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:

Section 1. The real property law is amended by adding a new section 233-c to read as follows:

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

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

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

(c) The term "subject residential cooperative ground lease" means the lease agreement, together with any amendments or other related agreements including any forbearance, settlement, tenancy in common or other 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.

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

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

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

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

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

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

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

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

2. Annual increases in base rent payable by any ground lease residential cooperative shall, when taken together with the amount of any increases in additional rent paid by the ground lease residential cooperative during the prior year, in no event exceed the maximum annual rent increase percentage of the base rent payable by the ground lease residential cooperative in the prior year. In the event the subject residential cooperative ground lease provides for increases in base rent on a periodic basis less frequently than annually, the increase in base

rent for any period, when taken together with the amount of any annual increase in additional rent paid by the ground lease residential cooperative during such period, may not represent more than the compound increase that results from applying the maximum annual rent increase percentage for each applicable year above the base rent for the prior base rent in effect. The provisions of this subdivision shall apply regardless of the methodology for determining the base rent or any increases therein as set forth in the subject residential cooperative ground lease instrument. In the event the amount of any increase in additional rent during any year exceeds the maximum annual rent increase percentage of the base rent for such year, such excess amount shall be carried forward to reduce the amount of any increase in base rent otherwise permitted hereunder in any future period until such excess amounts have been fully applied.

3. After the effective date of this section, any residential ground lease cooperative shall have the right to renew its subject residential cooperative ground lease on the same terms and conditions, subject to this section, as in effect at time of renewal, with such renewal exercisable at any time prior to or within ninety days after having received written notice from the subject ground lease owners of the expiration or termination of the subject residential cooperative ground lease. Any renewal term pursuant to the foregoing shall be equal to the term of such subject residential cooperative ground lease prior to such expiration or termination and shall occur automatically, unless the subject residential cooperative ground lease affirmatively elects to not so renew and has provided written notice of such non-renewal to the subject ground lease owners.

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

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

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

(b) If an offer to purchase by the residential ground lease cooperative is not delivered within such one hundred twenty day period, then, unless the subject ground lease owner thereafter elects to directly or indirectly sell, assign, exchange, or otherwise transfer any direct or indirect interest in any ground lease real property at a price lower than the price specified in the notice to the residential ground lease cooperative or on terms different from those presented to the residential ground lease cooperative, the subject ground lease owner has no further obligations under this section, unless the subject ground lease owner does not directly or indirectly sell, assign, exchange, or otherwise transfer any direct or indirect interest in any ground lease real property in accordance with the foregoing within one hundred twenty days after the expiration of the one hundred twenty day period commencing with delivery of the written notice of the proposed sale to the residential ground lease cooperative, in which case the provisions of paragraphs (a) and (c) of this subdivision shall continue to apply.

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

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

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

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

§ 3. This act shall take effect immediately and shall apply to all existing leases as of such effective date and to any renewals, amendments and other extensions of such leases.