment of the specified payments, the manufac-
3 tured home tenant obtains title and ownership of the home.

4 (c) "Lease to own payments" shall mean the periodic amounts required
5 to be paid over the duration of the lease to own contract, over and
6 above any payments required for rental of the lot upon which the manu-
7 factured home is located. Lease to own payments shall also include the
8 amount required to be paid at the end of the term.

9 (d) "Terms" means any of the fees, costs, obligations, or character-
10 istics of or associated with the lease to own option.

11 2. Requirements for lease to own contracts:

12 (a) on and after the effective date of this subdivision, no manufac-
13 tured home park owner or operator shall enter into a lease to own
14 contract except in accordance with the provisions of this subdivision;

15 (b) no manufactured home park owner or operator shall offer a lease to
16 own contract unless the manufactured park owner or operator has the
17 required documents of ownership including a certificate of title to the
18 home, if the home is a manufactured home subject to being titled pursu-
19 ant to article forty-six of the vehicle and traffic law, or for mobile
20 homes not subject to being titled pursuant to such article, such other
21 documentation, which may include a bill of sale, sufficient to establish
22 ownership of the home; and

23 (c) every lease to own contract, whether as a part of a lease, or as a
24 separate document, shall be in writing and clearly state all terms
25 governing the transaction. Such terms shall be separately stated and, at
26 a minimum, include the following:

27 (i) a description of the home to be leased, including:

28 (A) the name of the manufacturer of the home;

29 (B) the serial number of the home; and

30 (C) the year of manufacture of the home.

31 (ii) the lot number upon which the home is located in the manufactured
32 home park;

33 (iii) the periodic rent attributable solely to the lot upon which the
34 manufactured or mobile home is located; such lot rent may be increased
35 over the term of the contract, but only in conformity with the
36 provisions of this section;

37 (iv) the amount of the lease to own payments required to be made in
38 addition to the lot rent, including the periodic amount to be paid, the
39 number of payments required to be made over the term of the agreement
40 and the total amount of payments to be made;

41 (v) shall include the disclosures required by the federal Consumer
42 Leasing Act, 15 U.S.C.A. § 1667 et. seq., and Regulation M, 12 C.F.R.
43 Part 1013, without regard to the dollar amount limitations in 12 C.F.R.
44 § 1013.2(e)(1);

45 (vi) the duration of the lease and, if different, the duration of the
46 lease to own option; and

47 (vii) a provision requiring that in the event the manufactured home
48 park owner or operator sells or otherwise transfers ownership of the
49 manufactured home park to another person or entity, prior to such trans-
50 fer, the manufactured home park owner or operator shall:

51 (A) include a provision in the terms of the agreement transferring the
52 manufactured home park requiring that the purchaser or transferee of the
53 manufactured home park assume all obligations of the manufactured home
54 park owner or operator with respect to every lease to own contract then
55 in effect in the manufactured home park;

1 (B) refund to all manufactured home tenants with currently effective
2 lease to own contracts, the full amount of all lease to own payments
3 made by the manufactured home tenant over the entire time of his or her
4 tenancy plus interest at the rate for thirty year fixed rate mortgages
5 as shown on the then current Primary Mortgage Market Survey published by
6 the Federal Home Loan Mortgage Corporation (also known as "Freddie
7 Mac"); or

8 (C) agree to continue to retain ownership of the home and receive
9 lease to own contract payments until such time as ownership of the home
10 passes to the manufactured home tenant.

11 3. Notwithstanding any provision of law to the contrary, a lease to
12 own contract shall be presumed to be valid if:

13 (a) It complies with the provisions of the federal Consumer Leasing
14 Act, 15 U.S.C.A. § 1667 et. seq., and Regulation M, 12 C.F.R. Part 1013,
15 without regard to the dollar amount limitations in 12 C.F.R. §
16 1013.2(e)(1);

17 (b) Payments for lot rent are separately stated and not included with-
18 in the amount of periodic payments for the lease of the home;

19 (c) It provides that upon payment of the purchase option price and all
20 periodic lease payments then due, the lessor shall transfer title to the
21 home to the lessee; and

22 (d) In the case of lease to own contracts entered into on or after the
23 effective date of this subdivision, includes the provisions set forth in
24 paragraph two of this subdivision.

25 4. (a) A manufactured home park owner or operator who wrongfully
26 terminates the tenancy of a manufactured home tenant with a lease to own
27 contract shall refund to the manufactured home tenant the full amount of
28 all lease to own payments made by the manufactured home tenant over the
29 entire time of his or her tenancy plus interest at the rate specified in
30 section 5-501 of the general obligations law.

31 (b) For purposes of paragraph four of this subdivision, there shall be
32 a rebuttable presumption that a manufactured home park owner or operator
33 wrongfully terminated the tenancy if (i) the termination takes place
34 within twelve months of the end of the term of the lease to own contract
35 and (ii) at the time of the termination, the manufactured home tenant is
36 in good standing as defined in subparagraph (ii) of paragraph two of
37 subdivision e of this section.

38 5. Until such time as ownership of the home passes to the manufactured
39 home tenant, manufactured homes under a lease to own contract shall be
40 deemed to be rented homes for purposes of the provisions of subdivision
41 m of this section.

42 6. No manufactured home park owner or operator shall make any material
43 misrepresentation, expressly or by implication, in any commercial commu-
44 nication, regarding any of the terms of the lease to own contract
45 including, but not limited to:

46 (a) The charges for the lease to own contract option;

47 (b) The existence, nature, or amount of fees or costs to the manufac-
48 tured home tenant associated with the lease to own contract, including
49 but not limited to misrepresentations that no fees are charged;

50 (c) The existence, cost, payment terms, or other terms associated with
51 any additional product or feature that is or may be sold in conjunction
52 with the lease to own contract, including but not limited to credit
53 insurance or credit disability insurance;

54 (d) The terms, amounts, payments, or other requirements relating to
55 taxes or insurance associated with the lease to own contract, including
56 but not limited to misrepresentations about:

1 (i) whether separate payment of taxes or insurance is required; or
2 (ii) the extent to which payment for taxes or insurance is included in
3 the loan payments, loan amount, or total amount due from the manufac-
4 tured home tenant;

5 (e) Any prepayment penalty associated with the lease to own contract,
6 including but not limited to misrepresentations concerning the exist-
7 ence, nature, amount, or terms of such penalty;

8 (f) The variability of interest, payments, or other terms of the lease
9 to own contract, including but not limited to misrepresentations using
10 the word "fixed";

11 (g) Any comparison between:

12 (i) any rate or payment that will be available for a period less than
13 the full length of the lease to own contract; and

14 (ii) any actual or hypothetical rate or payment;

15 (h) The amount of the obligation, or the existence, nature, or amount
16 of cash or credit available to the manufactured home tenant in
17 connection with the lease to own contract, including but not limited to
18 misrepresentations that the manufactured home tenant will receive a
19 certain amount of cash or credit as part of the transaction;

20 (i) The existence, number, amount, or timing of any minimum or
21 required payments, including but not limited to misrepresentations about
22 any payments or that no payments are required in the lease to own
23 contract;

24 (j) The potential for default under the lease to own contract, includ-
25 ing but not limited to misrepresentations concerning the circumstances
26 under which the manufactured home tenant could default for nonpayment of
27 taxes, insurance, or maintenance, or for failure to meet other obli-
28 gations;

29 (k) The effectiveness of the lease to own contract in helping the
30 manufactured home tenant resolve difficulties in paying debts, including
31 but not limited to misrepresentations that any lease to own contract can
32 reduce, eliminate, or restructure debt or result in a waiver or forgive-
33 ness, in whole or in part, of the manufactured home tenant's existing
34 obligation with any person;

35 (l) The association of the lease to own contract or any provider of
36 such contract with any other person or program, including but not limit-
37 ed to misrepresentations that:

38 (i) the provider is, or is affiliated with, any governmental entity or
39 other organization; or

40 (ii) the product is or relates to a government benefit, or is
41 endorsed, sponsored by, or affiliated with any government or other
42 program, including but not limited to through the use of formats,
43 symbols, or logos that resemble those of such entity, organization, or
44 program;

45 (m) The source of any commercial communication, including but not
46 limited to misrepresentations that a commercial communication is made by
47 or on behalf of the manufactured home tenant's current mortgage lender
48 or servicer;

49 (n) The right of the manufactured home tenant to reside in the dwell-
50 ing that is the subject of the lease to own contract, or the duration of
51 such right;

52 (o) The manufactured home tenant's ability or likelihood to obtain any
53 lease to own contract or term, including but not limited to misrepresen-
54 tations concerning whether the manufactured home tenant has been preap-
55 proved or guaranteed for any such contract or term;

1 (p) The manufactured home tenant's ability or likelihood to obtain a
2 refinancing or modification of any lease to own contract or term,
3 including but not limited to misrepresentations concerning whether the
4 manufactured home tenant has been preapproved or guaranteed for any such
5 refinancing or modification; and

6 (q) The availability, nature, or substance of counseling services or
7 any other expert advice offered to the manufactured home tenant regard-
8 ing any lease to own contract or term, including but not limited to the
9 qualifications of those offering the services or advice.

10 7. It is a violation of this subdivision for any person to obtain, or
11 attempt to obtain, a waiver from any manufactured home tenant of any
12 protection provided by or any right of the manufactured home tenant
13 under this part.

14 8. (a) Manufactured home park owners or operators offering lease to
15 own contracts shall keep, for a period of twenty-four months from the
16 last date the manufactured home park owner or operator made or dissem-
17 inated the applicable commercial communication regarding any term of any
18 lease to own contract, the following evidence of compliance with this
19 part:

20 (i) copies of all materially different commercial communications as
21 well as sales scripts, training materials, and marketing materials,
22 regarding any term of any lease to own contract, that the manufactured
23 home park owner or operator made or disseminated during the relevant
24 time period;

25 (ii) documents describing or evidencing all lease to own contracts
26 available to manufactured home tenants during the time period in which
27 the person made or disseminated each commercial communication regarding
28 any term of any lease to own contract, including but not limited to the
29 names and terms of each such lease to own contract available to manufac-
30 tured home tenants; and

31 (iii) documents describing or evidencing all additional products or
32 services (such as credit insurance or credit disability insurance) that
33 are or may be offered or provided with the lease to own contracts avail-
34 able to manufactured home tenants during the time period in which the
35 person made or disseminated each commercial communication regarding any
36 term of any lease to own contract, including but not limited to the
37 names and terms of each such additional product or service available to
38 manufactured home tenants.

39 (b) Any person who is subject to the provisions of this subdivision
40 may keep the records required by subparagraph (a) of this paragraph in
41 any legible form, and in the same manner, format, or place as they keep
42 such records in the ordinary course of business.

43 9. Nothing contained in this subdivision shall be deemed to invalidate
44 a lease to own contract entered into prior to the effective date of this
45 subdivision.

46 § 2. This act shall take effect on the one hundred eightieth day after
47 it shall have become a law.