

STATE OF NEW YORK

7825--A

Cal. No. 719

2023-2024 Regular Sessions

IN SENATE

December 20, 2023

Introduced by Sens. KRUEGER, CLEARE, GONZALEZ, GOUNARDES, HOYLMAN-SIGAL, JACKSON, LIU, MAYER, MYRIE, RAMOS, RIVERA, SCARCELLA-SPANTON, SEPULVEDA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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,

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

LBD02744-05-4

1 directly or indirectly through a subsidiary or affiliate thereof, a
2 party to a subject residential cooperative ground lease.

3 (c) The term "subject residential cooperative ground lease" means the
4 lease agreement, together with any amendments or other related agree-
5 ments including any forbearance, settlement, tenancy in common or other
6 similar agreements related thereto, pursuant to which a ground lease
7 residential cooperative leases, occupies and/or otherwise uses for resi-
8 dential, commercial, or other ancillary purposes the ground lease real
9 property from one or more subject ground lease owners.

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

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

23 (f) The term "excepted ground lease owner" (i) means the United States
24 federal government, the state of New York, the city of New York, and any
25 agency, municipality or political subdivision of any of the foregoing
26 thereof, any entity owned or controlled by any of the foregoing, includ-
27 ing, without limitation, the Battery Park city authority, the Roosevelt
28 Island Operating Corporation, the Queens West Development Corporation,
29 the Brooklyn Bridge Park Development Corporation, the New York City
30 Educational Construction Fund, and the New York City Housing Authority;
31 and (ii) any charity approved under section 501(c) of the Internal
32 Revenue Code which acquired its interest as the owner and/or landlord of
33 a ground lease real property prior to January first, two thousand twen-
34 ty-four, and any Indian nation, tribe or band described under and
35 protected by the Indian law as defined under title twenty-five of the
36 United States Code, but shall exclude any "private foundation" within
37 the meaning of section five hundred nine of the Internal Revenue Code.

38 (g) The term "base rent" means for any year the payments, including
39 any consumer price index or other similar adjustment payments, other
40 than additional rent, required to be made to the subject ground lease
41 owners for such year pursuant to a subject residential cooperative
42 ground lease.

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

52 (i) The term "maximum annual rent increase percentage" means, for any
53 year, the greater of: (i) three percent (3%); and (ii) the percentage
54 change in the consumer price index (for all urban consumers, U.S. city
55 average, all items, not seasonally adjusted), as published by the United
56 States department of labor for such year.

1 (j) "Commissioner" means the commissioner of the division of housing
2 and community renewal.

3 2. Annual increases in base rent payable by any ground lease residen-
4 tial cooperative from and after the thirtieth anniversary of the initial
5 date of the subject residential ground lease shall in no event exceed
6 the maximum annual rent increase percentage of the base rent payable by
7 the ground lease residential cooperative in the prior year. In the event
8 the subject residential cooperative ground lease provides for increases
9 in base rent on a periodic basis less frequently than annually, the
10 increase in base rent for any period may not represent more than the
11 compound increase that results from applying the maximum annual rent
12 increase percentage for each applicable year above the base rent in
13 effect as of the last prior increase in base rent. The provisions of
14 this subdivision shall apply as a limit on annual increases in base rent
15 regardless of the methodology for determining the base rent or any
16 increases therein as set forth in the subject residential cooperative
17 ground lease instrument.

18 3. (a) Subject to paragraph (b) of this subdivision, after the effec-
19 tive date of this section, to the extent that a subject residential
20 cooperative ground lease does not otherwise contain a right or option to
21 renew that continues to be exercisable by the residential ground lease
22 cooperative, any residential ground lease cooperative shall have the
23 right to renew its subject residential cooperative ground lease on the
24 same terms and conditions, subject to this section, as in effect at time
25 of renewal, with such renewal exercisable at any time prior to the end
26 of the term or within ninety days after having received written notice
27 from the subject ground lease owners of the expiration or termination of
28 the subject residential cooperative ground lease. Any renewal term
29 pursuant to the foregoing shall, subject to paragraph (b) of this subdivi-
30 vision, be equal to the lesser of the term of such subject residential
31 cooperative ground lease prior to such expiration or termination or
32 thirty years, and shall occur automatically and successively, unless the
33 subject residential cooperative ground lease affirmatively elects to not
34 so renew and has provided written notice of such non-renewal to the
35 subject ground lease owners.

36 (b) Notwithstanding paragraph (a) of this subdivision, in the case of
37 any renewal that is not already provided for in the subject residential
38 cooperative ground lease, a subject ground lease owner may elect not to
39 renew a subject residential cooperative ground lease, and in any event
40 may bring and maintain any action for eviction, in each case for the
41 reasons set forth in section seven hundred eleven of the real property
42 actions and proceedings law.

43 4. After the effective date of this section, to the extent a subject
44 residential ground lease contains any prohibition, specified dollar
45 limitations or other requirements for or conditioned on obtaining the
46 prior written consent of the subject ground lease owner with respect to
47 the incurrence of indebtedness or borrowing of money by a residential
48 ground lease cooperative and/or the encumbrance of its interest in the
49 ground lease apartment building in connection therewith, in each case
50 where the primary purpose of such indebtedness and/or borrowed money is
51 to provide proceeds or other credit support to pay or fund repairs,
52 maintenance or other capital improvements on or with respect to the
53 ground lease real property and/or the ground lease apartment building,
54 the subject ground lease owner may only refuse to grant such consent for
55 reasonable cause and must provide the residential ground lease cooper-
56 ative with a written statement that sets forth the basis of refusal

1 within fifteen days of a written request for permission from the resi-
2 dential ground lease cooperative. The foregoing shall not apply to any
3 mortgage or granting of a security interest in the ground lease real
4 property, other than the residential ground lease cooperative apartment
5 building itself so long as it is subordinate to the rights of the
6 subject ground lease owner under the subject residential cooperative
7 ground lease.

8 5. (a) If, after the effective date of this section, any subject
9 ground lease owner proposes to directly or indirectly sell, assign,
10 exchange, or otherwise transfer any direct or indirect interest in any
11 ground lease real property, including, without limitation, any indirect
12 hypothecation by way of transfers of interests in any entity that is
13 itself a subject ground lease landlord or an owner thereof and/or the
14 subject residential cooperative ground lease itself, the subject
15 ground lease owner shall provide the residential ground lease cooper-
16 ative with written notice thereof containing the price and all other
17 terms and conditions of such direct or indirect proposed sale, assign-
18 ment, exchange, transfer, or other similar conveyance. The residential
19 ground lease cooperative shall have the right to purchase the interest
20 being sold, assigned, exchanged, transferred, or conveyed at the same
21 price and on substantially similar terms and conditions by providing
22 written notice to the subject ground lease owner within one hundred
23 twenty days of receipt of the aforementioned written notice from the
24 subject ground lease owner. The closing of the purchase by the residen-
25 tial ground lease cooperative shall occur within the time frame and
26 pursuant to procedures adopted by the commissioner pursuant to paragraph
27 (d) of this subdivision.

28 (b) If an offer to purchase by the residential ground lease cooper-
29 ative is not delivered within such one hundred twenty day period, then,
30 unless the subject ground lease owner thereafter elects to directly or
31 indirectly sell, assign, exchange, or otherwise transfer any direct or
32 indirect interest in any ground lease real property at a price lower
33 than the price specified in the notice to the residential ground lease
34 cooperative or on terms different from those presented to the residen-
35 tial ground lease cooperative, the subject ground lease owner has no
36 further obligations under this section, unless the subject ground lease
37 owner does not directly or indirectly sell, assign, exchange, or other-
38 wise transfer any direct or indirect interest in any ground lease real
39 property in accordance with the foregoing within one hundred twenty days
40 after the expiration of the one hundred twenty day period commencing
41 with delivery of the written notice of the proposed sale to the residen-
42 tial ground lease cooperative, in which case the provisions of para-
43 graphs (a) and (c) of this subdivision shall continue to apply.

44 (c) If the subject ground lease owner, after such one hundred twenty
45 day period, elects to directly or indirectly sell, assign, exchange, or
46 otherwise transfer any direct or indirect interest in any ground lease
47 real property at a price lower than the price specified in the notice to
48 the residential ground lease cooperative or on terms different from
49 those presented to the residential ground lease cooperative, then the
50 residential ground lease cooperative shall be entitled to notice thereof
51 and shall have an additional one hundred twenty days after receipt of
52 notice of the revised terms to deliver to the subject ground lease owner
53 a written notice indicating exercise of such residential ground lease
54 cooperative's right to purchase which meets the revised price, terms,
55 and conditions as presented by the subject ground lease owner. The
56 closing of the purchase by such residential ground lease cooperative

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

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

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

9 § 2. If any clause, sentence, paragraph, subdivision, section or part
10 of this act shall be adjudged by any court of competent jurisdiction to
11 be invalid, such judgment shall not affect, impair, or invalidate the
12 remainder thereof, but shall be confined in its operation to the clause,
13 sentence, paragraph, subdivision, section or part thereof directly
14 involved in the controversy in which such judgment shall have been
15 rendered. It is hereby declared to be the intent of the legislature that
16 this act would have been enacted even if such invalid provisions had not
17 been included herein.

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