

# STATE OF NEW YORK

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5105

2021-2022 Regular Sessions

## IN SENATE

February 23, 2021

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Introduced by Sens. LIU, BIAGGI, COMRIE, KAPLAN, KRUEGER, MAYER, PERSAUD, SEPULVEDA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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

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

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

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

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

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

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

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

1     § 234. Right to recover attorneys' fees in actions or summary  
2 proceedings arising out of leases of residential property. Whenever a  
3 lease of residential property shall provide that in any action or summa-  
4 ry proceeding the landlord may recover attorneys' fees and/or expenses  
5 incurred as the result of the failure of the tenant to perform any  
6 covenant or agreement contained in such lease, or that amounts paid by  
7 the landlord therefor shall be paid by the tenant as additional rent,  
8 there shall be implied in such lease a covenant by the landlord to pay  
9 to the tenant the reasonable attorneys' fees and/or expenses incurred by  
10 the tenant as the result of the failure of the landlord to perform any  
11 covenant or agreement on its part to be performed under the lease or in  
12 the successful defense of any action or summary proceeding commenced by  
13 the landlord against the tenant arising out of the lease, and an agree-  
14 ment that such fees and expenses may be recovered as provided by law in  
15 an action commenced against the landlord or by way of counterclaim in  
16 any action or summary proceeding commenced by the landlord against the  
17 tenant. A landlord may not recover attorneys' fees upon a default judg-  
18 ment. Any waiver of this section shall be void as against public policy.

19 Nothing in this section shall prohibit a cooperative housing corporation  
20 from recovering attorneys' fees in an action against a tenant where such  
21 tenant is also a shareholder of such cooperative housing corporation.

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

25     (d) If a lessor, or an agent of a lessor authorized to receive rent,  
26 fails to receive payment for rent within five days of the date specified  
27 in a lease agreement, such lessor or agent shall send the lessee, by  
28 certified mail, a written notice stating the failure to receive such  
29 rent payment. The failure of a lessor, or any agent of the lessor  
30 authorized to receive rent, to provide a lessee with a written notice of  
31 the non-payment of rent may be used as an affirmative defense by such  
32 lessee in an eviction proceeding based on the non-payment of rent.

33 Notwithstanding the provisions of this subdivision, a lessor which is a  
34 cooperative housing corporation may provide for a deadline in excess of  
35 five days and a method of sending notice other than by certified mail,  
36 as long as such deadline and method of sending notice is provided for in  
37 the proprietary lease, and the lessee is a shareholder of such cooper-  
38 ative housing corporation.

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