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

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2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. SCHIMEL, LAVINE, FINCH -- Multi-Sponsored by -- M. of A. CLARK, KEARNS, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to special proceedings to convey title to abandoned real property to cities, towns or villages

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

Section 1. The article heading of article 19-A of the real property actions and proceedings law, as amended by chapter 573 of the laws of 1982, is amended to read as follows:

SPECIAL PROCEEDING TO CONVEY TITLE TO ABANDONED [DWELLING] REAL PROPERTY TO CITY, TOWN OR VILLAGE

S 2. Section 1970 of the real property actions and proceedings law, as amended by chapter 593 of the laws of 1983, is amended to read as follows:

S 1970. Applicability. The department or agency of a city, town or village, responsible for [the enforcement of the multiple dwelling law, the multiple residence law, or any other law, code or ordinance governing the occupancy and maintenance of residential property] ENFORCING THE MUNICIPALITY'S BUILDING CODE (hereinafter in this article referred to as "the department") may institute a proceeding in accordance with the provisions of this article for a judgment vesting in the city, town or village title to [a dwelling] REAL PROPERTY which has been abandoned by the owner. This article shall not apply to a one-family or two-family dwelling occupied by the owner thereof.

S 3. Subdivisions 1 and 2 of section 1971 of the real property actions and proceedings law, subdivision 1 as amended by chapter 529 of the laws

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

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of 2008 and subdivision 2 as amended by chapter 496 of the laws of 1983, are amended to read as follows:

1. The department may make a finding that [a dwelling] REAL PROPERTY is abandoned if:

(a) In the case of an occupied dwelling, the owner has failed for a period of at least three consecutive months either to collect rent or to institute summary proceedings for nonpayment of rent, and the department finds that the dwelling has become a danger to life, health or safety as a result of the owner's failure to assume his OR HER responsibility for its condition. Such failure may be shown by such facts as an owner's failure to provide services including, but not limited to, the failure to make repairs, supply janitorial service, purchase fuel or other needed supplies, or pay utility bills. The appointment of an administrator pursuant to article seven-A of this chapter shall not prevent the department from making a finding that a dwelling is abandoned; or

(b) In the case of [a] vacant [dwelling] REAL PROPERTY, it is not sealed or continuously guarded as required by law or it was sealed or is continuously guarded by a person other than the owner, a mortgagee, lienor or agent thereof, and either of the following facts exists:

(i) A vacate order of the department or other governmental agency currently prohibits occupancy of the [dwelling] REAL PROPERTY; or

(ii) The tax on such premises has been due and unpaid for a period of at least one year; or

(III) THE PROPERTY HAS HAD A ZONING, HOUSING, BUILDING OR PROPERTY MAINTENANCE CODE VIOLATION WHICH HAS BEEN CONTINUOUSLY OUTSTANDING AND NOT REMEDIATED FOR A PERIOD OF AT LEAST ONE YEAR FROM THE DATE THE ORIGINAL ORDER TO CORRECT OR NOTICE OF VIOLATION WAS SERVED UPON THE PROPERTY OWNER PURSUANT TO SUBDIVISION FOUR OF SECTION THREE HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES IF THE OWNER IS A NATURAL PERSON, OR PURSUANT TO SECTION THREE HUNDRED TEN, THREE HUNDRED TEN-A, THREE HUNDRED ELEVEN OR THREE HUNDRED ELEVEN-A OF THE CIVIL PRACTICE LAW AND RULES IF THE OWNER IS A PARTNERSHIP, LIMITED PARTNERSHIP, CORPORATION OR LIMITED LIABILITY COMPANY, RESPECTIVELY, OR

(c) In the case of a building for which an administrator has been appointed pursuant to article seven-A of this chapter.

(i) no motion for the termination of the judgment entered pursuant to article seven-A of this chapter has been granted by the appointing court;

(ii) no mortgagee or lienor has commenced foreclosure proceedings; and

(iii) at least six months have passed since the granting of a judgment appointing an administrator pursuant to article seven-A of this chapter.

2. When the department finds that [a dwelling] REAL PROPERTY is abandoned within the meaning of this article, it shall make and file among its records a certification containing such finding and the facts on which it is based. Further, it shall immediately affix to the [dwelling] REAL PROPERTY in a prominent and conspicuous location, a notice that the [building] PROPERTY has been found to be [an] abandoned [building] and that it is a crime to take, remove or otherwise damage any fixture or part of the PROPERTY OR ANY building OR structure LOCATED THEREON.

S 4. Section 1971-a of the real property actions and proceedings law, as added by chapter 496 of the laws of 1983, is amended to read as follows:

S 1971-a. Destruction of abandoned [dwellings] REAL PROPERTY. "Destruction of [an] abandoned [dwelling] REAL PROPERTY" occurs when a person, having no right to do so or permission of the department or the owner to take, remove or otherwise damage the fixtures or the structure

of the building, nor any reasonable ground to believe that he OR SHE has such right or permission, intentionally removes or damages any fixture or part of the structure of a building which has been certified as abandoned in accordance with the provisions of section nineteen hundred seventy-one of this chapter.

S 5. Subdivision 2 of section 1972 of the real property actions and proceedings law, as amended by chapter 573 of the laws of 1982, is amended to read as follows:

2. The department shall serve upon the owner of the [dwelling] PROPERTY, a copy of the certification. Service shall be made personally or by posting in a conspicuous place upon the [dwelling] PROPERTY and mailing a copy by registered or certified mail to the last known owner at such owner's last known address. In the case of a dwelling subject to the provisions of section three hundred twenty-five of the multiple dwelling law, such mailing may be made to the last registered owner at his OR HER last registered address. The copy of the certification shall be accompanied by a notice stating that proceedings pursuant to this title may be instituted unless the owner notifies the department that the property has not been abandoned. Such notification shall be made by a showing that the conditions upon which the findings in such certification are based do not exist or have been corrected. Such showing shall be made not later than thirty days after the date of such notice.

S 6. Subdivision 1 of section 1973 of the real property actions and proceedings law, as amended by chapter 593 of the laws of 1983, is amended to read as follows:

1. After all provisions of section nineteen hundred seventy-two of this article have been complied with, the department may commence a proceeding in a court of competent jurisdiction in the county in which the [dwelling] PROPERTY is located, to vest title to the property in the city, town or village.

S 7. Subdivisions 1 and 3 of section 1974 of the real property actions and proceedings law, subdivision 1 as amended by chapter 573 of the laws of 1982 and subdivision 3 as amended by chapter 593 of the laws of 1983, are amended to read as follows:

1. If any party to the proceeding contests the issue of abandonment, the burden of proving that the [dwelling] PROPERTY is abandoned shall be upon the department, and the court shall make a finding based on the facts before it.

3. Upon a finding by the court that the [dwelling] PROPERTY is abandoned, the court shall enter a final judgment in favor of the petitioner. The fact that an administrator has been appointed pursuant to article seven-A of this chapter shall not prevent the court from entering a final judgment in favor of the petitioner upon a finding by the court that the [dwelling] PROPERTY is abandoned. The final judgment shall direct such officer of the city, town or village in which the [dwelling] PROPERTY is located as may be designated in the judgment to execute and record a deed conveying title of the premises to the city, town or village thirty days after entry of judgment. Upon the entry of such judgment the city, town or village shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

S 8. This act shall take effect immediately.