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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO PROPERTY -- LEASED LAND DWELLINGS

Introduced By: Senators McCaffrey, and Lynch

Date Introduced: February 16, 2011

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 34-18.2-3 of the General Laws in Chapter 34-18.2 entitled "Leased
2 Land Dwellings" is hereby amended to read as follows:

3 **34-18.2-3. Transfer of leased land -- Right of first refusal.** -- (a) In any instance in
4 which a land owner has been sent a certified letter from an incorporated home owners' association
5 indicating that the association has at least fifty-one percent (51%) of the home owners owning
6 residential dwellings on the landowners land as members and has articles of incorporation
7 specifying all rights and powers, including the power to negotiate for and acquire land on behalf
8 of the member homeowners, then, before leased land may be sold for any purpose and before it
9 may be leased for any purpose that would result in a discontinuance, the owner shall notify the
10 association by certified mail of any bona fide offer that the owner intends to accept, to buy the
11 leased land or to lease it for a use that would result in a discontinuance. The owner shall also give
12 notice by certified mail to the incorporated home owners' association of any intention to sell or
13 lease the land for a use which will result in a discontinuance within fourteen (14) days of any
14 advertisement or other public notice by the owner or his agent that the land is for sale or the land
15 upon which the residential dwelling is located is for lease.

16 (b) The notice to the home owners' association shall include the price, calculated as a
17 single lump sum amount which reflects the present value of any installment payments offered and
18 of any promissory notes offered in lieu of cash payments or, in the case of an offer to rent the
19 capitalized value of the annual rent, and the terms and conditions of the offer. Any incorporated

1 home owners' association entitled to notice under this section shall have the right to purchase, in
2 the case of a third party bona fide offer to purchase, or to lease in the case of a third party bona
3 fide offer to lease, the land, provided it meets the same price and the same terms and conditions
4 of any offer of which it is entitled to notice under this section by executing a contract or purchase
5 and sale or lease agreement with the owner within one hundred eighty (180) days of notice of the
6 offer. No owner shall attempt to terminate the tenancy of any member of the incorporated home
7 owners' association except for nonpayment of rent for a period of one hundred and eighty (180)
8 days following a notice of sale or lease under this section. No owner shall unreasonably refuse to
9 enter into, or unreasonably delay the execution of a purchase and sale or lease agreement with a
10 home owners' association that has made a bona fide offer to meet the same price and the same
11 terms and conditions of an offer for which notice is required to be given pursuant to this section.
12 Failure of the incorporated home owners' association to execute such a purchase and sale
13 agreement or lease within the first one hundred eighty (180) day period shall serve to terminate
14 the right of the association to purchase or lease the land. The time periods may be extended by
15 agreement of the association and the owner. Nothing herein shall be construed to require an
16 owner to provide financing to any association or to prohibit an owner from requiring an
17 association which is offering to lease land to have within its possession a sum equivalent to the
18 capitalized value of the proposed rent of the land and requiring that a portion of the sum, of an
19 amount necessary to pay the rent on the land for a period of no greater than two (2) years, be kept
20 in escrow for such purpose during the term of the lease. In the event that an incorporated home
21 owners' association accepts an offer under this section, the tenancy of the members of the
22 association shall be extended on a month to month basis until the time set in the offer for closing
23 on the offer.

24 (c) (1) When an owner has been properly notified under the terms of this section of the
25 existence of an incorporated home owners' association, the owner shall include in any purchase
26 and sale agreement or lease agreement which would be subject to this section, a statement
27 informing the purchaser or lessee of the home owners association's right of first refusal pursuant
28 to this section.

29 (2) In addition, the home owners' association shall record in the land evidence records of
30 the city or town where the leased land is located, a copy of its articles of incorporation together
31 with a statement setting forth its statutory right of first refusal to purchase or lease the land of the
32 owner pursuant to this section.

33 (3) The right of first refusal created herein shall not be deemed to allow a homeowners'
34 association to vary the terms of any offer made to an owner and to make a counteroffer to said

1 owner. The homeowners' association shall have the right of first refusal only on the exact terms
2 and conditions as set forth in the offer received by the owner; provided, however, that the home
3 owners' association shall not be required to meet any terms or conditions that would result in the
4 removal of members of the association from the property which is the subject of the offer.

5 (4) The right of first refusal created herein shall inure to a home owners' associatio n for
6 the time periods provided in this section, beginning on the date of notice to the home owners'
7 association. The effective period of the right of first refusal shall apply separately for each
8 substantially different bona fide offer to purchase the land or to lease it for a purpose that would
9 result in a discontinuance, and for each offer the same as an offer made more than three (3)
10 months prior to the later offer; provided, however, that in the case of the same offer made by a
11 prospective buyer who has previously made an offer for which notice to a home owners'
12 association was required by this section, the right of first refusal shall apply only if the
13 subsequent offer is made more than six (6) months after the earlier offer. The right of first refusal
14 shall not apply with respect to any offer received by the owner for which notice to a home
15 owners' association is not required pursuant to this section.

16 (5) No right of first refusal shall apply to a government taking by eminent domain or
17 negotiated purchase, a forced sale pursuant to a foreclosure, transfer by gift, devise or operation
18 of law, or a sale to a person who would be included within the table of descent and distribution if
19 there were to be a death intestate of a land owner.

20 (d) In any instance in which the incorporated home owners' association of leased land is
21 not the successful purchaser or lessee of the land, the seller or lessor of the land shall prove
22 compliance with this section by filing an affidavit of compliance in the official land evidence
23 records of the city or town where the property is located within seven (7) days of the sale or lease
24 of the land.

25 (e) No land owner shall attempt to increase any rental amount due regarding leased land
26 from the time of his or her receipt of any bona fide offer to purchase or to lease for a purpose
27 which would result in a discontinuance, until the expiration of the time period during which a
28 home owners' association may exercise its right of first refusal or until the time set in the offer for
29 closing on the offer.

30 (f) In the event that an owner terminates the tenancies of all of the members of the
31 incorporated association, the right of first refusal created by this section shall inure to the benefit
32 of the former membership of the association for a period of one year after the termination of the
33 tenancies, or until the houses which they occupied are removed or destroyed, whichever first
34 occurs, with the former members having the same rights and obligations as existed prior to the

1 terminations. Each homeowner whose residential dwelling is removed or destroyed shall be paid
2 fair and reasonable compensation by the land owner for all loss or damages caused to the
3 homeowner. The landowner shall make a written offer of compensation to the homeowner of fair
4 compensation within thirty (30) days before removal or destruction of the residential dwelling. If
5 the homeowner believes that the offer does not constitute fair and reasonable compensation, the
6 homeowner may submit the matter to binding arbitration pursuant to chapter 3 of title 10.

7 (1) Selection of arbitrator. After submission to arbitration by the homeowner, one
8 arbitrator shall be selected from the list of qualified arbitrators of the court annexed arbitration
9 program of the superior court in the same manner as arbitrators are selected in accordance with
10 the rules of that program. Each party shall share the expenses of arbitration in accordance with
11 the rules of the court annexed arbitration program.

12 (2) Hearings. The arbitrator shall call a hearing and provide seven (7) days notice of the
13 time and place of the hearing to the parties. The hearing shall be informal, and the rules of
14 evidence prevailing in judicial proceedings shall be binding. Any and all documentary evidence
15 and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator shall
16 have the power to administer oaths and to require by subpoena the attendance and testimony of
17 witnesses, and the production of books, records, and other evidence, relative or pertinent to the
18 issues presented to the arbitrator for determination. The decision of the arbitrator shall be binding
19 upon the parties, subject to the provisions of chapter 3 of title 10.

20 (g) This chapter shall not apply to chapter 31-44 of the Rhode Island general laws.

21 SECTION 2. Chapter 34-18.2 of the General Laws entitled "Leased Land Dwellings" is
22 hereby amended by adding thereto the following sections:

23 **34-18.2-4. Rent increases for leased land.** – (a) A landowner defined in section 34-18.2-
24 2 shall give the homeowner sixty (60) days written notice prior to any lot rent increase going into
25 effect. The written notice shall set forth the current rent, the proposed rent, and the date upon
26 which the increase shall take effect.

27 (b) If a homeowner or a homeowners' association having the power and authority to
28 negotiate rental terms on behalf of member homeowners, believes that the rent increase is
29 “excessive” as defined in this section, the homeowner or authorized homeowners' association
30 may submit the matter to binding arbitration pursuant to chapter 3 of title 10.

31 (1) Selection of arbitrator. After submission to arbitration by the homeowner, one
32 arbitrator shall be selected from the list of qualified arbitrators of the court annexed arbitration
33 program of the superior court in the same manner as arbitrators are selected in accordance with
34 the rules of that program. Each party shall share the expenses of arbitration in accordance with

1 the rules of the court annexed arbitration program.

2 (2) Hearings. The arbitrator shall call a hearing and provide seven (7) days notice of the
3 time and place of the hearing to the parties. The hearing shall be informal, and the rules of
4 evidence prevailing in judicial proceedings shall be binding. Any and all documentary evidence
5 and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator shall
6 have the power to administer oaths and to require by subpoena the attendance and testimony of
7 witnesses, and the production of books, records, and other evidence, relative or pertinent to the
8 issues presented to the arbitrator for determination. The decision of the arbitrator shall be binding
9 upon the parties, subject to the provisions of chapter 3 of title 10.

10 (c) An “excessive” rent increase for purposes of this section is an increase which is
11 unreasonable based on the landowner’s total expenses, including debt service and a reasonable
12 return on the landowner’s investment or equity in the leased land, provided, that the debt service
13 is directly related to acquisition of the land. Debt service used to or otherwise employed for
14 purposes other than that which is directly related to the acquisition or capital management of the
15 leased land shall be excluded. Further, the arbitrator shall perform an analysis as to the land
16 owner’s need for rent increase and services provided to the homeowner. This analysis shall be
17 performed for a period of not less than three (3) years prior to the application for rental increase.
18 Specifically excluded in any such analysis shall be any debt service incurred using the leased land
19 as collateral or other security for investment, enterprises, businesses or similar ventures separate
20 and apart from the leased land.

21 (d) The arbitrator will promptly hear the dispute and render a decision based on the
22 “excessive” rent increase standard as defined in this section. For purposes of determining a
23 reasonable return on the landowner’s investment or equity, the arbitrator shall perform a risk
24 analysis and consider alternative and comparative investments.

25 (e) No lot rent increase shall go into effect until the earlier of:

26 (1) Completion of the binding arbitration process; or

27 (2) One hundred-twenty (120) days after the written notice given under subsection (a) of
28 this section.

29 (f) This section shall not apply to chapter 31-44 of the Rhode Island general laws.

30 **34-18.2-5. Leased land exempt.** – The provisions of subsection 34-18.2-3(f) and section
31 34-18.2-4 herein shall not apply to:

32 (1) Any land owner who holds a recreation facility license pursuant to chapter 28-21; or

33 (2) A trailer park or campground license issued by the municipality wherein said trailer
34 park or campground is located; or

1 (3) Leased land which is leased to at least ninety percent (90%) of the homeowners on a
2 seasonal basis.

3 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY -- LEASED LAND DWELLINGS

1 This act would provide for the fair and reasonable compensation of homeowners for the
2 removal or destruction of their residential property on leased land, and would also provide for a
3 process of binding arbitration for a landowner and homeowner to resolve their dispute over the
4 compensation to be paid. This act would also provide binding arbitration for a landowner and a
5 homeowner of a leased land dwelling to resolve claims of excessive rent increases.

6 This act would take effect upon passage.

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