

STATE OF NEW YORK

5318

2021-2022 Regular Sessions

IN SENATE

March 2, 2021

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the abandoned property law, in relation to requiring abandoned property escheat to the Indian nation or tribe that historically occupied the land or to nearest nation or tribe; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Section 200 of the abandoned property law is amended to
2 read as follows:

3 § 200. Escheated lands. All lands the title of which shall fail from
4 a defect of heirs, shall revert, or escheat, to the [~~people~~] Indian
5 nation or tribe who historically occupied the property or if no such
6 tribe or nation currently exists, to the nearest extant Indian nation or
7 tribe. Such land shall be tribal land under the laws of the state.

8 § 2. Section 201 of the abandoned property law, as amended by chapter
9 310 of the laws of 1962, is amended to read as follows:

10 § 201. Action for recovery of property. Whenever the attorney-general
11 has good reason to believe that the title to, or right of possession of,
12 any real property has vested in [~~the people of the state~~] an Indian
13 nation or tribe by escheat whether from defect of heirs, alienage or
14 otherwise, [~~or by conviction or outlawry for treason as provided in~~
15 ~~section eight hundred nineteen of the code of criminal procedure,~~] he or
16 she may commence an action to recover the property.

17 § 3. Section 202 of the abandoned property law, as amended by chapter
18 314 of the laws of 1962, is amended to read as follows:

19 § 202. Parties to action. There may be made parties to such action,
20 all persons who would have, might have or might claim to have any inter-
21 est in or lien upon the premises so escheated or forfeited, at the time
22 of such escheat or forfeiture, and all persons in possession of such
23 real property. Where the names of the defendants are unknown, they may
24 be designated as "unknown defendants." The provisions of law applicable
25 to actions to recover real property shall apply to such actions, except
26 that service of the summons shall not be deemed to be complete until,

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

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1 pursuant to an order of the court, the summons together with a notice
2 directed to the defendants setting forth the object of the action, a
3 brief description of the land affected, the source and manner in and by
4 which it is alleged that said real property shall have escheated or
5 forfeited to [~~the people~~] an Indian nation or tribe, and the name or
6 names of person or persons whose title or interest shall have so
7 escheated or have been forfeited, shall have been published once in each
8 week for four successive weeks in two newspapers designated in the order
9 for such publication as most likely to give notice to the defendants to
10 be served.

11 § 4. Section 203 of the abandoned property law, as added by chapter
12 760 of the laws of 1944, is amended to read as follows:

13 § 203. Effect of judgment in favor of [~~people~~] an Indian nation or
14 tribe. A final judgment in favor of [~~the people~~] an Indian nation or
15 tribe in an action authorized as set forth in section two hundred one of
16 this article is conclusive as to the title of [~~the people~~] an Indian
17 nation or tribe in and to the premises described in said judgment
18 against any and all parties in said action, including unknown defend-
19 ants, and against any and all persons claiming from, through or under
20 such a party by title accruing after the filing of the judgment roll or
21 after the filing in the office of the clerk of the county in which said
22 real property or a part thereof is situated, a notice of the pendency of
23 the action.

24 § 5. Section 204 of the abandoned property law is REPEALED.

25 § 6. Section 205 of the abandoned property law, as amended by chapter
26 524 of the laws of 2005, is amended to read as follows:

27 § 205. Report by attorney-general. The attorney-general shall report
28 to the commissioner of general services all the real property recovered
29 by [~~the people~~] an Indian nation or tribe in any action brought pursuant
30 to this article.

31 § 7. Section 206 of the abandoned property law, as amended by chapter
32 60 of the laws of 1962, is amended to read as follows:

33 § 206. Petition for release of escheated lands. 1. Where there is
34 good reason to believe that real property shall have escheated to [~~the~~
35 ~~state~~] an Indian nation or tribe and final judgment shall not have been
36 entered as hereinbefore provided, a petition for the release to the
37 petitioner of any interest in real property believed to have escheated
38 to [~~the state~~] such Indian nation or tribe by reason of the failure of
39 heirs or the incapacity, for any reason except infancy or mental incom-
40 petency, of any of the petitioner's alleged predecessors in interest to
41 take such property by devise or otherwise, or to convey the same or by
42 reason of the alienage of any person, who but for such alienage would
43 have succeeded to such interest, may be presented to the commissioner of
44 general services within [~~forty~~] two years after such escheat. In any
45 case in which the heirs were legally incapacitated by reason of infancy
46 or mental incompetency, such petition may be presented to the commis-
47 sioner of general services within twenty years after such escheat. Such
48 petition may be presented:

49 a. By any person who would have succeeded to such interest but for his
50 or her alienage or the alienage of another person, or

51 b. By the surviving [~~husband, widow~~] spouse, stepfather, stepmother or
52 adopted child of the person whose interest has so escheated, or

53 c. By the purchaser at a judicial sale or sheriff's sale on execution,
54 or

55 d. By an heir, devisee, assignee, grantee, immediate or remote, or
56 executor of any person, who but for his or her death, assignment or

1 grant could present such petition, or the alleged grantee of any person
2 or of any association or body, whether incorporated or not, who or which
3 would have succeeded by devise or otherwise to the title of such person
4 but for his or her alienage or a legal incapacity to take or convey the
5 property so escheated, or

6 e. By a person having a contract to purchase made prior to the date of
7 escheat with the person whose interest shall have escheated.

8 2. Such petition shall be verified by each petitioner in the same
9 manner as a pleading in a court of record may be verified, and shall
10 allege:

11 a. The name and residence of each person owning any interest in such
12 real property immediately prior to the escheat;

13 b. The name and residence of each petitioner and the circumstances
14 which entitle him or her to present such petition;

15 c. The name and place of residence of every person who would have
16 succeeded to any such interest but for his or her alienage or the alien-
17 age of another or any other rule of legal incapacity hereinabove
18 mentioned affecting an attempted transfer of such interest to such
19 person or to or by any of his or her alleged predecessors in interest;

20 d. The description and value, at the date of the verification of the
21 petition, of such real property sought to be released;

22 e. The description and value, at the date of the verification of the
23 petition, of all the property of every such owner, which shall have
24 escheated to [~~the people of the state~~] an Indian nation or tribe by
25 reason of failure of heirs or alienage and which shall not then have
26 been released or conveyed by the state;

27 f. The name and residence of each person having or claiming an inter-
28 est in such real property at the date of the verification of the peti-
29 tion and the nature and value of such interest;

30 g. Any special facts or circumstances by reason of which it is claimed
31 that such interest should be released to the petitioner;

32 h. The name and residence of each person in possession or occupation
33 of the premises and the nature, if any, of the interest of such person;

34 i. The name and residence of each person having filed a protest with
35 the commissioner of general services under the provisions of section two
36 hundred ten of this article.

37 Such petition may be filed within sixty days after its verification
38 with the office of general services.

39 § 8. Section 207 of the abandoned property law, as amended by chapter
40 60 of the laws of 1962, is amended to read as follows:

41 § 207. Proceedings on receipt of petition. Prior to the presentation
42 of such petition, the petitioner shall cause to be personally served
43 upon each person who would have succeeded to any interest in said land
44 but for the alienage of such person or another or for any other rule of
45 legal incapacity hereinbefore mentioned affecting an attempted transfer
46 of such interest of such person, and each person in possession or occu-
47 pation or who has filed a protest under section two hundred ten of this
48 article, whose names and places of residence are known and cause to be
49 published in a newspaper published in each county in which any part of
50 said land is situated, once in each week for three successive weeks as
51 to those whose names and places of residence are unknown, a notice, in
52 form adopted or approved by the commissioner, directed to such persons.
53 Such notice shall state the date on which such petition shall be filed
54 with the office of general services, the nature of the application, a
55 description of the property affected and the name of the person or
56 persons whose interest or interests shall have escheated to [~~the people~~

1 ~~of the state of New York~~ an Indian nation or tribe. Such notice shall
2 also provide that any person or persons having a claim or right to said
3 property equal to or superior to the right of the petitioner may file a
4 remonstrance with the said commissioner on or before the date of said
5 filing against the granting of such petition and for the granting of a
6 release to such person or persons. Proof of service and of publication
7 as aforementioned shall be filed with the petition. The commissioner may
8 take proof of the facts alleged in said petition, by written or oral
9 evidence, whether or not a sale or release of said property was thereto-
10 fore made, the value of the property to be released, and such other
11 facts as in his or her judgment are necessary to determine the matter.
12 If a remonstrance shall have been presented, the commissioner may take
13 proof of the issues raised thereby and the relief therein asked. The
14 commissioner may, as a condition of hearing the matter, require the
15 petitioner or any remonstrant to produce witnesses or advance the
16 expense of producing them.

17 § 9. Section 208 of the abandoned property law, as amended by chapter
18 60 of the laws of 1962, is amended to read as follows:

19 § 208. Release. 1. The commissioner shall make his or her determi-
20 nation and enter an order accordingly. The commissioner may agreeably to
21 the best interest of the [~~state~~] the Indian nation or tribe and in his
22 or her discretion, if he or she deems it just to all persons interested,
23 execute in the name of the [~~state~~] Indian nation or tribe, a release on
24 such terms and conditions as the commissioner deems just, releasing to
25 such person or persons as he or she shall have determined entitled ther-
26 eto the interest of the [~~state~~] Indian nation or tribe in such real
27 property so sought to be released.

28 2. A conveyance so made to any such person who is a parent, child,
29 surviving [~~husband or widow~~] spouse of any such owner of any interest
30 therein immediately prior to the escheat, or the heirs-at-law of any
31 such surviving [~~husband or widow~~] spouse, or the alleged grantee or any
32 person or of any association or body, whether incorporated or not, who
33 or which would have succeeded by devise or otherwise to the title of
34 such person but for a legal incapacity to take or convey the property so
35 escheated shall be without consideration, if the value, at the date of
36 the petition, as determined by the commissioner, of all property of any
37 such owner escheated to [~~the state~~] an Indian nation or tribe and not
38 conveyed or released by the state, shall not exceed one hundred thousand
39 dollars, and of the property sought to be released shall not exceed ten
40 thousand dollars, except that any and all expenses incurred by the state
41 or relevant Indian nation or tribe in an action to recover the property
42 escheated or in any action pertaining thereto, or otherwise relating to
43 the escheated property shall be paid by such person. Where however, the
44 value of the property sought to be released shall exceed the sum of ten
45 thousand dollars the commissioner may release the same to such person
46 upon the payment of the appraised value in excess of ten thousand
47 dollars and in addition thereto the expenses incurred by the state or
48 relevant Indian nation or tribe in an action to recover the property as
49 aforementioned.

50 3. The release shall contain a brief recital of the determinations
51 required to be made by the commissioner on the hearing of the petition,
52 remonstrance or remonstrances, and of all the terms and conditions on
53 which the release is made.

54 § 10. Section 210 of the abandoned property law, as amended by chapter
55 60 of the laws of 1962, is amended to read as follows:

1 § 210. Protest against release. Any person may file, at any time, with
2 the commissioner, a protest, stating his or her name, residence and
3 post-office address, against the release by the state of any interest of
4 ~~[the people of the state]~~ an Indian nation or tribe acquired by escheat,
5 in any real property described in such protest.

6 § 11. Section 211 of the abandoned property law, as amended by chapter
7 60 of the laws of 1962, is amended to read as follows:

8 § 211. Lands held under written contract. Where lands have been
9 escheated to ~~[the state]~~ an Indian nation or tribe and the person last
10 seized was a citizen or capable of taking and holding real property the
11 commissioner shall fulfill any contract made by such person or by any
12 person from whom his or her title is derived, in respect to the sale of
13 such lands, so far only as to convey the right and title of the state,
14 pursuant to such contract, without any covenants of warranty or other-
15 wise, and shall allow all payment which may have been made on such
16 contracts. If any part of such escheated land has been occupied under a
17 verbal agreement for the purchase thereof, and the occupants have made
18 valuable improvements thereon, such agreement shall be as valid and
19 effectual as if it were in writing.

20 § 12. Section 212 of the abandoned property law, as amended by chapter
21 760 of the laws of 1944, is amended to read as follows:

22 § 212. Escheated lands subject to trusts and incumbrances. Lands
23 escheated to ~~[the state]~~ an Indian nation or tribe shall be held
24 subject to the same trusts and incumbrances to which they would have
25 been subject if they had descended, except that where the owner or bene-
26 ficiaries of such trusts or the holders of such incumbrances have been
27 made parties to an action brought under section two hundred one of this
28 article, such land shall be subject only to trusts and incumbrances of
29 record in the county in which the land is located prior to the filing of
30 notice of pendency of action authorized under section two hundred one of
31 this article.

32 § 13. Section 213 of the abandoned property law is amended to read as
33 follows:

34 § 213. Condemnation awards as interest in real property. An interest
35 in real property escheated to ~~[the state]~~ an Indian nation or tribe
36 shall for the purposes of this article, be deemed to include any and all
37 awards heretofore or hereafter made in condemnation proceedings against
38 such escheated lands and all the provisions of this article shall apply
39 to the release and assignment of such awards with the same force and
40 effect as to the release and conveyance of an interest in real property.

41 § 14. Section 214 of the abandoned property law, as added by chapter
42 760 of the laws of 1944, is amended to read as follows:

43 § 214. Receiver. At any time during the pendency of said action pursu-
44 ant to section two hundred one of this article, the court may upon
45 application therefor appoint a receiver to conserve said property and to
46 receive the rents, income and profits therefrom during the pendency of
47 the action. The rents, income and profits so received, after the payment
48 of the expenses of such receivership, shall be paid over to such party
49 or parties as shall be determined in the final judgment to be entitled
50 to possession of said property and in the event that ~~[the people are]~~ an
51 Indian nation or tribe adjudged entitled thereto, shall be directed to
52 be paid into the ~~[state]~~ of the Indian nation or tribe treasury.

53 § 15. Section 215 of the abandoned property law is REPEALED.

54 § 16. This act shall take effect immediately.