

# 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:

1 Section 1. The real property actions and proceedings law is amended  
2 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

#### Section 796. Definitions.

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19 person having an interest in the property.

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21 796-k. Presentation or settlement of accounts.

22 796-l. Waiver void.

23 796-m. Defense of warranty of habitability inapplicable.

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

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

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

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

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

19 6. "Person" means an individual, partnership, corporation, associ-  
20 ation, trust or other group or legal entity, however organized.

21 § 796-a. Jurisdiction; court; venue. 1. A special proceeding for a  
22 judgment directing the deposit of rents into court and the use of such  
23 monies for the purpose of remedying conditions at a dwelling dangerous  
24 to life, health or safety may be maintained by tenant or tenants of the  
25 dwelling in the county court, district court or city court having juris-  
26 isdiction in the municipality in which the dwelling is located.

27 2. A special proceeding as described in subdivision one of this  
28 section may also be commenced by the commissioner of the department  
29 charged with enforcement of the housing maintenance code in the munici-  
30 pality where the dwelling is located.

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

38 (b) A special proceeding pursuant to the provisions of this article  
39 may only be commenced with respect to the same premises by one munici-  
40 pality at a time.

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

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

47 § 796-b. Grounds for the proceeding. One-third or more of the tenants  
48 occupying a multiple residence dwelling or a tenant occupying a single  
49 residence dwelling or the commissioner of the department charged with  
50 enforcement of the housing maintenance code in the municipality where  
51 the dwelling is located may maintain a special proceeding as provided in  
52 this article, upon the grounds that there exists in such dwelling, or in  
53 any part thereof:

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

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

3 2. a course of conduct by the owner or the owner's agents of harass-  
4 ment, illegal eviction, continued deprivation of services or other acts  
5 dangerous to life, health or safety.

6 § 796-c. Commencement; notice of petition; time and manner of service.

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

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

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

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

23 (c) such deposited rents shall be used, subject to the court's direc-  
24 tion, to the extent necessary to remedy the condition or conditions  
25 alleged in the petition.

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

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

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

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

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

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

54 6. Notice of the proceeding shall be given to the non-petitioning  
55 tenants occupying the dwelling by affixing a copy of the notice of peti-  
56 tion 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

1 (b)(i) Directing that:

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

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

11 (C) such deposited rents shall be used, subject to the court's direc-  
12 tion, to the extent necessary to remedy the condition or conditions  
13 alleged in the petition; and

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

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

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

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

43 § 796-i. Application by mortgagee or lienor of record or other person  
44 having an interest in the property. 1. If, after a trial, the court  
45 shall determine that the facts alleged in the petition have been affir-  
46 matively established by the petitioners, that no defense thereto speci-  
47 fied in section seven hundred ninety-six-g of this article has been  
48 affirmatively established by the owner or a mortgagee or lienor of  
49 record, and that the facts alleged in the petition warrant the granting  
50 of the relief sought, and if the owner or any mortgagee or lienor of  
51 record or other person having an interest in the property, shall apply  
52 to the court to be permitted to remove or remedy the conditions speci-  
53 fied in such petition and shall (i) demonstrate the ability promptly to  
54 undertake the work required and (ii) post security for the performance  
55 of such work within the time, and in the amount and manner, deemed  
56 necessary by the court, then the court, in lieu of rendering judgment as

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

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

12 3. If, upon a hearing authorized in subdivision two of this section,  
13 the court shall determine that the owner, mortgagee, lienor or other  
14 person is not proceeding with due diligence, or upon the failure of the  
15 owner, mortgagee, lienor or other person to complete the work in accord-  
16 ance with the provisions of the order, the court shall render a final  
17 judgment appointing an administrator as authorized in section seven  
18 hundred ninety-six-j of this article. Such judgment shall direct the  
19 administrator to apply the security posted by such person to the remov-  
20 ing or remedying of the condition or conditions specified in the peti-  
21 tion. In the event that the amount of such security should be insuffi-  
22 cient for such purpose, such judgment shall direct the deposit of rents  
23 with the administrator, as authorized by section seven hundred ninety-  
24 six-h of this article, to the extent of such deficiency. In the event  
25 that such security should exceed the amount required to remove or remedy  
26 such condition or conditions, such judgment shall direct the administra-  
27 tor to file with the court, upon completion of the work prescribed ther-  
28 ein, a full accounting of the amount of such security and the expendi-  
29 tures made pursuant to such judgment, and to turn over such surplus to  
30 the person who posted such security, together with a copy of such  
31 accounting.

32 § 796-j. Appointment of administrator. 1.(a) The court is authorized  
33 and empowered, in implementation of a judgment rendered pursuant to  
34 section seven hundred ninety-six-h or seven hundred ninety-six-i of this  
35 article, to appoint a person other than the owner, a mortgagee or a  
36 lienor, to receive and administer the rent moneys or security deposited  
37 with such owner, mortgagee or lienor, subject to the court's direction.

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

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

45 (i) order the necessary materials, labor and services to remove or  
46 remedy the conditions specified in the judgment, and to make disburse-  
47 ments in payment thereof;

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

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

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

1     (v) in accordance with the direction of the court, to accept and repay  
2     such moneys as may be received from the department or departments  
3     charged with enforcement of the housing maintenance code in the munici-  
4     pality or municipalities where the dwelling is located for the purpose  
5     of managing the premises, replacing or substantially rehabilitating  
6     systems or making other repairs or capital improvements authorized by  
7     the court. All moneys expended by such department or departments pursu-  
8     ant to the foregoing shall constitute a debt recoverable from the owner  
9     and a lien upon the building and lot, and upon the rents and other  
10    income thereof.

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

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

21    (ii) payment of a reasonable amount for the services of the adminis-  
22    trator, including reimbursement of any legal fees incurred by the admin-  
23    istrator in connection with management of the building.

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

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

30    (v) payment to the owner of the dwelling of any surplus remaining  
31    after payments of subparagraphs (i), (ii), (iii) and (iv) of this para-  
32    graph have been made.

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

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

39    4. The administrator shall file a transcript of the judgment appoint-  
40    ing him or her with the clerk of the county in which the subject prem-  
41    ises is located within fifteen days of his or her appointment.

42    5. The duties of the administrator shall not be affected by the  
43    appointment of a receiver in an action to foreclose a mortgage on the  
44    premises, except that the rights of the owner, including the right to  
45    any surplus, pursuant to subparagraph (v) of paragraph (d) of subdivi-  
46    sion one of this section, shall pass to the receiver. The court in which  
47    the action to foreclose a mortgage on the premises is pending may  
48    appoint such administrator to serve as receiver in that action in addi-  
49    tion to his or her duties as administrator pursuant to this article.

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

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

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

5     8. The commissioner of the department charged with enforcement of the  
6 housing maintenance code in the municipality where the dwelling is  
7 located shall promulgate rules and regulations regarding criteria for  
8 the selection of administrators to be appointed pursuant to this section  
9 and shall establish and maintain a list of persons approved by such  
10 department. Any person appointed as an administrator within such munici-  
11 pality shall be selected from among the persons approved as administra-  
12 tors pursuant to such list. A city, town or village may establish and  
13 maintain such list itself or elect to have such list established and  
14 maintained by the commissioner of the department charged with enforce-  
15 ment of the housing maintenance code in the county in which a dwelling  
16 is located.

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

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

36     § 796-k. Presentation or settlement of accounts. The court shall  
37 require the keeping of written accounts itemizing the receipts and  
38 expenditures for work performed under an order issued pursuant to  
39 section seven hundred ninety-six-h or seven hundred ninety-six-i of this  
40 article, which shall be open to inspection by the owner of the dwelling,  
41 or any mortgagee or lienor or any other person having an interest in  
42 such receipts or expenditures provided, however, that notwithstanding  
43 any other provision of law to the contrary, such information as may be  
44 in the possession of the department charged with the enforcement of the  
45 housing maintenance code of the county or city shall be available from  
46 such department for inspection only by the owner of the dwelling, the  
47 tenant of the dwelling, or a person having a recorded interest in the  
48 property. Upon motion of the court or the administrator or of the owner,  
49 any mortgagee or lienor of record or of any person having an interest,  
50 the court may require a presentation or settlement of the accounts with  
51 respect thereto. Notice of a motion for presentation or settlement of  
52 such accounts shall be served on the owner, any mortgagee or other  
53 lienor of record who appeared in the proceeding and any person having an  
54 interest in such receipts or expenditures.

55     § 796-l. Waiver void. Any provision of a lease or other agreement  
56 whereby any provision of this article for the benefit of a tenant, resi-

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

3 § 796-m. Defense of warranty of habitability inapplicable. Notwith-  
4 standing any other provision of law, in any proceeding for the payment  
5 of rent commenced by an administrator appointed pursuant to this arti-  
6 cle, the provisions of section two hundred thirty-five-b of the real  
7 property law pertaining to the warranty of habitability shall not be a  
8 defense to such a proceeding for rent which accrues during the period of  
9 time that a judgment or an order pursuant to this article is in effect,  
10 unless the court determines that the conditions upon which such defense  
11 is based were caused by the failure of such administrator to perform his  
12 or her duties in a reasonable manner.

13 § 2. This act shall take effect immediately.