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

1882

2009-2010 Regular Sessions

I N A S S E M B L Y

January 14, 2009

Introduced by M. of A. CALHOUN -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to the summary proceeding to recover possession of real property in the case of leases of vacation homes for three months or less

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

Section 1. Subdivision 2 of section 731 of the real property actions and proceedings law, as amended by chapter 910 of the laws of 1965, is amended to read as follows:

2. Except as provided in section 732, relating to a proceeding for non-payment of rent, OR AS PROVIDED IN SECTION 732-A, RELATING TO A PROCEEDING FOR HOLDING OVER IN CERTAIN CASES, the notice of petition shall specify the time and place of the hearing on the petition and state that if respondent shall fail at such time to interpose and establish any defense that he OR SHE may have, he OR SHE may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

S 2. The real property actions and proceedings law is amended by adding a new section 732-a to read as follows:

S 732-A. HOLDING OVER IN THE CASE OF LEASES OF THREE MONTHS OR LESS OF A VACATION HOME. 1. FOR THE PURPOSES OF THIS SECTION, "VACATION HOME" MEANS A ONE OR TWO FAMILY DWELLING UNIT, OR A PORTION THEREOF, OWNED BY A LANDLORD WHO DOES NOT USE SUCH DWELLING UNIT AS HIS OR HER PRIMARY RESIDENCE.

2. THE PROVISIONS OF THIS SECTION SHALL APPLY IN ALL MUNICIPALITIES OF THE STATE, EXCEPT THE CITY OF NEW YORK.

3. THE PROCEEDING AUTHORIZED BY THIS SECTION MAY BE BROUGHT ON THE GROUND SPECIFIED IN SUBDIVISION 1 OF SECTION 711, WHEREIN THE PROPERTY POSSESSION OF WHICH IS SOUGHT TO BE RECOVERED IS A VACATION HOME THAT WAS LEASED TO THE RESPONDENT FOR A PERIOD NOT IN EXCESS OF THREE MONTHS.

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

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IN SUCH EVENT, ALL OTHER PROVISIONS OF THIS ARTICLE SHALL REMAIN APPLICABLE IN SUCH PROCEEDING, EXCEPT TO THE EXTENT INCONSISTENT WITH THE PROVISIONS OF THIS SECTION.

4. THE NOTICE OF PETITION SHALL BE RETURNABLE BEFORE THE CLERK, AND SHALL BE MADE RETURNABLE WITHIN FIVE DAYS AFTER ITS SERVICE.

5. IF THE RESPONDENT ANSWERS, THE CLERK SHALL FIX A DATE FOR TRIAL OR HEARING NOT LESS THAN THREE NOR MORE THAN EIGHT DAYS AFTER JOINDER OF ISSUE, AND SHALL IMMEDIATELY NOTIFY BY MAIL THE PARTIES OR THEIR ATTORNEYS OF SUCH DATE. IF THE DETERMINATION BE FOR THE PETITIONER, THE ISSUANCE OF A WARRANT SHALL NOT BE STAYED FOR MORE THAN FIVE DAYS FROM SUCH DETERMINATION.

6. IF THE RESPONDENT FAILS TO ANSWER WITHIN FIVE DAYS FROM THE DATE OF SERVICE, AS SHOWN BY THE AFFIDAVIT OR CERTIFICATE OF SERVICE OF THE NOTICE OF PETITION AND PETITION, THE JUDGE SHALL RENDER JUDGMENT IN FAVOR OF THE PETITIONER AND MAY STAY THE ISSUANCE OF THE WARRANT FOR A PERIOD OF NOT TO EXCEED TEN DAYS FROM THE DATE OF SERVICE.

7. THE NOTICE OF PETITION SHALL ADVISE THE RESPONDENT OF THE REQUIREMENTS OF SUBDIVISIONS 4, 5 AND 6, ABOVE.

S 3. Subdivision 1 of section 733 of the real property actions and proceedings law, as amended by chapter 910 of the laws of 1965, is amended to read as follows:

1. Except as provided in section 732, relating to a proceeding for non-payment of rent, OR AS PROVIDED IN SECTION 732-A, RELATING TO A PROCEEDING FOR HOLDING OVER IN CERTAIN CASES, the notice of petition and petition shall be served at least five and not more than twelve days before the time at which the petition is noticed to be heard.

S 4. Section 743 of the real property actions and proceedings law, as amended by chapter 644 of the laws of 2003, is amended to read as follows:

S 743. Answer. Except as provided in section 732, relating to a proceeding for non-payment of rent, OR AS PROVIDED IN SECTION 732-A, RELATING TO A PROCEEDING FOR HOLDING OVER IN CERTAIN CASES, at the time when the petition is to be heard the respondent, or any person in possession or claiming possession of the premises, may answer, orally or in writing. If the answer is oral the substance thereof shall be recorded by the clerk or, if a particular court has no clerk, by the presiding judge or justice of such court, and maintained in the case record. If the notice of petition was served at least eight days before the time at which it was noticed to be heard and it so demands, the answer shall be made at least three days before the time the petition is noticed to be heard and, if in writing, it shall be served within such time; whereupon any reply shall be served at least one day before such time. The answer may contain any legal or equitable defense, or counterclaim. The court may render affirmative judgment for the amount found due on the counterclaim.

S 5. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to any proceedings commenced on or after such date.