S T A T E O F N E W Y O R K

7716

2009-2010 Regular Sessions

I N A S S E M B L Y

April 22, 2009

Introduced by M. of A. P. RIVERA -- 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 premises

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

Section 1. Subdivision 5 of section 711 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, is amended to read as follows:

5. The premises, or any part thereof, are used or occupied [as a bawdy-house, or house or place of assignation for lewd persons, or] for purposes of prostitution, ILLEGAL GAMBLING, ILLEGAL POSSESSION, MANUFACTURE OR SALE OF A CONTROLLED SUBSTANCE OR MARIJUANA or for any OTHER illegal trade, ACTIVITY, BUSINESS or manufacture[, or other illegal business]. FOR PURPOSES OF THIS SECTION, TWO OR MORE CONVICTIONS OF A TENANT OR OCCUPANT WITHIN A PERIOD OF TWO YEARS, FOR ANY OF THE OFFENSES DESCRIBED IN ARTICLE TWO HUNDRED TWENTY, TWO HUNDRED TWENTY-ONE, TWO HUNDRED TWENTY-FIVE OR TWO HUNDRED THIRTY OF THE PENAL LAW ARISING OUT OF CONDUCT OCCURRING WITHIN ONE THOUSAND FEET OF THE SUBJECT PREMISES OR ANY PART THEREOF, OR TWO OR MORE CONVICTIONS OF ANY PERSON, WITHIN A PERIOD OF ONE YEAR, FOR ANY OF THE OFFENSES DESCRIBED IN ARTICLE TWO HUNDRED TWENTY, TWO HUNDRED TWENTY-ONE, TWO HUNDRED TWENTY-FIVE OR TWO HUNDRED THIRTY OF THE PENAL LAW ARISING OUT OF CONDUCT OCCURRING ON THE SUBJECT PREMISES OR ANY PART THEREOF SHALL BE PRESUMPTIVE EVIDENCE OF UNLAWFUL USE OR OCCUPATION OF SUCH PREMISES OR PART THEREOF AND OF THE TENANT'S OR OCCUPANT'S KNOWLEDGE OF SUCH UNLAWFUL USE OR OCCUPATION.

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

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

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1. [An] ANY owner or tenant[, including a tenant of one or more rooms of an apartment house, tenement house or multiple dwelling,] of any premises within [two hundred] ONE THOUSAND feet from other [demised] RENTED, OWNED OR SQUATTED UPON real property used or occupied in whole or in part [as a bawdy-house, or house or place of assignation for lewd persons, or] for purposes of prostitution, or for any OTHER illegal trade, ACTIVITY, business or manufacture, [or any domestic corporation organized for the suppression of vice, subject to or which submits to visitation by the state department of social services and possesses a certificate from such department of such fact and of conformity with regulations of the department] OR ANY TENANT ORGANIZATION, BLOCK ASSOCIATION, OR SIMILAR INCORPORATED OR UNINCORPORATED COMMUNITY ASSOCIATION WHICH IS ORGANIZED FOR THE PRIMARY PURPOSE OF PROMOTING THE PUBLIC WELFARE WITHIN AN AREA ENCOMPASSING ONE THOUSAND FEET OF THE SUBJECT REAL PROPERTY, or any duly authorized enforcement agency of the state or of a subdivision thereof, under a duty to enforce the provisions of the penal law or of any state or local law, ordinance, code, rule or regulation relating to buildings, may serve [personally] upon the owner or landlord of the [premises] SUBJECT REAL PROPERTY so used or occupied, or upon his agent, a written notice requiring the owner or landlord to make an application for the removal of the person so using or occupying the same. WITHIN TEN DAYS AFTER SERVICE OF SUCH NOTICE, SUCH OWNER OR LANDLORD OR HIS AGENT MAY DEMAND, IN WRITING, THAT THE OWNER, TENANT, ORGANIZATION, ASSOCIATION, OR ENFORCEMENT AGENCY SERVING THE NOTICE PROVIDE A WRITTEN STATEMENT PARTICULARIZING THE BASIS FOR SUCH NOTICE. If the owner or landlord or his agent does not make such application FOR REMOVAL within [five] TEN days [thereafter] AFTER SERVICE OF THE NOTICE, OR, IF A TIMELY DEMAND FOR A WRITTEN STATEMENT PARTICULARIZING THE BASIS FOR THE NOTICE IS MADE, WITHIN TEN DAYS AFTER SERVICE OF SUCH STATEMENT UPON THE OWNER OR LANDLORD OR HIS AGENT; or, having made [it] SUCH APPLICATION FOR REMOVAL, does not in good faith diligently prosecute it, the [person, corporation] OWNER, TENANT, ORGANIZATION, ASSOCIATION or enforcement agency giving the notice may bring a proceeding under this article for such removal as though the petitioner were the owner or landlord of the [premises] SUBJECT REAL PROPERTY, and shall have precedence over any similar proceeding thereafter brought by such owner or landlord or to one theretofore brought by him and not prosecuted diligently and in good faith. Proof of the ill repute of the [demised premises or of the inmates thereof] SUBJECT REAL PROPERTY, ITS OCCUPANTS or of those resorting thereto shall constitute presumptive evidence of the unlawful use of [the demised premises] SUCH REAL PROPERTY required to be stated in the petition for removal. [Both the person in possession of the property and the] THE owner or landlord OF THE REAL PROPERTY AND THE PERSON IN POSSESSION OF THE REAL PROPERTY, IF KNOWN, shall be made respondents in the proceeding. ANY SERVICE OF NOTICE OR DEMAND FOR A WRITTEN STATEMENT PARTICULARIZING THE BASIS FOR SUCH NOTICE SHALL BE MADE IN ACCORDANCE WITH SECTION SEVEN HUNDRED THIRTY-ONE OF THIS ARTICLE.

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

2. For purposes of this section, two or more convictions of [any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.05, 230.20, 230.25, 230.30 or 230.40 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdi-

vision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution] A TENANT OR OCCUPANT HAD, WITHIN A PERIOD OF TWO YEARS, FOR ANY OF THE OFFENSES DESCRIBED IN ARTICLES TWO HUNDRED TWENTY, TWO HUNDRED TWENTY-ONE, TWO HUNDRED TWENTY-FIVE AND TWO HUNDRED THIRTY OF THE PENAL LAW ARISING OUT OF CONDUCT OCCURRING WITHIN ONE THOUSAND FEET OF THE SUBJECT REAL PROPERTY, OR TWO OR MORE CONVICTIONS OF ANY PERSON HAD, WITHIN A PERIOD OF ONE YEAR, FOR ANY OF THE OFFENSES DESCRIBED IN THE FOREGOING ARTICLES OF THE PENAL LAW ARISING OUT OF CONDUCT OCCURRING ON THE SUBJECT REAL PROPERTY SHALL BE PRESUMPTIVE EVIDENCE OF UNLAWFUL USE OR OCCUPATION OF SUCH REAL PROPERTY AND OF THE TENANT'S, OCCUPANT'S AND OWNER'S OR LANDLORD'S KNOWLEDGE OF SUCH UNLAWFUL USE OR OCCUPATION.

S 4. Subdivisions 3, 4 and 5 of section 715 of the real property actions and proceedings law, subdivision 3 as added and subdivisions 4 and 5 as renumbered by chapter 206 of the laws of 1980, subdivision 4 as added by chapter 494 of the laws of 1976 and subdivision 5 as added by chapter 627 of the laws of 1978, are amended to read as follows:

3. [For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 225.00, 225.05, 225.10, 225.15, 225.20, 225.30, 225.32, 225.35 or 225.40 of the penal law, arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owner's knowledge of the same.

4.] A court granting a petition pursuant to this section may, in addition to any other order provided by law, make an order imposing and requiring the payment by the respondent of a civil penalty not exceeding [five] TEN thousand dollars to the municipality in which the subject premises is located and, the payment of reasonable attorneys fees and the costs of the proceeding to the petitioner. In any such case multiple respondents shall be jointly and severally liable for any payment so ordered and the amounts of such payments shall constitute a lien upon the subject realty.

[5.] 4. For the purposes of a proceeding under this section, an enforcement agency of the state or of a subdivision thereof, which may commence a proceeding under this section, may subpoena witnesses, compel their attendance, examine them under oath before himself or a court and require that any books, records, documents or papers relevant or material to the inquiry be turned over to him for inspection, examination or audit, pursuant to the civil practice law and rules. If a person subpoenaed to attend upon such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper, when ordered to do so by the officer conducting such inquiry, he shall be guilty of a class B misdemeanor.

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

3. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.05, 230.20, 230.25, 230.30, or 230.40 of the penal law arising out of conduct [engaged] in, at OR ON the [same] SUBJECT premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law

shall be presumptive evidence of unlawful use OR OCCUPATION of such premises and of the owners knowledge of [the same] SUCH UNLAWFUL USE OR OCCUPATION.

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

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

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

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

[6.] 7. Any owner or tenant, including a tenant of one or more rooms of an apartment house, tenement house or multiple dwelling of any premises within [two hundred] ONE THOUSAND feet of the [demised real property] SUBJECT PREMISES, may commence an action or proceeding in supreme court to enjoin the continued unlawful USE OR OCCUPATION OF THE SUBJECT PREMISES OR ANY OTHER UNLAWFUL trade, ACTIVITY, manufacture or [other] business in, AT OR ON such premises.

S 8. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.