

STATE OF NEW YORK

8867

IN SENATE

March 22, 2024

Introduced by Sen. MATTERA -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

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:

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

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

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

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

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

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

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

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

(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 PETI-

1 TION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN
2 NEW YORK LAW.

3 (Signature of Property Owner or Agent of Owner)"

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

17 4. After a police officer serves a notice to immediately vacate, the
18 property owner or authorized agent may request that the police officer
19 stand by to keep the peace while the property owner or agent of the
20 owner changes the locks and removes the personal property of the unlaw-
21 ful occupants from the premises to or near or over the property line. A
22 police officer is not liable to the unlawful occupant or any other party
23 for loss, destruction, or damage of property. The property owner or
24 their authorized agent is not liable to an unlawful occupant or any
25 other party for the loss, destruction, or damage to the personal proper-
26 ty unless such removal was wrongful.

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

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

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