



Legislation Details (With Text)

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Int. No. 558

By Council Members Weprin, Rivera, Gentile, Avella, Clarke, Fidler, Gennaro, Gonzalez, James, Koppell, Liu, Nelson, Reed, Stewart, Oddo, Katz, Brewer, Comrie, Yassky, Gerson and Recchia

A Local Law to amend the administrative code of the city of New York, in relation to unlawful real estate solicitations.

Be it enacted by the Council as follows:

Section 1. Legislative declaration. Recent zoning amendments will significantly deter excessively large -scale home construction in specific areas of the city. Based upon these amendments, certain real estate related businesses have commenced a policy of soliciting affected communities with fear-based propaganda, essentially threatening that the new regulations will ultimately lower property values. These businesses attempt to persuade real property owners that they should immediately sell their homes in order to maximize their profits.

The Council finds that such solicitation is misleading and inconsistent with the particulars of the new

zoning regulations. Accordingly, legislation must be adopted to confront this serious problem.

§2. Title 8 of the administrative code of the city of New York is hereby amended to add a new chapter 11 to read as follows:

CHAPTER 11

UNLAWFUL REAL ESTATE SOLICITATIONS

§ 8-1101 Definitions.

§ 8-1102 Unlawful real estate solicitations.

§ 8-1103 Violations.

§ 8-1104 Civil remedies.

§8-1101 Definitions. As used in this chapter:

1. "Real estate broker" means a real estate broker as defined in article twelve-A of the real property law of the state of New York.

2. "Real estate dealer" means any firm, partnership, association, corporation or person which or who has within the preceding twelve months, sold, traded or exchanged two or more dwellings other than, in the case of a person, such person's own residence.

3. "Real estate office" means an office or other place of business which is primarily engaged in the business of selling, buying, leasing, or renting real property; listing real property for sale, purchase, lease or rental; or providing brokerage services in connection with such selling, buying, leasing, renting, or listing.

4. "Real estate developer" means any person, corporation, partnership, business or entity engaged in the business of purchasing, selling, leasing or licensing real property for the purpose of engaging in demolition, modification of existing structure, or construction on said property.

§ 8-1102 Unlawful real estate solicitations. a. It shall be unlawful for any real estate broker, dealer, developer, office or any agent or employee of a real estate broker, dealer, developer or office, except in honest reply to an unprompted question by a prospective buyer or seller:

(i) to represent, for the purpose of inducing or encouraging the purchase, sale, or rental, or the

listing for purchase, sale, or rental, of any real property, that a change has occurred, or will or may occur, in land use or zoning regulations of any block, neighborhood, or area.

(ii) to represent, implicitly or explicitly, for the purpose of inducing or encouraging the purchase, sale, or rental or the listing for purchase, sale, or rental of any real property, that a change has occurred or will or may occur in land use or zoning regulations of any block, neighborhood, or area that may result in a reduction of area property values.

b. It shall be unlawful for any real estate broker, dealer, developer, office or any agent or employee of a real estate broker, dealer, developer or office:

(i) to make any misrepresentation in connection with the purchase, sale, or rental of any real property, that there will or may be physical deterioration of dwellings or fair market depreciation in any block, neighborhood or area resulting from a change that has occurred, or will or may occur, in land use or zoning regulations.

(ii) to refer to any changes that have occurred, or will or may occur, in land use or zoning regulations of any block, neighborhood, or area in any advertisement offering or seeking real property for purchase, sale or rental relating to said block, neighborhood, or area.

c. It shall be unlawful for any person, firm, partnership, association, or corporation, to knowingly aid, abet, or coerce the commission of any act made unlawful by subdivisions a and b of this section.

§ 8-1103 Violations. Any person, firm, partnership, association, or corporation convicted of violating this chapter shall be guilty of a class A misdemeanor.

§ 8-1104 Civil remedies. a. Any owner of real property who is induced to sell his or her property through or to a real estate broker, real estate dealer, real estate office, real estate developer, or agent thereof, by acts committed in violation of this chapter may institute a civil action against such broker, dealer, office, developer or agent.

b. If, in an action instituted pursuant to this subdivision, judgment is rendered in favor of plaintiff, such

plaintiff shall be awarded as damages:

(i) the amount of any gains, whether in the form of profits, commission, or otherwise, realized by defendant as the result of the first subsequent arm's length sale, exchange, or transfer of the property, or, if defendant acted as a broker, the amount of any commissions received by defendant through the sale, exchange, or transfer of plaintiff's property, such gains in all cases to be calculated without regard to any expenses incurred by the defendant, and may in addition be awarded reasonable attorneys' fees and court costs; or

(ii) if the defendant has not realized any gains as defined in this subdivision, an amount equal to the difference between the price for which plaintiff sold his or her property and the fair market value at the time of the sale, or the fair market value of the property at the time the action is commenced, whichever difference is greater, and may in addition be awarded reasonable attorneys' fees and court costs.

c. (i) Any buyer, through or from a real estate broker, real estate dealer, real estate office, real estate developer, or agent thereof, was induced to sell, exchange or transfer his or her property by acts committed in violation of this chapter may institute a civil action against such broker or dealer, office, developer or agent.

(ii) If, in an action instituted pursuant to paragraph (i) of this subdivision, judgment is rendered in favor of plaintiff, the plaintiff shall be awarded as damages the amount of any gains, whether in the form of profits, commission, or otherwise, realized by defendant as the result of such plaintiff's purchase of the property, such gains in all cases to be calculated without regard to any expenses incurred by the defendant, and may in addition be awarded reasonable attorneys' fees and court costs.

§3. This local law shall take effect 30 days after its enactment.

T.S.F.
LS#2099
01/18/05

January 28, 2005

TO: Council Member Weprin

FROM: GOVERNMENTAL AFFAIRS DIVISION

RE: To amend the administrative code of the city of New York, in relation to unlawful real estate solicitations

The attached material was prepared by the Governmental Affairs Division. If this material is to be introduced, please indicate below that you have received and approved the draft and please then forward six copies to Gifford Miller, Speaker, City Hall. Please also forward two copies of the memorandum in support to the Speaker's Office.

If you want to amend or alter the draft, please contact Thomas S. Ferrugia (788-9188). In the event that you revise the attached and submit it in revised form, please send us a copy as soon as possible.

**Approved as to Form
Not Content**

ROBERT NEWMAN
Senior Legislative Attorney
Governmental Affairs Division

LS# 2099

THOMAS S. FERRUGIA
Legislative Attorney

Gifford Miller:

Please introduce this legislation. My approval is/is not (please circle where appropriate) needed for co-sponsorship.

Council Member's Signature