STATE OF NEW YORK

10095

IN ASSEMBLY

March 10, 2020

Introduced by M. of A. McDONALD -- 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 by tenants of dwellings outside the city of New York and certain counties for judgment directing deposit of rents and the use thereof for the purpose of remedying conditions dangerous to life, health or safety

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

Section 1. The real property actions and proceedings law is amended by adding a new article 7-C to read as follows:

ARTICLE 7-C

SPECIAL PROCEEDINGS BY TENANTS OF DWELLINGS FOR JUDGMENT DIRECTING DEPOSIT OF RENTS AND THE USE THEREOF FOR THE PURPOSE OF REMEDYING CONDITIONS DANGEROUS TO LIFE, HEALTH OR SAFETY

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§ 796. Definitions. As used in this article:

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

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1. "Owner" means the owner or owners of the dwelling, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person or entity directly or indirectly in control of a dwelling, but shall not include a receiver appointed pursuant to section three hundred nine of the multiple dwelling law.

2. "Dwelling" or "premises" means any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings and is either rented, leased, let or hired out, to be occupied as such, including, but not limited to, an apartment building, a condominium, a townhouse, a single-family house or a multiple-family residence building. "Dwelling" or "premises" shall also include premises zoned for mixed residential and commercial use, provided that a portion of such premises are, in fact, occupied by one or more tenants for residential purposes.

3. "Commissioner" means the commissioner, chief supervisor or chief officer of a department.

4. "Department" means a department, agency or office.

5. "Municipality" means a county, city, town or village.

6. "Person" means an individual, partnership, corporation, association, trust or other group or legal entity, however organized.

§ 796-a. Jurisdiction; court; venue. 1. A special proceeding for a judgment directing the deposit of rents into court and the use of such monies for the purpose of remedying conditions at a dwelling dangerous to life, health or safety may be maintained by tenant or tenants of the dwelling in the county court, district court or city court having jurisdiction in the municipality in which the dwelling is located.

2. A special proceeding as described in subdivision one of this section may also be commenced by the commissioner of the department charged with enforcement of the housing maintenance code in the municipality where the dwelling is located.

(a) If the proceeding is instituted by such commissioner, one-third or more of the tenants of the dwelling may, at any time thereafter during the pendency of the proceeding or after final judgment pursuant to section seven hundred ninety-six-h or seven hundred ninety-six-i of this article, petition for substitution of themselves in place and instead of such commissioner. Such substitution shall be ordered by the court unless good reason to the contrary shall be shown.

(b) A special proceeding pursuant to the provisions of this article may only be commenced with respect to the same premises by one municipality at a time.

3. The place of trial of the special proceeding shall be within the county in which the dwelling or a portion thereof from which the rents issue is situated.

4. The provisions of this article shall not apply to dwellings located in the city of New York or in the counties of Nassau, Suffolk, Rockland and Westchester or in any cities, towns or villages of such counties.

§ 796-b. Grounds for the proceeding. One-third or more of the tenants occupying a multiple residence dwelling or a tenant occupying a single residence dwelling or the commissioner of the department charged with enforcement of the housing maintenance code in the municipality where the dwelling is located may maintain a special proceeding as provided in this article, upon the grounds that there exists in such dwelling, or in any part thereof:

1. a lack of heat, running water, light, electricity, adequate sewage disposal facilities, or any other condition dangerous to life, health or

safety, which has existed for five days, or an infestation by rodents, or any combination of such conditions; or

2. a course of conduct by the owner or the owner's agents of harassment, illegal eviction, continued deprivation of services or other acts dangerous to life, health or safety.

§ 796-c. Commencement; notice of petition; time and manner of service.

1. A special proceeding prescribed by this article shall be commenced by the service of a petition and notice of petition. A notice of petition may be issued only by a judge or the clerk of the court.

2. The notice of petition shall specify the time and place of the hearing on the petition and state that if at such time, a defense to such petition is not interposed and established by the owner or any mortgagee or lienor of record, a final judgment may be rendered directing that:

(a) the rents due on the date of entry of such judgment from the petitioning tenants and the rents due on the dates of service of such judgment on all other tenants occupying such dwelling, from such other tenants, shall be deposited with the administrator appointed pursuant to section seven hundred ninety-six-j of this article;

(b) any rents to become due in the future from such petitioners and from all other tenants occupying such dwelling shall be deposited with such administrator as they fall due; and

(c) such deposited rents shall be used, subject to the court's direction, to the extent necessary to remedy the condition or conditions alleged in the petition.

3. The notice of petition and petition shall be served upon the person set forth as the owner on the last recorded deed to the rented dwelling and upon every mortgagee and lienor of record, at least five days before the time at which the petition is noticed to be heard.

4. The proof of service shall be filed with the court before which the petition is to be heard on or before the return date.

5. (a) Service of the notice of petition and petition shall be made by personally delivering them to the person or persons required to be served pursuant to subdivision three of this section. If service cannot with due diligence be made upon an owner, mortgagee or lienor of record in such manner, it shall be made:

(i) upon the person set forth as the owner on the last recorded deed, to the rented dwelling by registered or certified mail, return receipt requested, at the address set forth in the recorded deed and by delivering to and leaving copies of the notice of petition and the petition personally with the person designated as the managing agent of the dwelling, if one shall have been designated;

(ii) upon a mortgagee or lienor of record, by registered or certified mail, return receipt requested, at the address set forth in the recorded mortgage or lien.

(b) If such personal service upon the person set forth as the owner on the last recorded deed to the rented property cannot be made with due diligence, service upon such last registered owner shall be made by affixing a copy of the notice and petition upon a conspicuous part of the subject dwelling; and in addition, within two days after such affixing, by sending a copy thereof by registered or certified mail, return receipt requested, to the owner at the address set forth in the last recorded deed with respect to such dwelling.

6. Notice of the proceeding shall be given to the non-petitioning tenants occupying the dwelling by affixing a copy of the notice of petition and petition upon a conspicuous part of the subject dwelling.

§ 796-d. Contents of petition. The petition shall:

1. Allege material facts showing that there exists in such dwelling or any part thereof one or more of the following:

(a) a lack of heat, running water, light, electricity, adequate sewage disposal facilities, or any other condition dangerous to life, health or safety, which has existed for five days, or an infestation of rodents; or

(b) a course of conduct by the owner or his agents of harassment, illegal eviction, continued deprivation of services or other acts dangerous to life, health or safety.

2. If the petitioners shall be tenants occupying the dwelling, they shall allege the number of petitioners making the petition and that:

(a) in the case of a multiple residence dwelling, they constitute one-third or more of the tenants in occupancy thereof; or

(b) in the case of a single residence dwelling, they are the occupants of such single-residence dwelling.

3. Allege a brief description of the nature of the work required to remove or remedy the condition and an estimate as to the cost thereof except that if the petitioners shall be tenants occupying the dwelling, the petition may allege the conditions complained of in which event such description shall not be required to be made by anyone not a party to the petition.

4. If the petitioners shall be tenants occupying the dwelling, they shall allege the amount of rent due from each such petitioner, monthly.

5. State the relief sought.

§ 796-e. Answer. At the time when the petition is to be heard, the owner and any mortgagee or lienor of record, shall answer in writing. 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 served at least three days before the time the petition is noticed to be heard and any reply shall be served at least one day before such time.

§ 796-f. Trial. Where triable issues of fact are raised, they shall be tried by the court without a jury at the time when issue is joined; provided, however, that the court, in its discretion, may grant an adjournment of such trial at request of either party, if it determines that an adjournment is necessary to enable either of the parties to procure the necessary witnesses, or upon consent of all the parties who appear. Such adjournment shall not be for more than five days except by consent of all the parties who appear.

§ 796-g. Defenses. It shall be a sufficient defense to the proceeding, if the owner or any mortgagee or lienor of record establish that:

1. The condition or conditions alleged in the petition did not in fact exist or that such condition or conditions have been removed or remedied; or

2. Such condition or conditions have been caused by a petitioning tenant or tenants or members of the family or families of such petitioner or petitioners or of their guests or by other residents of the dwelling or their families or guests; or

3. Any tenant or resident of the dwelling has refused entry to the owner or the owner's agent to a portion of the premises for the purpose of correcting such condition or conditions.

§ 796-h. Judgment. 1. The court shall render a final judgment either:

(a) Dismissing the petition for failure to affirmatively establish the allegations thereof or because of the affirmative establishment by the owner or a mortgagee or lienor of record of a defense or defenses specified in section seven hundred ninety-six-g of this article; or

(b)(i) Directing that:

(A) the rents due on the date of the entry of such judgment from the petitioning tenants and the rents due on the dates of service of the judgment on all other residential and non-residential tenants occupying such dwelling from such other tenants, shall be deposited with the administrator appointed by the court, pursuant to section seven hundred ninety-six-j of this article;

(B) any rents to become due in the future from all tenants occupying such dwelling shall be deposited with such administrator as they come due;

(C) such deposited rents shall be used, subject to the court's direction, to the extent necessary to remedy the condition or conditions alleged in the petition; and

(D) upon the completion of such work in accordance with such judgment, any remaining surplus shall be turned over to the owner, together with a complete accounting of the rents deposited and the costs incurred; and

(ii) granting such other and further relief as to the court may seem just and proper.

2. (a) A certified copy of such judgment shall be served personally upon each non-petitioning tenant occupying such dwelling. If personal service on any such non-petitioning tenant cannot be made with due diligence, service on such tenant shall be made by affixing a certified copy of such judgment on the entrance door of such tenant's apartment or other unit and, in addition, within one day after such affixing, by sending a certified copy thereof by registered mail, return receipt requested, to such tenant.

(b) Any right of the owner of such dwelling to collect such rent moneys from any petitioning tenant of such dwelling on or after the date of entry of such judgment, and from any non-petitioning tenant of such dwelling on or after the date of service of such judgment on such non-petitioning tenant as herein provided, shall be void and unenforceable to the extent that such petitioning or non-petitioning tenant, as the case may be, has deposited such moneys with the administrator in accordance with the terms of such judgment, regardless of whether such right of the owner arises from a lease, contract, agreement or understanding heretofore or hereafter made or entered into or arises as a matter of law from the relationship of the parties or otherwise. It shall be a valid defense in any action or proceeding against any such tenant to recover possession of real property for the non-payment of rent or for use or occupation to prove that the rent alleged to be unpaid was deposited with the administrator in accordance with the terms of a judgment entered under this section.

§ 796-i. Application by mortgagee or lienor of record or other person having an interest in the property. 1. If, after a trial, the court shall determine that the facts alleged in the petition have been affirmatively established by the petitioners, that no defense thereto specified in section seven hundred ninety-six-g of this article has been affirmatively established by the owner or a mortgagee or lienor of record, and that the facts alleged in the petition warrant the granting of the relief sought, and if the owner or any mortgagee or lienor of record or other person having an interest in the property, shall apply to the court to be permitted to remove or remedy the conditions specified in such petition and shall (i) demonstrate the ability promptly to undertake the work required and (ii) post security for the performance of such work within the time, and in the amount and manner, deemed necessary by the court, then the court, in lieu of rendering judgment as

provided in section seven hundred ninety-six-h of this article, may issue an order permitting such person to perform the work within a time fixed by the court.

2. If, after the issuance of an order pursuant to subdivision one of this section, but before the time fixed in such order for the completion of the work prescribed therein, it shall appear to the petitioners that the person permitted to do the same is not proceeding with due diligence, the petitions may apply to the court on notice to those persons who have appeared in the proceeding for a hearing to determine whether judgment should be rendered immediately as provided in subdivision three of this section.

3. If, upon a hearing authorized in subdivision two of this section, the court shall determine that the owner, mortgagee, lienor or other person is not proceeding with due diligence, or upon the failure of the owner, mortgagee, lienor or other person to complete the work in accordance with the provisions of the order, the court shall render a final judgment appointing an administrator as authorized in section seven hundred ninety-six-j of this article. Such judgment shall direct the administrator to apply the security posted by such person to the removing or remedying of the condition or conditions specified in the petition. In the event that the amount of such security should be insufficient for such purpose, such judgment shall direct the deposit of rents with the administrator, as authorized by section seven hundred ninety-six-h of this article, to the extent of such deficiency. In the event that such security should exceed the amount required to remove or remedy such condition or conditions, such judgment shall direct the administrator to file with the court, upon completion of the work prescribed therein, a full accounting of the amount of such security and the expenditures made pursuant to such judgment, and to turn over such surplus to the person who posted such security, together with a copy of such accounting.

§ 796-j. Appointment of administrator. 1.(a) The court is authorized and empowered, in implementation of a judgment rendered pursuant to section seven hundred ninety-six-h or seven hundred ninety-six-i of this article, to appoint a person other than the owner, a mortgagee or a lienor, to receive and administer the rent moneys or security deposited with such owner, mortgagee or lienor, subject to the court's direction.

(b) The court may appoint the commissioner of the department charged with enforcement of the housing maintenance code in the municipality where the dwelling is located or the commissioner's designee as such administrator, provided that the commissioner or the commissioner's designee shall consent, in writing, to such appointment.

(c) Any administrator is authorized and empowered in accordance with the direction of the court, to:

(i) order the necessary materials, labor and services to remove or remedy the conditions specified in the judgment, and to make disbursements in payment thereof;

(ii) demand, collect and receive the rents from the tenants of the dwelling;

(iii) institute all necessary legal proceedings including, but not limited to, summary proceedings for the removal of any tenant or tenants;

(iv) to rent or lease for terms not exceeding three years any part of said premises, however, the court may direct the administrator to rent or lease commercial portions of a premises zoned for mixed commercial and residential use for terms that the court may approve; and

(v) in accordance with the direction of the court, to accept and repay such moneys as may be received from the department or departments charged with enforcement of the housing maintenance code in the municipality or municipalities where the dwelling is located for the purpose of managing the premises, replacing or substantially rehabilitating systems or making other repairs or capital improvements authorized by the court. All moneys expended by such department or departments pursuant to the foregoing shall constitute a debt recoverable from the owner and a lien upon the building and lot, and upon the rents and other income thereof.

(d) Upon completion of the work prescribed in such judgment, the administrator, shall file with the court a full accounting of all receipts and expenditures for such work. The administrator shall dispose of the rents and other monies deposited with such administrator according to the following order of priority:

(i) payment in full for all of the work specified in the judgment; until all of the work specified in the judgment has been completed and payment for such work has been made, no other disbursements shall be permitted, except for fuel bills, fire and liability insurance, and bills for ordinary repairs and maintenance.

(ii) payment of a reasonable amount for the services of the administrator, including reimbursement of any legal fees incurred by the administrator in connection with management of the building.

(iii) payment of outstanding real property tax liens claimed by any municipality in which the dwelling is located.

(iv) payment of outstanding emergency repair liens filed and recorded by any municipality in which the dwelling is located and outstanding liens filed and recorded by such municipality or municipalities pursuant to this section.

(v) payment to the owner of the dwelling of any surplus remaining after payments of subparagraphs (i), (ii), (iii) and (iv) of this paragraph have been made.

2. The court may allow from the rent moneys or security on deposit a reasonable amount for services of such administrator.

3. The administrator shall furnish a bond, the amount and form of which shall be approved by the court. In its discretion and for good cause shown, the court may dispense with the necessity for a bond. The cost of a required bond shall be paid from the moneys so deposited.

4. The administrator shall file a transcript of the judgment appointing him or her with the clerk of the county in which the subject premises is located within fifteen days of his or her appointment.

5. The duties of the administrator shall not be affected by the appointment of a receiver in an action to foreclose a mortgage on the premises, except that the rights of the owner, including the right to any surplus, pursuant to subparagraph (v) of paragraph (d) of subdivision one of this section, shall pass to the receiver. The court in which the action to foreclose a mortgage on the premises is pending may appoint such administrator to serve as receiver in that action in addition to his or her duties as administrator pursuant to this article.

6.(a) Such administrator shall be liable only in his or her official capacity for injury to persons and property by reason of conditions of the premises in a case where an owner would have been liable; he or she shall not have any liability in his or her personal capacity.

(b) Appointment of an administrator pursuant to subdivision one of this section shall not relieve an owner of liability for injury to persons and property in such case.

7. No municipality shall be liable to any party, including the administrator or the owner of the dwelling, for injury to persons or property by reason of conditions of the premises or the acts or omissions of the administrator.

8. The commissioner of the department charged with enforcement of the housing maintenance code in the municipality where the dwelling is located shall promulgate rules and regulations regarding criteria for the selection of administrators to be appointed pursuant to this section and shall establish and maintain a list of persons approved by such department. Any person appointed as an administrator within such municipality shall be selected from among the persons approved as administrators pursuant to such list. A city, town or village may establish and maintain such list itself or elect to have such list established and maintained by the commissioner of the department charged with enforcement of the housing maintenance code in the county in which a dwelling is located.

9. The administrator shall, within thirty days of appointment, file with the court a plan for the provision of essential services and for the correction of such other hazardous conditions as may exist at the premises, specifying dates by which such services shall be provided and such conditions corrected. If such administrator cannot provide such services and correct such conditions by the dates specified in the plan, he or she shall be required to file with the court an amendment to the plan setting forth the reasons why such services and corrections could not be provided by such date and specifying new dates for such services and corrections. Such plan and any amendments to such plan shall be provided to the tenants by mail or by posting in a common area of the building and to the owner of record by mail.

10. The court may only discharge an administrator if the owner has paid in full or entered into a payment agreement to pay in full all outstanding real property tax liens claimed by any municipality in which the dwelling is located, all outstanding emergency repair liens filed and recorded by any municipality in which the dwelling is located and all outstanding liens filed and recorded by such municipality or municipalities pursuant to this section.

§ 796-k. Presentation or settlement of accounts. The court shall require the keeping of written accounts itemizing the receipts and expenditures for work performed under an order issued pursuant to section seven hundred ninety-six-h or seven hundred ninety-six-i of this article, which shall be open to inspection by the owner of the dwelling, or any mortgagee or lienor or any other person having an interest in such receipts or expenditures provided, however, that notwithstanding any other provision of law to the contrary, such information as may be in the possession of the department charged with the enforcement of the housing maintenance code of the county or city shall be available from such department for inspection only by the owner of the dwelling, the tenant of the dwelling, or a person having a recorded interest in the property. Upon motion of the court or the administrator or of the owner, any mortgagee or lienor of record or of any person having an interest, the court may require a presentation or settlement of the accounts with respect thereto. Notice of a motion for presentation or settlement of such accounts shall be served on the owner, any mortgagee or other lienor of record who appeared in the proceeding and any person having an interest in such receipts or expenditures.

§ 796-l. Waiver void. Any provision of a lease or other agreement whereby any provision of this article for the benefit of a tenant, resi-

dent or occupant of a dwelling is waived, shall be deemed against public policy and shall be void.

§ 796-m. Defense of warranty of habitability inapplicable. Notwithstanding any other provision of law, in any proceeding for the payment of rent commenced by an administrator appointed pursuant to this article, the provisions of section two hundred thirty-five-b of the real property law pertaining to the warranty of habitability shall not be a defense to such a proceeding for rent which accrues during the period of time that a judgment or an order pursuant to this article is in effect, unless the court determines that the conditions upon which such defense is based were caused by the failure of such administrator to perform his or her duties in a reasonable manner.

§ 2. This act shall take effect immediately.