STATE OF NEW YORK

9736

IN ASSEMBLY

April 3, 2024

Introduced by M. of A. FLOOD -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to providing for a limited alternative remedy to remove unauthorized persons from residential real property

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

Section 1. Legislative findings and intent. The Legislature finds that the right to exclude others from entering, and the right to direct others to immediately vacate, residential real property are the most important real property rights. The Legislature further finds that existing remedies regarding unauthorized persons who unlawfully remain on residential real property fail to adequately protect the rights of the property owner and fail to adequately discourage theft and vandalism. The intent of this act is to quickly restore possession of residential real property to the lawful owner of the property when the property is being unlawfully occupied and to thereby preserve property rights while limiting the opportunity for criminal activity.

§ 2. The real property actions and proceedings law is amended by adding a new section 758 to read as follows:

§ 758. Limited alternative remedy to remove unauthorized persons from residential real property. 1. A property owner or their authorized agent may request from a police officer, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, the immediate removal of a person or persons unlawfully occupying a residential dwelling pursuant to this section if all of the following conditions are met:

(a) The requesting person is the property owner or authorized agent of the property owner;

(b) The real property that is being occupied includes a residential dwelling;

(c) An unauthorized person or persons have unlawfully entered and remain or continue to reside on the property owner's property;

(d) The real property was not open to members of the public at the time the unauthorized person or persons entered;

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

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(e) The property owner has directed the unauthorized person to leave the property;

(f) The unauthorized person or persons are not current or former tenants pursuant to a written or oral rental agreement authorized by the property owner;

(g) The unauthorized person or persons are not immediate family members of the property owner; and

(h) There is no pending litigation related to the real property between the property owner and any known unauthorized person.

2. To request the immediate removal of an unlawful occupant of a residential dwelling, the property owner or their authorized agent shall submit a complaint by presenting a completed complaint to remove persons unlawfully occupying residential real property to a police officer in the county in which the real property is located. The submitted complaint must be in substantially the following form:

"COMPLAINT TO REMOVE PERSONS UNLAWFULLY OCCUPYING RESIDENTIAL REAL PROPERTY

I, the owner or authorized agent of the owner of the real property located at _____, New York, declare under the penalty of perjury that (initial each box):

1. I am the owner of the real property or the authorized agent of the owner of the real property.

2. I purchased the property on _____.

3. The real property is a residential dwelling.

4. An unauthorized person or persons have unlawfully entered and are remaining or residing unlawfully on the real property.

5. The real property was not open to members of the public at the time the unauthorized person or persons entered.

6. I have directed the unauthorized person or persons to leave the real property, but they have not done so.

7. The person or persons are not current or former tenants pursuant to any valid lease authorized by the property owner, and any lease that may be produced by an occupant is fraudulent.

8. The unauthorized person or persons sought to be removed are not an owner or a co-owner of the property and have not been listed on the title to the property unless the person or persons have engaged in title fraud.

9. The unauthorized person or persons are not immediate family members of the property owner.

10. There is no litigation related to the real property pending between the property owner and any person sought to be removed.

11. I understand that a person or persons removed from the property pursuant to this procedure may bring a cause of action against me for any false statements made in this complaint, or for wrongfully using this procedure, and that as a result of such action I may be held liable for actual damages, penalties, costs, and reasonable attorney fees.

12. I am requesting the police to immediately remove the unauthorized person or persons from the residential property.

13. A copy of my valid government-issued identification is attached, or I am an agent of the property owner, and documents evidencing my authority to act on the property owner's behalf are attached.

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN NEW YORK LAW.

(Signature of Property Owner or Agent of Owner)"

3. Upon receipt of the complaint, the police officer shall verify that the person submitting the complaint is the record owner of the real property or the authorized agent of the owner and appears otherwise entitled to relief under this section. If verified, the police officer shall, without delay, serve a notice to immediately vacate on all the unlawful occupants and shall put the owner in possession of the real property. Service may be accomplished by hand delivery of the notice to an occupant or by posting the notice on the front door or entrance of the dwelling. The police officer shall also attempt to verify the identities of all persons occupying the dwelling and note the identities on the return of service. If appropriate, the police officer may arrest any person found in the dwelling for trespass, outstanding warrants, or any other legal cause.

4. After a police officer serves a notice to immediately vacate, the property owner or authorized agent may request that the police officer stand by to keep the peace while the property owner or agent of the owner changes the locks and removes the personal property of the unlawful occupants from the premises to or near or over the property line. A police officer is not liable to the unlawful occupant or any other party for loss, destruction, or damage of property. The property owner or their authorized agent is not liable to an unlawful occupant or any other party for the loss, destruction, or damage to the personal property unless such removal was wrongful.

5. A person may bring a civil cause of action for wrongful removal under this section. A person harmed by a wrongful removal under this section may be restored to possession of the real property and may recover actual costs and damages incurred, statutory damages equal to triple the fair market rent of the dwelling, court costs, and reasonable attorney fees. The court shall advance the cause on the calendar.

6. The provisions of this section shall not limit the rights of a property owner or limit the authority of a police officer to arrest an unlawful occupant for trespassing, vandalism, theft, or other crime.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law.