STATE OF NEW YORK

1496

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the crime of illegal conversion or alteration of real property and to amend the administrative code of the city of New York, in relation to civil penalties for unlawful conversions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The penal law is amended by adding two new sections 145.75 and 145.80 to read as follows:

§ 145.75 Definition; conversion or alteration of real property.

For purposes of section 145.80 of this article, "conversion or alteration" shall mean any change in the structural parts or existing facilities of any building, including, but not limited to, the subdivision of rooms, or erection or demolition of walls, or the moving of any building from one location or position to another.

§ 145.80 Illegal conversion or alteration of real property.

A person is guilty of illegal conversion or alteration of real property when:

1. (a) he or she is the owner or manager of real property and knowingly participated or authorized the illegal alteration or conversion of such property in violation of any state or local law, ordinance, code or rule or regulation relating to real property, buildings or multiple dwellings; or

(b) he or she is a tenant of real property and makes an illegal conversion or alteration of such property without the knowledge of the owner thereof, and such alteration or conversion of the real property was in violation of any state or local law, ordinance, code or rule or regulation relating to real property, buildings or multiple dwellings; and

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

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2. the alteration or conversion causes a serious physical injury to another person.

Illegal conversion or alteration of real property is a class C felony.

§ 2. Subdivision 13.1 of section 28-201.2.1 of the administrative code of the city of New York, as added by local law number 17 of the city of New York for the year 2010, is amended to read as follows:

[~~13.1 The minimum civil penalty that shall be imposed for a violation of section 28-408.1 or section 28-410.1 of this code and the minimum fine that shall be imposed for a violation of such sections shall be two thousand five hundred dollars for the first violation and five thousand dollars for each subsequent violation.~~]

§ 3. Section 28-202.1 of the administrative code of the city of New York is amended by adding two new exceptions 4 and 5 to read as follows:

4. The minimum civil penalty for a violation of section 28-408.1 or section 28-410.1 shall be two thousand five hundred dollars for a first violation and five thousand dollars for a second violation, in addition to any separate daily penalty imposed pursuant to subdivision 1 of this section.

5. The minimum civil penalty for a violation of section 28-210.1 in any building involving the illegal conversion, maintenance or occupancy of three or more dwelling units than are legally authorized by the certificate of occupancy or if no certificate of occupancy is required as evidenced by official records shall be fifteen thousand dollars for each dwelling unit beyond the number that are legally authorized. It shall be an affirmative defense for the owner of such building that: (i) such building is a multiple dwelling which lawfully has five or more units; (ii) such owner reasonably did not know of such illegal conversion, maintenance or occupancy; and (iii) upon receipt of such violation, such owner attempted to address such illegal conversion, maintenance or occupancy by: (a) notifying the occupants of each dwelling unit subject to such illegal conversion, maintenance or occupancy that such dwelling unit has been converted, maintained or occupied in violation of this code and that such occupant may be subject to legal proceedings which could result in such occupant's eviction from such dwelling unit; or (b) commencing such legal proceedings.

§ 4. Section 28-204.6 of the administrative code of the city of New York, as added by local law number 33 of the city of New York for the year 2007, is amended to read as follows:

§28-204.6 Tax lien. Enforcement of environmental control board judgments against owners for certain building code violations. Notwithstanding any provision of law to the contrary, an environmental control board judgment against an owner for **(i)** a building code violation with respect to a private dwelling, a wooden-framed single room occupancy multiple dwelling, or a dwelling with a legal occupancy of three or fewer dwelling units **or (ii) a violation of section 28-210.1 involving the illegal conversion, maintenance or occupancy of three or more dwelling units than are legally authorized by the certificate of occupancy or if no certificate of occupancy is required as evidenced by official records,** shall constitute a tax lien on the property named in the violation with respect to which such judgment was rendered, as hereinafter provided. Such liens shall be entered and enforced as provided in this section [~~28-204.6~~].

§ 5. Section 28-207.4.1 of the administrative code of the city of New York, as added by local law number 33 of the city of New York for the year 2007, is amended to read as follows:

§ 28-207.4.1 Basis for vacate. Conditions for which the commissioner may issue a vacate order shall include but shall not be limited to the following conditions that create a hazard to life, public safety, or property:

1. Danger of structural failure;

2. Danger of facade failure;

3. Inadequate fire protection, detection, or suppression;

4. Inadequate egress; [~~or~~]

5. Improper storage of hazardous materials, combustible or toxic[~~.~~]; or

6. A violation of section 28-210.1 which involves the illegal conversion, maintenance or occupancy of three or more dwelling units than are legally authorized by the certificate of occupancy is required as evidenced by official records.

§ 6. The administrative code of the city of New York is amended by adding a new section 28-210.4 to read as follows:

§ 28-210.4 Inspection; failure to gain access to premises. Upon receiving a complaint of a condition relating to a building or part thereof that would, if observed by the commissioner, be identified by the commissioner as a violation of section 28-210.1 involving the illegal conversion, maintenance or occupancy of three or more dwelling units than are legally authorized by the certificate of occupancy or if no certificate of occupancy is required as evidenced by official records, the commissioner shall attempt to enter and inspect such building or part thereof, the commissioner shall notify the owner of such building or part thereof. After two unsuccessful attempts to gain access to such building or part thereof, by certified mail, return receipt requested, that such complaint has been received and that an inspection will be scheduled at a date and reasonable time determined by the department; provided that such date shall be no earlier than ten days and no more than thirty days after such notice is sent. If the commissioner is unable to gain access to such building or part thereof on the date specified in such notice, the commissioner shall immediately prepare an affidavit documenting each unsuccessful attempt to gain access to such building or part thereof, shall seek to obtain an affidavit from the complainant and shall transmit to the corporation counsel such affidavits together with any additional documents the commissioner deems relevant and a request that such counsel seek an order from a court of competent jurisdiction directing that appropriate access to such building or part thereof be provided to the commissioner; provided that, in preparing such request, priority may be given by the commissioner to requests based on the degree of hazard to safety or property that the commissioner believes present. Such counsel shall promptly consider such request, and where such counsel determines that there is appropriate basis to obtain such an order, shall seek such an order. The commissioner shall promptly execute any such order in accordance with its terms.

§ 7. Section 11-319 of the administrative code of the city of New York is amended by adding a new subdivision a-6 to read as follows:

a-6. Notwithstanding any provision of this chapter to the contrary, beginning on September first, two thousand sixteen, a lien that includes civil penalties for a violation of section 28-201.1 of the code where such civil penalties accrued on or after July first, two thousand sixteen, and became a lien pursuant to section 28-204.6.6 of the code, may be sold by the city pursuant to this chapter, where such civil penalties component of such lien, as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of

the notice of sale (i) shall have remained unpaid in whole or in part for one year or more, and (ii) equals or exceeds the sum of one thousand dollars. After such sale, any such civil penalties component of such lien may be transferred in the manner provided by this chapter.

§ 8. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of the foregoing sections of this act on its effective date are authorized and directed to be made and completed on or before such effective date.