STATE OF NEW YORK

6921

2023-2024 Regular Sessions

IN ASSEMBLY

May 9, 2023

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Housing

AN ACT to amend the general business law, the real property law and the state finance law, in relation to providing expanded homeownership opportunities from the conversion of certain residential rental buildings to condominium status by property owners that commit to preserve the inventory of expiring affordable housing in the city of New York

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

Section 1. The general business law is amended by adding a new section 352-eeeee to read as follows:

§ 352-eeeee. Conversions to condominium ownership for the preservation of expiring affordable housing in the city of New York. 1. As used in this section, the following words and terms shall have the following meanings:

(a) "Annual update amendment". An annual update amendment is an amendment to the preservation plan that shall be submitted to the attorney general every year that a dwelling unit is unsold, with the first such annual update amendment due within forty-five days of the anniversary of the acceptance of the post-closing amendment to the preservation plan. An annual update amendment shall supply the evidence, data and information required in this section, and such other information as the attorney general's regulations shall require, so that the attorney general is satisfied that the preservation plan as amended discloses the information necessary for a reasonable investor to make his or her purchase decision and that the preservation plan is otherwise complete, current and accurate.

(b) "Bona fide purchaser". A bona fide purchaser is either (i) a tenant in occupancy who enters into a purchase agreement for a dwelling unit pursuant to his, her, or its exercise of one of the rights accorded

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

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to tenants in occupancy in subdivision five of this section, or (ii) a bona fide non-tenant purchaser.

(c) "Bona fide non-tenant purchaser". A bona fide non-tenant purchaser is a purchaser of a dwelling unit who has represented that he, she, or they or a member or members of his, her or their immediate family intend to occupy the dwelling unit when it becomes vacant.

(d) "Commercially reasonable good faith effort". A commercially reasonable good faith effort on the part of an offeror of a preservation plan shall, at minimum, include (i) the filing of an annual update amendment to the preservation plan; (ii) all of the condominium's dwelling units other than any income-restricted rental units as the units being offered for sale under the preservation plan, each at an offering price that is consistent with comparable dwelling units recently sold within the locality; and (iii) entering into a written agreement with a licensed real estate broker or selling agent in connection with the sale of dwelling units offered for sale under the preservation plan. For the avoidance of doubt, a commercially reasonable good faith effort shall not require an offeror to sell dwelling units at a price substantially below the market-rate for comparable units recently sold within the locality, nor shall it require an offeror to offer for sale dwelling units that are occupied by non-purchasing tenants.

(e) "Condominium". A condominium shall also include a qualified leasehold condominium as defined in subdivision twelve of section three hundred thirty-nine-e of the real property law.

(f) "Consummation of the preservation plan". Consummation of the preservation plan shall refer to the filing of the declaration for the condominium and the first transfer of title to at least one purchaser under the preservation plan following a declaration of effectiveness by the department of law declaring the preservation plan effective.

(g) "Eligible disabled persons". Non-purchasing tenants who have an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any substantial gainful employment on the date the preservation plan is submitted to the department of law or on the date the attorney general has accepted the preservation plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the preservation plan is submitted to the department of law or on the date the attorney general has accepted the preservation plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided, however, that if the disability first occurs after acceptance of the preservation plan for filing, then such election may be made within sixty days following the onset of such disability unless during the period subsequent to sixty days following the acceptance of the preservation plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser; and provided further that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit if it is not an income-restricted rental unit on the terms then offered to tenants in occupancy.

(h) "Eligible senior citizens". Non-purchasing tenants who are sixty-two years of age or older on the date the preservation plan is submitted to the department of law or on the date the attorney general has

accepted the plan for filing, and the spouses of any such tenants on such date, and who have elected, within sixty days of the date the preservation plan is submitted to the department of law or on the date the attorney general has accepted the preservation plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided that such election shall not preclude any such tenant from subsequently purchasing the dwelling unit on the terms then offered to tenants in occupancy.

(i) "Extended affordability term". The extended affordability term for the income-restricted rental units shall be in perpetuity for so long as the building or group of buildings or development are in existence, and subject to any obligation to rebuild in the event of condemnation, damage or destruction required by the new regulatory agreement with the relevant housing finance agency.

(j) "Inclusionary housing unit". An inclusionary housing unit is an income-restricted rental unit that is located within an inclusionary housing designated area or a mandatory inclusionary housing area.

(k) "Inclusionary housing designated area". An inclusionary housing designated area is a specified area in which the inclusionary housing program (also known as the voluntary inclusionary housing program) is applicable, pursuant to the regulations set forth for such areas in section 23-90 of the zoning resolution. The locations of inclusionary housing designated areas are identified in either (i) appendix "F" of the zoning resolution or (ii) in a special purpose district as described in section 15-011 of the zoning resolution.

(l) "Income-restricted rental unit". An income-restricted rental unit shall refer to a dwelling unit located in a building or group of buildings or development that is the subject of a preservation plan submitted to the attorney general pursuant to this section, and such dwelling unit:

(i) meets the definition of a "low-income unit" as such term is defined in section forty-two of the internal revenue code and is subject to a regulatory agreement with a relevant housing finance agency; or

(ii) meets the definition of a "low-income unit" as such term is defined in subdivision (d) of section one hundred forty-two of the internal revenue code and is subject to a regulatory agreement with a relevant housing finance agency; or

(iii) previously met the definition of "low-income unit" pursuant to subparagraph (i) or (ii) of this paragraph, and notwithstanding the expiration of a regulatory agreement with a relevant housing finance agency, the owner of such dwelling unit affirms, under the penalty of perjury, that it has continuously operated and rented the dwelling unit (A) as if it remained an income-restricted rental unit and (B) as if all of the restrictions of the expired regulatory agreement had continuously been extended or otherwise remained in effect; or

(iv) is a dwelling unit located within a building or group of buildings or development that, in accordance with provisions of section four hundred twenty-one-a of the real property tax law, the local housing agency shall have required to be a unit affordable to families of low and moderate income; or

(v) is a dwelling unit that is rented to persons of low income or families of low income as defined in subdivision nineteen of section two of the private housing finance law or as otherwise required by a federal, state, or local law or mandate.

(m) "Mandatory inclusionary housing area". A mandatory inclusionary housing area is a specified area in which the inclusionary housing program is applicable, pursuant to the regulations set forth for such areas in section 23-90 of the zoning resolution. The locations of mandatory inclusionary housing areas are identified in either (i) appendix "F" of the zoning resolution or (ii) in a special purpose district as described in section 15-011 of the zoning resolution.

(n) "Non-purchasing tenant". A person who has not purchased under the preservation plan and who is a tenant entitled to possession at the time the preservation plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the preservation plan shall not be deemed a non-purchasing tenant. A tenant entitled to possession of an income-restricted rental unit at the time the preservation plan is declared effective is a non-purchasing tenant, notwithstanding that the income-restricted rental units are not offered for sale pursuant to such preservation plan.

(o) "Post-closing amendment". A post-closing amendment is an amendment to a preservation plan filed with the attorney general confirming that the preservation plan has been consummated.

(p) "Preservation plan". An offering statement or prospectus submitted to the department of law pursuant to this section for the conversion of a building or group of buildings or development from rental status to condominium ownership, wherein the offeror documents that it has agreed to an extended affordability term for the income-restricted rental units with a relevant housing finance agency.

(q) "Purchaser under the preservation plan". A purchaser under the preservation plan is a person who purchases a dwelling unit from offeror pursuant to the terms of a preservation plan that has been accepted for filing by the attorney general. A person or entity that acquires dwelling units and assumes certain obligations of offeror shall not be considered a purchaser under the preservation plan.

(r) "Relevant housing finance agency". Relevant housing finance agency shall refer to a city or state agency with oversight over income-restricted rental units due to the receipt of substantial government assistance prior to the date of submission of a preservation plan. For purposes of this section, a relevant housing finance agency shall also refer to the city or state agency that will continue to have oversight of income-restricted rental units after consummation of the preservation plan.

(s) "Regulatory agreement". A regulatory agreement shall refer to the written agreement with a relevant housing finance agency that restricts the income and rents of income-restricted rental units that is either: (i) in effect prior to the date of submission of a preservation plan; or (ii) in effect after consummation of the preservation plan.

(t) "Substantial government assistance". Substantial government assistance shall refer to either (i) low income housing tax credits under section forty-two of the internal revenue code or (ii) bond financing under section one hundred forty-two of the internal revenue code.

(u) "Zoning resolution". Zoning resolution shall refer to the zoning resolution of the city of New York.

2. The attorney general shall refuse to accept for submission a preservation plan for the conversion of a building or group of buildings or development to condominium ownership under this section where the attorney general determines that any of the following is applicable:

(a) The preservation plan is for a building or group of buildings or development that receives a partial property tax exemption pursuant to section four hundred twenty-one-a of the real property tax law, and the applicable governing provisions of section four hundred twenty-one-a of the real property tax law prohibit the dwelling units being offered for sale from being owned pursuant to condominium ownership; or

(b) The preservation plan is for a building or group of buildings or development that the offeror or a predecessor-in-title to offeror voluntarily renounced the receipt of a full or partial tax exemption, tax abatement or benefit under the real property tax law or the private housing finance law, or satisfied the terms and conditions of a regulatory agreement involving substantial government assistance prior to its expiration date, for purposes of complying with this section; or

(c) The preservation plan is for a building or group of buildings or development that either: (i) receives a partial tax exemption under section four hundred twenty-one-a of the real property tax law which has a remaining term of more than three years as of the date of submission of the preservation plan; or (ii) includes income-restricted dwelling units with a regulatory agreement where the compliance period, as such term is defined by section forty-two of the internal revenue code, has not yet expired. Nothing in this paragraph shall be interpreted as prohibiting the attorney general from accepting for filing a preservation plan that contains income-restricted rental units as defined in subparagraph (iii) of paragraph (l) of subdivision one of this section; or

(d) The preservation plan is for a building or group of buildings or development, wherein the only income-restricted rental units of the building or group of buildings or development are inclusionary housing units unless the owner of such building or group of buildings or development has agreed to set aside twenty percent of the total number of dwelling units that are not inclusionary housing units as income-restricted rental units.

3. At the time of submission of the preservation plan, the offeror shall confirm that it has reached an agreement with a relevant housing finance agency regarding the income-restricted rental units during the extended affordability term, and shall include the following disclosures:

(a) A list of the proposed income-restricted rental units;

(b) The proposed owner of the income-restricted rental units, if not the offeror;

(c) The operating expenses and revenues applicable to the income-restricted rental units, which shall be reflected in the updated Schedule A and Schedule B for the first year of operation of the condominium, the allocation of common interests, projected common charges, estimated real estate taxes, and rents to be collected from each income-restricted rental unit, and the allocation of common expenses under section three hundred thirty-nine-m of the real property law, applicable to the income-restricted rental units, which shall be used to limit certain condominium expenses allocable to the income-restricted rental units and to cover any shortfall in the revenue from rent to cover the costs of operation of the income-restricted rental units;

(d) A description of any financing encumbering the income-restricted rental units, and whether a tax exemption or abatement is in place to reduce real estate taxes for the income-restricted rental units;

(e) A description of any regulatory agreement or agreements to be recorded against the income-restricted rental units and the term thereof

and the relevant housing finance agency or agencies with supervisory oversight;

(f) A description of the provisions of the declaration and by-laws for the condominium that provides for the special allocation of common expenses in accordance with section three hundred thirty-nine-m of the real property law, and any specific requirements set forth in a regulatory agreement requiring unit owners in the condominium to cover any shortfall in the revenue from rent to cover the costs of operation of the income-restricted rental units;

(g) A description of the contemplated structure of the board of managers of the condominium, including specifically an explanation as to how the interests of the owner of the income-restricted rental units are to be adequately represented;

(h) The name, address and contact details for the relevant housing finance agency or agencies with supervisory oversight of the income-restricted rental units and the occupants within;

(i) A provision that once a vacancy occurs of an income-restricted rental unit, that income-restricted rental unit may only be leased to low income households whose annual household income is at or below fifty percent of area median income at the time of the initial lease, and that the initial rent shall not exceed the rent set forth by the relevant housing finance agency for a household with an annual income at or below fifty percent of the area median income;

(j) A representation by offeror that the regulatory agreement includes and accounts for (i) all of the existing on-site income-restricted rental units in an existing building or group of buildings or development, or (ii) all of the income-restricted rental units associated with an existing building or group of buildings or development located on a zoning lot where one or more buildings were set aside as affordable housing for purposes of qualifying for a partial property tax exemption pursuant to section four hundred twenty-one-a of the real property tax law;

(k) The income-restricted rental units may not be removed from rent stabilization pursuant to the exemption for units owned as a condominium under sections 2520.11 and 2500.9 of the rent stabilization code or section 26-504 of the administrative code of the city of New York; and

(l) The recording of the condominium declaration and commencement of condominium operations does not modify the requirement under section four hundred twenty-one-a of the real property tax law that all residential rental apartments are subject to rent stabilization laws.

4. Upon submission of the preservation plan to the department of law, each tenant in the building or group of buildings or development of a dwelling unit being offered for sale shall be provided with a written notice stating that such preservation plan has been submitted to the department of law. Written notice to each tenant in occupancy shall contain or be accompanied by:

(a) a copy of the preservation plan;

(b) a statement that tenants of the dwelling units being offered for sale pursuant to the preservation plan or their representatives may physically inspect the premises at any time subsequent to the submission of the preservation plan to the department of law, during normal business hours, upon written request made by them to the offeror, provided such representatives are registered architects or professional engineers licensed by the office of the professions of the education department of the state of New York; and

(c) a statement that tenants of the income-restricted rental units are not being offered for sale the dwelling units they occupy, but their tenancies shall continue undisturbed during and after the conversion of the property to condominium ownership. The statement shall also disclose that the income-restricted rental units shall remain subject to the rent stabilization code for the duration of the current tenant's occupancy of an income-restricted rental unit, and for all future tenants of an income-restricted rental unit, throughout the extended affordability term.

5. The tenants in occupancy of dwelling units being offered for sale on the date the attorney general accepts the preservation plan for filing shall have the exclusive right to purchase their dwelling units for ninety days after the preservation plan has been accepted for filing by the attorney general, during which time the offering price available to the tenant in occupancy may not be increased and a tenant's dwelling unit shall not be shown to a third party unless he or she has, in writing, waived his or her right to purchase. Subsequent to the expiration of such ninety-day period, a tenant in occupancy of a dwelling unit who has not purchased shall be given the exclusive right for an additional six months from said expiration date to purchase said dwelling unit on the same terms and conditions as are contained in any executed contract to purchase said dwelling unit entered into by a purchaser under the preservation plan, such exclusive right to be exercisable within fifteen days from the date of mailing by registered mail of notice of the execution of a contract of sale together with a copy of said executed purchase agreement to said tenant.

6. The preservation plan shall also disclose that the offeror shall:

(a) market and sell all the dwelling units (other than the income-restricted rental units) in the building or group of buildings or development, as each such dwelling unit becomes vacant, to a purchaser under the preservation plan through the use of commercially reasonable good faith efforts;

(b) fund a reserve in the manner and amount as provided in section three hundred thirty-nine-mm of the real property law;

(c) file an annual update amendment every year which shall include an updated Schedule A of all dwelling units being offered for sale under the preservation plan; and

(d) exercise commercially reasonable good faith efforts to sell at least fifty-one percent of the total number of dwelling units offered for sale under the preservation plan (excluding any income-restricted rental units not offered for sale) within five years from the date of the post-closing amendment.

7. After the issuance of the letter from the attorney general stating that the preservation plan has been accepted for filing, the offeror shall, on the thirtieth, sixtieth, eighty-eighth and ninetieth day after such date and at least once every thirty days until the preservation plan is declared effective or abandoned, as the case may be, and on the second day before the expiration of any exclusive purchase period provided in a substantial amendment to the preservation plan:

(a) file with the attorney general a written statement under oath setting forth the percentage of bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the preservation plan was accepted for filing by the attorney general who have executed and delivered written agreements to purchase under the preservation plan as of the date of such written statement under oath; and

(b) before noon on the day such statement is filed post a copy of such written statement under oath in a prominent place accessible to all tenants in each building covered by the preservation plan.

8. A preservation plan may not be declared effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units offered for sale in the building or group of buildings or development from either (a) bona fide tenants who were in occupancy on the date a letter was issued by the attorney general accepting the preservation plan for filing or (b) bona fide non-tenant purchasers. The purchase agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements. A negotiated reduction from the original offering price extended shall not, by itself, be deemed a discriminatory inducement.

9. Those written statements under oath that the offeror is required to file with the attorney general pursuant to subdivision seven of this section shall also include:

(a) the total number of written agreements to purchase under the preservation plan received from bona fide non-tenant purchasers;

(b) the total number of written agreements to purchase under the preservation plan received from all bona fide tenants in occupancy;

(c) the percentage of dwelling units under contract, calculated by adding the number of written purchase agreements for a unit that were received from (i) all bona fide tenants in occupancy plus (ii) all bona fide non-tenant purchasers and then dividing the sum of those two numbers by the total number of dwelling units offered for sale under the preservation plan;

(d) whether or not the offeror intends to claim a credit against the mandatory initial contribution the offeror is obligated to deposit into the condominium's reserve fund pursuant to subdivision three of section three hundred thirty-nine-mm of the real property law for the actual cost of capital replacements which the offeror has begun after the preservation plan was submitted for filing to the department of law but before the preservation plan is declared effective, together with their actual or estimated costs which credit shall not exceed the actual cost of the credit;

(e) whether or not the offeror shall be making its reserve fund contributions required pursuant to section three hundred thirty-nine-mm earlier or in an amount greater than required; and

(f) a representation that no purchaser counted for purposes of declaring the preservation plan effective is the offeror, the selling agent or the managing agent, or is a principal of the offeror, the selling agent, or the managing agent or is related to any principal of the offeror, any principal of the selling agent or any principal of the managing agent by blood, marriage, or adoption, or is an affiliate, business associate, an employee, a shareholder, a member, a manager, a director, an officer, a limited partner of the offeror, selling agent or managing agent.

10. The preservation plan shall provide that it will be deemed abandoned, void and of no effect if it does not become effective within fifteen months from the date of issue of the letter of the attorney general stating that the preservation plan has been accepted for filing and, in the event of such abandonment, no new plan for the conversion of such building or group of buildings or development shall be submitted to the attorney general for at least twelve months after such abandonment.

11. No closings of title of a dwelling unit to a purchaser under the preservation plan shall take place until the attorney general shall have

also accepted for filing an amendment that declares the preservation plan effective. Within forty-five days of the first closing of title of a dwelling unit to a purchaser under the preservation plan, the offeror shall submit to the attorney general its post-closing amendment to the preservation plan. Thereafter, the preservation plan shall continually be updated with the filing of an annual update amendment, no later than thirty days from the anniversary of the date the attorney general accepted the post-closing amendment for filing. An offeror or successor offeror shall only be relieved of its obligation to file an annual update amendment to the preservation plan after the last dwelling unit offered for sale is conveyed to a purchaser under the preservation plan.

12. After the date of acceptance for filing of the post-closing amendment, the offeror shall continue to make commercially reasonable good faith efforts to sell the dwelling units it owns.

13. The attorney general shall refuse to accept for filing an annual update amendment to the preservation plan unless:

(a) The annual update amendment discloses, in addition to the other disclosures required elsewhere in this section or the regulations of the attorney general, the following data and information:

(i) an accounting of the dwelling units sold and closed by the offeror in the preceding twelve months, with an indication if the dwelling unit was conveyed to a purchaser under the preservation plan or to a successor offeror;

(ii) an inventory of the offeror's unsold dwelling units at the end of the preceding twelve months, in form and substance as shall satisfy the attorney general; and

(iii) all the information, data and literature presented by the board of managers in its semi-annual reports on the status of the reserve fund as required under subdivision five of section three hundred thirty-nine-mm of the real property law.

(b) The annual update amendment shall be accompanied by an affidavit from a principal of the offeror attesting to the following data and information with respect to all the dwelling units the offeror then owns:

(i) the dwelling units' identifying information and general location;

(ii) whether, on the date of submission of the annual update amendment, the unsold dwelling unit is subject to a fully executed purchase agreement, and if so, whether the purchaser is a purchaser under the preservation plan or otherwise;

(iii) whether, on the date of submission of the annual update amendment, the dwelling unit is occupied or vacant, and if occupied, an indication that occupancy is:

(A) by a rent-regulated tenant;

(B) by a market-rate tenant;

(C) a month-to-month tenancy;

(D) a tenancy at sufferance; or

(E) other.

(iv) notwithstanding the occupancy status of a dwelling unit on the date of submission of the annual update amendment, an indication if the dwelling unit was vacant for more than one of the twelve preceding months. For each dwelling unit so indicated, the offeror shall also disclose:

(A) the date range that the dwelling unit was vacant;

(B) the date range for any period of time that the dwelling unit was marketed for sale;

(C) date of sale;

(D) the date the dwelling unit was leased by a tenant; and

(E) the date the lease is set to expire (if applicable).

14. No eviction proceedings shall be commenced at any time against non-purchasing tenants for failure to purchase or for any other reason applicable to expiration of tenancy; provided that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the non-purchasing tenant of his, her or their obligations to the owner of the dwelling unit; and provided further that an owner of a unit may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he, she or they seek the dwelling unit for the use and occupancy of himself or herself or his, her or their family's use and occupancy.

15. No eviction proceedings shall be commenced, except as provided in this subdivision, at any time against either eligible senior citizens or eligible disabled persons. The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the preservation plan has been accepted for filing shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy considering, in determining comparability, such factors as building services, level of maintenance and operating expenses; provided that such proceedings may be commenced against such tenants for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the tenant of his, her or their obligations to the owner of the dwelling unit.

16. Eligible senior citizens and eligible disabled persons who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

17. The rights granted under the preservation plan to eligible senior citizens and eligible disabled persons may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

18. Any offeror who disputes the election by a person to be an eligible senior citizen or an eligible disabled person shall apply to the attorney general within thirty days of the receipt of the election forms for a determination by the attorney general of such person's eligibility. The attorney general shall, within thirty days thereafter, issue a determination of eligibility. The foregoing shall, in the absence of fraud, be the sole method for determining a dispute as to whether a person is an eligible senior citizen or an eligible disabled person. The determination of the attorney general shall be reviewable only through a proceeding under article seventy-eight of the civil practice law and rules, which proceeding shall be commenced within thirty days after such determination by the attorney general becomes final.

19. Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to the conversion of the building or group of buildings or development to condominium ownership shall continue to be subject thereto.

20. The rentals of non-purchasing tenants who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and non-purchasing tenants who reside in dwelling units with respect to which government regulation as to rentals and continued occu-

pancy is eliminated or becomes inapplicable after the preservation plan has been accepted for filing by the attorney general shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy. In determining comparability, consideration shall be given to such factors as building services, level of maintenance and operating expenses.

21. The rights granted under the preservation plan to purchasers under the preservation plan and to non-purchasing tenants may not be abrogated or reduced notwithstanding any expiration of, or amendment to, this section.

22. Any local legislative body may adopt local laws and any agency, officer or public body may prescribe rules and regulations with respect to the continued occupancy by tenants of dwelling units which are subject to regulation as to rentals and continued occupancy pursuant to law, provided that in the event that any such local law, rule or regulation shall be inconsistent with the provisions of this section, the provisions of this section shall control.

23. The attorney general shall refuse to accept for filing a preservation plan when the attorney general determines: (a) that one or more of the income-restricted rental units within the building, group of buildings or development was vacant on the date of submission; or (b) of the dwelling units that are not income-restricted rental units, an excessive number of long-term vacancies did not exist on the date that the preservation plan was first submitted to the department of law. For purposes of this subdivision, "long-term vacancies" shall mean dwelling units not leased or occupied by bona fide tenants for more than five months prior to the date of such submission to the department of law; and "excessive" shall mean a vacancy rate in excess of the greater of (i) ten percent and (ii) a percentage that is double the normal average vacancy rate for the building or group of buildings or development for two years prior to the January preceding the date the preservation plan was first submitted to the department of law.

24. All dwelling units occupied by non-purchasing tenants shall be managed by the same managing agent who manages all other dwelling units in the building or group of buildings or development. Such managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. The offeror shall guarantee the obligation of the managing agent to provide all such services and facilities until such time as the offeror surrenders control of the board of managers, at which time the board of managers of the condominium shall assume responsibility for the provision of all services and facilities required by law on a non-discriminatory basis.

25. It shall be unlawful for any person to engage in any course of conduct, including, but not limited to, interruption or discontinuance of essential services, which substantially interferes with or disturbs the comfort, repose, peace or quiet of any tenant in his, her or their use or occupancy of his, her or their dwelling unit or the facilities related thereto. The attorney general may apply to a court of competent jurisdiction for an order restraining such conduct and, if he deems it appropriate, an order restraining the owner from selling the dwelling unit itself or from proceeding with the plan of conversion; provided that nothing contained herein shall be deemed to preclude the tenant from applying on his, her or their own behalf for similar relief.

26. Any provision of a lease or other rental agreement which purports to waive a tenant's rights under this section or rules and regulations promulgated pursuant hereto shall be void as contrary to public policy.

27. Notwithstanding the requirements of this section regarding the preservation of income-restricted rental units as rental housing, and to the extent permitted under existing law as it relates to the income-restricted rental units, the income-restricted rental units in a building or group of buildings or development that is the subject of a preservation plan may be offered for sale to existing tenants in occupancy or other qualified low-income purchasers, if the relevant housing finance agency provides a letter of ownership support to the department of law prior to the preservation plan being accepted for filing confirming that the proposed offering of such income-restricted ownership units meet the following criteria: (a) the offering prices are affordable to the existing tenants and/or the qualified low-income purchasers who meet the definition of persons of low income or families of low income as defined by subdivision nineteen of section two of the private housing finance law; (b) adequate provisions exist in a regulatory agreement, condominium declaration and by-laws to ensure that once conveyed, income-restricted ownership units shall remain affordable to qualified low-income owners and subsequent purchasers and owners for so long as the condominium is in existence; (c) the regulatory agreement, condominium declaration and by-laws allow for adequate oversight of the income-restricted ownership units by the relevant housing finance agency to ensure such dwelling units are occupied by qualified low-income purchasers; and (d) that the relevant housing finance agency is legally authorized and capable of enforcing these provisions and covenants to do so. If the income-restricted rental units to be sold are subject to a regulatory agreement or agreements with more than one relevant housing finance agency, each such relevant housing finance agency must provide a letter of ownership support.

28. It shall be unlawful for an offeror, its designees and/or successors to have or exercise voting control of the condominium's board of managers for more than ninety days from the fifth anniversary date of the first closing of title to a dwelling unit, or whenever the unsold dwelling units constitute less than fifty percent of the common interests appurtenant to all dwelling units, whichever is sooner.

29. The attorney general may, in his or her discretion, waive the requirement in paragraph (d) of subdivision six of this section that an offeror sell at least fifty-one percent of the dwelling units offered for sale under the preservation plan when the offeror provides proof satisfactory to the attorney general that five years of commercially reasonable good faith efforts did not result in the sale of fifty-one percent of the dwelling units. If such waiver is granted, the offeror shall be required to disclose the new date by which it will sell at least fifty-one percent of the dwelling units offered for sale under the preservation plan in its subsequent annual update amendment. Any waiver granted hereunder shall not alleviate an offeror, its designees and/or successors of the obligation set forth in subdivision twenty-eight of this section.

30. Within ninety days of the effective date of this section, the attorney general shall submit a notice of proposed rulemaking for publication in the state register which shall contain the suitable rules necessary to carry out the provisions of this section. The authority of the attorney general to promulgate, adopt, publish, notify, review, amend, modify, reconsider, or rescind any rule or regulation as may be conferred anywhere within this section shall comply with the state administrative procedure act in all respects.

31. For any offering statement or prospectus (including, without limitation, a preservation plan and any amended filings thereto), submitted to the department of law pursuant to this section, the filing fees set forth in paragraph (a) of subdivision seven of section three hundred fifty-two-e of this article shall not apply. Instead, an offeror shall tender the following filing fee with and for its submission:

(a) seven hundred fifty dollars for every offering not in excess of two hundred fifty thousand dollars;

(b) for every offering in excess of two hundred fifty thousand dollars, four-tenths of one percent of the total amount of the offering but not in excess of sixty thousand dollars, of which one-half of said amount shall be a nonrefundable deposit paid at the time of submitting the preservation plan to the department of law for review and the balance payable upon the attorney general's issuance of a letter of acceptance of the preservation plan for filing;

(c) two hundred twenty-five dollars for each price change amendment to a preservation plan;

(d) seven hundred fifty dollars for any other amendment to a preservation plan; and

(e) seven hundred fifty dollars for each such application, and an additional seven hundred fifty dollars for each and every amendment submitted in furtherance of such an application to permit an offeror to solicit public interest prior to the filing of a preservation plan to the department of law.

§ 2. Section 339-e of the real property law is amended by adding six new subdivisions 1-a, 6-a, 8-a, 10-a, 11-a and 13-a to read as follows:

1-a. "Capital replacement" means a building-wide replacement of a major component of any of the following systems:

(a) elevator;

(b) heating, ventilation and air conditioning;

(c) plumbing;

(d) wiring;

(e) window; or

(f) a major structural replacement to the building; provided, however, that replacements made to cure code violations of record shall not be included.

6-a. "Consummation of the preservation plan" means, in the context of a preservation plan for the conversion of residential rental property to condominium ownership that has been accepted for filing by the department of law pursuant to section three hundred fifty-two-eeeee of the general business law and subsequently amended to disclose that said preservation plan has been declared effective, (i) the recording of the declaration for the condominium and (ii) the closing of title to a dwelling unit with a purchaser under the preservation plan.

8-a. "Offeror", as used in section three hundred thirty-nine-mm of this article, means the offeror of a preservation plan to convert residential rental property to condominium ownership pursuant to section three hundred fifty-two-eeeee of the general business law, together with his, her or its nominees, assignees and successors in interest.

10-a. "Preservation plan", as used in section three hundred thirty-nine-mm of this article, means an offering statement or prospectus submitted to the department of law pursuant to section three hundred fifty-two-eeeee of the general business law for the conversion of a building or group of buildings or development from rental status to condominium ownership, wherein the offeror documents that it has agreed

to an extended affordability term for the income-restricted rental units with a relevant housing finance agency.

11-a. "Purchaser under the preservation plan", when used in section three hundred thirty-nine-mm of this article, means a purchaser under the preservation plan shall refer to a person who purchases a dwelling unit from the offeror pursuant to the terms of a preservation plan that has been accepted for filing by the attorney general. A person or entity that acquires dwelling units and assumes certain obligations of the offeror shall not be considered a purchaser under the preservation plan.

13-a. "Total price", when used in section three hundred thirty-nine-mm of this article, means the sum of the cost of all units in the offering (including any income-restricted ownership units offered for sale to qualified low income purchasers, but excluding any income-restricted rental units whether such income-restricted rental units are retained and operated by the offeror or sold to another entity that shall own and operate the income-restricted rental units to persons of low income) at the last price which was offered to tenants in occupancy prior to the effective date of the preservation plan regardless of number of sales made.

§ 3. The real property law is amended by adding a new section 339-mm to read as follows:

§ 339-mm. Establishment of reserve fund for buildings converting to condominium ownership under section three hundred fifty-two-eeeee of the general business law. 1. Within thirty days after the consummation of a preservation plan, the offeror thereof (and/or its designee or designees and/or successor or successors) shall establish and transfer to the condominium board of managers a reserve fund to be used exclusively for making capital repairs, replacements and improvements necessary for the health and safety of the residents of such building. Such reserve fund shall be exclusive of any other funds required to be reserved under the preservation plan or applicable law or regulation of the attorney general, except a fund for capital repairs, replacements and improvements substantially similar in purpose to and in an amount not less than the reserve fund mandated by this section. Such reserve fund shall also be exclusive of any working capital fund and shall not be subject to reduction for closing apportionments.

2. Such fund shall be established in an amount equal to either (a) three percent of the total price or, (b) (i) three percent of the actual sales price of all condominium units sold by the offeror at the time the preservation plan is declared effective, provided, however, that if such amount is less than one percent of the total price, then the fund shall be established as a minimum of one percent of the total price; plus (ii) supplemental contributions to be made by the offeror at a rate of three percent of the actual sales price of condominium units for each unit held by the offeror and sold to bona fide purchasers subsequent to the effective date of the preservation plan and within five years of the consummation of the preservation plan, notwithstanding that the total amount contributed may exceed three percent of the total price; and provided, further, that if five years from thirty days after the consummation of the preservation plan the total contributions by the offeror to the fund are less than three percent of the total price the offeror shall pay the difference between the amount contributed and three percent of the total price. Supplemental contributions shall be made within thirty days of each sale.

3. The contributions required pursuant to this section may be made earlier or in an amount greater than so provided. An offeror may claim

and receive credit against the mandatory initial contribution to the reserve fund for the actual cost of capital replacements which he or she has begun after the preservation plan is submitted for filing to the department of law and before the preservation plan is declared effective; provided, however, that any such replacements shall be set forth in the preservation plan together with their actual or estimated costs and further provided, that such credit shall not exceed the lesser of the actual cost of the capital replacements or one percent of the total price.

4. Any building, construction of which was completed within three years prior to the consummation of the preservation plan, shall be exempt from the requirements of this section.

5. The condominium board of managers shall report to unit owners on a semi-annual basis with respect to all deposits into and withdrawals from the reserve fund mandated by subdivision two of this section.

6. The offeror, not later than the thirtieth day following the acceptance of a preservation plan for filing by the department of law pursuant to section three hundred fifty-two-eeeee of the general business law and until the consummation of the preservation plan, shall post and maintain in a prominent place, accessible to all tenants in each building covered by the plan, a listing of all violations of record against such buildings as determined by the department of buildings of the city of New York and the department of housing preservation and development of the city of New York. All newly issued violations shall be posted within forty-eight hours of their issuance and maintained as described in this subdivision. The offeror may satisfy the requirements of this section by designating an agent on the premises with whom such listing shall be made available for inspection by the tenants.

7. Any provision purporting to waive the provisions of this section in any contract to purchase or agreement between an offeror and a unit purchaser or an offeror and the condominium board of managers created under a preservation plan shall be void as against public policy.

8. (a) Except as otherwise provided in paragraph (b) of this subdivision, any person who knowingly violates or assists in the violation of any provision of this section shall be subject to a civil penalty of one hundred dollars per day per unit for each day that a building is not in compliance with the provisions of such section; provided, however, that such civil penalty shall not exceed one thousand dollars per unit.

(b) Any person who violates or assists in the violation of subdivision two of this section shall also be subject to a civil penalty of one thousand dollars per day for each day that the reserve fund required by subdivision two of this section is not established; provided, however, that such civil penalty shall not exceed the amount required to be reserved pursuant to subdivision two of this section.

(c) Any other action or proceeding in any court of competent jurisdiction that may be appropriate or necessary for the enforcement of the provisions of this section may be brought in the name of the people of the state of New York by the attorney general, including actions to secure permanent injunctions enjoining any acts or practices which constitute a violation of any provision of this section, mandating compliance with the provisions of this section or for such other relief as may be appropriate. In any such action or proceeding, the attorney general may apply to any court of competent jurisdiction, or to a judge or justice thereof, for a temporary restraining order or preliminary injunction enjoining and restraining all persons from violating any provision of this section, mandating compliance with the provisions of

this section, or for such other relief as may be appropriate, until the hearing and determination of such action or proceeding and the entry of final judgment or order therein. The court, or judge or justice thereof, to whom such application is made, is hereby authorized to make any or all of the orders specified in this paragraph, as may be required in such application, with or without notice, and to make such other or further orders or directions as may be necessary to render the same effectual. No undertaking shall be required as a condition of the granting or issuing of such order, or by reason thereof.

(d) Nothing contained in this section shall impair any rights, remedies or causes of action accrued or accruing to purchasers of condominium units with regard to the funding of a reserve fund under this section.

(e) The attorney general is empowered to enforce the provisions of this section.

§ 4. Subdivision 2, subparagraph (i) of paragraph (a) of subdivision 2-a, and paragraphs (a) and (c) of subdivision 7 of section 352-e of the general business law, subdivision 2 as amended by chapter 1042 of the laws of 1981, subparagraph (i) of paragraph (a) of subdivision 2-a as added by chapter 771 of the laws of 1983, paragraph (a) of subdivision 7 as amended by section 1 of part BBB-1 of chapter 57 of the laws of 2008, and paragraph (c) of subdivision 7 as amended by chapter 637 of the laws of 1989, are amended as follows:

2. Unless otherwise provided by regulation issued by the attorney general, the offering statement or statements or prospectus required in subdivision one of this section shall be filed with the department of law at its office in the city of New York, prior to the public offering of the security involved. No offer, advertisement or sale of such securities shall be made in or from the state of New York until the attorney general has issued to the issuer or other offerer a letter stating that the offering has been filed. The attorney general, not later than thirty days after the submission of such filing, shall issue such a letter or, in the alternative, a notification in writing indicating deficiencies in the offering statement, statements or prospectus; provided, however, that in the case of a building or group of buildings to be converted to cooperative or condominium ownership which is occupied in whole or in part for residential purposes and which is not the subject of a preservation plan submitted pursuant to section three hundred fifty-two-eeeee of this article, such letter or notification shall be issued in not sooner than four months and not later than six months from the date of submission of such filing. The attorney general may also refuse to issue a letter stating that the offering statement or statements or prospectus has been filed whenever it appears that the offering statement or statements or prospectus does not clearly set forth the specific property or properties to be purchased, leased, mortgaged, or otherwise to be acquired, financed or the subject of specific investment with a substantial portion of the offering proceeds.

(i) "Plan". Every offering statement or prospectus submitted to the department of law for the conversion of a building or group of buildings or development from residential rental status to cooperative or condominium ownership, other than a plan governed by the provisions of either section three hundred fifty-two-eee [~~or~~], three hundred fifty-two-eeee or section three hundred fifty-two-eeeee of this [~~chapter~~] article, or a plan for such conversion pursuant to article two, eight or eleven of the private housing finance law.

(a) The department of law shall collect the following fees for the filing of each offering statement or prospectus as described in subdivision one of this section: seven hundred fifty dollars for every offering not in excess of two hundred fifty thousand dollars; for every offering in excess of two hundred fifty thousand dollars, four-tenths of one percent of the total amount of the offering but not in excess of [~~thirty~~] sixty thousand dollars of which one-half of said amount shall be a nonrefundable deposit paid at the time of submitting the offering statement to the department of law for review and the balance payable upon the issuance of a letter of acceptance for filing said offering statement. The department of law shall, in addition, collect a fee of two hundred twenty-five dollars for each price change amendment to an offering statement and seven hundred fifty dollars for any other amendment to an offering statement. For each application granted by the department of law, which permits the applicant to solicit public interest or public funds preliminary to the filing of an offering statement or for the issuance of a "no-filing required" letter and any amendment thereto, the department of law shall collect a fee of [~~two~~] seven hundred [~~twenty-five~~] fifty dollars. [~~In the event the sponsor thereafter files an offering statement, the fee paid for the preliminary application shall be credited against the balance of the fee due and payable on filing.~~] For each application granted pursuant to section three hundred fifty-two-g of this article, the department of law shall collect a fee of two-tenths of one percent of the amount of the offering of securities; however, the minimum fee shall be seven hundred fifty dollars, and the maximum fee shall be [~~thirty~~] sixty thousand dollars. All revenue from that portion of any fee imposed pursuant to this paragraph, which exceeds twenty thousand dollars for offering statements, and five hundred twenty-five dollars for all other filings, shall be paid by the department of law to the state comptroller to be deposited in and credited to the real estate finance bureau fund, established pursuant to section eighty of the state finance law.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision, the department of law shall not collect any fees for the filing of an offering statement or prospectus or any amended filings thereto as described in subdivision one of this section whenever: (i) a conversion of a mobile home park, building or group of buildings or development from residential rental status to cooperative or condominium ownership is being made pursuant to article eleven, eighteen, nineteen or twenty of the private housing finance law; or (ii) the offering statement or prospectus or amendment thereto is submitted to the department of law pursuant to section three hundred fifty-two-eeeee of this article. For submissions made pursuant to section three hundred fifty-two-eeeee of this article, the department of law shall instead collect the fees set forth in subdivision thirty-one of such section. All revenue from that portion of any fee imposed pursuant to subdivision thirty-one of section three hundred fifty-two-eeeee of this article shall be paid by the department of law to the state comptroller to be deposited in and credited to the housing protection unit fund, established pursuant to section eighty-b of the state finance law.

§ 5. Paragraph (a) of subdivision 1 of section 352-eeee of the general business law, as amended by section 1 of part N of chapter 36 of the laws of 2019, is amended to read as follows:

(a) "Plan". Every offering statement or prospectus submitted to the department of law pursuant to section three hundred fifty-two-e of this article for the conversion of a building or group of buildings or devel-

opment from residential rental status to cooperative or condominium ownership or other form of cooperative interest in realty, other than an offering statement or prospectus for such conversion pursuant to **section three hundred fifty-two-eeeee of this article or** article two, eight or eleven of the private housing finance law.

§ 6. The state finance law is amended by adding a new section 80-b to read as follows:

§ 80-b. Housing protection unit fund. 1. There is hereby established in the custody of the state comptroller a special fund to be known as the "housing protection unit fund".

2. The housing protection unit fund shall consist of moneys appropriated thereto, funds transferred from any other fund or sources, and moneys deposited therein pursuant to the fees imposed by section three hundred fifty-two-eeeee of the general business law.

3. The moneys in the housing protection unit fund shall be kept separate from and shall not be commingled with any other moneys in the custody of the state comptroller. All moneys in the housing protection unit fund shall be distributed each state fiscal year and such moneys shall be allocated to and expended by the department of law solely for the operation and administration of its housing protection unit.

§ 7. This act shall take effect on the one hundred eightieth day after it shall have become a law.