

**RESOLUTION NO. 1250 -2009, ADOPTING LOCAL LAW
NO. 45 -2009, A LOCAL LAW TO EXTEND THE RIGHT OF
FIRST REFUSAL TO HOMEOWNERS OF PLANNED
RETIREMENT COMMUNITIES**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on November 17, 2009 a proposed local law entitled, **"A LOCAL LAW TO EXTEND THE RIGHT OF FIRST REFUSAL TO HOMEOWNERS OF PLANNED RETIREMENT COMMUNITIES"**; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 45 -2009, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO EXTEND THE RIGHT OF FIRST REFUSAL TO
HOMEOWNERS OF PLANNED RETIREMENT COMMUNITIES**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that developers in different parts of the country are selling homes in "retirement communities," in which the purchaser buys and owns the home while the developer retains ownership of the land on which the home is installed (as well as the roads, sidewalks and common areas in the communities). The homeowners in those communities lease the property on which their home is installed.

This Legislature further finds and recognizes the unique nature of this kind of development, where the purchaser owns a home but is required to lease the land on which the home is situated.

This Legislature also finds and determines that this type of development is not governed or regulated under New York Real Property Law and, therefore, the residents of those retirement communities are not afforded the kinds of protection that are extended to mobile homeowners or multiple dwelling tenants.

This Legislature hereby finds and determines that the current provisions extending right of first refusal to mobile homeowners or tenants when an owner of a mobile home park offers such park for sale, has proven successful in protecting the interests of mobile homeowners or tenants.

Therefore, the purpose of this law is to extend the right of first refusal to occupants of homes in planned retirement communities as is provided to mobile homeowners and multiple dwelling tenants.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

HOMEOWNER - one who holds title or bill of sale to a home.

PLANNED RETIREMENT COMMUNITY - a contiguous parcel of privately owned real property on which two hundred or more lots are leased to owners of year-round homes erected thereon and affixed thereto wherein the permanent occupation is restricted to tenants fifty-five years of age or older. This term shall not include mobile homes, manufactured homes, or condominiums as defined in New York Real Property Law or real property owned by a corporation formed pursuant to the New York Cooperative Corporations Law.

TENANT - one who occupies a home in a planned retirement community.

Section 3.

A. If the owner of a planned retirement community offers a planned retirement community for sale or receives a bona fide offer to purchase that he intends to consider or to respond to with a counteroffer, he shall deliver written notice of the offer to all home owners residing within the planned retirement community within 30 days, stating the price, terms and conditions of sale. Delivery of such written notice shall be in person or by certified mail.

B. The homeowners, by and through a homeowners' association, shall have a first option to purchase the planned retirement community, provided that they meet the price, terms and conditions of the planned retirement community owner within 90 days after the date of delivery of the notice, unless otherwise agreed. If a contract between the owner of a planned retirement community and the homeowners' association is not executed within such 90 day period, then, unless the owner of the planned retirement community thereafter elects to offer or accept an offer to purchase the planned retirement community at a price lower than the prices specified in the notice to the homeowners, he has no further obligations under this section

C. If the owner of the planned retirement community thereafter elects to offer or to accept an offer to purchase the planned retirement community at a price lower than the price specified in the notice to the homeowners, the homeowners, by and through a homeowners' association, shall have an additional 30 days to meet the price, terms and conditions of the owner of the planned retirement community by executing a contract.

D. This section shall not apply to:

- (1) Any transfer by gift, devise or operation of law;
- (2) Any transfer by a corporation to an affiliate;
- (3) Any conveyance of an interest in a planned retirement community incidental to the financing of planned retirement community;
- (4) Any conveyance resulting from the foreclosure of a mortgage, deed of trust or other instrument encumbering a planned retirement community or any deed given in lieu of such foreclosure;
- (5) Any sale or transfer between or among joint tenants or tenants in common owning a planned retirement community;
- (6) The acquisition of a planned retirement community by a government entity under its power of eminent domain;

- (7) A planned retirement community that is specifically limited to the utilization as a planned retirement community through a pertinent town zoning ordinance.

E. In the event that the owner of a planned retirement community loses title to the County of Suffolk to the underlying real property for nonpayment of taxes, then the right of first refusal set forth above may be exercised by any homeowner residing within the planned retirement community, by and through a homeowners' association, in accordance with the provisions of this section as if a bona fide offer to purchase had been made to a planned retirement community owner, anything in any other county law, ordinance, resolution, provision of this chapter or regulation to the contrary notwithstanding, such as but not limited to Chapter 27 of the Suffolk County Code and § A32-2I or J of the Suffolk County Administrative Code. For the purposes of carrying out the provisions of this subsection the County of Suffolk, through the County Division of Real Estate, shall be charged with the duties, functions, rights, responsibilities and obligations of a planned retirement community owner.

Section 4. Right to Organize and Assemble.

No person shall deny or abridge the right of a homeowner or tenant to organize a homeowners' or tenants' association or to assemble within a planned retirement community.

Section 5. Rules and Regulations.

A. All rules and regulations governing a planned retirement community shall be part of any contract of sale offered by the owner(s) of any planned retirement community.

B. The owner of a planned retirement community located within the County of Suffolk shall file with the Commissioner of the Suffolk County Department of Consumer Affairs a copy of all rules and regulations governing the planned retirement community, and any amendments to such rules and regulations, within 30 days of publication.

C. Rules and regulations already in existence on the effective date of this section shall be filed with the Commissioner of the Suffolk County Department of Consumer Affairs within 60 days after this section takes effect.

D. Failure to file such rules and regulations with the Commissioner of the Suffolk County Department of Consumer Affairs shall render such rules and regulations null, void, unenforceable and without any force or effect.

Section 6. Grounds for Eviction.

A. An owner of a planned retirement community may not evict a homeowner or tenant other than for the following reasons:

(1) The planned retirement community homeowner or tenant has defaulted in the payment of rent and a proper demand has been made for such delinquent rent. On tender of payment of such delinquent rent, together with allowable costs, any action instituted for nonpayment of rent shall be terminated;

(2) The home or rented space is used for any illegal trade or business;

(3) The homeowner or tenant is in violation of a federal, state or local law or ordinance which may be deemed detrimental to the safety and welfare of the other persons residing in the planned retirement community;

(4) The homeowner or tenant or anyone occupying the home is in violation of any lease, term or lawful rule or regulation established by the owner of a planned retirement community and has continued in violation, without attempt to cure, for more than 10 days after the owner of the planned retirement community has given written notice of such violation to the homeowner or tenant directing that the home owner or tenant correct the violation within 10 days of the receipt of said notice.

B. No homeowner or tenant shall be denied a continuance or renewal of a lease so long as he or she has, during his or her period of occupancy, complied with the terms of his or her lease and the lawful rules and regulations of the planned retirement community then in effect.

C. Any planned retirement community owner or operator who violates this section shall be subject to a civil penalty of not more than \$1,000 for each violation. Each day or a part of a day on which a violation continues or occurs shall constitute a separate violation.

D. Enforcement

(1) This section shall be enforced by the Suffolk County Department of Consumer Affairs, the Suffolk County Attorney or by any other governmental agency or department authorized to secure compliance with the law by an action in any court of competent jurisdiction for an injunction to prevent the violation or threatened violation thereof;

(2) A civil action in the name of the governmental agency may be commenced to recover a civil penalty in the amounts prescribed by this section;

(3) A violation or failure to comply with any provision of this section may be raised as a complete defense, or as counterclaim, by a homeowner and/or tenant in any action brought by an owner of a planned retirement community in a court proceeding in Suffolk County.

Section 7. Penalties and Remedies.

(A) Any planned retirement community owner or operation who unlawfully violates a provision of this law shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) and/or imprisonment not to exceed six (6) months.

(B) Any planned retirement community home owner or tenant injured or damaged in whole or in part as a result of a violation of any of the provisions of this section may bring an action for recovery of damages in an amount not to exceed three times the actual damages or five hundred dollars, whichever is greater, plus reasonable attorney's fees. The remedy shall be in addition to and shall not preclude or diminish any action that an individual may have under common law or any local, state or federal law or regulation.

(C) The Suffolk County Attorney may commence an action to restrain, prevent, and/or enjoin a violation of this section or a continuance of such violation of this section or a continuance of such violation by a planned retirement community owner or operator.

Section 8. Applicability.

This law shall apply to sales, actions, or leases involving planned retirement community homes occurring or entered into after the effective date of this law.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. SEQRA Determination.

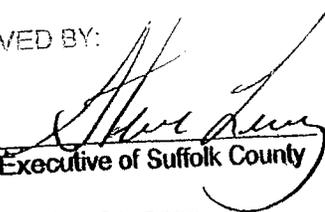
This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect on the ninetieth (90th) day immediately subsequent to filing in the Office of the Secretary of State.

DATED: December 15, 2009

APPROVED BY:


County Executive of Suffolk County

Date: December 31, 2009

After a public hearing duly held on December 29, 2009
Filed with the Secretary of State on January 20, 2010

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the
of the County of Suffolk, have compared the foregoing copy of resolution with the
original resolution now on file in this office, and which was duly adopted by the
County Legislature of said County, on December 15, 2009, and signed by the
County Executive on December 31, 2009, after a public hearing duly held on
December 29, 2009 and filed with the Secretary of State on January 20, 2010
and that the same is a true and correct transcript of said resolution and of the whole
thereof.

In Witness Whereof, I have hereunto set my hand and the official
Seal of the County Legislature of the County of Suffolk on

Tim Laube

Clerk of the County Legislature