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

S. 5251 A. 7870

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

April 27, 2009

IN SENATE -- Introduced by Sens. LAVALLE, FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the town law, in relation to authorizing the town of Brookhaven to establish a housing and community court

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

Section 1. The town law is amended by adding a new article 10-A to read as follows:

ARTICLE 10-A
BROOKHAVEN HOUSING AND
COMMUNITY COURT

SECTION 160. ESTABLISHMENT.
161. ADMINISTRATIVE LAW JUDGES.
162. JURISDICTION TO IMPOSE CIVIL PENALTIES.
163. SUMMONS.
164. COMMENCEMENT OF PROCEEDINGS; DEFAULT JUDGMENTS.
165. JUDICIAL ENFORCEMENT.
166. RESTRICTION ON COLLATERAL USE.
167. APPEALS.

S 160. ESTABLISHMENT. THE TOWN BOARD OF THE TOWN OF BROOKHAVEN MAY BY ORDINANCE OR LOCAL LAW ESTABLISH A HOUSING AND COMMUNITY COURT TO ASSIST THE DISTRICT COURT IN THE DISPOSITION OF ALL VIOLATIONS OF TOWN OF BROOKHAVEN HOUSING LAWS, CODES AND ORDINANCES.

S 161. ADMINISTRATIVE LAW JUDGES. 1. THE TOWN BOARD OF THE TOWN OF BROOKHAVEN SHALL APPOINT ADMINISTRATIVE LAW JUDGES WHO SHALL BE ATTORNEYS ADMITTED TO PRACTICE IN THIS STATE FOR NOT LESS THAN THREE YEARS

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

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AND SHALL HAVE SUCH OTHER QUALIFICATIONS AS MAY BE PRESCRIBED BY SUCH TOWN BOARD.

2. NO ADMINISTRATIVE LAW JUDGE SHALL PARTICIPATE IN ANY PROCEEDING TO WHICH HE OR SHE IS A PARTY, IN WHICH HE OR SHE HAS BEEN AN ATTORNEY, COUNSEL OR REPRESENTATIVE, IF HE OR SHE IS RELATED BY CONSANGUINITY OR AFFINITY TO ANY PARTY TO THE PROCEEDING WITHIN THE SIXTH DEGREE OR WHERE SUCH PARTICIPATION IS OTHERWISE PROHIBITED BY LAW. ADMINISTRATIVE LAW JUDGES SHALL ENSURE THAT ALL HEARINGS ARE CONDUCTED IN A FAIR AND IMPARTIAL MANNER.

3. EXCEPT AS OTHERWISE PROVIDED BY LAW, IN THE CONDUCT OF AN ADJUDICATION, AN ADMINISTRATIVE LAW JUDGE MAY:

A. HOLD CONFERENCES FOR THE SETTLEMENT OR SIMPLIFICATION OF ISSUES;

B. ADMINISTER OATHS AND AFFIRMATIONS, EXAMINE WITNESSES, RULE UPON OFFERS OF PROOF, RECEIVE EVIDENCE, AND OVERSEE, REGULATE, ORDER AND ENFORCE SUCH DISCOVERY AS IS APPROPRIATE UNDER THE CIRCUMSTANCES;

C. UPON MOTION OF ANY PARTY, OR UPON THE ADMINISTRATIVE LAW JUDGE'S OWN MOTION UPON CONSENT OF THE DEFENDANT, SUBPOENA THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS, RECORDS OR OTHER INFORMATION;

D. REGULATE THE COURSE OF THE HEARING;

E. RULE ON PROCEDURAL REQUESTS OR SIMILAR MATTERS;

F. MAKE FINAL FINDINGS OF FACT AND FINAL DECISIONS, DETERMINATIONS OR ORDERS;

G. WHERE THE BROOKHAVEN HOUSING AND COMMUNITY COURT IS AUTHORIZED TO RENDER A FINAL DECISION, DETERMINATION OR ORDER IMPOSING CIVIL PENALTIES, IMPOSE SUCH CIVIL PENALTIES; AND

H. TAKE ANY OTHER ACTION AUTHORIZED BY LAW.

4. UNLESS INCONSISTENT WITH THIS ARTICLE, ALL HEARINGS SHALL SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF ARTICLE THREE OF THE STATE ADMINISTRATIVE PROCEDURE ACT.

5. UNLESS OTHERWISE AUTHORIZED BY LAW AND EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION SIX OF THIS SECTION, NO ADMINISTRATIVE LAW JUDGE SHALL COMMUNICATE IN CONNECTION WITH ANY ISSUE THAT RELATES IN ANY WAY TO THE MERITS OF A PROCEEDING PENDING BEFORE SUCH JUDGE WITH ANY PERSON EXCEPT UPON NOTICE AND OPPORTUNITY FOR ALL PARTIES TO PARTICIPATE.

6. AN ADMINISTRATIVE LAW JUDGE MAY CONSULT, ON QUESTIONS OF LAW AND MINISTERIAL MATTERS, WITH OTHER ADMINISTRATIVE LAW JUDGES AND THE SUPPORT STAFF OF SUCH COURT, PROVIDED THAT SUCH ADMINISTRATIVE LAW JUDGES OR SUPPORT STAFF HAVE NOT ENGAGED IN FUNCTIONS IN CONNECTION WITH THE ADJUDICATORY PROCEEDING UNDER CONSIDERATION OR A FACTUALLY RELATED PROCEEDING.

S 162. JURISDICTION TO IMPOSE CIVIL PENALTIES. 1. THE BROOKHAVEN HOUSING AND COMMUNITY COURT MAY IMPOSE ANY CIVIL PENALTY FOR THE VIOLATION OF A TOWN LAW, CODE OR ORDINANCE THAT THE DISTRICT COURT IS AUTHORIZED TO IMPOSE. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ANY CIVIL PENALTY IMPOSED BY SUCH COURT UPON A PERSON WHO HAS AN INTEREST IN REAL PROPERTY IN THE TOWN OF BROOKHAVEN, SHALL BE A LIEN UPON SUCH REAL PROPERTY IF SUCH PENALTY IS NINETY DAYS OR MORE IN ARREARS. ALL SUCH ARREARS SHALL BE DEEMED TO BE A REAL PROPERTY TAX UPON THE REAL PROPERTY AND MAY BE COLLECTED AS SUCH PURSUANT TO THE REAL PROPERTY TAX LAW.

2. NO PERSON APPEARING BEFORE THE BROOKHAVEN HOUSING AND COMMUNITY COURT SHALL BE SENTENCED TO A TERM OF IMPRISONMENT UPON BEING FOUND GUILTY OF ANY CHARGE, NOR SHALL AN ADMINISTRATIVE LAW JUDGE ORDER THE ARREST OR DETENTION OF ANY PERSON, NOR SHALL AN ADMINISTRATIVE LAW JUDGE DEPRIVE ANY PERSON OF THE RIGHT TO COUNSEL.

S 163. SUMMONS. THE BROOKHAVEN HOUSING AND COMMUNITY COURT SHALL HAVE THE SAME POWERS AND DUTIES RELATING TO A SUMMONS AS ARE PROVIDED TO DISTRICT COURTS PURSUANT TO ARTICLE FOUR OF THE UNIFORM DISTRICT COURT ACT, ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES, ARTICLE THREE OF THE BUSINESS CORPORATION LAW AND ARTICLE THREE OF THE LIMITED LIABILITY COMPANY LAW. IN ADDITION,

1. SERVICE OF A SUMMONS MAY BE MADE BY DELIVERING SUCH SUMMONS TO A PERSON EMPLOYED BY THE RESPONDENT:

A. TO WORK ON THE PREMISES THE OCCUPANCY OF WHICH CAUSED THE ALLEGED VIOLATION OF A TOWN OF BROOKHAVEN LAW, CODE OR ORDINANCE,

B. AT THE PREMISES AT WHICH THE RESPONDENT ACTUALLY CONDUCTS THE BUSINESS THE OPERATION OF WHICH GAVE RISE TO SUCH ALLEGED VIOLATION, OR

C. AT THE SITE OF THE WORK AT WHICH SUCH AN ALLEGED VIOLATION OCCURRED; AND

2. SERVICE OF A SUMMONS MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE RESPONDENT. IF AFTER TWENTY-ONE DAYS SUCH MAILING HAS NOT BEEN RETURNED AS UNDELIVERABLE, THE RESPONDENT SHALL BE PRESUMED TO HAVE BEEN SERVED SUCH SUMMONS.

S 164. COMMENCEMENT OF PROCEEDINGS; DEFAULT JUDGMENTS. 1. THE BROOKHAVEN HOUSING AND COMMUNITY COURT SHALL CONDUCT THE PROCEEDINGS AUTHORIZED BY LOCAL LAW IN ACCORDANCE WITH THIS SECTION.

2. SUCH PROCEEDINGS SHALL BE COMMENCED BY THE SERVICE OF A SUMMONS. THE SUMMONS OR COPY THEREOF WHEN FILLED IN AND SERVED SHALL CONSTITUTE NOTICE OF THE VIOLATION CHARGED, AND, IF SWORN TO OR AFFIRMED, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN. THE SUMMONS WHEN SWORN TO OR AFFIRMED SHALL CONSTITUTE THE TESTIMONY OF THE SIGNATOR AND, WHEN FILED WITH THE BROOKHAVEN HOUSING AND COMMUNITY COURT SHALL BE ADMITTED INTO EVIDENCE AS SUCH TESTIMONY AT ANY HEARING ON THE VIOLATION CHARGED. EVERY SUCH SUMMONS SHALL STATE WHETHER THE FACTS SET FORTH THEREIN ARE KNOWN PERSONALLY TO THE SIGNATOR AND IF THE FACTS ARE NOT SO KNOWN THE SUMMONS SHALL SPECIFICALLY IDENTIFY THE SOURCE OF KNOWLEDGE OF SUCH FACTS. IF THE RESPONDENT DISPUTES THE FACTS STATED IN THE SUMMONS, THE ADMINISTRATIVE LAW JUDGE, WHERE APPROPRIATE MAY REJECT THE SIGNATOR'S FACTS, ACCEPT FACTS THE RESPONDENT OFFERS, OR DIRECT THE SIGNATOR'S APPEARANCE.

3. A. THE SUMMONS SHALL CONTAIN INFORMATION ADVISING THE PERSON CHARGED OF THE MANNER AND THE TIME IN WHICH SUCH PERSON MAY EITHER ADMIT OR DENY THE VIOLATION CHARGED IN THE SUMMONS. SUCH SUMMONS SHALL ALSO CONTAIN A WARNING TO ADVISE THE PERSON CHARGED THAT FAILURE TO PLEAD IN THE MANNER AND TIME STATED IN THE SUMMONS MAY RESULT IN A DEFAULT DECISION AND ORDER BEING ENTERED AGAINST SUCH PERSON. THE ORIGINAL OR A COPY OF THE SUMMONS SHALL BE FILED AND RETAINED BY THE BROOKHAVEN HOUSING AND COMMUNITY COURT AND SHALL BE DEEMED A RECORD KEPT IN THE ORDINARY COURSE OF BUSINESS.

B. EVERY SUMMONS SHALL IDENTIFY THE PROVISION OF LAW CHARGED AND SHALL SET FORTH THE FACTUAL BASIS FOR THE VIOLATION. WHERE A SUMMONS DOES NOT CONTAIN THIS INFORMATION, IT SHALL BE DISMISSED AT THE REQUEST OF THE RESPONDENT OR THE ADMINISTRATIVE LAW JUDGE MAY DISMISS THE SUMMONS UPON HIS OR HER OWN MOTION.

4. WHERE A RESPONDENT HAS FAILED TO PLEAD WITHIN THE TIME ALLOWED BY CONTROLLING LAW OR, IF THERE IS NO SUCH CONTROLLING LAW, BY THE RULES OF THE BROOKHAVEN HOUSING AND COMMUNITY COURT, OR HAS FAILED TO APPEAR ON A DESIGNATED HEARING DATE OR A SUBSEQUENT DATE FOLLOWING AN ADJOURNMENT, SUCH FAILURE TO PLEAD OR APPEAR SHALL BE DEEMED, FOR ALL PURPOSES, TO BE AN ADMISSION OF LIABILITY AND SHALL BE GROUNDS FOR RENDERING A DEFAULT DECISION AND ORDER IMPOSING A PENALTY UP TO THE MAXIMUM AMOUNT

PRESCRIBED UNDER LAW FOR THE VIOLATION CHARGED. A DEFAULT DECISION AND ORDER MAY BE OPENED WITHIN ONE YEAR OF ITS ENTRY UPON WRITTEN APPLICATION SHOWING EXCUSABLE DEFAULT AND A MERITORIOUS DEFENSE TO THE CHARGE; A DEFAULT DECISION AND ORDER MAY THEREAFTER BE OPENED ONLY UPON WRITTEN APPLICATION SHOWING EXCUSABLE DEFAULT, A MERITORIOUS DEFENSE TO THE CHARGE, AND GOOD CAUSE FOR THE DELAY.

5. ANY FINAL ORDER OF THE BROOKHAVEN HOUSING AND COMMUNITY COURT IMPOSING A CIVIL PENALTY, WHETHER THE ADJUDICATION WAS HAD BY HEARING OR UPON DEFAULT OR OTHERWISE, SHALL CONSTITUTE A JUDGMENT RENDERED BY SUCH COURT AGAINST THE RESPONDENT WHICH MAY BE ENTERED IN THE DISTRICT COURT OR ANY OTHER PLACE PROVIDED FOR THE ENTRY OF CIVIL JUDGMENTS WITHIN THE STATE, AND MAY BE ENFORCED AGAINST THE RESPONDENT AND HIS, HER OR ITS PROPERTY WITHOUT COURT PROCEEDINGS IN THE SAME MANNER AS THE ENFORCEMENT OF MONEY JUDGMENTS ENTERED IN CIVIL ACTIONS, PROVIDED FURTHER, ANY ARREARS MAY BE COLLECTED AS REAL PROPERTY TAXES PURSUANT TO SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-TWO OF THIS ARTICLE; PROVIDED HOWEVER THAT NO SUCH JUDGMENT SHALL BE ENTERED WHICH EXCEEDS THE JURISDICTION OF SUCH DISTRICT COURT OR OTHER COURT.

6. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, BEFORE A JUDGMENT BASED UPON A DEFAULT MAY BE SO ENTERED THE BROOKHAVEN HOUSING AND COMMUNITY COURT SHALL HAVE NOTIFIED THE RESPONDENT BY FIRST CLASS MAIL IN SUCH FORM:

A. OF THE DEFAULT DECISION AND ORDER AND THE PENALTY IMPOSED;

B. THAT A JUDGMENT MAY BE ENTERED IN THE DISTRICT COURT OR ANY OTHER PLACE PROVIDED FOR THE ENTRY OF CIVIL JUDGMENTS WITHIN THE STATE OF NEW YORK; AND

C. THAT ENTRY OF SUCH JUDGMENT MAY BE AVOIDED BY REQUESTING A STAY OF DEFAULT FOR GOOD CAUSE SHOWN AND EITHER REQUESTING A HEARING OR ENTERING A PLEA WITHIN THIRTY DAYS OF THE MAILING OF SUCH NOTICE.

S 165. JUDICIAL ENFORCEMENT. ANY ORDER, SUBPOENA, OR ANY FINAL DECISION OR DETERMINATION RENDERED BY THE BROOKHAVEN HOUSING AND COMMUNITY COURT SHALL BE SUBJECT TO ENFORCEMENT BY THE JUDICIARY IN AN ACTION OR PROCEEDING COMMENCED IN A COURT OF COMPETENT JURISDICTION BY THE PREVAILING PARTY, INCLUDING THE TOWN OF BROOKHAVEN.

S 166. RESTRICTION ON COLLATERAL USE. DECISIONS, DETERMINATIONS AND ORDERS ISSUED BY THE BROOKHAVEN HOUSING AND COMMUNITY COURT SHALL NOT BE CITED, AND SHALL NOT BE CONSIDERED PRECEDENT NOR BE GIVEN ANY FORCE OR EFFECT IN ANY CRIMINAL PROCEEDING.

S 167. APPEALS. EVERY APPEAL OF A FINAL DETERMINATION OF THE BROOKHAVEN HOUSING AND COMMUNITY COURT SHALL BE HEARD IN THE APPELLATE TERM OF SUPREME COURT IN THE SECOND DEPARTMENT. SUCH APPEALS SHALL BE TAKEN BY FILING A NOTICE OF APPEAL WITH SUCH COURT WITHIN THIRTY DAYS OF THE ENTRY OF THE DECISION, DETERMINATION, OR ORDER FROM WHICH THE APPEAL IS BEING TAKEN.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.