

STATE OF NEW YORK

3241

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. McDONALD, GOTTFRIED, THIELE, EPSTEIN -- 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 Assem-
bly, 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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10 796-b. Grounds for the proceeding.

11 796-c. Commencement; notice of petition; time and manner of
12 service.

13 796-d. Contents of petition.

14 796-e. Answer.

15 796-f. Trial.

16 796-g. Defenses.

17 796-h. Judgment.

18 796-i. Application by mortgagee or lienor of record or other
19 person having an interest in the property.

20 796-j. Appointment of administrator.

21 796-k. Presentation or settlement of accounts.

22 796-l. Waiver void.

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

LBD01841-01-1

796-m. Defense of warranty of habitability inapplicable.

§ 796. Definitions. As used in this article:

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 1. a lack of heat, running water, light, electricity, adequate sewage
2 disposal facilities, or any other condition dangerous to life, health or
3 safety, which has existed for five days, or an infestation by rodents,
4 or any combination of such conditions; or

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

8 § 796-c. Commencement; notice of petition; time and manner of service.

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

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

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

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

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

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

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

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

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

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

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

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

4 § 796-d. Contents of petition. The petition shall:

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

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

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

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

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

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

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

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

28 5. State the relief sought.

29 § 796-e. Answer. At the time when the petition is to be heard, the
30 owner and any mortgagee or lienor of record, shall answer in writing. If
31 the notice of petition was served at least eight days before the time at
32 which it was noticed to be heard and it so demands, the answer shall be
33 served at least three days before the time the petition is noticed to be
34 heard and any reply shall be served at least one day before such time.

35 § 796-f. Trial. Where triable issues of fact are raised, they shall be
36 tried by the court without a jury at the time when issue is joined;
37 provided, however, that the court, in its discretion, may grant an
38 adjournment of such trial at request of either party, if it determines
39 that an adjournment is necessary to enable either of the parties to
40 procure the necessary witnesses, or upon consent of all the parties who
41 appear. Such adjournment shall not be for more than five days except by
42 consent of all the parties who appear.

43 § 796-g. Defenses. It shall be a sufficient defense to the proceeding,
44 if the owner or any mortgagee or lienor of record establish that:

45 1. The condition or conditions alleged in the petition did not in fact
46 exist or that such condition or conditions have been removed or reme-
47 died; or

48 2. Such condition or conditions have been caused by a petitioning
49 tenant or tenants or members of the family or families of such petition-
50 er or petitioners or of their guests or by other residents of the dwell-
51 ing or their families or guests; or

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

55 § 796-h. Judgment. 1. The court shall render a final judgment either:

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

5 (b)(i) Directing that:

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

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

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

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

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

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

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

47 § 796-i. Application by mortgagee or lienor of record or other person
48 having an interest in the property. 1. If, after a trial, the court
49 shall determine that the facts alleged in the petition have been affir-
50 matively established by the petitioners, that no defense thereto speci-
51 fied in section seven hundred ninety-six-g of this article has been
52 affirmatively established by the owner or a mortgagee or lienor of
53 record, and that the facts alleged in the petition warrant the granting
54 of the relief sought, and if the owner or any mortgagee or lienor of
55 record or other person having an interest in the property, shall apply
56 to the court to be permitted to remove or remedy the conditions speci-

1 fied in such petition and shall (i) demonstrate the ability promptly to
2 undertake the work required and (ii) post security for the performance
3 of such work within the time, and in the amount and manner, deemed
4 necessary by the court, then the court, in lieu of rendering judgment as
5 provided in section seven hundred ninety-six-h of this article, may
6 issue an order permitting such person to perform the work within a time
7 fixed by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 6.(a) Such administrator shall be liable only in his or her official
55 capacity for injury to persons and property by reason of conditions of

1 the premises in a case where an owner would have been liable; he or she
2 shall not have any liability in his or her personal capacity.

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

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

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

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

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

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

1 such accounts shall be served on the owner, any mortgagee or other
2 lienor of record who appeared in the proceeding and any person having an
3 interest in such receipts or expenditures.

4 § 796-l. Waiver void. Any provision of a lease or other agreement
5 whereby any provision of this article for the benefit of a tenant, resi-
6 dent or occupant of a dwelling is waived, shall be deemed against public
7 policy and shall be void.

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

18 § 2. This act shall take effect immediately.