

7142

2009-2010 Regular Sessions

I N   A S S E M B L Y

March 25, 2009

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Introduced by M. of A. TOWNSEND, FINCH, KOLB, WALKER -- Multi-Sponsored  
by -- M. of A. BALL, BARCLAY, BURLING, CALHOUN, JORDAN, MOLINARO,  
OAKS, QUINN, RAI, THIELE, TOBACCO -- read once and referred to the  
Committee on Judiciary

AN ACT to amend the real property actions and proceedings law and the  
real property law, in relation to illegal occupancy of certain prem-  
ises; and to repeal subdivision 3 of section 715 of the real property  
actions and proceedings law relating thereto

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

1     Section 1. Subdivision 5 of section 711 of the real property actions  
2 and proceedings law, as added by chapter 312 of the laws of 1962, is  
3 amended to read as follows:  
4     5. The premises, or any part thereof, are used or occupied [as a  
5 bawdy-house, or house or place of assignation for lewd persons, or] for  
6 purposes of prostitution, ILLEGAL GAMBLING, ILLEGAL POSSESSION, MANUFAC-  
7 TURE OR SALE OF A CONTROLLED SUBSTANCE OR MARIJUANA or for any OTHER  
8 illegal trade, ACTIVITY, BUSINESS or manufacture[, or other illegal  
9 business]. FOR PURPOSES OF THIS SECTION, TWO OR MORE CONVICTIONS OF A  
10 TENANT OR OCCUPANT WITHIN A PERIOD OF TWO YEARS, FOR ANY OF THE OFFENSES  
11 DESCRIBED IN ARTICLE TWO HUNDRED TWENTY, TWO HUNDRED TWENTY-ONE, TWO  
12 HUNDRED TWENTY-FIVE OR TWO HUNDRED THIRTY OF THE PENAL LAW ARISING OUT  
13 OF CONDUCT OCCURRING WITHIN ONE THOUSAND FEET OF THE SUBJECT PREMISES OR  
14 ANY PART THEREOF, OR TWO OR MORE CONVICTIONS OF ANY PERSON, WITHIN A  
15 PERIOD OF ONE YEAR, FOR ANY OF THE OFFENSES DESCRIBED IN ARTICLE TWO  
16 HUNDRED TWENTY, TWO HUNDRED TWENTY-ONE, TWO HUNDRED TWENTY-FIVE OR TWO  
17 HUNDRED THIRTY OF THE PENAL LAW ARISING OUT OF CONDUCT OCCURRING ON THE  
18 SUBJECT PREMISES OR ANY PART THEREOF SHALL BE PRESUMPTIVE EVIDENCE OF  
19 UNLAWFUL USE OR OCCUPATION OF SUCH PREMISES OR PART THEREOF AND OF THE  
20 TENANT'S OR OCCUPANT'S KNOWLEDGE OF SUCH UNLAWFUL USE OR OCCUPATION.

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

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1 S 2. Subdivision 1 of section 715 of the real property actions and  
2 proceedings law, as amended by chapter 555 of the laws of 1978, is  
3 amended to read as follows:

4 1. [An] ANY owner or tenant[, including a tenant of one or more rooms  
5 of an apartment house, tenement house or multiple dwelling,] of any  
6 premises within [two hundred] ONE THOUSAND feet from other [demised]  
7 RENTED, OWNED OR SQUATTED UPON real property used or occupied in whole  
8 or in part [as a bawdy-house, or house or place of assignation for lewd  
9 persons, or] for purposes of prostitution, or for any OTHER illegal  
10 trade, ACTIVITY, business or manufacture, [or any domestic corporation  
11 organized for the suppression of vice, subject to or which submits to  
12 visitation by the state department of social services and possesses a  
13 certificate from such department of such fact and of conformity with  
14 regulations of the department] OR ANY TENANT ORGANIZATION, BLOCK ASSO-  
15 CIATION, OR SIMILAR INCORPORATED OR UNINCORPORATED COMMUNITY ASSOCIATION  
16 WHICH IS ORGANIZED FOR THE PRIMARY PURPOSE OF PROMOTING THE PUBLIC  
17 WELFARE WITHIN AN AREA ENCOMPASSING ONE THOUSAND FEET OF THE SUBJECT  
18 REAL PROPERTY, or any duly authorized enforcement agency of the state or  
19 of a subdivision thereof, under a duty to enforce the provisions of the  
20 penal law or of any state or local law, ordinance, code, rule or regu-  
21 lation relating to buildings, may serve [personally] upon the owner or  
22 landlord of the [premises] SUBJECT REAL PROPERTY so used or occupied, or  
23 upon his OR HER agent, a written notice requiring the owner or landlord  
24 to make an application for the removal of the person so using or occupy-  
25 ing the same. WITHIN TEN DAYS AFTER SERVICE OF SUCH NOTICE, SUCH OWNER  
26 OR LANDLORD OR HIS AGENT MAY DEMAND, IN WRITING, THAT THE OWNER, TENANT,  
27 ORGANIZATION, ASSOCIATION, OR ENFORCEMENT AGENCY SERVING THE NOTICE  
28 PROVIDE A WRITTEN STATEMENT PARTICULARIZING THE BASIS FOR SUCH NOTICE.  
29 If the owner or landlord or his OR HER agent does not make such applica-  
30 tion FOR REMOVAL within [five] TEN days [thereafter] AFTER SERVICE OF  
31 THE NOTICE, OR, IF A TIMELY DEMAND FOR A WRITTEN STATEMENT PARTICULARIZ-  
32 ING THE BASIS FOR THE NOTICE IS MADE, WITHIN TEN DAYS AFTER SERVICE OF  
33 SUCH STATEMENT UPON THE OWNER OR LANDLORD OR HIS OR HER AGENT; or,  
34 having made [it] SUCH APPLICATION FOR REMOVAL, does not in good faith  
35 diligently prosecute it, the [person, corporation] OWNER, TENANT, ORGAN-  
36 IZATION, ASSOCIATION or enforcement agency giving the notice may bring  
37 a proceeding under this article for such removal as though the petition-  
38 er were the owner or landlord of the [premises] SUBJECT REAL PROPERTY,  
39 and shall have precedence over any similar proceeding thereafter brought  
40 by such owner or landlord or to one theretofore brought by him OR HER  
41 and not prosecuted diligently and in good faith. Proof of the ill  
42 repute of the [demised premises or of the inmates thereof] SUBJECT REAL  
43 PROPERTY, ITS OCCUPANTS or of those resorting thereto shall constitute  
44 presumptive evidence of the unlawful use of [the demised premises] SUCH  
45 REAL PROPERTY required to be stated in the petition for removal. [Both  
46 the person in possession of the property and the] THE owner or landlord  
47 OF THE REAL PROPERTY AND THE PERSON IN POSSESSION OF THE REAL PROPERTY,  
48 IF KNOWN, shall be made respondents in the proceeding. ANY SERVICE OF  
49 NOTICE OR DEMAND FOR A WRITTEN STATEMENT PARTICULARIZING THE BASIS FOR  
50 SUCH NOTICE SHALL BE MADE IN ACCORDANCE WITH SECTION SEVEN HUNDRED THIR-  
51 TY-ONE OF THIS ARTICLE.

52 S 3. Subdivision 2 of section 715 of the real property actions and  
53 proceedings law, as added by chapter 494 of the laws of 1976, is amended  
54 to read as follows:

55 2. For purposes of this section, two or more convictions of [any  
56 person or persons had, within a period of one year, for any of the

1 offenses described in section 230.00, 230.05, 230.20, 230.25, 230.30 or  
2 230.40 of the penal law arising out of conduct engaged in at the same  
3 real property consisting of a dwelling as that term is defined in subdi-  
4 vision four of section four of the multiple dwelling law shall be  
5 presumptive evidence of conduct constituting use of the premises for  
6 purposes of prostitution] A TENANT OR OCCUPANT HAD, WITHIN A PERIOD OF  
7 TWO YEARS, FOR ANY OF THE OFFENSES DESCRIBED IN ARTICLES TWO HUNDRED  
8 TWENTY, TWO HUNDRED TWENTY-ONE, TWO HUNDRED TWENTY-FIVE AND TWO HUNDRED  
9 THIRTY OF THE PENAL LAW ARISING OUT OF CONDUCT OCCURRING WITHIN ONE  
10 THOUSAND FEET OF THE SUBJECT REAL PROPERTY, OR TWO OR MORE CONVICTIONS  
11 OF ANY PERSON HAD, WITHIN A PERIOD OF ONE YEAR, FOR ANY OF THE OFFENSES  
12 DESCRIBED IN THE FOREGOING ARTICLES OF THE PENAL LAW ARISING OUT OF  
13 CONDUCT OCCURRING ON THE SUBJECT REAL PROPERTY SHALL BE PRESUMPTIVE  
14 EVIDENCE OF UNLAWFUL USE OR OCCUPATION OF SUCH REAL PROPERTY AND OF THE  
15 TENANT'S, OCCUPANT'S AND OWNER'S OR LANDLORD'S KNOWLEDGE OF SUCH UNLAW-  
16 FUL USE OR OCCUPATION.

17 S 4. Subdivision 3 of section 715 of the real property actions and  
18 proceedings law is REPEALED, and subdivisions 4 and 5, as renumbered by  
19 chapter 206 of the laws of 1980, are renumbered subdivisions 3 and 4.

20 S 5. Subdivision 3 of section 231 of the real property law, as amended  
21 by chapter 203 of the laws of 1980, is amended to read as follows:

22 3. For the purposes of this section, two or more convictions of any  
23 person or persons had, within a period of one year, for any of the  
24 offenses described in section 230.00, 230.05, 230.20, 230.25, 230.30, or  
25 230.40 of the penal law arising out of conduct [engaged] in, at OR ON  
26 the [same] SUBJECT premises consisting of a dwelling as that term is  
27 defined in subdivision four of section four of the multiple dwelling law  
28 shall be presumptive evidence of unlawful use OR OCCUPATION of such  
29 premises and of the owners knowledge of [the same] SUCH UNLAWFUL USE OR  
30 OCCUPATION.

31 S 6. Subdivision 5 of section 231 of the real property law, as added  
32 by chapter 203 of the laws of 1980, is amended to read as follows:

33 5. [The attorney general] ANY DULY AUTHORIZED ENFORCEMENT AGENCY OF  
34 THE STATE OR OF ANY SUBDIVISION THEREOF, UNDER A DUTY TO ENFORCE THE  
35 PROVISIONS OF THE PENAL LAW OR OF ANY STATE OR LOCAL LAW, ORDINANCE,  
36 CODE, RULE OR REGULATIONS RELATING TO BUILDINGS, may commence an action  
37 or proceeding in the supreme court to PERMANENTLY enjoin the continued  
38 UNLAWFUL USE OR OCCUPATION OF THE SUBJECT PREMISES OR ANY OTHER unlawful  
39 trade, ACTIVITY, manufacture or business in, AT OR ON such premises AND  
40 TO SECURE A PERMANENT CLOSING ORDER OF THE SUBJECT PREMISES.

41 S 7. Subdivisions 5 and 6 of section 231 of the real property law, as  
42 added by chapter 206 of the laws of 1980, are amended to read as  
43 follows:

44 [5.] 6. For the purposes of this section, two or more convictions of  
45 any person or persons had, within a period of one year, for any of the  
46 offenses described in section 225.00, 225.05, 225.10, 225.15, 225.20,  
47 225.30, 225.32, 225.35 or 225.40 of the penal law, arising out of  
48 conduct [engaged] in, at OR ON the [same] SUBJECT premises consisting of  
49 a dwelling as that term is defined in subdivision four of section four  
50 of the multiple dwelling law shall be presumptive evidence of unlawful  
51 use OR OCCUPATION of such premises and of the owner's AND TENANT'S know-  
52 ledge of [the same] SUCH UNLAWFUL USE OR OCCUPATION.

53 [6.] 7. Any owner or tenant, including a tenant of one or more rooms  
54 of an apartment house, tenement house or multiple dwelling of any prem-  
55 ises within [two hundred] ONE THOUSAND feet of the [demised real proper-  
56 ty] SUBJECT PREMISES, may commence an action or proceeding in supreme

1 court to enjoin the continued unlawful USE OR OCCUPATION OF THE SUBJECT  
2 PREMISES OR ANY OTHER UNLAWFUL trade, ACTIVITY, manufacture or [other]  
3 business in, AT OR ON such premises.  
4 S 8. This act shall take effect on the ninetieth day after it shall  
5 have become a law.