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Memorandum in Opposition

REAL PROPERTY LAW SECTION
COMMITTEE ON CONDOMINIUMS AND COOPERATIVES

RPLS #3 June 10, 2021

S. 3082 By: Senator Salazar
A. 5573 By: M. of A. Hunter
Senate Committee: Judiciary
Assembly Committee: Housing
Effective Date: Immediately

AN ACT to amend the real property law, in relation to prohibiting eviction without good cause.

LAW & SECTION REFERRED TO: Article 6-A of the real property law.

REAL PROPERTY LAW SECTION
COMMITTEE ON CONDOMINIUMS AND COOPERATIVES
OPPOSES THIS LEGISLATION

The Real Property Law Section's Legislative Subcommittee of Cooperative & Condominium Law Committee of the New York State Bar has grave concerns with the "Good Cause Law" being debated in the Senate and Assembly during this Legislative Session. If implemented,the "Good Cause Law" will have a very harmful effect on New York's vulnerable residential real estate market and will potentially cripple the ability of a CooperativeApartment Corporation ("Co-op") to operate. The new "Good Cause" standard is a proposed law intended to create a new and oppressive standard for the general housing industry to further limit the already limited ability for Landlords to evict their tenants and raise rents. Putting aside the fact that this law should not be passed for normal landlord tenant relationship, once again, this proposed new law is tacked on a to a series of recent laws that show a lack of understanding of the fact that Co-ops are a landlord-tenant relationship between the Co-op and its shareholders, but not the typical landlord-tenant relationship. As such, we believe this law is not truly intended to affect Co-ops. As a result, we believe, at a minimum,the proposed law needs to carve out cooperative apartment corporations. The reasons are set forth herein below.

Under the proposed Law, in order to evict a tenant, as defined by the Bill, a landlord would have to obtain an order from a Judge that the reasons for eviction are for "Good Cause," as defined by § 214. The proposed Bill does articulate that the failure or inability to pay rent constitutes a "Good Cause" as a reason for eviction. However, eviction on the grounds of a Tenant's (shareholder's in the case of a cooperative apartment) ability to pay

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rent (maintenance) may not have been the result of a rent increase that is considered "unreasonable."

The Bill will essentially create a rebuttable presumption against the Landlord if the rent (maintenance in the case of Co-ops) increases more than 3% or 1.5 x the "the annual percentage change in the Consumer Price Index for the region in which the housing accommodation is located…whichever is greater." What this means is that these bills would cap the amount that Maintenance (rent) which could be raised in a given year. However, as you know, the increase in property taxes, utilities and water rates and overhead alone typically exceeds 3% annually and necessitates an increase in Maintenance (rent) to pay those increases. Keep in mind the rise in the Consumer Price index was 1.9% from 2019 to 2020. These caps would jeopardize the ability of Cooperative Apartment Corporations who are the landlords of their shareholders to meet their expenses, risking foreclosure of the underlying mortgage on their building or tax foreclosure. Cooperative Corporations need to raise the necessary funds to cover existing costs or to fund new projects for the repair and Maintenance for their respective communities. It is import to note, Cooperatives operate on a "break-even" basis and hence increase "rents" solely to cover their current and anticipated costs and to build up reserves. An additional factor is that subjecting the reasonableness of maintenance increases to court approval may interfere with the Co-op's ability to pay its mortgage thus jeopardizing Co-ops' ability to obtain mortgage financing or increasing the cost of such financing. As such, Co- op's should not be put in a position where they need to litigate a non-payment of maintenance case to prove that their increase of maintenance was reasonable.

The Bill would also hamper the ability of a Cooperative Apartment shareholderor Condominium Unit owner who rents out his apartment to pay their Maintenance and/or Common Charges which pay to maintain their building, thus leading to deterioration of the property and adversely affecting all of the property's occupants whether tenants or owners. In addition, the proposed legislation will adversely affect a Cooperative Apartment's or Condominium Unit owner's ability to repair, maintain, and remodel the apartments as the Tenant could bar entry into the Tenant's residence if the Tenant deems the issue unreasonable. According to § 214(f), "Good Cause" for eviction is provided when

> "The tenant has unreasonably refused the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or for the purpose of showing the housing accommodation…"

However, should a Tenant believe that a proposed repair or improvement is not "necessary," they could bar entry to the residence and force Landlords, Co-ops, and Condo landlords to go to Court to prove that the proposed repair or improvement would be considered "necessary." This provision will invite a sea of litigation between Landlords

and Tenants as the Courts across the State will be forced to litigate what is and is not "necessary." Additionally, this proposed Law takes no consideration for a potential maintenance issue that could impact the rest of the building (i.e. – if accessto a shareholder's apartment is needed to repair an issue affecting a neighbor's apartment) and other residents' apartments should entry be thwarted by an existing tenant.

While the Bill seems intended to protect tenants, it completely ignores Cooperative Apartment Corporation's, their shareholders and Condominium Unit owners' financial reality.

The Subcommittee recommends that the proposed Bill should not be enacted due to the inevitable and disastrous consequences that will follow, as well as create more litigation in the already overcrowded landlord-tenant courts. At a minimum, we recommend that the Bill be amended to specifically exempt Co-ops, Condominiums and HOAs, and shareholder and Condominium/HOA home owners (and other single-family homes) from this Bill's provisions. Community associations represent a unique and specialized sector of the residential housing market and operate in materially different ways outside of the standard Landlord-Tenant relationship. If the goal of the Legislature is to empower traditional tenants, then the Legislature should tailor the Bill only to regulate the general housing industry and not community associations as it would cause tremendous financial burdens on the other tenants/residents of these communities. Remember, if community associations are unable to freely evict tenants, then the cost is placed on the other residents of the building (an absurd and perhaps unintentional consequence of the proposed Bill). More importantly, if every shareholder was entitled to not pay a maintenance increase of more than 3%, Co-op buildings will find themselves faced with foreclosures of the entire building and shareholders could lose their investments. We ask the legislature to consider that Cooperatives and Condominiums (and HomeownersAssociation) are not a traditional rental setting and should be excluded from the limitations proposed in this bill and similar proposed legislation. We remind the legislature that hundreds of thousands of New Yorkers live in Cooperative, Condominium and Homeowners association housing.

Note, many of the reasons set forth herein above which are provided in connection with our recommendation of the carve out for community associations also apply to why the law should not be adopted in its entirety as every other landlord will have similar arguments with respect to the substantial and harmful effect it will have on the NY real estate market.