

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.

LBD11045-01-9

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

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

10 3. EXCEPT AS OTHERWISE PROVIDED BY LAW, IN THE CONDUCT OF AN ADJUDI-
11 CATION, AN ADMINISTRATIVE LAW JUDGE MAY:

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

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

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

19 D. REGULATE THE COURSE OF THE HEARING;

20 E. RULE ON PROCEDURAL REQUESTS OR SIMILAR MATTERS;

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

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

26 H. TAKE ANY OTHER ACTION AUTHORIZED BY LAW.

27 4. UNLESS INCONSISTENT WITH THIS ARTICLE, ALL HEARINGS SHALL SUBSTAN-
28 Tially COMPLY WITH THE REQUIREMENTS OF ARTICLE THREE OF THE STATE ADMIN-
29 ISTRATIVE PROCEDURE ACT.

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

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

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

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

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

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

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

11 B. AT THE PREMISES AT WHICH THE RESPONDENT ACTUALLY CONDUCTS THE BUSI-
12 NESS THE OPERATION OF WHICH GAVE RISE TO SUCH ALLEGED VIOLATION, OR

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

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

19 S 164. COMMENCEMENT OF PROCEEDINGS; DEFAULT JUDGMENTS. 1. THE BROOKHA-
20 VEN HOUSING AND COMMUNITY COURT SHALL CONDUCT THE PROCEEDINGS AUTHORIZED
21 BY LOCAL LAW IN ACCORDANCE WITH THIS SECTION.

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

36 3. A. THE SUMMONS SHALL CONTAIN INFORMATION ADVISING THE PERSON
37 CHARGED OF THE MANNER AND THE TIME IN WHICH SUCH PERSON MAY EITHER ADMIT
38 OR DENY THE VIOLATION CHARGED IN THE SUMMONS. SUCH SUMMONS SHALL ALSO
39 CONTAIN A WARNING TO ADVISE THE PERSON CHARGED THAT FAILURE TO PLEAD IN
40 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.

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

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

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

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

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

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

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

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

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

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

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

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