

# STATE OF NEW YORK

6770

2019-2020 Regular Sessions

## IN SENATE

October 9, 2019

Introduced by Sen. LIU -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general obligations law, the real property law, and the real property actions and proceedings law, in relation to excluding tenant-shareholders in cooperative housing corporations from certain housing provisions

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

1 Section 1. Paragraph (a) of subdivision 1-a of section 7-108 of the  
2 general obligations law, as added by section 25 of part M of chapter 36  
3 of the laws of 2019, is amended to read as follows:

4 (a) No deposit or advance shall exceed the amount of one month's rent  
5 under such contract, except in dwelling units which are a cooperative  
6 housing corporation and where the tenant would become a shareholder of  
7 such dwelling unit.

8 § 2. Section 227-f of the real property law is amended by adding a new  
9 subdivision 3 to read as follows:

10 3. This section shall not apply to a prospective tenant of a cooper-  
11 ative housing corporation, where such prospective tenant would become a  
12 shareholder of such cooperative housing corporation.

13 § 3. Subdivisions 1 and 2 of section 238-a of the real property law,  
14 as added by section 10 of part M of chapter 36 of the laws of 2019, are  
15 amended to read as follows:

16 1. (a) Except in instances where statutes or regulations provide for a  
17 payment, fee or charge, no landlord, lessor, sub-lessor or grantor may  
18 demand any payment, fee, or charge for the processing, review or accept-  
19 ance of an application, or demand any other payment, fee or charge  
20 before or at the beginning of the tenancy, except background checks and  
21 credit checks as provided by paragraph (b) of this subdivision, provided  
22 that this subdivision shall not apply to entrance fees charged by  
23 continuing care retirement communities licensed pursuant to article

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

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1 forty-six or forty-six-A of the public health law, assisted living  
2 providers licensed pursuant to article forty-six-B of the public health  
3 law, adult care facilities licensed pursuant to article seven of the  
4 social services law, senior residential communities that have submitted  
5 an offering plan to the attorney general, or not-for-profit independent  
6 retirement communities that offer personal emergency response, house-  
7 keeping, transportation and meals to their residents. Nothing in this  
8 paragraph shall prohibit a cooperative housing corporation from demand-  
9 ing from a prospective tenant any payment, fee or charge which is neces-  
10 sary to compensate a managing agent for the processing, review or  
11 acceptance of such prospective tenant's application where such prospec-  
12 tive tenant would become a shareholder of such cooperative housing  
13 corporation.

14 (b) A landlord, lessor, sub-lessor or grantor may charge a fee or fees  
15 to reimburse costs associated with conducting a background check and  
16 credit check, provided the cumulative fee or fees for such checks is no  
17 more than the actual cost of the background check and credit check or  
18 twenty dollars, whichever is less, and the landlord, lessor, sub-lessor  
19 or grantor shall waive the fee or fees if the potential tenant provides  
20 a copy of a background check or credit check conducted within the past  
21 thirty days. The landlord, lessor, sub-lessor or grantor may not collect  
22 the fee or fees unless the landlord, lessor, sub-lessor or grantor  
23 provides the potential tenant with a copy of the background check or  
24 credit check and the receipt or invoice from the entity conducting the  
25 background check or credit check. Notwithstanding the provisions of  
26 this paragraph, a cooperative housing corporation shall be permitted to  
27 charge a fee or fees to reimburse costs associated with conducting a  
28 background check and credit check in excess of twenty dollars, where the  
29 potential tenant would become a shareholder of such cooperative housing  
30 corporation, provided the cumulative fee or fees for such checks is no  
31 more than the actual cost of such background check and/or credit check.

32 2. No landlord, lessor, sub-lessor or grantor may demand any payment,  
33 fee, or charge for the late payment of rent unless the payment of rent  
34 has not been made within five days of the date it was due, and such  
35 payment, fee, or charge shall not exceed fifty dollars or five percent  
36 of the monthly rent, whichever is less, except that this subdivision  
37 shall not apply to a tenant of a cooperative housing corporation, where  
38 such tenant is also a shareholder of such cooperative housing corpo-  
39 ration.

40 § 4. Section 702 of the real property actions and proceedings law, as  
41 added by section 11 of part M of chapter 36 of the laws of 2019, is  
42 amended to read as follows:

43 § 702. Rent in a residential dwelling. In a proceeding relating to a  
44 residential dwelling or housing accommodation, the term "rent" shall  
45 mean the monthly or weekly amount charged in consideration for the use  
46 and occupation of a dwelling pursuant to a written or oral rental agree-  
47 ment. No fees, charges or penalties other than rent may be sought in a  
48 summary proceeding pursuant to this article, notwithstanding any  
49 language to the contrary in any lease or rental agreement, except that  
50 such additional fees, charges or penalties may be sought in a summary  
51 proceeding brought by a cooperative housing corporation against a tenant  
52 who is a shareholder of such cooperative housing corporation.

53 § 5. Section 234 of the real property law, as amended by section 8 of  
54 part M of chapter 36 of the laws of 2019, is amended to read as follows:

55 § 234. Right to recover attorneys' fees in actions or summary  
56 proceedings arising out of leases of residential property. Whenever a

1 lease of residential property shall provide that in any action or summa-  
2 ry proceeding the landlord may recover attorneys' fees and/or expenses  
3 incurred as the result of the failure of the tenant to perform any  
4 covenant or agreement contained in such lease, or that amounts paid by  
5 the landlord therefor shall be paid by the tenant as additional rent,  
6 there shall be implied in such lease a covenant by the landlord to pay  
7 to the tenant the reasonable attorneys' fees and/or expenses incurred by  
8 the tenant as the result of the failure of the landlord to perform any  
9 covenant or agreement on its part to be performed under the lease or in  
10 the successful defense of any action or summary proceeding commenced by  
11 the landlord against the tenant arising out of the lease, and an agree-  
12 ment that such fees and expenses may be recovered as provided by law in  
13 an action commenced against the landlord or by way of counterclaim in  
14 any action or summary proceeding commenced by the landlord against the  
15 tenant. A landlord may not recover attorneys' fees upon a default judg-  
16 ment. Any waiver of this section shall be void as against public policy.  
17 Nothing in this section shall prohibit a cooperative housing corporation  
18 from recovering attorneys' fees in an action against a tenant where such  
19 tenant is also a shareholder of such cooperative housing corporation.

20 § 6. Subdivision (d) of section 235-e of the real property law, as  
21 added by section 9 of part M of chapter 36 of the laws of 2019, is  
22 amended to read as follows:

23 (d) If a lessor, or an agent of a lessor authorized to receive rent,  
24 fails to receive payment for rent within five days of the date specified  
25 in a lease agreement, such lessor or agent shall send the lessee, by  
26 certified mail, a written notice stating the failure to receive such  
27 rent payment. The failure of a lessor, or any agent of the lessor  
28 authorized to receive rent, to provide a lessee with a written notice of  
29 the non-payment of rent may be used as an affirmative defense by such  
30 lessee in an eviction proceeding based on the non-payment of rent.  
31 Notwithstanding the provisions of this subdivision, a lessor which is a  
32 cooperative housing corporation may provide for a deadline in excess of  
33 five days and a method of sending notice other than by certified mail,  
34 as long as such deadline and method of sending notice is provided for in  
35 the proprietary lease, and the lessee is a shareholder of such cooper-  
36 ative housing corporation.

37 § 7. This act shall take effect immediately and shall apply to actions  
38 and proceedings commenced on or after such effective date.