

STATE OF NEW YORK

5031--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. L. ROSENTHAL, SIMONE -- read once and referred to the Committee on Housing -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to limiting the amount of rent increases for residential ground lease cooperative apartment buildings and establishing certain rights upon expiration of such leases

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
2 233-c to read as follows:

3 § 233-c. Residential ground lease cooperative apartment buildings. 1.
4 Wherever used in this section:

5 (a) The term "residential ground lease cooperative apartment building"
6 means any and all buildings, improvements and/or other structures
7 located in the state of New York occupied, owned and/or leased in whole
8 or in part by a ground lease residential cooperative, or any subsidiary
9 or affiliate thereof, pursuant to a subject residential cooperative
10 ground lease.

11 (b) The term "ground lease residential cooperative" means any New York
12 corporation organized and/or operating as a housing development fund
13 corporation, New York cooperative corporation and/or cooperative housing
14 corporation, including any entity meeting the definition thereof for
15 federal income tax purposes, or any person or entity that is a tenant in
16 common, co-tenant or joint owner with any such corporation, or which is,
17 directly or indirectly through a subsidiary or affiliate thereof, a
18 party to a subject residential cooperative ground lease.

19 (c) The term "subject residential cooperative ground lease" means the
20 lease agreement, together with any amendments or other related agree-
21 ments including any forbearance, settlement, tenancy in common or other
22 similar agreements related thereto, pursuant to which a ground lease

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

LBD02744-03-3

1 residential cooperative leases, occupies and/or otherwise uses for resi-
2 dential, commercial, or other ancillary purposes the ground lease real
3 property from one or more subject ground lease owners.

4 (d) The term "ground lease real property" means all real property,
5 including improvements thereon, all or any portion of which is leased,
6 rented, licensed or otherwise provided for use to a ground lease resi-
7 dential cooperative pursuant to a subject residential cooperative ground
8 lease, including any portion thereof that may be subleased or otherwise
9 used for ancillary retail, parking, or commercial purposes.

10 (e) The term "subject ground lease owners" means any and all persons
11 or entities (whether natural persons, estates, trusts, corporations,
12 partnerships or other entities), other than any excepted ground lease
13 owner, that holds title to and/or is the owner (whether by the entirety,
14 as tenants in common or otherwise) of ground lease real property and/or
15 is otherwise the landlord under any subject residential cooperative
16 ground lease.

17 (f) The term "excepted ground lease owner" means the United States
18 federal government, the state of New York, the city of New York, and any
19 agency, municipality or political subdivision of any of the foregoing
20 thereof, any entity owned or controlled by any of the foregoing, includ-
21 ing, without limitation, the Battery Park city authority, any charity
22 approved under section 501(c) of the Internal Revenue Code which
23 acquired its interest as the owner and/or landlord of a ground lease
24 real property prior to January first, two thousand twenty-three, and any
25 Indian nation, tribe or band as defined under title twenty-five of the
26 United States Code, but shall exclude any "private foundation" within
27 the meaning of section five hundred nine of the Internal Revenue Code.

28 (g) The term "base rent" means for any year the payments, including
29 any consumer price index or other similar adjustment payments, other
30 than additional rent, required to be made to the subject ground lease
31 owners for such year pursuant to a subject residential cooperative
32 ground lease.

33 (h) The term "additional rent" means, for any year, the amounts spent
34 or borne by the ground lease residential cooperative during such year
35 pursuant to, or in order to comply with, the subject residential cooper-
36 ative ground lease for the payment of real estate taxes, insurance,
37 repair, maintenance, including, without limitation, maintenance as may
38 be required pursuant to any facade inspection safety program implemented
39 by any city, municipality or other government entity within the state of
40 New York, and/or other capital improvements for or with respect to the
41 residential ground lease cooperative apartment building.

42 (i) The term "maximum annual rent increase percentage" means, for any
43 year, the greater of: (x) three percent (3%); and (y) the consumer price
44 index (for all urban consumers, U.S. city average, all items, not
45 seasonally adjusted), as published by the United States department of
46 labor for such year.

47 (j) "Commissioner" means the commissioner of the division of housing
48 and community renewal.

49 2. Annual increases in base rent payable by any ground lease residen-
50 tial cooperative shall, when taken together with the amount of any
51 increases in additional rent paid by the ground lease residential coop-
52 erative during the prior year, in no event exceed the maximum annual
53 rent increase percentage of the base rent payable by the ground lease
54 residential cooperative in the prior year. In the event the subject
55 residential cooperative ground lease provides for increases in base rent
56 on a periodic basis less frequently than annually, the increase in base

1 rent for any period, when taken together with the amount of any annual
2 increase in additional rent paid by the ground lease residential cooper-
3 ative during such period, may not represent more than the compound
4 increase that results from applying the maximum annual rent increase
5 percentage for each applicable year above the base rent for the prior
6 base rent in effect. The provisions of this subdivision shall apply
7 regardless of the methodology for determining the base rent or any
8 increases therein as set forth in the subject residential cooperative
9 ground lease instrument. In the event the amount of any increase in
10 additional rent during any year exceeds the maximum annual rent increase
11 percentage of the base rent for such year, such excess amount shall be
12 carried forward to reduce the amount of any increase in base rent other-
13 wise permitted hereunder in any future period until such excess amounts
14 have been fully applied.

15 3. After the effective date of this section, any residential ground
16 lease cooperative shall have the right to renew its subject residential
17 cooperative ground lease on the same terms and conditions, subject to
18 this section, as in effect at time of renewal, with such renewal exer-
19 cisable at any time prior to or within ninety days after having received
20 written notice from the subject ground lease owners of the expiration or
21 termination of the subject residential cooperative ground lease. Any
22 renewal term pursuant to the foregoing shall be equal to the term of
23 such subject residential cooperative ground lease prior to such expira-
24 tion or termination and shall occur automatically, unless the subject
25 residential cooperative ground lease affirmatively elects to not so
26 renew and has provided written notice of such non-renewal to the subject
27 ground lease owners.

28 4. After the effective date of this section, any residential ground
29 lease cooperative shall, notwithstanding anything to the contrary,
30 including prohibitions or specified dollar limitations, set forth in a
31 subject residential cooperative ground lease, have the authority, right
32 and power to incur indebtedness or otherwise borrow money, and to grant
33 a first mortgage and/or other similar security interest on or in the
34 ground lease apartment building with respect to such indebtedness or
35 borrowed money, of any amount, if the primary purpose of such indebt-
36 edness and/or borrowed money is to provide proceeds or other credit
37 support to pay or fund additional rent or otherwise perform repairs,
38 maintenance or other capital improvements on or with respect to the
39 ground lease real property and/or the ground lease apartment building.

40 5. (a) If, after the effective date of this section, any subject
41 ground lease owner proposes to directly or indirectly sell, assign,
42 exchange, or otherwise transfer any direct or indirect interest in any
43 ground lease real property, including, without limitation, any indirect
44 hypothecation by way of transfers of interests in any entity that is
45 itself a subject ground lease landlord or an owner thereof and/or the
46 subject residential cooperative ground lease itself, the subject
47 ground lease owner shall provide the residential ground lease cooper-
48 ative with written notice thereof containing the price and all other
49 terms and conditions of such direct or indirect proposed sale, assign-
50 ment, exchange, transfer, or other similar conveyance. The residential
51 ground lease cooperative shall have the right to purchase the interest
52 being sold, assigned, exchanged, transferred, or conveyed at the same
53 price and on substantially similar terms and conditions by providing
54 written notice to the subject ground lease owner within one hundred
55 twenty days of receipt of the aforementioned written notice from the
56 subject ground lease owner. The closing of the purchase by the residen-

1 tial ground lease cooperative shall occur within the time frame and
2 pursuant to procedures adopted by the commissioner pursuant to paragraph
3 (d) of this subdivision.

4 (b) If an offer to purchase by the residential ground lease cooper-
5 ative is not delivered within such one hundred twenty day period, then,
6 unless the subject ground lease owner thereafter elects to directly or
7 indirectly sell, assign, exchange, or otherwise transfer any direct or
8 indirect interest in any ground lease real property at a price lower
9 than the price specified in the notice to the residential ground lease
10 cooperative or on terms different from those presented to the residen-
11 tial ground lease cooperative, the subject ground lease owner has no
12 further obligations under this section, unless the subject ground lease
13 owner does not directly or indirectly sell, assign, exchange, or other-
14 wise transfer any direct or indirect interest in any ground lease real
15 property in accordance with the foregoing within one hundred twenty days
16 after the expiration of the one hundred twenty day period commencing
17 with delivery of the written notice of the proposed sale to the residen-
18 tial ground lease cooperative, in which case the provisions of para-
19 graphs (a) and (c) of this subdivision shall continue to apply.

20 (c) If the subject ground lease owner, after such one hundred twenty
21 day period, elects to directly or indirectly sell, assign, exchange, or
22 otherwise transfer any direct or indirect interest in any ground lease
23 real property at a price lower than the price specified in the notice to
24 the residential ground lease cooperative or on terms different from
25 those presented to the residential ground lease cooperative, then the
26 residential ground lease cooperative shall be entitled to notice thereof
27 and shall have an additional one hundred twenty days after receipt of
28 notice of the revised terms to deliver to the subject ground lease owner
29 a written notice indicating exercise of such residential ground lease
30 cooperative's right to purchase which meets the revised price, terms,
31 and conditions as presented by the subject ground lease owner. The
32 closing of the purchase by such residential ground lease cooperative
33 shall occur within the time frame and pursuant to procedures adopted by
34 the commissioner pursuant to paragraph (d) of this subdivision.

35 (d) The commissioner shall adopt the procedures in connection with
36 this subdivision no later than one year after the effective date of this
37 section to give effect to closing terms and conditions associated with
38 any purchase and sale contemplated by this subdivision.

39 (e) This section does not apply to purchases of ground lease real
40 property by a governmental entity under its powers of eminent domain.

41 § 2. If any clause, sentence, paragraph, subdivision, section or part
42 of this act shall be adjudged by any court of competent jurisdiction to
43 be invalid, such judgment shall not affect, impair, or invalidate the
44 remainder thereof, but shall be confined in its operation to the clause,
45 sentence, paragraph, subdivision, section or part thereof directly
46 involved in the controversy in which such judgment shall have been
47 rendered. It is hereby declared to be the intent of the legislature that
48 this act would have been enacted even if such invalid provisions had not
49 been included herein.

50 § 3. This act shall take effect immediately and shall apply to all
51 existing leases as of such effective date and to any renewals, amend-
52 ments and other extensions of such leases.