

3158--A

2013-2014 Regular Sessions

I N S E N A T E

January 31, 2013

Introduced by Sens. KRUEGER, HASSELL-THOMPSON, HOYLMAN, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property actions and proceedings law, in relation to proceedings to recover possession

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The opening paragraph of section 711 of the real property
2 actions and proceedings law, as amended by chapter 739 of the laws of
3 1982, is amended to read as follows:
4 [A] NO TENANT IN A RESIDENTIAL DWELLING SHALL BE REMOVED FROM
5 POSSESSION EXCEPT IN A SPECIAL PROCEEDING OR THROUGH OTHER JUDICIAL
6 PROCESS. FOR THE PURPOSES OF THIS ARTICLE, A tenant shall include an
7 occupant of one or more rooms in a rooming house or a resident, not
8 including a transient occupant, of one or more rooms in a hotel who has
9 been in possession for thirty consecutive days or longer[; he shall not
10 be removed from possession except in a special proceeding]. A special
11 proceeding may be maintained under this article upon the following
12 grounds:
13 S 2. Subdivision 1 of section 721 of the real property actions and
14 proceedings law, as added by chapter 312 of the laws of 1962, is amended
15 to read as follows:
16 1. The landlord or lessor, PROVIDED, HOWEVER, THAT NO PERSON MAY
17 INSTITUTE A PROCEEDING PURSUANT TO THIS ARTICLE WITH RESPECT TO PREMISES
18 LOCATED IN A MULTIPLE DWELLING UNTIL SUCH TIME AS THE OWNER OF THE
19 MULTIPLE DWELLING HAS REGISTERED PROPERLY WITH THE AGENCY RESPONSIBLE
20 FOR CODE ENFORCEMENT, IN ACCORDANCE WITH THE PROVISIONS OF SECTION THREE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD01794-03-4

1 HUNDRED OF THE MULTIPLE RESIDENCE LAW OR SECTION THREE HUNDRED OF THE
2 MULTIPLE DWELLING LAW.

3 S 3. Subdivision 1 of section 731 of the real property actions and
4 proceedings law, as amended by chapter 563 of the laws of 1994, is
5 amended to read as follows:

6 1. The special proceeding prescribed by this article shall be
7 commenced by petition and a notice of petition PREPARED IN ACCORDANCE
8 WITH RULES APPROVED BY THE APPELLATE DIVISION WITH JURISDICTION OVER THE
9 PROCEEDINGS. SUCH RULES SHALL PROVIDE FOR THE USE OF LANGUAGE THAT IS
10 DESIGNED TO BE UNDERSTOOD BY THE RESPONDENT IN THE PROCEEDING. THE PETI-
11 TION SHALL INCLUDE SUCH OTHER NOTICE OF THE RIGHTS OF THE RESPONDENT AS
12 MAY BE DEEMED APPROPRIATE, INCLUDING A STATEMENT THAT A FORM ANSWER IS
13 AVAILABLE FROM THE CLERK OF THE COURT. A notice of petition may be
14 issued only by an attorney, judge or the clerk of the court; it may not
15 be issued by a party prosecuting the proceeding in person.

16 S 4. Section 741 of the real property actions and proceedings law, as
17 added by chapter 312 of the laws of 1962, the opening paragraph as
18 amended by chapter 583 of the laws of 1979 and subdivision 5 as amended
19 by chapter 302 of the laws of 1976, is amended to read as follows:

20 S 741. Contents of petition. The petition shall be verified by the
21 person authorized by section seven hundred twenty-one OF THIS ARTICLE to
22 maintain the proceeding; or by a legal representative, attorney or agent
23 of such person pursuant to subdivision (d) of section [thirty hundred]
24 THREE THOUSAND twenty of the civil practice law and rules. An attorney
25 of such person may verify the petition on information and belief
26 notwithstanding the fact that such person is in the county where the
27 attorney has his office. Every petition shall:

28 1. State the interest of the petitioner in the premises from which
29 removal is sought.

30 2. State the respondent's interest in the premises and his relation-
31 ship to petitioner with regard thereto.

32 3. Describe the premises from which removal is sought.

33 4. STATE WHETHER THERE ARE ANY VIOLATIONS OF ANY STATE OR LOCAL HOUS-
34 ING CODES WHICH REMAIN OUTSTANDING ON THE PREMISES OR COMMON AREAS. IN
35 CITIES WITH A POPULATION OF ONE MILLION OR MORE, OR IN ANY MUNICIPALITY
36 IN WHICH HOUSING CODE VIOLATIONS ARE CLASSIFIED BY DEGREE OF THREAT TO
37 HEALTH AND SAFETY, THE PETITION SHALL ITEMIZE ANY SUCH VIOLATIONS WHICH
38 HAVE BEEN IDENTIFIED BY THE APPLICABLE CODE ENFORCEMENT AGENCY IN ITS
39 NOTICE OF VIOLATION AS BEING "HAZARDOUS", "IMMEDIATELY HAZARDOUS" OR
40 WHICH HAVE BEEN OTHERWISE CATEGORIZED AS CONSTITUTING A SERIOUS, OR
41 IMMINENT, THREAT TO HEALTH AND SAFETY OR REQUIRING IMMEDIATE REPAIR.

42 5. STATE WHETHER THE PETITIONER HAS BEEN NOTIFIED BY THE LOCAL DEPART-
43 MENT OF SOCIAL SERVICES THAT PAYMENT FOR RENT IS BEING WITHHELD PURSUANT
44 TO SECTION ONE HUNDRED FORTY-THREE-B OF THE SOCIAL SERVICES LAW FOR ANY
45 PORTION OF THE PREMISES.

46 6. WITH RESPECT TO PREMISES SUBSIDIZED DIRECTLY OR INDIRECTLY UNDER A
47 STATE OR FEDERAL PROGRAM WHICH REQUIRES THAT CONDITIONS BE MET IN
48 CONNECTION WITH LEASE TERMINATION OR EVICTION, STATE THE NAME OF THE
49 PROGRAM, THE NAME OF THE AGENCY CHARGED WITH SUPERVISION AND WHETHER THE
50 PETITIONER HAS COMPLIED WITH ALL APPLICABLE RULES, REGULATIONS AND
51 ADMINISTRATIVE HEARING REQUIREMENTS AND HAS SERVED ALL NOTICES REQUIRED
52 IN CONNECTION WITH LEASE TERMINATION OR EVICTION FROM THAT PUBLIC OR
53 SUBSIDIZED HOUSING PROGRAM.

54 7. State the facts upon which the special proceeding is based.

55 [5.] 8. State the relief sought. The relief may include a judgment
56 for rent due, and for a period of occupancy during which no rent is due,

1 for the fair value of use and occupancy of the premises if the notice of
2 petition contains a notice that a demand for such a judgment has been
3 made.

4 ANY WILLFUL MATERIAL MISSTATEMENT OR OMISSION BY THE PETITIONER WITH
5 RESPECT TO THE REQUIREMENTS OF THIS SECTION SHALL SUBJECT THE PETITIONER
6 TO A CIVIL PENALTY, NOT TO EXCEED ONE THOUSAND DOLLARS, TO BE ASSESSED
7 IN THE EVICTION PROCEEDING OR IN A SUBSEQUENT PLENARY ACTION. THE PETI-
8 TIONER MAY REQUEST LEAVE OF THE COURT TO AMEND THE PETITION FOR THE
9 PURPOSE OF CORRECTING MATERIAL MISSTATEMENTS OR CURING OMISSIONS. IN THE
10 EVENT LEAVE TO AMEND IS GRANTED, THE RESPONDENT SHALL BE PROVIDED AN
11 ADJOURNMENT TO RESPOND OF NOT LESS THAN TEN DAYS FROM THE DATE OF
12 SERVICE OF THE AMENDED PETITION. A PETITIONER SHALL BE DEEMED TO HAVE
13 MADE A MATERIAL MISSTATEMENT OR OMISSION WITH RESPECT TO THE REQUIRE-
14 MENTS OF SUBDIVISION FOUR OF THIS SECTION UPON SUBMISSION TO THE COURT
15 OF CERTIFIED RECORDS, OR OTHERWISE PROPERLY AUTHENTICATED RECORDS, OF
16 THE LOCAL AGENCY OR AGENCIES CHARGED WITH CODE COMPLIANCE THAT
17 VIOLATIONS OF APPLICABLE CODES, OTHER THAN TENANT CAUSED OR HOUSEKEEPING
18 AS DETERMINED BY THE COURT, WERE OUTSTANDING AT THE TIME OF THE VERIFI-
19 CATION OF THE PETITION WHICH WERE NOT DESCRIBED THEREIN. A MATERIAL
20 MISSTATEMENT SHALL BE DEEMED WILLFUL UNLESS THE PETITIONER CAN ESTABLISH
21 BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH MISSTATEMENT WAS NOT WILL-
22 FUL. IN ADDITION TO THE FOREGOING, IN THE EVENT THAT AN EVICTION WARRANT
23 IS EXECUTED IN A PROCEEDING IN WHICH A WILLFUL MATERIAL MISSTATEMENT IS
24 MADE, THE RESPONDENT SHALL BE ENTITLED TO DAMAGES NOT EXCEEDING THREE
25 TIMES THE COSTS INCURRED AS A RESULT OF THE EVICTION UNLESS THE PETI-
26 TIONER CAN ESTABLISH THAT THE EVICTION WOULD HAVE BEEN JUSTIFIED REGARD-
27 LESS OF THE MISSTATEMENT.

28 S 5. Section 743 of the real property actions and proceedings law, as
29 amended by chapter 644 of the laws of 2003, is amended to read as
30 follows:

31 S 743. Answer. Except as provided in section [732] SEVEN HUNDRED THIR-
32 TY-TWO OF THIS ARTICLE, relating to a proceeding for non-payment of
33 rent, at the time when the petition is to be heard the respondent, or
34 any person in possession or claiming possession of the premises, may
35 answer, orally or in writing. If the answer is oral the substance there-
36 of shall be recorded by the clerk or, if a particular court has no
37 clerk, by the presiding judge or justice of such court, and maintained
38 in the case record. A FORM ANSWER, IN A FORM APPROVED BY THE APPELLATE
39 DIVISION WITH JURISDICTION OVER THE PROCEEDING, SHALL BE MADE AVAILABLE
40 TO THE RESPONDENT BY THE CLERK OF THE COURT. THE FORM ANSWER SHALL
41 INCLUDE POSSIBLE DEFENSES TO THE PROCEEDING, INCLUDING BUT NOT LIMITED
42 TO DEFENSES ESTABLISHED BY SECTIONS TWO HUNDRED TWENTY-THREE AND TWO
43 HUNDRED THIRTY-FIVE-B OF THE REAL PROPERTY LAW, SECTION ONE HUNDRED
44 FORTY-THREE-B OF THE SOCIAL SERVICES LAW AND SECTION THREE HUNDRED
45 FIVE-A OF THE MULTIPLE RESIDENCE LAW. If the notice of petition was
46 served at least eight days before the time at which it was noticed to be
47 heard and it so demands, the answer shall be made at least three days
48 before the time the petition is noticed to be heard and, if in writing,
49 it shall be served within such time; whereupon any reply shall be served
50 at least one day before such time. The answer may contain any legal or
51 equitable defense, or counterclaim. The court may render affirmative
52 judgment for the amount found due on the counterclaim.

53 S 6. Subdivision 1 of section 745 of the real property actions and
54 proceedings law, as amended by chapter 403 of the laws of 1983, is
55 amended to read as follows:

1 1. Where triable issues of fact are raised, they shall be tried by
2 the court unless, at the time the petition is noticed to be heard, a
3 party demands a trial by jury, in which case trial shall be by jury.
4 WHEN THE PETITION INDICATES PURSUANT TO SUBDIVISION FOUR OF SECTION
5 SEVEN HUNDRED FORTY-ONE OF THIS ARTICLE, THAT THERE ARE OUTSTANDING CODE
6 VIOLATIONS, THE COURT SHALL INQUIRE REGARDING THE DURATION AND SEVERITY
7 OF THE OUTSTANDING VIOLATIONS AND MAY STAY THE PROCEEDING PENDING
8 REMOVAL OF THE VIOLATIONS IN ACCORDANCE WITH SECTION SEVEN HUNDRED
9 FIFTY-FIVE OF THIS ARTICLE, OR MAKE OTHER DISPOSITION OF THE PROCEEDING
10 INCLUDING GRANTING A TOTAL OR PARTIAL ABATEMENT OF RENT, OR DISMISSAL OF
11 THE PROCEEDING, AS APPROPRIATE. At the time when issue is joined the
12 court, in its discretion at the request of either party and upon proof
13 to its satisfaction by affidavit or orally that an adjournment is neces-
14 sary to enable the applicant to procure his necessary witnesses, or by
15 consent of all the parties who appear, may adjourn the trial of the
16 issue, but not more than ten days, except by consent of all parties.

17 S 7. Section 749 of the real property actions and proceedings law is
18 amended by adding two new subdivisions 4 and 5 to read as follows:

19 4. THE NOTICE DESCRIBED IN SUBDIVISION TWO OF THIS SECTION SHALL
20 INCLUDE A STATEMENT ADVISING THE RESPONDENT THAT ASSISTANCE TO PREVENT
21 THE EVICTION OR OTHERWISE TO PREVENT THE RESPONDENT FROM BECOMING HOME-
22 LESS MAY BE AVAILABLE FROM THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND
23 SHALL INCLUDE THE PHONE NUMBER PROVIDED TO THE ENFORCEMENT OFFICER BY
24 ANY PRIVATE OR PUBLIC AGENCY PROVIDING SUCH ASSISTANCE AT THE REQUEST OF
25 SUCH AGENCY. REFERRAL TO LEGAL AID, LEGAL SERVICES OR OTHER LEGAL
26 ASSISTANCE OFFICES SHALL ALSO BE INCLUDED ON SUCH NOTICES AT THE REQUEST
27 OF SUCH OFFICES. IN A PROCEEDING BASED UPON NON-PAYMENT, SUCH NOTICE
28 SHALL ALSO ADVISE THE RESPONDENT OF THE RENT DETERMINED DUE TOGETHER
29 WITH TAXES, ASSESSMENTS, INTEREST, PENALTIES AND COSTS IN ACCORDANCE
30 WITH THE PROVISION OF SUBDIVISION ONE OF SECTION SEVEN HUNDRED FIFTY-ONE
31 OF THIS ARTICLE, AND SHALL ADVISE THE RESPONDENT OF THE AMOUNT REQUIRED
32 AND PROCEDURE FOR PAYMENT.

33 5. UPON WRITTEN OR ORAL NOTIFICATION TO THE OFFICER BY AN AUTHORIZED
34 REPRESENTATIVE OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES THAT AN APPLI-
35 CATION FOR ASSISTANCE TO PREVENT EVICTION IS PENDING ON BEHALF OF THE
36 RESPONDENT HOUSEHOLD, THE OFFICER SHALL REFRAIN FROM EXECUTION OF THE
37 WARRANT UNTIL SUCH TIME AS THAT OFFICER IS ADVISED BY THE SOCIAL
38 SERVICES OFFICIAL OF THE DETERMINATION OF SUCH APPLICATION, PROVIDED,
39 HOWEVER, THAT THE SOCIAL SERVICES DISTRICT SHALL GUARANTEE PAYMENT TO
40 THE PETITIONER FOR ANY ADDITIONAL RENT ACCRUING DURING THIS PERIOD TO BE
41 CALCULATED ON A PRO-RATA BASIS FOR THE NUMBER OF DAYS DELAY OCCASIONED
42 BY THE OPERATION OF THIS PROVISION.

43 S 8. The opening paragraph and subdivision 1 of section 751 of the
44 real property actions and proceedings law, as added by chapter 312 of
45 the laws of 1962, are amended to read as follows:

46 The respondent may, at any time before a warrant is [issued]
47 EXECUTED, stay the [issuing] EXECUTION thereof and also stay an
48 execution to collect the costs, as follows:

49 1. Where the lessee or tenant holds over after a default in the
50 payment of rent, or of taxes or assessments, he may effect a stay by
51 depositing the amount of the rent due or of such taxes or assessments,
52 and interest and penalty, if any thereon due, and the costs of the
53 special proceeding, with the clerk of the court, or where the office of
54 clerk is not provided for, with the court, who shall thereupon, upon
55 demand, pay the amount deposited to the petitioner or his duly author-
56 ized agent; or by delivering to the court or clerk [his] A WRITTEN

1 ASSURANCE BY AN AUTHORIZED REPRESENTATIVE OF THE LOCAL DEPARTMENT OF
2 SOCIAL SERVICES OR AN undertaking to the petitioner in such sum as the
3 court approves to the effect that [he will pay] the rent[, or] DUE WILL
4 BE PAID TOGETHER WITH such taxes or assessments, and interest and penal-
5 ty and costs within ten days, at the expiration of which time a warrant
6 may issue, unless [he] THE RESPONDENT produces to the court satisfactory
7 evidence of the payment.

8 S 9. This act shall take effect on the first of February next succeed-
9 ing the date on which it shall have become a law and shall apply to
10 actions and proceedings commenced on or after such effective date,
11 provided, however, that effective immediately, all actions and proce-
12 dures with respect to the proposed adoption, amendment, suspension or
13 repeal of any rule or regulation necessary to the timely implementation
14 of this act on its effective date are directed and authorized to be made
15 and completed on or before such effective date.