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Title: A Local Law to amend the administrative code of the city of New York, in relation to sales of cooperative apartments

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Indexes:

Attachments: 1. Summary of Int. No. 1458, 2. Int. No. 1458 - 2/1/17, 3. February 1, 2017 - Stated Meeting Agenda with Links to Files, 4. Committee Report 11/8/17, 5. Hearing Testimony 11/8/17, 6. Hearing Transcript 11/8/17

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Int. No. 1458

By Council Members Lander, Williams and Menchaca

A Local Law to amend the administrative code of the city of New York, in relation to sales of cooperative apartments

Be it enacted by the Council as follows:

Section 1. Title 8 of the administrative code of the city of New York is amended by adding a new chapter 12, to read as follows:

CHAPTER 12

FAIR RESIDENTIAL COOPERATIVE DISCLOSURE LAW

§ 8-1201 Definitions.

§ 8-1202 Mandatory statement

§ 8-1203 Amended, supplemental and untimely statements.

§ 8-1204 Liability for failure to provide statement

§ 8-1205 Procedure for asserting violation.

§ 8-1206 Preclusive effect of statement.

§ 8-1207 No estoppel or res judicata.

§ 8-1208 Construction

§ 8-1209 Audits; Reporting.

§ 8-1201 Definitions. When used in this chapter:

Application. The term “application” means both the request of a prospective seller or a prospective purchaser to a cooperative corporation for that cooperative corporation to provide its unconditional consent to a sale of certificates of stock, a proprietary lease, or other evidence of an ownership interest in such cooperative corporation, and the information and documents, acquired by the cooperative corporation in connection with its determination as to whether or not to grant unconditional consent to the sale of certificates of stock, a proprietary lease, or other evidence of an ownership interest in such cooperative corporation.

Commission. The term “commission” means the New York city commission on human rights.

Cooperative corporation. The term “cooperative corporation” means any corporation governed by the requirements of the state cooperative corporation law or general business law that grants persons the right to reside in a cooperative apartment, that right existing by such person’s ownership of certificates of stock, proprietary lease, or other evidence of ownership of an interest in such entity but shall not include a cooperative corporation containing less than 10 dwelling units.

Proper party. The term “proper party” means a prospective purchaser whose application has been rejected or a real estate broker who would have been entitled to a commission had the proposed transaction been approved or the city of New York.

Prospective purchaser. The term “prospective purchaser” means a person who has entered into a contract of sale to purchase the proprietary lease and the ownership interest in a cooperative corporation from a prospective seller.

Prospective seller. The term “prospective seller” means a person who has a proprietary lease and an ownership interest in a cooperative corporation and who has entered into a contract of sale to sell the person’s

proprietary lease and ownership interest in a cooperative corporation to a prospective purchaser.

Sale. The term “sale” means the transfer of a person’s ownership interest in a cooperative corporation and that person’s proprietary lease to another person.

§ 8-1202 Mandatory statement. a. If a prospective purchaser is disapproved, the cooperative corporation shall provide the prospective purchaser with a written statement of each and all of its reasons for withholding consent no later than five business days after it has made its decision to withhold consent.

b. The statement required by this section must set forth each reason for withholding consent with specificity. This requirement includes identifying each element of the prospective purchaser’s application which was found by the cooperative corporation to be deficient, any specific ways that the application failed to meet any specific policies, standards, or requirements of the cooperative corporation, and the source of any negative information relied upon by the cooperative corporation in connection with any of its reasons for withholding consent to the proposed purchase. The statement must convey sufficient information to enable a prospective purchaser to take specific steps to remedy any specific deficiencies in that application.

c. The statement required by this section must set forth the number of applications that have been received by the cooperative corporation in the period commencing three years prior to the date of the submission of the application that is the subject of the statement and continuing through and including the date of the statement. The statement must also set forth for the same period of time the number of applications for which the cooperative corporation withheld consent and the number of applications for which the cooperative corporation did not make a decision on such applications.

d. The statement required by this section shall include a certification by an officer of the cooperative corporation, sworn or affirmed under penalties of perjury, that the statement is a true, complete and specific recitation of each and all of the cooperative corporation’s reasons for withholding consent; that each person who participated in the decision to withhold consent has stated to the certifying officer that he or she had no reasons for withholding consent other than those set forth in the statement; and that the statement is a true and

complete recitation of total applications, applications for which consent was withheld and applications in which no decision was made as required by this chapter.

§8-1203 Amended, supplemental and untimely statements. a. Amendments or supplements to timely statements required by section 8-1202 of this chapter shall also be considered timely if such amendments or supplements are provided to a prospective purchaser within ten business days after the cooperative corporation has disapproved a prospective purchaser.

b. If a cooperative corporation seeks to provide a prospective purchaser with an untimely statement, amendment, or supplement, the untimely statement, amendment or supplement must be accompanied by a statement of reasons for untimeliness. If no more than twenty days have elapsed since the cooperative corporation's decision to withhold consent and no proper party has initiated an action or proceeding pursuant to this chapter or pursuant to any other chapter of this title, the untimely statement, amendment or supplement shall be permitted to be considered in mitigation of the scope of non-compliance should an action or proceeding subsequently be commenced pursuant to this chapter, and shall be permitted to be considered in determining the scope of permissible evidence pursuant to section 8-1207 of this chapter, provided that the cooperative corporation can demonstrate that the reasons provided for untimeliness were true and can demonstrate that those reasons establish good cause for the untimeliness. In the event that more than twenty days have elapsed since the cooperative corporation's decision to withhold consent, or a proper party has initiated an action or proceeding pursuant to this chapter or pursuant to any other chapter of this title, then such untimely statement or amendment or supplement shall not be permitted to be considered in mitigation of the scope of non-compliance in an action or proceeding commenced pursuant to this chapter, and shall not be permitted to be considered for determining the scope of permissible evidence pursuant to section 8-1207 of this chapter.

§ 8-1204 Liability for failure to provide statement. In addition to any other penalties or sanctions which may be imposed pursuant to this chapter or any other applicable provision of law, any cooperative corporation that is determined to have failed to timely comply with any of the provisions of sections 8-1202 of this chapter

shall be liable for statutory damages to each proper party who commences or joins in an action or proceeding alleging a failure to have timely complied with the requirements in an amount no less than one thousand dollars and no more than twenty-five thousand dollars, in addition to liability as provided by section 8-1206 of this chapter. In determining the appropriate statutory damages to be imposed pursuant to this section, a finder of fact shall take into account both the scope of non-compliance and the resources of the cooperative corporation.

§ 8-1205 Procedure for asserting violation. a. Any proper party may commence an action in any court of competent jurisdiction alleging a failure to comply with the requirements of this chapter. Such action must be commenced within six months of the time when compliance was required. The prevailing party in such an action may be awarded costs and reasonable attorneys' fees. The court shall also order an appropriate equitable remedy, provided that such remedy shall not include a grant of property or an order directing the cooperative corporation to reconsider an application or to grant its consent to a sale. In the event that the finder of fact determines that non-compliance was willful, the finder of fact shall award punitive damages, but such damages shall not exceed twice the amount awarded under section 1204 of this chapter.

b. In lieu of commencing an action in a court of competent jurisdiction, any proper party may commence a proceeding before the commission. Such proceeding must be commenced within sixty days of the time when compliance was required. The prevailing party in such a proceeding may be awarded costs and reasonable attorneys' fees and shall be awarded an appropriate equitable remedy, provided that such remedy shall not include a grant of property or an order directing the cooperative corporation to reconsider an application or to grant its consent to a sale. In the event that the commission determines that non-compliance was willful, it shall award punitive damages but such damages shall not exceed twice the amount awarded under section 1204 of this chapter.

§8-1206 Preclusive effect of statement. a. In any action or proceeding commenced against a cooperative corporation pursuant to chapter one, four, five or twelve of this title neither the cooperative corporation nor any of its directors officers, employees, or agents shall be permitted to introduce any evidence concerning reasons

for having withheld consent that were not set forth in a statement fully compliant with the requirements of this chapter.

b. A person commencing an action in a court of competent jurisdiction as described in paragraph a of this section is under no obligation to commence a proceeding under section 8-1206 of this chapter in order for such person to gain preclusion of non-compliant statements. The court before which the allegation of an unlawful discriminatory practice is pending shall determine which statements, if any, fully complied with the requirements of section 8-1202 of this chapter, unless such a judgment has already been rendered pursuant to a proceeding commenced pursuant to section 8-1206 of this chapter.

§8-1207 No estoppel or res judicata. No action or proceeding commenced pursuant to this chapter shall determine or purport to determine either the genuineness of the reasons provided in the statement required by section 8-1202 of this chapter or shall determine any question of whether any person has committed an unlawful discriminatory practice as defined by chapter one of this title. If a judgment rendered pursuant to an action or proceeding commenced pursuant to this chapter purports to do so, a person shall nevertheless retain all rights to commence an action or proceeding alleging the commission of an unlawful discriminatory act, and insofar as any judgment rendered pursuant to this chapter purports to make findings regarding either genuineness or whether an unlawful discriminatory practice has been committed, such purported findings shall not be given any force or effect in any other action or proceeding.

§8-1208 Construction. a. The provisions of this chapter shall be construed in a manner to make certain that prospective purchaser has been provided with sufficient information to learn why a cooperative corporation has withheld consent to such purchase; and to deter attempts to evade or delay compliance with the provisions of this chapter.

b. No provision of this chapter shall be construed or interpreted to restrict or expand the reasons for which a cooperative corporation may lawfully withhold consent.

§ 8-1209 Reporting. On or before January first of the year following the first full calendar year in which

this chapter is in effect, and annually on January first thereafter, the commission shall report to the mayor and the council on the implementation of this chapter. Such report shall include the number of complaints received pursuant to this chapter and the dispositions of such complaints. Such report shall also include any recommendations by the commission for changes to the provisions of this chapter.

§2. Subdivision 4 of section 8-105 of the administrative code of the city of New York is amended by adding a new paragraph c to read as follows:

c. To receive and pass upon complaints or initiate investigations made pursuant to subdivision b of section 8-1205 of this title.

§3. This local law takes effect 120 days after it becomes law; provided that the commissioner of the commission on human rights may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, establishing guidelines and promulgating rules.

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