STATE OF NEW YORK

4955--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 27, 2023

Introduced by M. of A. THIELE -- 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 lease-hold retirement communities

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

Section 1. The real property law is amended by adding a new section 238-b to read as follows:

§ 238-b. Lease-hold retirement community. 1. Definitions. As used in this section:

(a) A "lease-hold retirement community" shall mean a contiguous parcel of privately owned real property containing two hundred or more lots which are leased to owners of year-round homes erected thereon and affixed thereto wherein the occupation is restricted to individuals based on age pursuant to paragraph (h) of subdivision three of this section.

A "lease-hold retirement community" shall not include a manufactured home park, or condominium, as defined in this chapter, a continuing care retirement community authorized under article forty-six or forty-six-A of the public health law, or a cooperative housing corporation.

(b) "Home owner" shall mean one who holds title to a home.

(c) "Tenant" shall mean one who occupies a home in a lease-hold retirement community for thirty days or more, and whose occupation of the home in the lease-hold retirement community is known to the lease-hold retirement community owner or operator.

2. Leases. (a) Any lease-hold retirement community owner or operator shall offer every home owner the opportunity to sign a long term lease for ninety-nine years, with an option of the home owner to cancel said lease on ninety days written notice to said owner or operator.

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

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(b) A copy of such lease-hold retirement community's rules and regulations, if any, shall be attached to and become a part of the lease provided for by this section, as if fully set forth therein.

(c) No rules or regulations shall be inconsistent with the lease provisions in effect at the commencement of such lease.

(d) A copy of the lease shall be delivered by such lease-hold retirement community owner or operator to all home owners or tenants at the time of the first deposit made payable to said lease-hold retirement community owner or operator.

3. Rules and regulations. (a) The lease-hold retirement community owner or operator may promulgate rules or regulations governing the rent and use or occupation of the home lot, provided that such rules or regulations shall not be unreasonable, arbitrary or capricious.

(b) A copy of all rules and regulations shall be delivered by the lease-hold retirement community owner or operator to all home owners or tenants at the time of the first deposit made payable to said lease-hold retirement community owner or operator.

(c) A copy of all rules and regulations shall be posted in a conspicuous public location upon the grounds of the lease-hold retirement community.

(d) If a rule or regulation is not applied uniformly to all home owners or tenants, there shall be a rebuttable presumption that such rule or regulation is unreasonable, arbitrary or capricious.

(e) Any rule or regulation which does not conform to the requirements of this section or which has not been supplied or posted as required by this section, shall not be enforceable.

(f) No rule or regulation may be added, amended, repealed or changed by the lease-hold retirement community owner or operator without specifying the date of implementation of said added, amended, repealed or changed rule or regulation, which date shall be no fewer than thirty days after written notice to all home owners or tenants.

(g) Rules and regulations shall not take effect until supplied and posted pursuant to this subdivision.

(h) Such rules and regulations may establish a minimum age for individuals to occupy a home within the lease-hold retirement community subject to any applicable law.

4. Fees. (a) No lease-hold retirement community home owner or tenant shall be charged a fee, charge, or assessment except for rent, utilities, and fees for services necessary for the operation of the lease-hold retirement community, such as for facilities available to the home owners and tenants.

(b) All such charges for rent, utilities, services necessary for the operation of the lease-hold retirement community, and facilities available to the home owners and tenants must be reasonably related to the facility available or the services actually rendered.

(c) A lease-hold retirement community owner or operator must fully disclose all charges for rent, utilities, services necessary for the operation of the lease-hold retirement community, and facilities available to the home owners and tenants to all home owners at the time of the first deposit made payable to said community owner or operator. A new or increased fee, charge, or assessment that is not specified in a home owner's lease agreement shall not be collectable until the lease-hold retirement community owner or operator provides the home owner with a written copy detailing such fee, charge, or assessment specifying the date of implementation which shall be no less than ninety days after such written notice.

(d) Failure on the part of the lease-hold retirement community owner or operator to fully disclose all charges for rent, utilities, services necessary for the operation of the lease-hold retirement community, and facilities available to the home owners and tenants pursuant to paragraph (c) of this subdivision shall prevent the said community owner or operator from collecting such charges.

5. Prohibition. No lease-hold retirement community owner or operator shall:

(a) Restrict the purchase or installation of any commodities, goods or services by the home owner or agent thereof to specific vendors, including, but not limited to, employees, agents or other persons acting for or on behalf of the lease-hold retirement community owner or operator.

(b) Restrict the interior improvement, including but not limited to, the installation of appliances, to any property of the home owner or tenant, so long as such interior improvement is in compliance with applicable building codes, other provisions of law, and the rules and regulations of the lease-hold retirement community and provided further that adequate utilities are available for such improvement.

(c) Restrict the installation, maintenance or repair of any property of the home owner or tenant to specific vendors including, but not limited to, employees, agents or other persons acting for or on behalf of the lease-hold retirement community owner or operator.

(d) Charge a fee or impose other charges on a home owner or tenant who chooses to install appliances or fixtures. This shall not restrict the ability of the lease-hold retirement community owner or operator to collect increased utility charges resulting from the installation of any appliance or fixture.

(e) Impose any charge for or restrict the ingress or egress to the lease-hold retirement community of, any person employed, retained, or invited by the home owner or tenant.

6. Sale of homes. (a) No lease-hold retirement community owner or operator shall deny a home owner the right to sell their home within the lease-hold retirement community provided the home owner shall give to the lease-hold retirement community owner or operator twenty days' written notice of the home owner's intention to sell, provided that if the home owner is deceased no such notice shall be required from the administrator or executor of the home owner's estate, and provided further that no lease-hold retirement community owner or operator shall restrict access to the lease-hold retirement community to any potential purchaser or representatives of any seller unless the lease-hold retirement community owner establishes that such restriction is necessary to protect the property of such community owner or operator from substantial harm or impairment. The lease-hold retirement community owner or operator may reserve the right to approve the purchaser of said home for the remainder of the seller's or deceased home owner's term but such permission may not be unreasonably withheld. If the lease-hold retirement community owner or operator unreasonably withholds permission or unreasonably restricts access to the lease-hold retirement community, the home owner or the executor or administrator of a deceased home owner's estate may recover the costs of the proceedings and attorneys' fees if it is found that the lease-hold retirement community owner or operator acted in bad faith by withholding permission or restricting access.

(b) The right to sell a lease-hold retirement community home includes the incidental right to use any and all methods common to sales of residential property.

(c) The lease-hold retirement community owner or operator shall enter into a lease agreement within a reasonable time from the completion of the sale pursuant to subdivision two of this section with the subsequent purchaser of a home in the lease-hold retirement community.

(d) The lease-hold retirement community owner or operator shall not exact a commission or fee with respect to the price realized by the seller unless the community owner or operator has acted as agent for the home owner in the sale pursuant to a written contract.

(e) If the lease-hold retirement community owner or operator rejects a purchaser as a prospective home owner, the selling home owner must be informed in writing of the reasons therefor.

7. (a) The lease-hold retirement community owner or operator may reserve the right to approve any tenants who lease or sublease real property and any improvements thereon from a home owner within the lease-hold retirement community. The lease-hold retirement community owner or operator may only withhold approval if the proposed tenant or proposed lease or sublease is not in conformity with the established rules and regulations of such lease-hold retirement community.

(b) If a home owner wishes to lease or sublease real property and any improvements thereon within a lease-hold retirement community:

(1) The home owner must inform the lease-hold retirement community owner or operator no less than thirty days prior to the proposed effective date of such lease or sublease.

(2) The lease-hold retirement community owner or operator may request additional information from the home owner within ten days. If such additional information is not unduly burdensome, failure to provide such additional information will allow the lease-hold retirement community owner or operator to withhold their approval of the proposed tenant or proposed lease or sublease.

(3) If the lease-hold retirement community owner or operator does not respond by approving or withholding approval of the proposed tenant or proposed lease or sublease within thirty days of the initial request by the homeowner, the proposed tenant or proposed lease or sublease shall be deemed approved.

8. Emergencies. A lease-hold retirement community owner or operator shall designate a phone number that is available on a twenty-four hour basis to insure the availability of emergency response in matters affecting the health, safety, well-being, and general welfare of lease-hold retirement community tenants. The telephone number shall be posted in a conspicuous public location in the lease-hold retirement community, given in writing to each home owner and tenant, and registered with appropriate municipal law enforcement, health and fire officials.

9. Retaliation. (a) No lease-hold retirement community owner or operator shall serve a notice to quit upon any home owner or commence any action to recover real property or summary proceeding to recover possession of real property in retaliation for:

(1) A good faith complaint, by or in behalf of the home owner, to a governmental authority of the lease-hold retirement community owner's or operator's alleged violation of any health or safety law, regulation, code, or ordinance, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes; or

(2) Actions taken in good faith, by or in behalf of the home owner, to secure or enforce any rights under the lease, under subdivision ten of this section and subdivisions two and three of section two hundred thirty-five-b of this article, or under any other local law, law of the state of New York, or of its governmental subdivisions, or of the

United States which has as its objective the regulation of premises used for dwelling purposes; or

(3) The home owners's participation in the activities of a home owners's organization.

(b) No lease-hold retirement community owner or operator shall substantially alter the terms of the tenancy in retaliation for any actions set forth in subparagraphs one, two and three of paragraph (a) of this subdivision.

(c) This subdivision shall apply to all lease-hold retirement community with four or more homes. However, its provisions shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the home owner, a member of the home owner's household, or a guest of the home owner. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership. The rights and obligations of the lease-hold retirement community owner or operator and the home owner shall be governed by the provisions of this subdivision and subdivisions three, four and five of section two hundred twenty-three-b of this article.

10. Warranty of habitability, maintenance, disruption of services. In every written or oral lease or rental agreement entered into by a home owner, the lease-hold retirement community owner or operator shall be deemed to covenant and warrant that the premises so leased or rented and the home if rented, including rental through a rent-to-own contract, and all areas used in connection therewith in common with other home owner or residents including all roads within the lease-hold retirement community are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises and such homes if rented shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety. When any such condition has been caused by the misconduct of the home owner or lessee or persons under their direction or control, it shall not constitute a breach of such covenants and warranties. The rights and obligations of the lease-hold retirement community owner or operator and the home owner shall be governed by the provisions of this subdivision and subdivisions two and three of section two hundred thirty-five-b of this article.

11. Attorneys' fees. Whenever a lease shall provide that in any action or summary proceeding the lease-hold retirement community owner or operator may recover attorneys' fees and expenses awarded by a court, there shall be implied in such lease a covenant by the lease-hold retirement community owner or operator, to pay to the home owner the reasonable attorneys' fees and expenses incurred by the home owner to the same extent as is provided in section two hundred thirty-four of this article which section shall apply in its entirety. A lease-hold retirement community owner or operator may not demand that a home owner pays attorneys' fees unless such fees have been awarded pursuant to a court order.

12. Refusal to furnish service. Any lease-hold retirement community owner or operator who has agreed to provide hot or cold water, heat, light, power, or any other service or facility to an occupant of the lease-hold retirement community shall not willfully or intentionally fail to furnish such water, heat, light, power or other service or facility, or interfere with the quiet enjoyment of the leased premises.

13. Receipts. Upon receipt of rent, fees, charges or other assessments, in the form of cash or any instrument other than the personal

check of the tenant, it shall be the duty of the lease-hold retirement community owner or operator to provide the payor with a written receipt containing the following:

(a) The date;

(b) The amount;

(c) The identity of the premises and the purpose for which paid; and

(d) The signature and title of the person receiving payment.

14. Remedies. The county attorney may commence an action to restrain, prevent, and/or enjoin a violation of this section or a continuance of such violation of this section or a continuance of such violation by a lease-hold retirement community owner or operator.

§ 2. Subdivision 1 of section 233-b of the real property law, as added by section 12 of part O of chapter 36 of the laws of 2019, is amended to read as follows:

1. The provisions of this section shall apply to all manufactured homes located in a manufactured home park as defined in section two hundred thirty-three of this article, however manufactured homes located in manufactured home parks that are subject to a regulatory agreement with a governmental entity to preserve affordable housing or that otherwise limits rent increases are exempt from the provisions of this section. **Homes in a lease-hold retirement community, as defined in section two hundred thirty-eight-b of this article, shall also be subject to the provisions of this section relating to rent increases the same as a manufactured home park.**

§ 3. Severability. If any part or provision of this act or the application thereof to a person or circumstance is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or the provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or application thereof to other persons or circumstances.

§ 4. This act shall take effect on the first of October next succeeding the date on which it shall have become a law and shall apply to sales, actions, rent increases, or leases involving lease-hold retirement community homes occurring or entered into on or after such date.