

# STATE OF NEW YORK

3320--A

Cal. No. 302

2021-2022 Regular Sessions

## IN ASSEMBLY

January 22, 2021

Introduced by M. of A. EPSTEIN, GOTTFRIED, REYES, SIMON, FALL, COOK, TAYLOR, GALLAGHER, STECK, JACKSON, FERNANDEZ -- Multi-Sponsored by -- M. of A. NOLAN -- read once and referred to the Committee on Judiciary -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the New York city civil court act and the real property actions and proceedings law, in relation to stipulations in summary proceedings to recover possession of real property

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

1 Section 1. Legislative findings and intent. The legislature hereby  
2 finds and declares that litigants in cases in housing court parts, espe-  
3 cially in the state's major metropolitan areas, are often self-repre-  
4 sented. Under these circumstances, and especially because the stakes  
5 for the self-represented litigant in such cases can be so high, e.g.,  
6 eviction from one's home, it is vital to the administration of justice  
7 that the judges in such parts take all necessary and appropriate steps  
8 to assure that self-represented litigants fully understand the  
9 proceedings in which they are involved, any claims or defenses they may  
10 have and the available options in light of those claims or defenses, and  
11 the potential consequences of any agreements they may be asked to make  
12 in the course of those proceedings. Accordingly, it is the intent of  
13 this act that no agreement between the parties to a proceeding in a  
14 housing court part wherein one or more of such parties are self-repre-  
15 sented may be approved by the court unless the judge presiding therein  
16 ascertains that the claims or defenses of each self-represented party  
17 are adequately addressed in the stipulation and that each self-repre-  
18 sented party understands the nature and consequences of such agreement;  
19 and the judge memorializes such inquiry on the record of the proceeding.  
20 In declaring this intent, the legislature further reminds all authori-

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

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1 ties responsible for designating the judges who preside in housing  
2 courts parts of the importance of selecting or reappointing judges who  
3 are best equipped, by training, experience and disposition, to preside  
4 over cases where parties frequently are self-represented.

5 § 2. Subdivisions (f) and (i) of section 110 of the New York city  
6 civil court act, subdivision (f) as amended by chapter 64 of the laws of  
7 2007 and subdivision (i) as amended by chapter 310 of the laws of 1978,  
8 are amended to read as follows:

9 (f) The housing judges shall be appointed by the administrative judge  
10 from a list of persons selected annually as qualified by training,  
11 interest, experience, judicial temperament, ability to handle a caseload  
12 involving self-represented litigants and knowledge of federal, state and  
13 local housing laws and programs by the advisory council for the housing  
14 part. The list of persons who have been approved by such advisory coun-  
15 cil, whether or not appointed to such judicial position, shall be deemed  
16 public information and be published in the city record immediately after  
17 such list is submitted to the administrative judge. The annual salary  
18 of a housing judge shall be one hundred fifteen thousand four hundred  
19 dollars.

20 (i) Housing judges shall have been admitted to the bar of the state  
21 for at least five years, two years of which shall have been in active  
22 practice. Each housing judge shall serve full-time for five years.  
23 Reappointment shall be at the discretion of the administrative judge and  
24 on the basis of the criteria set forth for selection by the advisory  
25 council in subdivision (f) of this section, performance, competency and  
26 results achieved during the preceding term, and the judge's allocution  
27 of stipulations to self-represented litigants and the judge's compliance  
28 with section seven hundred forty-six of the real property actions and  
29 proceedings law.

30 § 3. Section 746 of the real property actions and proceedings law, as  
31 added by chapter 281 of the laws of 2009, is amended to read as follows:

32 § 746. Stipulations. 1. In any proceeding under this article, if a  
33 stipulation is made, on the occasion of a court appearance in the  
34 proceeding, setting forth an agreement between the parties, other than a  
35 stipulation solely to adjourn or stay the proceeding, and either the  
36 petitioner or the respondent is not represented by counsel, the court  
37 shall fully describe the terms of the stipulation to that party on the  
38 record.

39 2. No stipulation required to be on the record by subdivision one of  
40 this section may be approved by the court unless the court first  
41 conducts an allocution on the record that shall, at a minimum, find the  
42 following:

43 (a) the identity of the parties and whether all necessary parties have  
44 been named in the proceeding;

45 (b) the authority of the signatory to the stipulation if the named  
46 party is not present; and

47 (c) shall further find:

48 (i) that the unrepresented party understands that he or she may try  
49 the case if he or she does not agree with the proposed stipulation or if  
50 an acceptable stipulation cannot be negotiated;

51 (ii) where the other party is represented, whether the party's attor-  
52 ney inappropriately gave legal advice to the unrepresented litigant or  
53 whether the unrepresented litigant is agreeing to the proposed stipu-  
54 lation as a result of undue duress;

55 (iii) whether the unrepresented respondent agrees with or contests any  
56 allegation in the petition and predicate notices;

1 (iv) that the unrepresented party is aware of and understands claims  
2 or defenses he or she may have in the proceeding and is aware of the  
3 available options in light of those claims or defenses, especially where  
4 the stipulation provides for a surrender of the dwelling unit or the  
5 conversion of a nonpayment proceeding into a holdover proceeding;

6 (v) that the unrepresented litigant's claims or defenses are adequate-  
7 ly addressed in the stipulation;

8 (vi) that the unrepresented party understands and agrees to the terms  
9 of the stipulation;

10 (vii) that the unrepresented party understands the effect of non-com-  
11 pliance with the terms of the stipulation by either side and what the  
12 deadlines and procedures are for addressing such non-compliance, includ-  
13 ing how to restore the case to the court calendar to obtain relief under  
14 or from the stipulation;

15 (viii) in all non-payment cases, including where the unrepresented  
16 party indicates that he or she intends to apply for public assistance  
17 benefits or to a charity to pay rent that is sought in the proceeding  
18 and that the court has determined to be owing to the petitioner, that an  
19 appropriate rent breakdown is included in the stipulation; and

20 (ix) that the unrepresented party understands the implications of a  
21 judgment against him or her and the legal requirement that the petition-  
22 er provide a satisfaction of judgment upon payment.

23 3. The court may use a court attorney to conference a case to deter-  
24 mine the unrepresented party's claims or defenses and his or her under-  
25 standing of all available options in light of those claims or defenses,  
26 or any of the other elements of the allocution required by this section.  
27 However, such conference may not substitute for an allocution by the  
28 court and, where it is used, the results shall be reported to the court,  
29 which shall note on the record that such conference occurred.

30 4. Notwithstanding the foregoing, where the court, in its discretion,  
31 determines that, in the interests of justice, inclusion in the allocu-  
32 tion required by subdivision two of this section of one or more findings  
33 described in paragraph (c) of such subdivision is or are not necessary  
34 given the history of the case, prior appearances or other factors,  
35 excluding a court attorney conference provided for in subdivision three  
36 above, such finding or findings may be omitted and the reason for such  
37 omission shall be set forth on the record.

38 § 4. This act shall take effect on the ninetieth day after it shall  
39 have become a law and shall apply to all proceedings commenced on or  
40 after such effective date.