

STATE OF NEW YORK

5337--A

2021-2022 Regular Sessions

IN ASSEMBLY

February 12, 2021

Introduced by M. of A. McDONALD, JONES, SANTABARBARA, LUPARDO, MORINELLO, J. M. GIGLIO, ASHBY, DARLING, FAHY, JACOBSON -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, COOK, HAWLEY, TAGUE -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property actions and proceedings law, in relation to authorizing special proceedings to convey title to abandoned commercial and industrial real property to a city, town, or village; and providing for the repeal of such provisions upon expiration thereof

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 19-B to read as follows:

ARTICLE 19-B
SPECIAL PROCEEDING TO CONVEY TITLE TO ABANDONED COMMERCIAL AND
INDUSTRIAL
REAL PROPERTY TO CITY, TOWN, OR VILLAGE

Section 1980. Applicability.

1981. Certification of abandonment.

1982. Notice.

1982-a. Alternative notice provisions.

1983. Commencement of proceeding.

1984. Decision and judgment of the court.

§ 1980. Applicability. The department or agency of a city, town, or village, responsible for the enforcement of the commercial building code, industrial building code, or any other law, code or ordinance

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

LBD01842-02-2

1 governing the occupancy and maintenance of commercial or industrial real
2 property (hereinafter in this article referred to as "the department")
3 may institute a proceeding in accordance with the provisions of this
4 article for a judgment vesting in the city, town, or village title to a
5 commercial or industrial real property which has been abandoned by the
6 owner.

7 § 1981. Certification of abandonment. 1. The department may make a
8 finding that a commercial or industrial real property is abandoned if:

9 (a) The owner of a commercial or industrial real property has failed
10 for a period of at least three consecutive months either to collect rent
11 or to institute summary proceedings for nonpayment of rent, and the
12 department finds that the commercial or industrial real property has
13 become a danger to life, health or safety as a result of the owner's
14 failure to assume its responsibility for its condition. Such failure may
15 be shown by such facts as an owner's failure to provide services includ-
16 ing, but not limited to, the failure to make repairs, supply janitorial
17 service, purchase fuel or other needed supplies, or pay utility bills.
18 The appointment of an administrator shall not prevent the department
19 from making a finding that a commercial or industrial real property is
20 abandoned; or

21 (b) In the case of a vacant commercial or industrial real property, it
22 is not sealed or continuously guarded as required by law or it was
23 sealed or is continuously guarded by a person other than the owner, a
24 mortgagee, lienor or agent thereof, and either of the following facts
25 exists:

26 (i) A vacate order of the department or other governmental agency
27 currently prohibits occupancy of the commercial or industrial real prop-
28 erty; or

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

31 (iii) The property has had a zoning, building or property maintenance
32 code violation which has been continuously outstanding and not remedi-
33 ated for a period of at least one year from the date the original order
34 to correct or notice of violation was served upon the property owner
35 pursuant to subdivision four of section three hundred eight of the civil
36 practice law and rules if the owner is a natural person, or pursuant to
37 section three hundred ten, three hundred ten-a, three hundred eleven or
38 three hundred eleven-a of the civil practice law and rules if the owner
39 is a partnership, limited partnership, corporation or limited liability
40 company, respectively; or

41 (c) In the case of a building for which an administrator has been
42 appointed:

43 (i) no motion for the termination of the judgment has been granted by
44 the appointing court;

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

46 (iii) at least six months have passed since the granting of a judgment
47 appointing an administrator.

48 2. When the department finds that a commercial or industrial real
49 property is abandoned within the meaning of this article, it shall make
50 and file among its records a certification containing such finding and
51 the facts on which it is based. Further, it shall immediately affix to
52 the commercial or industrial real property in a prominent and conspicu-
53 ous location, a notice that the real property has been found to be aban-
54 doned and that it is a crime to take, remove or otherwise damage any
55 fixture or part of the property or any building or structure located
56 thereon.

1 § 1982. Notice. 1. If the department proposes to institute proceedings
2 pursuant to this article, it may file a copy of the certification and a
3 notice of intention to commence such proceedings in the office of the
4 clerk of the county in which the commercial or industrial real property
5 is located. Such notice shall contain the names of all persons required
6 to be served pursuant to this section and shall otherwise meet the
7 requirements of subdivision (b) of rule sixty-five hundred eleven of the
8 civil practice law and rules. The notice shall be indexed by the clerk
9 in the manner prescribed by subdivision (c) of rule sixty-five hundred
10 eleven of the civil practice law and rules for a notice of pendency of
11 action and shall have the same effect as such notice. It shall expire
12 one year after filing, if no proceeding pursuant to this article has
13 been commenced. Except as otherwise provided herein, all of the
14 provisions of article sixty-five of the civil practice law and rules
15 shall be applicable to the notice filed pursuant to this article.

16 2. The department shall serve upon the owner of the commercial or
17 industrial real property, a copy of the certification. Service shall be
18 made personally or by posting in a conspicuous place upon the commercial
19 or industrial real property and mailing a copy by registered or certi-
20 fied mail to the last known owner at such owner's last known address.
21 The copy of the certification shall be accompanied by a notice stating
22 that proceedings pursuant to this article may be instituted unless the
23 owner notifies the department that the property has not been abandoned.
24 Such notification shall be made by a showing that the conditions upon
25 which the findings in such certification are based do not exist or have
26 been corrected. Such showing shall be made not later than thirty days
27 after the date of such notice.

28 3. Within five days of the service of notice on the owner, a copy of
29 the certification shall be served on each mortgagee, lienor and lessee
30 of record, personally or by registered mail to the address set forth in
31 the recorded instrument or, if no address appears therein, to the person
32 at whose request the instrument was recorded. Such copy shall, in the
33 case of a mortgagee or lienor, be accompanied by a notice that
34 proceedings pursuant to this article may be instituted unless the mort-
35 gagee or lienor, within fifteen days of such mailing, either commences
36 proceedings to foreclose the mortgage or lien or enters into an agree-
37 ment with the department to bring the building into compliance with the
38 applicable provisions of law.

39 4. If the name or address of
40 (a) the last owner of record, or
41 (b) any owner, mortgagee, lienor, or claimant as shown on records
42 maintained by any city official required by any local law to maintain
43 records of persons entitled to notice or process in connection with the
44 maintenance of in rem foreclosure actions, or
45 (c) the person listed as the owner of the property on the latest
46 completed assessment roll,
47 is different from that referred to in subdivisions two and three of this
48 section, a copy of the notice to the owner, or to a mortgagee or lienor,
49 whichever is applicable, shall also be sent to such person at such
50 address by registered mail.

51 § 1982-a. Alternative notice provisions. 1. In lieu of the notice
52 provisions of section nineteen hundred eighty-two of this article, a
53 city, town, or village may elect to adopt the notice provisions of this
54 section.

55 2. (a) Upon the filing of a copy of the certification and notice of
56 intention to commence proceedings pursuant to this article in the office

1 of the county clerk, the department forthwith shall cause a notice of
2 intention to commence proceedings pursuant to this article to be
3 published in each of three non-consecutive weeks in a two-month period
4 in at least two newspapers designated by the city, town, or village.

5 (b) Each newspaper designated for this purpose shall have general
6 circulation in the city, town, or village. An official newspaper of the
7 city, town, or village shall be deemed to satisfy the requirements of
8 this provision. In New York and Bronx counties, the newspapers to be
9 designated for the publication of such notice or any other public notice
10 required pursuant to this article shall be the daily law journal desig-
11 nated by the justices of the appellate division of the first judicial
12 department and another newspaper designated by such justices pursuant to
13 the provisions of subdivisions one and two of section ninety-one of the
14 judiciary law.

15 (c) Such notice shall be in substantially the following form:
16 "..... Court,..... County.

17 IN THE MATTER OF A PROCEEDING FOR A JUDGMENT VESTING TITLE TO REAL PROP-
18 ERTY WHICH HAS BEEN ABANDONED BY THE OWNER PURSUANT TO ARTICLE NINE-
19 TEEN-B OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW BY.....

20 (insert name of city, town, or village). NOTICE OF PROCEEDING TO VEST
21 TITLE TO ABANDONED REAL PROPERTY PLEASE TAKE NOTICE that on the.....
22 day of....., the..... (insert name of city, town, or
23 village), hereinafter, the "Petitioner", pursuant to law, filed with the
24 clerk of county a petition for a judgment vesting title to
25 real property abandoned by the owner against various parcels of real
26 property. Such petition pertains to the following parcels: (insert the
27 description and the name of the owner or owners of record of each parcel
28 as of the date of the filing of the certification).

29 Effect of filing: All persons having or claiming to have an interest
30 in the real property described in such petition are hereby notified that
31 the filing of such petition constitutes the commencement by the Peti-
32 tioner of a proceeding in the court specified in the caption above to
33 title to such real property therein described by a proceeding for a
34 judgment against the owners who abandoned such real property.

35 Nature of proceeding: Such proceeding is brought against the real
36 property only. No personal judgment will be entered herein for such
37 abandonment.

38 Persons affected: This notice is directed to all persons owning or
39 having or claiming to have an interest in the real property described in
40 such petition. Such persons are hereby notified further that a duplicate
41 of such petition has been filed in the office of the Department of the
42 (insert name of city, town, or village) and will remain open for public
43 inspection up to and including the date specified below unless the owner
44 notifies the department that the property has not been abandoned. The
45 last day for notice by the owner that the property has not been aban-
46 doned is hereby fixed as the day of (here insert a
47 date at least three months after the date of the first publication of
48 this notice).

49 Service of answer: Every person having any right, title or interest in
50 or lien upon any parcel of real property described in such petition may
51 serve a duly verified answer upon the attorney for the department
52 setting forth in detail the nature and amount of his or her interest and
53 any defense or objection to the proceeding. Such answer must be filed in
54 the office of the county clerk and served upon the attorney for the
55 department on or before the date above mentioned as the last day for
56 notice to the department that the property has not been abandoned.

1 Failure to answer: In the event of failure to answer by any person
2 having the right to do so, such person shall be forever barred and fore-
3 closed of all his or her right, title and interest in and to the parcel
4 described in such petition and a judgment divesting such person of any
5 right, title or interest in and to the parcel described in such petition
6 may be taken by default.

7 Department:

8 Attorney for Department:"

9 (d) The department shall on or before the date of the first publica-
10 tion of the notice set forth in paragraph (c) of this subdivision cause
11 a copy of such notice to be posted once in its office and shall cause a
12 copy of such notice to be posted in the county courthouse in the place
13 provided for the posting of public notices.

14 (e) Nothing contained in this section shall be construed to preclude
15 the department from providing for additional public notice of such
16 proceeding by other means, including broadcast on the local access chan-
17 nel of a cable television company having a franchise within the city,
18 town, or village.

19 (f) If the substance of such notice has been incorporated into the
20 petition of foreclosure, the requirements of this section shall be
21 satisfied if the petition is published and posted in the manner
22 prescribed by this section.

23 3. (a) Parties entitled to notice. The department shall, on or before
24 the date of the first publication of the notice above set forth, cause a
25 notice to be mailed to (i) each owner and any other person whose right,
26 title, or interest was a matter of public record as of the date the
27 certification was filed, which right, title or interest will be affected
28 by a judgment divesting the owner of title to the real property, and
29 whose name and address are reasonably ascertainable from the public
30 record, including the records in the offices of the surrogate of the
31 county, or from material submitted to the department pursuant to para-
32 graph (d) of this subdivision, and (ii) any other person who has filed a
33 declaration of interest which has not expired.

34 (b) Notification method. (i) Such notice shall be sent to each such
35 party both by certified mail and ordinary first class mail, subject to
36 the provisions of subparagraph (iv) of this paragraph. The notice shall
37 be deemed received unless both the certified mailing and the ordinary
38 first class mailing are returned by the United States postal service
39 within forty-five days after being mailed. In that event, the department
40 shall attempt to obtain an alternate mailing address from the United
41 States postal service. When notice is required to be sent to the commis-
42 sioner of taxation and finance, an alternate notice may be used by the
43 department, in accordance with instructions prescribed by the commis-
44 sioner of taxation and finance.

45 (ii) If an alternate mailing address is found, the department shall
46 cause the notice to be mailed to such owner at such address both by
47 certified mail and by ordinary first class mail. Notwithstanding any
48 provision of law to the contrary, such owner may notify the department
49 that the property has not been abandoned or serve a duly verified answer
50 to the petition until either the thirtieth day after such mailing, or
51 the date specified by the notice of the proceeding as the last day for
52 an answer, whichever is later.

53 (iii) If no alternate mailing address can be found, then in the case
54 of an owner, the department shall cause a copy of such notice to be
55 posted as provided herein on the property to which the petition relates;
56 in the case of a non-owner, the department shall cause a copy of such

1 notice to be posted in the department and in the office of the clerk of
2 the court in which the petition has been filed. Notwithstanding any
3 provision of law to the contrary, the party to whom such notice is
4 directed may notify the department that the property has not been aban-
5 doned or serve a duly verified answer to the petition until either the
6 thirtieth day after such posting or delivery, or the date specified by
7 the notice of the proceeding as the last day for an answer, whichever is
8 later.

9 (iv) Where an owner is listed as "unknown" on the tax roll and the
10 name of such owner cannot be found in the public record, the notice
11 shall be mailed to the property address by ordinary first class mail
12 addressed to "occupant" and a copy thereof shall be posted on the prop-
13 erty to which the petition relates.

14 (c) Posting of notice. When a notice is required to be posted on the
15 property to which the petition relates pursuant to this section, the
16 posting shall be deemed sufficient if it is either (i) affixed to a door
17 of a residential or commercial structure on the premises, or (ii)
18 attached to a vertical object, such as a tree, post or stake, and plain-
19 ly visible from the road. Provided, that if, when visiting the premises
20 for this purpose, the department should find thereon an occupant of
21 suitable age and discretion, he or she may deliver such notice to such
22 occupant in addition to or in lieu of posting it. The process of so
23 posting or delivering such notice shall warrant the imposition of an
24 extra charge of one hundred dollars against the parcel, in addition to
25 any other charges authorized by section eleven hundred twenty-four of
26 the real property tax law and without regard to any limitations set
27 forth therein.

28 (d) Changes of address. It shall be the responsibility of any party
29 entitled to notice pursuant to this section to notify the department
30 when his, her or its address changes. Such notification need not be in
31 any particular form as long as it is in writing, affirmatively states
32 that such party's address has changed or uses language to that effect,
33 and sets forth the new address. It shall not suffice to submit to the
34 department an item that merely displays the new address, such as a check
35 upon which the new address has been imprinted, or a letter or envelope
36 which uses the new address as the return address, unless such submission
37 includes language clearly indicating that such address is that party's
38 new address. In the event that a proceeding is challenged on grounds of
39 lack of notice, and the party raising this issue failed to provide a
40 current address to the department pursuant to this paragraph, the court
41 having jurisdiction may take such failure into account when evaluating
42 whether reasonable notice was given.

43 (e) Public record. For purposes of this section, the public record
44 shall be deemed to consist of the books maintained by the recording
45 officer of the county in which the property is located pursuant to
46 section three hundred fifteen of the real property law, the books kept
47 by the clerk of the surrogate's court of the county in which the prop-
48 erty is located pursuant to section twenty-five hundred two of the surro-
49 gate's court procedure act, the tax rolls in the possession of the city,
50 town, or village dated from the certification of abandonment forward.

51 4. The notice to be so mailed shall consist of (a) a copy of the peti-
52 tion and, if not substantially the same as the petition, the public
53 notice of vesting of title, provided that such copies need not include
54 the descriptions or the names of the owners of any parcels in which the
55 addressee does not have an interest, and (b) a statement substantially
56 as follows: "To the party to whom the enclosed notice is addressed: You

1 are presumed to own or have a legal interest in one or more of the
2 parcels of real property described on the enclosed petition. A proceed-
3 ing to vest title to such property based upon the abandonment by the
4 owner has been commenced. This proceeding will result in the loss of
5 ownership of such property and all rights in that property. To avoid
6 loss of ownership or of any other rights in the property, you must
7 interpose a duly verified answer in the proceeding. You may wish to
8 contact an attorney to protect your rights. After..... (insert the
9 last date to notify the Department), a court will transfer the title of
10 the property to the..... (Name of the city, town, or village) by
11 means of a court judgment. Should you have any questions regarding this
12 notice, please call..... (insert the name of the officer or employee
13 of the Department) at..... (insert telephone number).
14 Dated,..... (Insert date)."

15 5. (a) An affidavit of mailing of such notice shall be executed.

16 (b) The failure of an intended recipient to receive any such notice
17 shall not invalidate the proceeding or prevent the enforcement of the
18 same as provided by law.

19 (c) The service of the notice required by this section shall be deemed
20 to be equivalent to the service of a notice of petition pursuant to
21 section four hundred three of the civil practice law and rules.

22 6. (a) Nothing contained herein shall be construed to preclude the
23 department from issuing, at its discretion, a duplicate of any such
24 notice, clearly labeled as such, through means other than ordinary first
25 class mail, including but not limited to personal service, registered or
26 certified mail, facsimile transmission, or electronic mail.

27 (b) Nothing contained herein shall be construed to preclude the
28 department from issuing, at its discretion, one or more informal notices
29 to an owner or other party prior to issuing the notice required by this
30 section.

31 (c) The failure of the department to mail any such discretionary, or
32 the failure of an intended recipient to receive such a notice, shall not
33 invalidate the proceeding or prevent the enforcement of the same as
34 provided by law.

35 7. Any notice mailed by ordinary first class mail pursuant to this
36 section may also be mailed in duplicate by certified mail at the option
37 of the department.

38 § 1983. Commencement of proceeding. 1. After all provisions of section
39 nineteen hundred eighty-two of this article have been complied with, the
40 department may commence a proceeding in a court of competent jurisdic-
41 tion in the county in which the commercial or industrial real property
42 is located, to vest title to the property in the city, town, or village.

43 2. The petition in such proceeding shall be accompanied by a copy of
44 the certification and proof by affidavit that the provisions of section
45 nineteen hundred eighty-two of this article have been complied with and
46 that no party served with the notice pursuant to such section has taken
47 the appropriate action prescribed therein in response thereto.

48 3. A copy of the petition shall be served on all persons to whom
49 notice was given pursuant to section nineteen hundred eighty-two of this
50 article by personal service pursuant to article three of the civil prac-
51 tice law and rules. A notice of pendency shall be filed in accordance
52 with the provisions of section sixty-five hundred one of the civil prac-
53 tice law and rules. A copy of the petition shall also be posted in a
54 conspicuous place on the premises in question, accompanied by a notice
55 that any person having or claiming an interest in the property may
56 appear at the hearing thereon to protect his or her interest.

1 4. The petition shall be noticed to be heard not less than fifteen
2 days after service is completed on all parties to the proceeding.

3 5. A special proceeding pursuant to this article may also be commenced
4 by order to show cause, in which case the manner of service and the time
5 at which the order is returnable shall be as prescribed therein by the
6 court.

7 § 1984. Decision and judgment of the court. 1. If any party to the
8 proceeding contests the issue of abandonment, the burden of proving that
9 the commercial or industrial real property is abandoned shall be upon
10 the department, and the court shall make a finding based on the facts
11 before it.

12 2. (a) Upon application by any party to the proceeding, the court may
13 order a stay of the proceeding for such time as the court deems proper
14 to permit the mortgagee or lienor to foreclose its mortgage or lien and
15 to permit the owner, mortgagor or lienor to enter the property to make
16 repairs or if the property be vacant to seal or continuously guard the
17 building as required by law. The court may impose such terms upon the
18 owner, mortgagee or lienor as it deems proper for the issuance of said
19 order, including the posting of such security, if any, as it may
20 require. At the expiration of the period prescribed by the court, the
21 court may extend the time of the owner, mortgagee or lienor to comply
22 with the order, dismiss the proceeding if the owner, mortgagee or lienor
23 has substantially complied with the order, or issue a judgment as
24 provided in subdivision three of this section, if the court finds that
25 the owner, mortgagee or lienor has failed to comply with the order.

26 (b) Notwithstanding paragraph (a) of this subdivision, if the depart-
27 ment has brought a proceeding pursuant to section nineteen hundred
28 eighty-three of this article based on a finding of abandonment pursuant
29 to paragraph (c) of subdivision one of section nineteen hundred eighty-
30 one of this chapter, the court may not grant a stay for more than six
31 months, nor extend it for more than an additional three months.

32 3. Upon a finding by the court that the commercial or industrial real
33 property is abandoned, the court shall enter a final judgment in favor
34 of the petitioner. The fact that an administrator has been appointed as
35 to the subject property shall not prevent the court from entering a
36 final judgment in favor of the petitioner upon a finding by the court
37 that the commercial or industrial real property is abandoned. The final
38 judgment shall direct such officer of the city, town, or village in
39 which the commercial or industrial real property is located as may be
40 designated in the judgment to execute and record a deed conveying title
41 of the premises to the city, town, or village thirty days after entry of
42 judgment. Upon the entry of such judgment the city, town, or village
43 shall be seized of an estate in fee simple absolute in such land and all
44 persons, including the state of New York, infants, incompetents, absen-
45 tees and non-residents who may have had any right, title, interest,
46 claim, lien or equity of redemption in or upon such lands shall be
47 barred and forever foreclosed of all such right, title, interest, claim,
48 lien or equity of redemption.

49 4. The provisions of section three hundred seventeen of the civil
50 practice law and rules shall not apply to a proceeding instituted pursu-
51 ant to this article. A motion or action to set aside a judgment in a
52 proceeding instituted pursuant to this article on the grounds either
53 that there was a failure to comply with the provisions of this article
54 as to notice or that a defect in the proceeding prejudiced a substantial
55 right of a party may be instituted within ninety days after the deed
56 vesting title in a city has been recorded, but not thereafter.

1 5. The right, title and interest of a purchaser or incumbrancer of a
2 property as to which a deed vesting title in a city, town, or village
3 has been recorded pursuant to a judgment obtained through this article
4 shall not be affected or impaired by a motion or action instituted more
5 than ninety days after such deed vesting title in a city, town, or
6 village has been recorded.

7 § 2. This act shall take effect immediately and shall expire June 30,
8 2025 when upon such date the provisions of this act shall be deemed
9 repealed.