

6703

2011-2012 Regular Sessions

I N   A S S E M B L Y

March 25, 2011

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Introduced by M. of A. TENNEY -- 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.  
21     S 2. Subdivision 1 of section 715 of the real property actions and  
22 proceedings law, as amended by chapter 555 of the laws of 1978, is  
23 amended to read as follows:  
24     1. [An] ANY owner or tenant[, including a tenant of one or more rooms  
25 of an apartment house, tenement house or multiple dwelling,] of any  
26 premises within [two hundred] ONE THOUSAND feet from other [demised]

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

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

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

49 2. For purposes of this section, two or more convictions of [any  
50 person or persons had, within a period of one year, for any of the  
51 offenses described in section 230.00, 230.05, 230.20, 230.25, 230.30 or  
52 230.40 of the penal law arising out of conduct engaged in at the same  
53 real property consisting of a dwelling as that term is defined in subdi-  
54 vision four of section four of the multiple dwelling law shall be  
55 presumptive evidence of conduct constituting use of the premises for  
56 purposes of prostitution] A TENANT OR OCCUPANT HAD, WITHIN A PERIOD OF

1 TWO YEARS, FOR ANY OF THE OFFENSES DESCRIBED IN ARTICLES TWO HUNDRED  
2 TWENTY, TWO HUNDRED TWENTY-ONE, TWO HUNDRED TWENTY-FIVE AND TWO HUNDRED  
3 THIRTY OF THE PENAL LAW ARISING OUT OF CONDUCT OCCURRING WITHIN ONE  
4 THOUSAND FEET OF THE SUBJECT REAL PROPERTY, OR TWO OR MORE CONVICTIONS  
5 OF ANY PERSON HAD, WITHIN A PERIOD OF ONE YEAR, FOR ANY OF THE OFFENSES  
6 DESCRIBED IN THE FOREGOING ARTICLES OF THE PENAL LAW ARISING OUT OF  
7 CONDUCT OCCURRING ON THE SUBJECT REAL PROPERTY SHALL BE PRESUMPTIVE  
8 EVIDENCE OF UNLAWFUL USE OR OCCUPATION OF SUCH REAL PROPERTY AND OF THE  
9 TENANT'S, OCCUPANT'S AND OWNER'S OR LANDLORD'S KNOWLEDGE OF SUCH UNLAW-  
10 FUL USE OR OCCUPATION.

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

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

16 3. For the purposes of this section, two or more convictions of any  
17 person or persons had, within a period of one year, for any of the  
18 offenses described in section 230.00, 230.05, 230.20, 230.25, 230.30, or  
19 230.40 of the penal law arising out of conduct [engaged] in, at OR ON  
20 the [same] SUBJECT premises consisting of a dwelling as that term is  
21 defined in subdivision four of section four of the multiple dwelling law  
22 shall be presumptive evidence of unlawful use OR OCCUPATION of such  
23 premises and of the owners knowledge of [the same] SUCH UNLAWFUL USE OR  
24 OCCUPATION.

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

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

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

38 [5.] 6. For the purposes of this section, two or more convictions of  
39 any person or persons had, within a period of one year, for any of the  
40 offenses described in section 225.00, 225.05, 225.10, 225.15, 225.20,  
41 225.30, 225.32, 225.35 or 225.40 of the penal law, arising out of  
42 conduct [engaged] in, at OR ON the [same] SUBJECT premises consisting of  
43 a dwelling as that term is defined in subdivision four of section four  
44 of the multiple dwelling law shall be presumptive evidence of unlawful  
45 use OR OCCUPATION of such premises and of the owner's AND TENANT'S know-  
46 ledge of [the same] SUCH UNLAWFUL USE OR OCCUPATION.

47 [6.] 7. Any owner or tenant, including a tenant of one or more rooms  
48 of an apartment house, tenement house or multiple dwelling of any prem-  
49 ises within [two hundred] ONE THOUSAND feet of the [demised real proper-  
50 ty] SUBJECT PREMISES, may commence an action or proceeding in supreme  
51 court to enjoin the continued unlawful USE OR OCCUPATION OF THE SUBJECT  
52 PREMISES OR ANY OTHER UNLAWFUL trade, ACTIVITY, manufacture or [other]  
53 business in, AT OR ON such premises.

54 S 8. This act shall take effect on the ninetieth day after it shall  
55 have become a law.