



MEMORANDUM IN SUPPORT S7825 (Krueger)/A5031A (Rosenthal)

AN ACT to amend the real property law, in relation to limiting the amount of rent increases for residential ground lease cooperative apartment buildings and establishing certain rights upon expiration of such leases.

This bill addresses the perils facing more than 10,000 New York families who live in residential ground lease cooperative apartment houses (RGLCs). Residents own their apartments, but the cooperative corporation does not own the land upon which the building sits; rather the RGLC leases the land from a third-party landowner. Residing in approximately 100 co-ops spread across four New York City boroughs and Westchester County, these homeowners have built the type of diverse working communities that make New York great.

These solidly middle-class families are in danger of losing their homes and investments as a handful of billionaires seek to exploit the ground lease relationship. It is physically impossible for a co-op to relocate its apartment building to a different location, and this creates a type of quasi-monopolistic power for the landowner. Negotiations are one-sided: the shareholders have no choices, and the landowners have no competition. Given the absence of legal protections for these homeowners under existing law, landowners can profiteer and residents are left in a desperate position, which is only amplified by New York's housing crisis.

The Ground Lease Coop Coalition was formed in 2023 and grew rapidly. These co-ops have always been a haven for middle-income households, and many were built specifically for veterans in the post-WWII era. The Coalition's apartments are home to more than 25,000 New Yorkers, and its members come from all walks of life, ethnicities, and income levels.

Existing Highly Comparable Legislation – A Road Map Forward

While no protections currently exist for ground lease co-ops, in 2019 legislation was enacted that provides much-needed safeguards for a rural form of homeownership that is strikingly comparable: Manufactured Homes (MHs). Just as RGLCs lease land from a landowner, owners of manufactured home lease a site from a park owner. This MH legislation became law in the wake of widespread rent exploitation by predatory speculators who bought out mom-and-pop park owners and took advantage of a homeowner's inability to relocate their home to another site, thereby extracting all value from it. This law, Part O of the Housing Stability and Tenant Protection Act of 2019 (Chapter 36, L. 2019), established several key rights for MH homeowners: first, it placed a 3% annual ceiling on rent increases; second, it provided the MH homeowners a right to renew their leases; and last, it granted homeowners the right to purchase the land if the landowner decided to sell the property.

The Ground Lease Coop Bill (S7825/A5031A), contains four key provisions, three of which are modeled from the protections found in the existing Manufactured Homes law:

- 1. Cap on Rent Increases – Annual increase in ground rent limited to the greater of 3% or the change in CPI.** This limit, which is more beneficial to landowners than provided for in the MH statute, is necessary to protect residents from losing their homes, while still providing a reasonable rent increase to the landowner. In one Manhattan ground lease coop, where more than 70% of the residents are 65 years of age or older, the ground lease rent increased 5,000% between 1990 and

2018. Another co-op saw the land beneath it recently marketed – and sold – on the clear premise that in 2025 the ground rent owed will increase from roughly \$4 million to \$40 million, thereby rendering the co-op financially unviable, with the shareholders forced out of their homes, and the land redeveloped as a tower for the ultra-rich.

2. **Right to Borrow – Creates the right for ground lease coops to obtain a mortgage to perform major capital and safety-related projects, which are often mandated by government agencies and can easily cost millions of dollars.** Many ground leases prohibit the RGLC from borrowing money without the landowner’s consent, and numerous examples exist of landowners extracting an additional payment – commonly called a “ransom” payment – from the co-op. For example, in 2012 New York City mandated that boilers be modernized to a more environmentally friendly type of oil. To pay for this, a 1,788-unit co-op in Whitestone, Queens secured a multi-million-dollar loan commitment to upgrade the 42 boiler rooms at its garden apartment property. The landowner refused to grant its permission, and litigation ensued. The co-op ultimately made a substantial payment to the landowner, so he would consent to the loan, and the building could comply with a government-mandated, environmentally-friendly, requirement.
3. **Right to Renew – Currently the landowner can simply refuse to renew the lease and effectively evict long-term residents.** The MH law provides a right to renew and the same logic applies to ground lease co-ops. Absent this protection, residents are at risk of losing ownership of what is the single largest asset of most Americans: their homes. Even the seemingly distant expiration of the ground lease can cause problems for an RGLC *today*. Buyers at a Sheepshead Bay, Brooklyn property are already unable to obtain standard 30-year purchase financing from lenders even though the ground lease does not expire for another 25 years. As a result, these properties are becoming “cash only,” and values can plummet decades in advance of the end of the lease.
4. **Right of First Refusal (ROFR) – The ground lease co-op can purchase the land if the landowner chooses to sell.** The MH law contains a similar ROFR, and S7825/A5031A modifies the language in that statute to provide the same right to ground lease coops. It is commonplace for landowners to use a family transfer of the ground lease to younger generations as a vehicle to move wealth in a scheme that claims an artificially low valuation for the land, thereby avoiding substantial tax payments. Consider this actual example involving a landowner family transfer:
 - 2008 \$171 million** = Land value used in rent reset negotiations between landowner and RGLC
 - 2011 \$ 62 million** = Land value recorded by landowners in a series of internal family transfers
 - 2018 \$270 million** = Land value used in rent reset negotiations between landowner and RGLC
 Between \$100 and \$200 million disappeared in these maneuvers, escaping the tax system. A ROFR would mitigate this sort of off-market transfer and provide an opportunity for the RGLC to buy the land at a market price, while also ensuring that the correct taxes are paid by the landowners.

The Ground Lease Coop Coalition supports this important bill and urges its prompt enactment.

Note: This bill only applies to private leases, not charities, religious or government entities.

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