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.

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

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

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

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

(i) A vacate order of the department or other governmental agency currently prohibits occupancy of the commercial or industrial real property; or

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

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

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

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

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

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

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

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

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

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

4. If the name or address of

(a) the last owner of record, or

(b) any owner, mortgagee, lienor, or claimant as shown on records maintained by any city official required by any local law to maintain records of persons entitled to notice or process in connection with the maintenance of in rem foreclosure actions, or

(c) the person listed as the owner of the property on the latest completed assessment roll,

is different from that referred to in subdivisions two and three of this section, a copy of the notice to the owner, or to a mortgagee or lienor, whichever is applicable, shall also be sent to such person at such address by registered mail.

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

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

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

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

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

IN THE MATTER OF A PROCEEDING FOR A JUDGMENT VESTING TITLE TO REAL PROPERTY WHICH HAS BEEN ABANDONED BY THE OWNER PURSUANT TO ARTICLE NINETEEN-B OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW BY..... (insert name of city, town, or village). NOTICE OF PROCEEDING TO VEST TITLE TO ABANDONED REAL PROPERTY PLEASE TAKE NOTICE that on the..... day of....., the..... (insert name of city, town, or village), hereinafter, the "Petitioner", pursuant to law, filed with the clerk of ..... county a petition for a judgment vesting title to real property abandoned by the owner against various parcels of real property. Such petition pertains to the following parcels: (insert the description and the name of the owner or owners of record of each parcel as of the date of the filing of the certification).

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

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

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

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

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

Department:

Attorney for Department:"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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