McKinney's Consolidated Laws of New York Annotated
Real Property Law (Refs & Annos)
Chapter 50. Of the Consolidated Laws
Article 7. Landlord and Tenant (Refs & Annos)

McKinney's Real Property Law § 235-h

§ 235-h. Waiver of right to bring a declaratory judgment action

Effective: December 20, 2019

Currentness

No commercial lease shall contain any provision waiving or prohibiting the right of any tenant to bring a declaratory judgment action with respect to any provision, term or condition of such commercial lease. The inclusion of any such waiver provision in a commercial lease shall be null and void as against public policy.

Credits

(Added L.2019, c. 689, § 1, eff. Dec. 20, 2019.)

Editors' Notes

PRACTICE COMMENTARIES

by Dan M. Blumenthal

2020

Signed and effective December 20, 2019, this new section makes commercial lease clauses that unconditionally waive the tenant's right to seek declaratory relief from a default void as against public policy. Enacted on the heels of the Second Department decision in *159 MP Corp. v. Redbridge Bedford, LLC*, 160 A.D.3d 176, 71 N.Y.S.3d 87 (2d Dept. 2018), *aff'd* 33 N.Y.3d 353, 104 N.Y.S.3d 1, *rearg. denied*, 33 N.Y.3d 1136, 109 N.Y.S.3d 217 (2019), the section protects parties to commercial leases from provisions barring declaratory relief, including the 50-year-old right of commercial tenants to a so-called 'Yellowstone Injunction.' *First Natl. Stores v. Yellowstone Shopping Ctr.*, 21 N.Y.2d 630, 290 N.Y.S.2d 721 (1968). *N.B., the Commentator is part of the tenant-appellants' legal team in Redbridge.* The section preserves a tenant's right to injunctive relief, staying a cure period based on its showing that "(1) it holds a commercial lease; (2) it received from the landlord either a notice of default, a notice to cure, or a threat of termination of the lease; (3) it requested injunctive relief prior to the termination of the lease; and (4) it is prepared and maintains the ability to cure the alleged default by any means short of vacating the

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premises." *Audthan LLC v. Nick & Duke, LLC*, 181 A.D.3d 503, 121 N.Y.S.3d 245 (1st Dept. 2020) *quoting Graubard Mollen Horowitz Pomeranz & Shapiro v. 600 Third Ave. Assoc.*, 93 N.Y.2d 508, 514, 693 N.Y.S.2d 91 (1999) even if lease provisions purport to prohibit the application and bars a landlord from using a minor or contrived breach as an excuse to prematurely terminate a commercial lease, finding such scenarios to be "disruptive of commerce." Memorandum in Support of Assembly Bill A2554 (2019), now this statute.

McKinney's Real Property Law § 235-h, NY REAL PROP § 235-h
Current through L.2021, chapters 1 to 49, 61 to 88. Some statute sections may be more current, see credits for details.

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