

AN ACT to reconsolidate laws relating to actions, rights of action and proceedings concerning real property, constituting chapter eighty-one of the consolidated laws  
Became a law March 13, 1962, with the approval of the Governor. Passed by a majority vote, three-fifths being present  
The People of the State of New York, represented in Senate and Assembly, do enact as follows:

**REAL PROPERTY ACTIONS AND PROCEEDINGS LAW**

- Article      1.      Short title; definitions; jurisdiction of certain actions; construction of act. (§§ 101-131.)
2.      General provisions governing real property actions. (§§ 201-241.)
3.      Provisions relating to evidence. (§§ 301-351.)
4.      Valuing interests in real property. (§§ 401-406.)
5.      Adverse possession. (§§ 501-551.)
6.      Action to recover real property. (§§ 601-661.)
7.      Summary proceeding to recover possession of real property. (§§ 701-767.)
- 7-A.    Special proceedings by tenants of dwellings in the city of New York and the counties of Nassau, Suffolk, Rockland and Westchester for judgment directing deposit of rents and the use thereof for the purpose of remedying conditions dangerous to life, health or safety. (§§ 769-783.)
- 7-B.    Special proceeding for the removal of abandoned manufactured homes (§§ 790-795.)
- 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. (§§ 796--796-m.)
- 7-C\*.    Special proceedings by tenants for judgment directing repairs of conditions and other relief in residential real property constituting violation of applicable local or state housing standards or real property law § 235-b and any other appropriate relief. (§§ 796--796-m.)

8. Waste and other actions and rights of action for injury to real property. (§§ 801-881.)
9. Action for partition. (§§ 901-993.)
10. Action for dower. (§§ 1001-1093.)
11. Proceeding to discover the death of a tenant for life. (§§ 1101-1143.)
12. Other actions and proceedings between co-owners or owners of successive interests. (§§ 1201-1221.)
13. Action to foreclose a mortgage. (§§ 1301-1393.)
15. Action to compel the determination of a claim to real property. (§§ 1501-1551.)
16. Judicial authorization of sale, lease, mortgage, acquisition, exchange or voluntary partition. (§§ 1601-1651.)
17. Special proceeding for disposition of real property of infant, incompetent or conservatee. (§§ 1701-1766.)
18. Special proceeding for release of claim against state of infant or incompetent for appropriation of real property. (§§ 1801-1808.)
19. Discharge or extinguishment of encumbrances, claims and interests. (§§ 1901-1955.)
- 19-A. Special proceeding to convey title to abandoned dwelling to city, town or village. (§§ 1970-1974.)
- 19-B. Special proceeding to convey title to abandoned commercial and industrial real property to city, town, or village. (§§ 1980-1984.)
20. Enforcement of covenants and easements; recovery of damages for breach of covenant or injury to easement. (§ 2001.)
21. Effective date; laws repealed. (§§ 2101-2111.)

## ARTICLE 1

### **SHORT TITLE; DEFINITIONS; JURISDICTION OF CERTAIN ACTIONS; CONSTRUCTION OF ACT**

Section 101. Short title.

111. Definitions.

121. Jurisdiction of certain actions relating to real property  
situate without the state.

131. Construction of act of reconsolidation.

**§ 101. Short title.** This chapter shall be known as the real property actions and proceedings law and may be cited as "RPAPL".

**§ 111. Definitions.** 1. As used in section 1641 of this chapter and in sections 1901 and 1911 of this chapter, the terms "real property" and "lands" are co-extensive in meaning with lands, tenements and hereditaments.

2. As used in section 1921, the term "real property" includes lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years.

3. As used in this chapter the term "incompetent" or "incompetent person" means a person incompetent to manage his affairs of whose property a committee has been appointed pursuant to section 78.03 or a person of whose property a committee has been appointed pursuant to section 78.07 of the mental hygiene law.

4. As used in this chapter the term "infant" or "minor" means a person who has not attained the age of eighteen years.

5. As used in this chapter, the term "conservatee" means a person under substantial impairment within the meaning of the conservatorship provisions of article seventy-seven of the mental hygiene law for whom a conservator has been appointed.

**§ 121. Jurisdiction of certain actions relating to real property situate without the state.** An action may be maintained in the courts of this state to recover damages for injuries to real estate without the state, or for breach of contracts or of covenants relating thereto,

whenever such an action could be maintained in relation to personal property without the state. The action must be tried in the county in which the parties or some one thereof resides, or if no party resides within the state, in any county.

**§ 131. Construction of act of reconsolidation.** 1. This chapter shall be construed as a continuation and reenactment of the provisions of the real property law repealed by article 21 hereof as such provisions existed on December 31, 1961.

2. The repeal by this chapter of provisions of the real property law specified in article 21 hereof and the enactment of this chapter shall not affect any action or proceeding pending under any such provision at the time this chapter shall take effect.

3. Any act of the legislature of the year 1962 or 1963 which in form amends or repeals or purports to amend or repeal any provision or provisions of the real property law repealed by article 21 of this chapter shall be legally effective notwithstanding the repeal of such provision or provisions and shall be construed as an amendment or repeal, as the case may be, of the corresponding provision or provisions of this chapter, and such corresponding provisions shall be construed to be amended, modified, changed or repealed as though they had been expressly and in terms so amended or repealed.

4. Reference by any law, general or special, in force on December 31, 1961, or in any act of the legislature of the year 1962 or 1963, to a provision of the real property law repealed by article 21 of this chapter as in force immediately before the time this chapter shall take effect shall be construed to refer to the corresponding provision of this chapter.

## ARTICLE 2

### **GENERAL PROVISIONS GOVERNING REAL PROPERTY ACTIONS**

Section 201. State tax commission, state or industrial commissioner as

- defendant in certain real property actions.
- 202. Pleading interest of the state.
  - 202-a. Pleading interest of a city.
  - 203. Judgment in action adversely affecting the title,  
interest or claim of the state based upon tax deed.
  - 211. Prevention of waste or damage during pendency.
  - 221. Compelling delivery of possession of real property.
  - 231. Sale; notice of; when and how conducted.
  - 232. Purchases by certain officers prohibited; penalty.
  - 241. Persons bound by judgment in certain actions.

**§ 201. State tax commission, state or industrial commissioner as defendant in certain real property actions.** In any action affecting real property upon which the state tax commission has a lien under the tax law or under a law enacted pursuant to the authority of the tax law or article two-E of the general city law, whether or not such lien exists by reason of the filing or docketing of a warrant under such laws, the state tax commission may be made a party defendant in the same manner as a private person. In any action affecting real property upon which the state has a lien under sections two hundred forty-six-a and two hundred forty-six-b of the lien law, the state may be made a party defendant in the same manner as a private person. In any action affecting real property upon which a lien exists by reason of the docketing of a warrant pursuant to the unemployment insurance law, the industrial commissioner may be made a party defendant in the same manner as a private person.

**§ 202. Pleading interest of the state.** Where the state or any department, bureau, board, commission, council, officer, agency or instrumentality of the state is defendant in an action affecting real property, the complaint shall set forth:

1. Detailed facts showing the particular nature of the interest in or lien on the real property and the reason for making the state a party defendant.

2. If the lien exists by virtue of a judgment, other than a warrant the name of the court, date recorded, clerk's office in which filed, and names of the parties against whom and in whose favor recorded. In the case of a warrant, the date filed or docketed, clerk's office in which filed or docketed, and names of the parties against whom and in whose favor issued.

3. If the lien exists by virtue of a provision of law other than a judgment, the provision of law under which said lien is created.

4. If the lien is one under articles ten, ten-a, ten-b, ten-c or twenty-six of the tax law, whether or not such lien exists by reason of the filing or docketing of a warrant under such law, the name of each decedent against whose estate there is an unpaid transfer or estate tax, the date of death, place of residence at the time of death, heirs at law and next of kin, whether the decedent died testate or intestate, whether his estate has been administered, and if so where.

5. If the lien is one under articles nine, nine-a, nine-b, nine-c or twenty-seven of the tax law, whether or not such lien exists by reason of the filing or docketing of a warrant under such law, the name of the corporation, association, joint-stock company, unincorporated company, person, or partnership against whose property there is an unpaid corporation, license, or franchise tax or penalty.

6. If the lien is one under article twenty-six-a of the tax law, whether or not such lien exists by reason of the filing or docketing of a warrant under such law, the names of the donees or transferees against whose property there is an unpaid gift tax.

**§ 202-a. Pleading interest of a city.** Where a city or any department, bureau, board, commission, officer, agency or instrumentality thereof is a defendant in an action affecting real property, the complaint shall set forth:

1. Detailed facts showing the particular nature of the interest in or lien on the real property and the reason for making such city a party-defendant.

2. If the lien exists by virtue of a judgment, the name of the court, date recorded, clerk's office in which filed, the names of the parties against whom and in whose favor such judgment was recovered and a brief description of the grounds for or the nature of such judgment.

3. If the lien exists by virtue of a provision of law other than a judgment, the provision of law under which said lien is created.

**§ 203. Judgment in action adversely affecting the title, interest or claim of the state based upon tax deed.** In any action affecting the title, or the possession, enjoyment or use of, real property in which one of the parties is the state, any judgment that may adversely affect the title, interest or claim of the state based upon a tax deed shall provide in effect as follows:

1. That the state shall have a lien upon such real property or part thereof described in such tax deed, prior and superior to all other liens, (a) for the amount of the unpaid taxes not adjudged illegal in such action for which such real property was sold or liable to be sold in the first instance and for which such tax deed was issued, together with fees, charges and interest; (b) for the amount of the unpaid taxes not adjudged illegal in such action for which such real property was subsequently sold or liable to be sold, together with fees, charges and interest; (c) for the amount of all taxes, fees and charges admitted or paid by the state upon such real property to the date of the entry of such judgment, together with interest thereon from the date of such admission or payment. In the determination of the amount of such lien, establishment of payments of taxes on said real property by the adjudged or admitted owner of the property during any of the same years in which payments were also made by the state shall reduce the lien of the state by the larger of the two tax payments for each of the years affected by duplicate payments, and in the event that wholly identical areas are not

affected by the duplicate payments the court shall have power to apportion and adjust the amount of the lien as equity may require.

2. That the state may foreclose such lien as a mortgage on real property is foreclosed, provided such lien remains unpaid after the expiration of one year from the entry of such judgment.

The remedy provided by this section for recovery of tax payments shall be in addition to any other remedy now or hereafter available in law or in equity.

**§ 211. Prevention of waste or damage during pendency.** If, during the pendency of an action to recover a judgment affecting the title to, or the possession, use or enjoyment of, real property, a party commits waste upon, or does any other damage to, the property in controversy, the court may grant, without notice or security, an order restraining him from the commission of any further waste upon or damage to the property. Disobedience to such an order may be punished as a contempt of the court. This section does not affect the right to a permanent or temporary injunction in such an action.

**§ 221. Compelling delivery of possession of real property.** Where a judgment affecting the title to, or the possession, enjoyment or use of, real property allots to any person a distinct parcel of real property, or contains a direction for the sale of real property, or confirms such an allotment or sale, it also may direct the delivery of the possession of the property to the person entitled thereto, subject to the rights and obligations set forth in section thirteen hundred five of this chapter.

If a party, or his representative or successor, who is bound by the judgment, withholds possession from the person thus declared to be entitled thereto, the court, by order, in its discretion, besides punishing the disobedience as a contempt, may require the sheriff to put that person into possession. Such an order shall be executed as if it

were an execution for the delivery of the possession of the property.

**§ 231. Sale; notice of; when and how conducted.** 1. A sale of real property made in pursuance of a judgment affecting the title to, or the possession, enjoyment or use of, real property, shall be at public auction to the highest bidder.

2. (a) Notice of such sale shall be given by the officer making it by publishing a notice of the time and place of the sale, containing a description of the property to be sold, in a newspaper published in the county in which the property is located, or, if there is none, in a newspaper published in an adjoining county, unless the property is situated wholly or partly in a city, or in an incorporated village in which a daily, semi-weekly or tri-weekly newspaper is published, and, in that case, by publishing notice of the sale in such a daily, semi-weekly or tri-weekly paper, except that where such real property is located in a county within the city of New York such publication shall be in a daily newspaper published within such county, or in a weekly paper published in a city or in such incorporated village. If the property be situated in a city, or a village in which no newspaper is published daily, semi-weekly or tri-weekly, and there be an adjoining city or village in the same or another county, in which a newspaper is published, daily, semi-weekly or tri-weekly, such notice may be published in such daily, semi-weekly or tri-weekly newspaper of the latter city or village or in a weekly newspaper of such city. In each case, publication may be either once in each week for four successive weeks or at least twice in each week for three successive weeks perceding the original date fixed for the sale. If the publication is for three weeks, such sale shall take place on any day on or after the twenty-first day and on or before the twenty-eighth day after the day of the first publication; and if the publication is for four weeks such sale shall take place on any day on or after the twenty-eighth day and on or before the thirty-fifth day after the day of the first publication. Any period of seven successive days shall constitute a week under this section.

(b) Where the property is situated wholly outside a city or an

incorporated village referred to in subparagraph (a) of this subdivision, notice of such sale shall also be given by posting a copy of the notice of sale at least twenty-eight days preceding the original date fixed for the sale in three public places in the town in which the property is located, and, if the sale is to be held in another town or in a city, in three public places therein.

3. If the officer appointed to make such sale does not appear at the time and place where such sale has been advertised to take place, the attorney for the plaintiff may postpone or adjourn such sale not to exceed four weeks, during which time such attorney may make application to the court to have another person appointed to make such sale. Notice of postponement of the sale shall be posted at least three days prior to the postponed date in the same places as the original notice of sale when posting of the notice of sale is required, and shall be published once at least three days prior to the postponed date in the newspaper in which the notice of sale was originally published.

4. The terms of the sale shall be made known at the sale, and if the property or any part thereof is to be sold subject to the right of dower, charge or lien, that fact shall be declared at the time of the sale.

5. If the property consists of two or more distinct buildings, farms or lots, they shall be sold separately, unless otherwise ordered by the court; but where two or more buildings are situated in the same city lot, they shall be sold together.

6. At any time within one year after the sale, but not thereafter, the court, upon such terms as may be just, may set the sale aside for failure to comply with the provisions of this section as to the notice, time or manner of such sale if a substantial right of a party was prejudiced by the defect.

**§ 232. Purchases by certain officers prohibited; penalty.** No officer making a sale as prescribed in section 231, or guardian of an infant

party, or any person for his benefit, directly or indirectly, shall purchase or be interested in the purchase of any of the property sold; except that a guardian, where he is lawfully authorized to do so, may purchase for the benefit or in behalf of his ward. The violation of this section is a misdemeanor; and a purchase made contrary to this section is void.

**§ 241. Persons bound by judgment in certain actions.** In an action brought to recover a judgment affecting the title to, or the possession, use or enjoyment of, real property, all the proceedings and the judgment shall bind, in addition to the persons who are bound by the filing of a notice of pendency of the action pursuant to law, all persons born between the filing of the notice of pendency and the entry of judgment who would have been bound by such proceedings if born after such judgment.

### ARTICLE 3

#### PROVISIONS RELATING TO EVIDENCE

Section 301. Conveyance and record as evidence.

311. Presumption of possession from legal title.

321. Proof of ownership of unoccupied lands and timber thereon.

331. Proof of lost execution or writ after sheriff's sale of real property.

341. Recitals as to heirships in conveyances.

342. Recitals in judgments affecting title to real property as evidence.

351. Evidence as to common lands in the city of New York.

**§ 301. Conveyance and record as evidence.** 1. The certificate of the acknowledgment or of the proof of a conveyance, or the record, or the transcript of the record, of such a conveyance, is not conclusive, and it may be rebutted, and the effect thereof may be contested, by a party affected thereby.

2. If it appears that the acknowledgment or proof was taken upon the oath of an interested or incompetent witness, the conveyance, or the record or transcript of the record thereof, shall not be received in evidence until its execution is established by other competent proof, except in a case where the title to the land conveyed or affected by such conveyance or instrument has passed to a subsequent purchaser for a valuable consideration.

**§ 311. Presumption of possession from legal title.** In an action to recover real property or the possession thereof, the person who establishes a legal title to the premises is presumed to have been possessed thereof within the time required by law; and the occupation of the premises by another person is deemed to have been under and in subordination to the legal title unless the premises have been held and possessed adversely to the legal title for ten years before the commencement of the action.

**§ 321. Proof of ownership of unoccupied lands and timber thereon.** In all actions to recover the possession of, or otherwise to determine the title to, or for trespass upon or injury to, unoccupied lands, timber, trees, or underwood thereon, any party seeking such recovery or determination may show an unbroken chain of title for twenty years, or conveyance of the land to himself more than twenty years next preceding the commencement of the action or the assertion of the defense or counterclaim except in actions for trespass, and in actions for trespass for twenty years next preceding the commission of the trespass or injury, and such proof shall be presumptive evidence of ownership at the times respectively of the commencement of such action or assertion of the defense or counterclaim or commission of such trespass or injury. Such presumption may be rebutted by any other or opposing party by showing ownership of said lands, at the times respectively of the commencement of the action or the commission of the trespass or injury, in some person other than the party claiming ownership by virtue of such presumption. In any such action wherein the state, or any county or any state officer, board or commission shall be a party, evidence as

aforsaid shall not be deemed to create any presumption of ownership as against said designated parties.

**§ 331. Proof of lost execution or writ after sheriff's sale of real property.** Whenever, upon the trial of an action, it shall appear that at least ten years theretofore real property has been sold by a sheriff for enforcement of the valid lien thereon of a duly docketed judgment, and that a certificate of the sale has been duly made by the sheriff and filed, and that a conveyance in completion of the purchase has been executed and recorded, but that the execution or writ by virtue of which the sale has so been made cannot be found in the office of the clerk with whom the same should have been filed, then and in such case the recital of or reference to such execution or writ contained in the said certificate, or in the said conveyance, or in the record thereof, shall be prima facie evidence of the said execution or writ and of the issuance of the same as against any party whose claim of title is not shown to have been accompanied or supported by peaceable possession of the premises in controversy for at least three years immediately preceding the commencement of the action.

**§ 341. Recitals as to heirships in conveyances.** Hereafter, in any special proceeding or action in any of the courts of this state, any deed, mortgage, lease, release, power of attorney or other instrument more than ten years old, executed for the purpose of transferring the title to or interest in lands, tenements or hereditaments situated within this state, which contains recitals that the grantors, grantees, or either, or both, are the heirs at law of a prior owner of the title or interest described in said instrument, or a survivor of a tenancy by the entirety or joint tenancy, shall be presumptive evidence of said heirship, or of such survivorship, as therein recited, if such instrument be duly acknowledged or witnessed and proved in any manner required or permitted at the date of the execution thereof, and be duly recorded in any county where any part of the lands described therein shall be located, or duly recorded in the office of the secretary of state of the state of New York.

**§ 342. Recitals in judgments affecting title to real property as evidence.** In any action or special proceeding in any of the courts of this state, a judgment, decree or order of any court of record, or made by a judge of any court of record in this state, in any action affecting the title of real property, which contains recitals that any acts were done or proceedings had which were necessary to give to such court or judge jurisdiction or power to grant such judgment, decree or order, shall be presumptive evidence that such acts were duly performed or proceedings duly had, if such judgment, decree or order shall have been duly entered or filed in the office of the clerk of the county in which the action or special proceeding was pending wherein such judgment, decree or order was granted.

**§ 351. Evidence as to common lands in the city of New York.** In any action or special proceeding involving a question as to the situs of any lot of the common lands, so-called, in the city of New York, the court may, upon the offer of any party, receive in evidence any evidence which was received in the action heretofore prosecuted in the superior court of the city of New York, by Russell D. Miner, and continued by the personal representatives of the same Russell D. Miner, deceased, against the city of New York, or in the action in such court between certain heirs at law of the same Russell D. Miner, deceased, and Jacob Scholle and others, and also the deposition of Isaac T. Ludlam, deceased, verified before E. Henry Lacombe, as referee, upon the fourteenth day of November, eighteen hundred seventy-eight, in an action in such court by Hester Sherman and others, against Thomas Kane and others; provided that the testimony of a witness shall not be admissible, under the provisions of this section until the court is satisfied that such witness has heretofore died; and provided further, that no provision of this section shall give to any documentary evidence introduced in connection with any former testimony any greater or different effect than may be due to it by reason of the testimony relative thereto. Such evidence may be introduced in any mode established by the practice of the courts for the introduction of testimony given upon a former trial, by a witness who

has since died, or by reading from the printed cases on appeal, heretofore filed in the office of the clerk of the superior court of the city of New York.

#### ARTICLE 4

##### **VALUING INTERESTS IN REAL PROPERTY**

Section 401. When interests are valued under this article.

402. Interest rate.

403. Mortality and other tables.

404. Evidence as to ancestry, health and habits of individual.

405. Interest defeasible by remarriage.

406. Computation by superintendent of financial services.

**§ 401. When interests are valued under this article.** The following interests shall be valued in the manner provided by this article: (a) an interest in real property dependent as to value upon the duration of one or more lives in being, whether such interest is present or future; and (b) a future interest preceded only by one or more interests described in clause (a); whenever 1. the owner of such interest is entitled to receive a sum in gross in satisfaction of, or in compensation for impairment of, his interest in real property which has been transformed into a fund by judicial action or proceeding; or 2. ownership of real property is divided into successive legal interests, including one or more interests dependent as to value upon the duration of one or more lives of persons in being, and the fraction of complete ownership belonging to each partial owner must be ascertained so as to permit an adjudication of the fraction of some new capital expenditure required either for the payment of a mortgage, special assessment or other lien upon such property, or for the satisfaction of an obligation imposed by law as an incident of ownership; or 3. such valuation is necessary for the final determination of some action or proceeding, other than an action or proceeding for which the insurance law, the workmen's compensation law or the tax law prescribes methods of valuation.

**§ 402. Interest rate.** In all valuations made under this article, the interest rate of four per centum, compounded annually, shall be employed for all purposes.

**§ 403. Mortality and other tables.** In all valuations made under this article where such valuation depends upon the continuance of, or upon the termination of a life or lives in being, the table of mortality prescribed by section four thousand two hundred seventeen of the insurance law for new, ordinary life policies shall be employed in the manner required by accepted actuarial practice. If, in any case, such table fails to provide required data, other tables accepted by actuarial practice may be employed.

**§ 404. Evidence as to ancestry, health and habits of individual** In all valuations made under this article, no significance shall be given to the ancestry, health or habits of the person whose life is involved. Each valuation shall be based exclusively on the actuarial data.

**§ 405. Interest defeasible by remarriage.** Whenever an interest is defeasible on the remarriage of a person whose life is involved, this fact of defeasibility may be taken into account in the valuation of any such interest or of any interest subject thereto, if justice requires. For this purpose, the Casualty Actuarial Society's Table on Remarriage or other tables accepted by actuarial practice shall be employed.

**§ 406. Computation by superintendent of financial services.** Any court, judge, referee or other judicial or administrative officer by whom any valuation under this article must be made is authorized to transmit to the superintendent of financial services such statement of facts as is necessary to permit the required computation, and such superintendent shall thereupon make the computation and, without charge, certify the same to the court or other officer submitting such statement. Any such certificate shall be conclusive evidence that the method of computation

adopted therein is correct.

ARTICLE 5  
**ADVERSE POSSESSION**

Section 501 Adverse possession; defined.

511. Adverse possession under written instrument or judgment.

512. Essentials of adverse possession under written instrument or judgment.

521. Adverse possession not under written instrument or judgment.

522. Essentials of adverse possession not under written instrument or judgment.

531. Adverse possession, how affected by relation of landlord and tenant.

541. Adverse possession, how affected by relation of tenants in common.

543. Adverse possession; how affected by acts across a boundary line.

551. Right of person to possession not affected by descent cast.

**§ 501. Adverse possession; defined.** For the purposes of this article:

1. Adverse possessor. A person or entity is an "adverse possessor" of real property when the person or entity occupies real property of another person or entity with or without knowledge of the other's superior ownership rights, in a manner that would give the owner a cause of action for ejectment.

2. Acquisition of title. An adverse possessor gains title to the occupied real property upon the expiration of the statute of limitations for an action to recover real property pursuant to subdivision (a) of section two hundred twelve of the civil practice law and rules, provided that the occupancy, as described in sections five hundred twelve and five hundred twenty-two of this article, has been adverse, under claim of right, open and notorious, continuous, exclusive, and actual.

3. Claim of right. A claim of right means a reasonable basis for the belief that the property belongs to the adverse possessor or property owner, as the case may be. Notwithstanding any other provision of this article, claim of right shall not be required if the owner or owners of the real property throughout the statutory period cannot be ascertained in the records of the county clerk, or the register of the county, of the county where such real property is situated, and located by reasonable means.

**§ 511. Adverse possession under written instrument or judgment.** Where the occupant or those under whom the occupant claims entered into the possession of the premises under claim of right, exclusive of any other right, founding the claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and there has been a continued occupation and possession of the premises included in the instrument, decree or judgment, or of some part thereof, for ten years, under the same claim, the premises so included are deemed to have been held adversely; except that when they consist of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot.

**§ 512. Essentials of adverse possession under written instrument or judgment.** For the purpose of constituting an adverse possession, founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in any of the following cases:

1. Where there has been acts sufficiently open to put a reasonably diligent owner on notice.

2. Where it has been protected by a substantial enclosure, except as provided in subdivision one of section five hundred forty-three of this article.

3. Where, although not enclosed, it has been used for the supply of

fuel or of fencing timber, either for the purposes of husbandry or for the ordinary use of the occupant.

Where a known farm or a single lot has been partly improved, the portion of the farm or lot that has been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, is deemed to have been occupied for the same length of time as the part improved and cultivated.

**§ 521. Adverse possession not under written instrument or judgment.**

Where there has been an actual continued occupation of premises under a claim of right, exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the premises so actually occupied, and no others, are deemed to have been held adversely.

**§ 522. Essentials of adverse possession not under written instrument or judgment.** For the purpose of constituting an adverse possession not founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in either of the following cases, and no others:

1. Where there have been acts sufficiently open to put a reasonably diligent owner on notice.
2. Where it has been protected by a substantial enclosure, except as provided in subdivision one of section five hundred forty-three of this article.

**§ 531. Adverse possession, how affected by relation of landlord and tenant.** Where the relation of landlord and tenant has existed, the possession of the tenant is deemed the possession of the landlord until the expiration of ten years after the termination of the tenancy; or, where there has been no written lease, until the expiration of ten years after the last payment of rent; notwithstanding that the tenant has

acquired another title or has claimed to hold adversely to his landlord. But this presumption shall cease after the periods prescribed in this section and such tenant may then commence to hold adversely to his landlord.

**§ 541. Adverse possession, how affected by relation of tenants in common.** Where the relation of tenants in common has existed, the occupancy of one tenant, personally or by his servant or by his tenant, is deemed to have been the possession of the other, notwithstanding that the tenant so occupying the premises has acquired another title or has claimed to hold adversely to the other. But this presumption shall cease after the expiration of ten years of continuous exclusive occupancy by such tenant, personally or by his servant or by his tenant, or immediately upon an ouster by one tenant of the other and such occupying tenant may then commence to hold adversely to his cotenant.

**§ 543. Adverse possession; how affected by acts across a boundary line.** 1. Notwithstanding any other provision of this article, the existence of de minimus non-structural encroachments including, but not limited to, fences, hedges, shrubbery, plantings, sheds and non-structural walls, shall be deemed to be permissive and non-adverse.

2. Notwithstanding any other provision of this article, the acts of lawn mowing or similar maintenance across the boundary line of an adjoining landowner's property shall be deemed permissive and non-adverse.

**§ 551. Right of person to possession not affected by descent cast.** The right of a person to the possession of real property is not impaired or affected by a descent being cast in consequence of the death of a person in possession of the property.

## ARTICLE 6

## **ACTION TO RECOVER REAL PROPERTY**

Section 601. Damages for withholding real property obtainable in action to recover possession; set-off by defendant.

611. Where action cannot be maintained: dower; property not exceeding six inches in width; by mortgagee.

612. Where action cannot be maintained; action based on reverter or breach of condition subsequent.

621. Separate action by joint tenant or tenant in common.

623. Action by grantee of lands held adversely.

625. Action by reversioner or remainderman after tenant's default.

631. Defendants.

633. Action against co-tenant; ouster to be proved.

635. Action against occupants of apartments.

637. Action against one defendant subject to rights of others.

641. Complaint.

651. Expiration of plaintiff's title before trial.

653. Judgment to state plaintiff's estate.

661. Liability of purchaser pending an action.

**§ 601. Damages for withholding real property obtainable in action to recover possession; set-off by defendant.** In an action to recover the possession of real property, the plaintiff may recover damages for withholding the property, including the rents and profits or the value of the use and occupation of the property for a term not exceeding six years; but the damages shall not include the value of the use of any improvements made by the defendant or those under whom he claims. Where permanent improvements have been made in good faith by the defendant or those under whom he claims, while holding, under color of title, adversely to the plaintiff, the value thereof must be allowed to the defendant in reduction of the damages of the plaintiff, but not beyond the amount of those damages.

**§ 611. Where action cannot be maintained: dower; property not exceeding six inches in width; by mortgagee.** The action cannot be

maintained:

1. Where an action for dower may be maintained.

2. Where the real property consists of a strip of land not exceeding six inches in width upon which there stands the exterior wall of a building erected partly upon said strip and partly upon the adjoining lot, and a building has been erected upon land of the plaintiff abutting on the said wall, unless said action be commenced within one year after the completion of the erection of such wall. But an action may be maintained if commenced within the further period of one year, for the recovery of damages by reason of the erection of such wall, and upon the satisfaction of the judgment for such damages the title of the plaintiff to such strip of land shall thereby be transferred to and vest in the defendant. If an action for the recovery of real property or damages is not brought within the period hereby limited therefor, the person in possession of such lands shall be deemed to have an easement in said strip of land so long as the said wall partly erected thereon shall stand, and no longer, and in case of the destruction of such wall the owner of such strip shall have the same right to take or recover the possession thereof as if such wall had never existed.

3. By a mortgagee, or his assignee, or other representative.

**§ 612. Where action cannot be maintained; action based on reverter or breach of condition subsequent.** 1. Except as otherwise provided in this section, an action to recover the possession of real property cannot be maintained where it is founded upon a claim of reverter of an estate in fee conveyed upon special limitation or founded upon a claim of breach of a condition subsequent, other than a condition of a lease for a term of years, unless (a) within ten years after the occurrence of the reverter or the first occurrence of the breach, the plaintiff, or any predecessor in interest then entitled to possession or to exercise the power of termination, shall have served upon the person or persons against whom the action might then have been commenced a written demand that possession be delivered, stating the ground thereof, and the action

is commenced within one year thereafter or (b), if no such demand is served, the action is commenced within such ten years.

2. Where the reverter or breach occurred before September 1, 1963, an action may be maintained if demand is made as provided in this section before the expiration of ten years computed from the occurrence of the reverter or the first occurrence of the breach, or on or before September 1, 1965, whichever is later, and the action is commenced within one year thereafter or if, without previous demand as provided in this section, the action is commenced before the expiration of ten years computed from the occurrence of the reverter or the first occurrence of the breach, or on or before September 1, 1965, whichever is later.

3. The demand shall be served either personally or by mailing the same by certified mail addressed to the person or persons against whom the action might then have been commenced, at his or their last known address or addresses.

4. The demand may be made on behalf of an infant by his parent or guardian or by the person with whom he resides, may be made on behalf of an incompetent by the committee of his person or property, and may be made on behalf of a conservatee by the conservator of his property. If the person entitled to maintain the action shall have died, the demand may be made either by the persons succeeding to the right of the decedent, or one of them, or on their behalf by the personal representative of the decedent.

5. The demand shall become ineffective unless action to recover possession in accordance therewith is commenced within one year from the date of service thereof. If no action is commenced, or no such demand is served within the time specified in subdivisions 1 or 2, or if the demand served becomes ineffective, it shall be conclusively presumed that the possibility of reverter by reason of which the estate is claimed to have reverted, or the power of termination for breach of the condition which is claimed to have been broken, was extinguished at or before the date when the reverter would have occurred or a right of entry would have accrued by reason of such possibility of reverter or

breach of such condition.

6. The operation of this section is not affected by any disability, or by the fact that the person against whom the action might have been brought within the period herein provided was during that time a non-resident or absent from the state, and is not affected by any lack of knowledge on the part of any person that the reverter or breach has occurred, unless it is established that the facts upon which the reverter occurred, or the facts constituting the breach, were concealed from the plaintiff or his predecessor in interest by actual fraud. If such fraud be established, the time provided in subdivision 1 or 2 shall commence to run when the facts are discovered by a person entitled to serve the demand as provided in this section.

7. This section does not limit any other statute or rule of law or equity by which a possibility of reverter or right of entry is or may be extinguished or rendered unenforceable, or by which an action to recover possession of the property may be extinguished or barred.

**§ 621. Separate action by joint tenant or tenant in common.** Where two or more persons are entitled to the possession of real property as joint tenants or tenants in common, one or more of them may maintain the action to recover his or their undivided shares in the property in any case where such an action might be maintained by all.

**§ 623. Action by grantee of lands held adversely.** The action shall be maintained by a grantee, his executors, administrators or assigns in his own name, although at the time of the conveyance, such real property was in the actual possession of a person claiming under a title adverse to that of the grantor.

**§ 625. Action by reversioner or remainderman after tenant's default.** Where a tenant for life or for a term of years suffers judgment to be taken against him, by consent or by default, in an action to recover

real property, the heir or person owning the reversion or remainder, may maintain an action to recover the property, after the determination of the particular estate.

**§ 631. Defendants.** Where the complaint demands judgment for the immediate possession of the property, if the property is actually occupied, the occupant shall be made defendant in the action. If it is not so occupied, the action shall be brought against some person exercising acts of ownership thereupon, or claiming title thereto or an interest therein, at the time of the commencement of the action. Any person claiming title to, or the right to the possession of, the real property sought to be recovered, as landlord, remainderman, reversioner, or otherwise adversely to the plaintiff, may be joined as defendant.

**§ 633. Action against co-tenant; ouster to be proved.** Where the action is brought by a tenant in common or a joint tenant against his co-tenant, the plaintiff, besides proving his right, shall also prove that the defendant actually ousted him or did some other act amounting to a total denial of his right.

**§ 635. Action against occupants of apartments.** In a case where two or more defendants occupy different apartments in a building the plaintiff is entitled to judgment jointly against all the defendants who are liable to him.

**§ 637. Action against one defendant subject to rights of others.** Where one or more answering defendants hold under another defendant, and the plaintiff elects to proceed against the latter, subject to the rights and interests of the former, if the plaintiff recovers final judgment against the defendant under whom they hold, the judgment operates as a transfer to the plaintiff of that defendant's right, title and interest.

**§ 641. Complaint.** The complaint shall state the plaintiff's interest in the property and describe it with reasonable certainty in such manner that, from the description, possession of the property claimed may be delivered.

**§ 651. Expiration of plaintiff's title before trial.** If the right or title of the plaintiff expires after the commencement of the action but before the trial, and he would have been entitled to recover but for the expiration, the verdict, report or decision shall be rendered according to the fact; and the plaintiff is entitled nevertheless to judgment for his damages for the withholding of the property to the time when his right or title so expired.

**§ 653. Judgment to state plaintiff's estate.** A verdict, report or decision in favor of the plaintiff and the judgment rendered thereon, shall specify in writing the estate of the plaintiff in the property recovered, whether it is in fee, or for life, or for a term of years stating for whose life it is, or specifying the duration of the term, if the estate be less than a fee.

**§ 661. Liability of purchaser pending an action.** If the defendant aliens the real property in question after the filing of a notice of pendency of the action, and an execution against him for the plaintiff's damages is returned wholly or partly unsatisfied, an action may be maintained by the plaintiff against any person who has been in possession of the property, under the defendant's conveyance, to recover the unsatisfied portion of the damages, for a time not exceeding that during which he possessed the property.

## ARTICLE 7

### **SUMMARY PROCEEDING TO RECOVER POSSESSION OF REAL PROPERTY**

Section 701. Jurisdiction; courts; venue.

- 702. Rent in a residential dwelling.
- 711. Grounds where landlord-tenant relationship exists.
- 713. Grounds where no landlord-tenant relationship exists.
- 713-a. Special proceeding for termination of adult home and residence for adults admission agreements.
- 715. Grounds and procedure where use or occupancy is illegal.
- 715-a. Grounds and procedure for removal of commercial tenants for unlicensed cannabis retail sale.
- 721. Person who may maintain proceeding.
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- 735. Manner of service; filing; when service complete.
- 741. Contents of petition.
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- 744. Eviction based on domestic violence victim status prohibited.
- 745. Trial.
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- 747. Judgment.
- 749. Warrant.
- 749-a. New York city marshals.
- 751. Stay upon paying rent or giving undertaking; discretionary stay outside city of New York.
- 753. Stay in premises occupied for dwelling purposes.
- 755. Stay of proceeding or action for rent upon failure to make repairs.
- 756. Stay of summary proceedings or actions for rent under certain conditions.
- 756-a. Stay of action or proceeding when a party's claim to title is in dispute.
- 757. Eviction as the result of foreclosure.
- 761. Redemption by lessee.
- 763. Redemption by creditor of lessee.

- 765. Effect of redemption upon lease.
- 767. Order of redemption; liability of persons redeeming.
- 768. Unlawful eviction.

**§ 701. Jurisdiction; courts; venue.** 1. A special proceeding to recover real property may be maintained in a county court, the court of a police justice of the village, a justice court, a court of civil jurisdiction in a city, or a district court.

2. The place of trial of the special proceeding shall be within the jurisdictional area of the court in which the real property or a portion thereof is situated; except that where the property is located in an incorporated village which includes parts of two or more towns the proceeding may be tried by a justice of the peace of any such town who keeps an office in the village.

**§ 702. Rent in a residential dwelling.** 1. In a proceeding relating to a residential dwelling or housing accommodation, the term "rent" shall mean the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement. No fees, charges or penalties other than rent may be sought in a summary proceeding pursuant to this article, notwithstanding any language to the contrary in any lease or rental agreement.

2. This section shall not apply to a summary proceeding in which the parties are a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, and a tenant who is a dwelling unit owner or shareholder of such corporation, provided that the proprietary lease or occupancy agreement between the cooperative housing corporation and the tenant provides for fees, charges, penalties or assessments other than rent to be recoverable in such a proceeding.

**§ 711. Grounds where landlord-tenant relationship exists.** A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer. A tenant shall not include a squatter. For the purposes of this section, a squatter is a person who enters onto or intrudes upon real property without the permission of the person entitled to possession, and continues to occupy the property without title, right or permission of the owner or owner's agent or a person entitled to possession. In the event of a conflict between the provisions regarding squatters of this section and the provisions of subdivision three of section seven hundred thirteen of this article, the provisions of section seven hundred thirteen of this article shall be controlling. No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding. A special proceeding may be maintained under this article upon the following grounds:

1. The tenant continues in possession of any portion of the premises after the expiration of his term, without the permission of the landlord or, in a case where a new lessee is entitled to possession, without the permission of the new lessee. Acceptance of rent after commencement of the special proceeding upon this ground shall not terminate such proceeding nor effect any award of possession to the landlord or to the new lessee, as the case may be. A proceeding seeking to recover possession of real property by reason of the termination of the term fixed in the lease pursuant to a provision contained therein giving the landlord the right to terminate the time fixed for occupancy under such agreement if he deem the tenant objectionable, shall not be maintainable unless the landlord shall by competent evidence establish to the satisfaction of the court that the tenant is objectionable.

\* 2. The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days' notice requiring, in the alternative, the payment of the rent, or the possession of the premises, has been served upon the tenant as prescribed in section seven hundred thirty-five of this article. The fourteen-day notice shall append or contain the notice required pursuant to section two hundred thirty-one-c

of the real property law, which shall state the following: (i) if the premises are or are not subject to article six-A of the real property law, the "good cause eviction law", and if the premises are exempt, such notice shall state why the premises are exempt from such law; (ii) if the landlord is not renewing the lease for a unit subject to article six-A of the real property law, the lawful basis for such non-renewal; and (iii) if the landlord is increasing the rent upon an existing lease of a unit subject to article six-A of the real property law above the applicable local rent standard, as defined in subdivision eight of section two hundred eleven of the real property law, the justification for such increase. Any person succeeding to the landlord's interest in the premises may proceed under this subdivision for rent due such person's predecessor in interest if such person has a right thereto. Where a tenant dies during the term of the lease and rent due has not been paid and the apartment is occupied by a person with a claim to possession, a proceeding may be commenced naming the occupants of the apartment seeking a possessory judgment only as against the estate. Entry of such a judgment shall be without prejudice to the possessory claims of the occupants, and any warrant issued shall not be effective as against the occupants.

\* NB Effective until June 15, 2034

\* 2. The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days' notice requiring, in the alternative, the payment of the rent, or the possession of the premises, has been served upon him as prescribed in section seven hundred thirty-five of this article. Any person succeeding to the landlord's interest in the premises may proceed under this subdivision for rent due his predecessor in interest if he has a right thereto. Where a tenant dies during the term of the lease and rent due has not been paid and the apartment is occupied by a person with a claim to possession, a proceeding may be commenced naming the occupants of the apartment seeking a possessory judgment only as against the estate. Entry of such a judgment shall be without prejudice to the possessory claims of the occupants, and any warrant issued shall not be effective as against the occupants.

\* NB Effective June 15, 2034

3. The tenant, in a city defaults in the payment, for sixty days after the same shall be payable, of any taxes or assessments levied on the premises which he has agreed in writing to pay pursuant to the agreement under which the premises are held, and a demand for payment has been made, or at least three days' notice in writing, requiring in the alternative the payment thereof and of any interest and penalty thereon, or the possession of the premises, has been served upon him, as prescribed in section 735. An acceptance of any rent shall not be construed as a waiver of the agreement to pay taxes or assessments.

4. The tenant, under a lease for a term of three years or less, has during the term taken the benefit of an insolvency statute or has been adjudicated a bankrupt.

5. The premises, or any part thereof, are used or occupied as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade or manufacture, or other illegal business.

6. The tenant, in a city having a population of one million or more, removes the batteries or otherwise disconnects or makes inoperable an installed smoke or fire detector which the tenant has not requested be moved from its location so as not to interfere with the reasonable use of kitchen facilities provided that the court, upon complaint thereof, has previously issued an order of violation of the provisions heretofore stated and, subsequent to the thirtieth day after service of such order upon the tenant, an official inspection report by the appropriate department of housing preservation and development is presented, in writing, indicating non-compliance herewith; provided further, that the tenant shall have the additional ten day period to cure such violation in accordance with the provisions of subdivision four of section seven hundred fifty-three of this chapter.

**§ 713. Grounds where no landlord-tenant relationship exists.** A special proceeding may be maintained under this article after a ten-day notice

to quit has been served upon the respondent in the manner prescribed in section 735, upon the following grounds:

1. The property has been sold by virtue of an execution against him or a person under whom he claims and a title under the sale has been perfected.

2. He occupies or holds the property under an agreement with the owner to occupy and cultivate it upon shares or for a share of the crops and the time fixed in the agreement for his occupancy has expired.

3. He or the person to whom he has succeeded has intruded into or squatted upon the property without the permission of the person entitled to possession and the occupancy has continued without permission or permission has been revoked and notice of the revocation given to the person to be removed.

4. The property has been sold for unpaid taxes and a tax deed has been executed and delivered to the purchaser and he or any subsequent grantee, distributee or devisee claiming title through such purchaser has complied with all provisions of law precedent to the right to possession and the time of redemption by the former owner or occupant has expired.

5. Subject to the rights and obligations set forth in section thirteen hundred five of this chapter, the property has been sold in foreclosure and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the civil practice law and rules, has been exhibited to him.

6. He is the tenant of a life tenant of the property, holding over and continuing in possession of the property after the termination of the estate of such life tenant without the permission of the person entitled to possession of the property upon termination of the life estate.

7. He is a licensee of the person entitled to possession of the property at the time of the license, and (a) his license has expired, or

(b) his license has been revoked by the licensor, or (c) the licensor is no longer entitled to possession of the property; provided, however, that a mortgagee or vendee in possession shall not be deemed to be a licensee within the meaning of this subdivision.

8. The owner of real property, being in possession of all or a part thereof, and having voluntarily conveyed title to the same to a purchaser for value, remains in possession without permission of the purchaser.

9. A vendee under a contract of sale, the performance of which is to be completed within ninety days after its execution, being in possession of all or a part thereof, and having defaulted in the performance of the terms of the contract of sale, remains in possession without permission of the vendor.

10. The person in possession has entered the property or remains in possession by force or unlawful means and he or his predecessor in interest was not in quiet possession for three years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer; no notice to quit shall be required in order to maintain a proceeding under this subdivision.

11. The person in possession entered into possession as an incident to employment by petitioner, and the time agreed upon for such possession has expired or, if no such time was agreed upon, the employment has been terminated; no notice to quit shall be required in order to maintain the proceeding under this subdivision.

**§ 713-a. Special proceeding for termination of adult home and residence for adults admission agreements.** A special proceeding to terminate the admission agreement of a resident of an adult home or residence for adults and discharge a resident therefrom may be maintained in a court of competent jurisdiction pursuant to the

provisions of section four hundred sixty-one-h of the social services law and nothing contained in such section shall be construed to create a relationship of landlord and tenant between the operator of an adult home or residence for adults and a resident thereof.

**§ 715. Grounds and procedure where use or occupancy is illegal.** 1. An owner or tenant, including a tenant of one or more rooms of an apartment house, tenement house or multiple dwelling, of any premises within two hundred feet from other demised real property used or occupied in whole or in part as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade, business or manufacture, or any domestic corporation organized for the suppression of vice, subject to or which submits to visitation by the state department of social services and possesses a certificate from such department of such fact and of conformity with regulations of the department, or any duly authorized enforcement agency of the state or of a subdivision thereof, under a duty to enforce the provisions of the penal law or of any state or local law, ordinance, code, rule or regulation relating to buildings, may serve personally upon the owner or landlord of the premises so used or occupied, or upon his agent, a written notice requiring the owner or landlord to make an application for the removal of the person so using or occupying the same. If the owner or landlord or his agent does not make such application within five days thereafter; or, having made it, does not in good faith diligently prosecute it, the person, corporation or enforcement agency giving the notice may bring a proceeding under this article for such removal as though the petitioner were the owner or landlord of the premises, and shall have precedence over any similar proceeding thereafter brought by such owner or landlord or to one theretofore brought by him and not prosecuted diligently and in good faith. Proof of the ill repute of the demised premises or of the inmates thereof or of those resorting thereto shall constitute presumptive evidence of the unlawful use of the demised premises required to be stated in the petition for removal. Both the person in possession of the property and the owner or landlord shall be made respondents in the proceeding.

2. For purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.05, 230.06, 230.11, 230.12, 230.13, 230.20, 230.25, 230.30, 230.32 or 230.40 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

3. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 225.00, 225.05, 225.10, 225.15, 225.20, 225.30, 225.32, 225.35 or 225.40 of the penal law, arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owner's knowledge of the same.

4. A court granting a petition pursuant to this section may, in addition to any other order provided by law, make an order imposing and requiring the payment by the respondent of a civil penalty not exceeding five thousand dollars to the municipality in which the subject premises is located and, the payment of reasonable attorneys fees and the costs of the proceeding to the petitioner. In any such case multiple respondents shall be jointly and severally liable for any payment so ordered and the amounts of such payments shall constitute a lien upon the subject realty.

5. For the purposes of a proceeding under this section, an enforcement agency of the state or of a subdivision thereof, which may commence a proceeding under this section, may subpoena witnesses, compel their attendance, examine them under oath before himself or a court and require that any books, records, documents or papers relevant or material to the inquiry be turned over to him for inspection, examination or audit, pursuant to the civil practice law and rules. If a person subpoenaed to attend upon such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance

upon such inquiry shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper, when ordered to do so by the officer conducting such inquiry, he shall be guilty of a class B misdemeanor.

**§ 715-a. Grounds and procedure for removal of commercial tenants for unlicensed cannabis retail sale.** 1. Any duly authorized enforcement agency of the state or of a subdivision thereof, under a duty to enforce the provisions of the penal law or of any state or local law, ordinance, code, rule or regulation relating to buildings, or the cannabis control board, office of cannabis management or the attorney general pursuant to section one hundred thirty-eight-a of the cannabis law, may serve personally upon the owner or landlord of real property authorized or otherwise intended or advertised, in whole or part, for use to buy, sell or otherwise provide goods or services, or for other business, commercial, professional services or manufacturing activities, or upon their agent, a written notice requiring the owner or landlord to make an application for the removal of a commercial tenant so using or occupying the same for a violation of article two hundred twenty-two of the penal law or article six of the cannabis law involving the unlicensed sale of cannabis or products marketed or labeled as such. If the owner or landlord or their agent does not make such application within five days thereafter; or, having made it, does not in good faith diligently prosecute it, the enforcement agency giving the notice may bring a proceeding under this article for such removal as though the petitioner were the owner or landlord of the premises, and shall have precedence over any similar proceeding thereafter brought by such owner or landlord or to one theretofore brought by them and not prosecuted diligently and in good faith. An enforcement agency authorized to bring a petition hereunder may do so on their own initiative or upon a referral from an agency of the state or a subdivision thereof. The person in possession of the property, as well as any lessee or sublessee and the owner or landlord shall be made respondents in the proceeding.

2. A court, upon a finding of such violation may, in addition to any other order provided by law:

(a) grant a petition pursuant to this section ordering the immediate removal of such tenant;

(b) impose and require the payment by any respondent not otherwise subject to a civil penalty under section sixteen or one hundred twenty-five of the cannabis law, who has been found to have knowingly permitted such a violation, a civil penalty not exceeding five times the amount of rent charged, owed, or paid, as the case may be, for the duration of the violation, which may be calculated from the date the owner or landlord respondent received notice of the violation to the date the unlicensed activity is abated, for which a respondent shall be required to provide sufficient proof thereof, including but not limited to a sworn statement by a local law enforcement or other governmental entity that the unlicensed activity has been abated; provided, however, that in a city with a population of over one million the civil penalty shall be fifty thousand dollars. The landlord or property owner shall also provide a copy of any executed lease with such tenant;

(c) order the payment of reasonable attorneys fees and the costs of the proceeding to the petitioner; and

(d) order that any such multiple respondents shall be jointly and severally liable for any payment so ordered under this subdivision.

3. For the purposes of a proceeding under this section, an enforcement agency of the state or of a subdivision thereof, which may commence a proceeding under this section, may subpoena witnesses, compel their attendance, examine them under oath before themselves or a court and require that any books, records, documents or papers relevant or material to the inquiry be turned over to them for inspection, examination or audit, pursuant to the civil practice law and rules.

4. The use or occupancy of premises customarily or habitually for the unlicensed retail sale of cannabis or products marketed or labeled as such shall constitute an illegal trade, manufacture, or other business for the purposes of section two hundred thirty-one of the real property law.

**§ 721. Person who may maintain proceeding.** The proceeding may be

brought by:

1. The landlord or lessor.
2. The reversioner or remainderman next entitled to possession of the property upon the termination of the estate of a life tenant, where a tenant of such life tenant holds over.
3. The purchaser upon the execution or foreclosure sale, or the purchaser on a tax sale to whom a deed has been executed and delivered or any subsequent grantee, distributee or devisee claiming title through such purchaser.
4. The person forcibly put out or kept out.
5. The person with whom, as owner, the agreement was made, or the owner of the property occupied under an agreement to cultivate the property upon shares or for a share of the crops.
6. The person lawfully entitled to the possession of property intruded into or squatted upon.
7. The person entitled to possession of the property occupied by a licensee who may be dispossessed.
8. The person, corporation or law enforcement agency authorized by this article to proceed to remove persons using or occupying premises for illegal purposes.
9. The receiver of a landlord, purchaser or other person so entitled to apply, when authorized by the court.
10. The lessee of the premises, entitled to possession.
11. Not-for-profit corporations, and tenant associations authorized in writing by the commissioner of the department of the city of New York charged with enforcement of the housing maintenance code of such city to

manage residential real property owned by such city.

**§ 731. Commencement; notice of petition.** 1. The special proceeding prescribed by this article shall be commenced by petition and a notice of petition. A notice of petition may be issued only by an attorney, judge or the clerk of the court; it may not be issued by a party prosecuting the proceeding in person.

2. Except as provided in section 732, relating to a proceeding for non-payment of rent, the notice of petition shall specify the time and place of the hearing on the petition and state that if respondent shall fail at such time to interpose and establish any defense that he may have, he may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

3. In the city of New York, when the petitioner seeks to make an application pursuant to subdivision two of section seven hundred forty-five of this article, the notice of petition shall advise the respondent of the requirements of subdivision two of section seven hundred forty-five of this article.

4. In an action premised on a tenant defaulting in the payment of rent, payment to the landlord of the full amount of rent due, when such payment is made at any time prior to the hearing on the petition, shall be accepted by the landlord and renders moot the grounds on which the special proceeding was commenced.

**§ 732. Special provisions applicable in non-payment proceeding if the rules so provide.** If the appropriate appellate division shall so provide in the rules of a particular court, this section shall be applicable in such court in a proceeding brought on the ground that the respondent has defaulted in the payment of rent; in such event, all other provisions of this article shall remain applicable in such proceeding, except to the extent inconsistent with the provisions of this section.

1. The notice of petition shall be returnable before the clerk, and shall be made returnable within ten days after its service.

2. If the respondent answers, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination, except as provided in section seven hundred fifty-three of this article.

3. If the respondent fails to answer within ten days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, the judge shall render judgment in favor of the petitioner and may stay the issuance of the warrant for a period of not to exceed ten days from the date of service, except as provided in section seven hundred fifty-three of this article.

4. The notice of petition shall advise the respondent of the requirements of subdivisions 1, 2 and 3, above.

**§ 733. Time of service; order to show cause.** 1. Except as provided in section seven hundred thirty-two of this article, relating to a proceeding for non-payment of rent, the notice of petition and petition shall be served at least ten and not more than seventeen days before the time at which the petition is noticed to be heard.

2. The court may grant an order to show cause to be served in lieu of a notice of petition. If the special proceeding is based upon the ground specified in subdivision 1 of section 711, and the order to show cause is sought on the day of the expiration of the lease or the next day thereafter, it may be served at a time specified therein which shall be at least two hours before the hour at which the petition is to be heard.

**§ 734. Notice of petition; service on the Westchester county**

**department of social services.** In the county of Westchester, if the local legislative body has, by local law, opted to require such notice, service of a copy of the notice of petition and petition in any proceeding commenced against a residential tenant in accordance with the provisions of this article shall be served upon the county commissioner of social services. Such service shall be made by certified mail, return receipt requested, directed to an address set forth in the local law, or pursuant to the provisions of the civil practice law and rules. Such service shall be made at least five days before the return date set in the notice of petition. Proof of such service shall be filed with the court. Failure to serve the commissioner shall not be a jurisdictional defect, and shall not be a defense to a proceeding brought pursuant to the provisions of this article.

**§ 735. Manner of service; filing; when service complete.** 1. Service of the notice of petition and petition shall be made by personally delivering them to the respondent; or by delivering to and leaving personally with a person of suitable age and discretion who resides or is employed at the property sought to be recovered, a copy of the notice of petition and petition, if upon reasonable application admittance can be obtained and such person found who will receive it; or if admittance cannot be obtained and such person found, by affixing a copy of the notice and petition upon a conspicuous part of the property sought to be recovered or placing a copy under the entrance door of such premises; and in addition, within one day after such delivering to such suitable person or such affixing or placement, by mailing to the respondent both by registered or certified mail and by regular first class mail,

(a) if a natural person, as follows: at the property sought to be recovered, and if such property is not the place of residence of such person and if the petitioner shall have written information of the residence address of such person, at the last residence address as to which the petitioner has such information, or if the petitioner shall have no such information, but shall have written information of the place of business or employment of such person, to the last business or employment address as to which the petitioner has such information; and

(b) if a corporation, joint-stock or other unincorporated association,

as follows: at the property sought to be recovered, and if the principal office or principal place of business of such corporation, joint stock or other unincorporated association is not located on the property sought to be recovered, and if the petitioner shall have written information of the principal office or principal place of business within the state, at the last place as to which petitioner has such information, or if the petitioner shall have no such information but shall have written information of any office or place of business within the state, to any such place as to which the petitioner has such information. Allegations as to such information as may affect the mailing address shall be set forth either in the petition, or in a separate affidavit and filed as part of the proof of service.

2. The notice of petition, or order to show cause, and petition together with proof of service thereof shall be filed with the court or clerk thereof within three days after;

(a) personal delivery to respondent, when service has been made by that means, and such service shall be complete immediately upon such personal delivery; or

(b) mailing to respondent, when service is made by the alternatives above provided, and such service shall be complete upon the filing of proof of service.

**§ 741. Contents of petition.** The petition shall be verified by the person authorized by section seven hundred twenty-one to maintain the proceeding; or by a legal representative, attorney or agent of such person pursuant to subdivision (d) of section thirty hundred twenty of the civil practice law and rules. An attorney of such person may verify the petition on information and belief notwithstanding the fact that such person is in the county where the attorney has his office. Every petition shall:

1. State the interest of the petitioner in the premises from which removal is sought.

2. State the respondent's interest in the premises and his

relationship to petitioner with regard thereto.

3. Describe the premises from which removal is sought.

4. State the facts upon which the special proceeding is based.

5. State the relief sought. The relief may include a judgment for rent due, and for a period of occupancy during which no rent is due, for the fair value of use and occupancy of the premises if the notice of petition contains a notice that a demand for such a judgment has been made.

\* 5-a. Append or incorporate the notice required pursuant to section two hundred thirty-one-c of the real property law, which shall state the following: (i) if the premises are or are not subject to article six-A of the real property law, the "good cause eviction law", and if the premises are exempt, such petition shall state why the premises are exempt from such law; (ii) if the landlord is not renewing the lease for a unit subject to article six-A of the real property law, the lawful basis for such non-renewal; and (iii) if the landlord is increasing the rent upon an existing lease of a unit subject to article six-A of the real property law above the applicable local rent standard, as defined in subdivision eight of section two hundred eleven of the real property law, the justification for such increase.

\* NB Repealed June 15, 2034

\* 5-b. If the petitioner claims exemption from the provisions of article six-A of the real property law pursuant to subdivision one of section two hundred fourteen of the real property law, append or incorporate the information required pursuant to subdivision one of section two hundred fourteen of the real property law.

\* NB Repealed June 15, 2034

6. In the city of Albany, where the premises from which removal is sought is subject to a local law requiring the registration of said premises as a condition of legal rental, allege proof of compliance with such local law.

7. In the city of Newburgh, where the premises from which removal is

sought is subject to a local law requiring the registration of said premises as a condition of legal rental, allege proof of compliance with such local law.

8. In the city of Syracuse, where the premises from which removal is sought is subject to a local law requiring the registration of said premises as a condition of legal rental, allege proof of compliance with such local law.

9. In the city of Schenectady, where the premises from which removal is sought is subject to a local law requiring the registration of said premises as a condition of legal rental, allege proof of compliance with such local law.

**§ 743. Answer.** Except as provided in section seven hundred thirty-two of this article, relating to a proceeding for non-payment of rent, at the time when the petition is to be heard the respondent, or any person in possession or claiming possession of the premises, may answer, orally or in writing. If the answer is oral the substance thereof shall be recorded by the clerk or, if a particular court has no clerk, by the presiding judge or justice of such court, and maintained in the case record. The answer may contain any legal or equitable defense, or counterclaim. The court may render affirmative judgment for the amount found due on the counterclaim.

**§ 744. Eviction based on domestic violence victim status prohibited.**  
1. A tenant shall not be removed from possession of a residential unit pursuant to this article because of such person's domestic violence victim status, as defined in section two hundred twenty-seven-d of the real property law. It shall be a defense to a proceeding to recover possession of a residential unit that a landlord seeks such recovery because of a person's domestic violence victim status, and that, but for such status, the landlord would not seek to recover possession. A landlord may rebut such defense by showing that he or she seeks to recover possession of a residential unit because of any other lawful

ground.

2. Nothing in this section shall restrict a landlord's legal rights to recover possession of a residential unit on grounds not based on or derived from domestic violence victim status.

3. A landlord shall not be civilly liable to other tenants, guests, invitees, or licensees arising from reasonable and good faith efforts to comply with this section.

4. This section shall not apply to buildings used for dwelling purposes that are owner occupied and have two or fewer residential units.

**§ 745. Trial.** 1. Where triable issues of fact are raised, they shall be tried by the court unless, at the time the petition is noticed to be heard, a party demands a trial by jury, in which case trial shall be by jury. At the time when issue is joined the court, at the request of either party shall adjourn the trial of the issue, not less than fourteen days, except by consent of all parties. A party's second or subsequent request for adjournment shall be granted in the court's sole discretion.

2. In the city of New York:

(a) In a summary proceeding upon the second of two adjournments granted solely at the request of the respondent, or, upon the sixtieth day after the first appearance of the parties in court less any days that the proceeding has been adjourned upon the request of the petitioner, counting only days attributable to adjournment requests made solely at the request of the respondent and not counting an initial adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel, whichever occurs sooner, the court may, upon consideration of the equities, direct that the respondent, upon a motion on notice made by the petitioner, deposit with the court sums of rent or use and occupancy that shall accrue subsequent to the date of the court's order, which may be established without the use of expert

testimony. The court shall not order deposit or payment of use and occupancy where the respondent can establish, to the satisfaction of the court that respondent has properly interposed one of the following defenses or established the following grounds:

(i) the petitioner is not a proper party to the proceeding pursuant to section seven hundred twenty-one of this article; or

(ii) (A) actual eviction, or (B) actual partial eviction, or (C) constructive eviction; and respondent has quit the premises; or

(iii) a defense pursuant to section one hundred forty-three-b of the social services law; or

(iv) a defense based upon the existence of hazardous or immediately hazardous violations of the housing maintenance code in the subject apartment or common areas; or

(v) a colorable defense of rent overcharge; or

(vi) a defense that the unit is in violation of the building's certificate of occupancy or is otherwise illegal under the multiple dwelling law or the New York city housing maintenance code; or

(vii) the court lacks personal jurisdiction over the respondent.

Two adjournments shall not include an adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel made on a return date of the proceeding. Such rent or use and occupancy sums shall be deposited with the clerk of the court or paid to such other person or entity, including the petitioner or an agent designated by the division of housing and community renewal, as the court shall direct or shall be expended for such emergency repairs as the court shall approve.

(b) In establishing the monthly amount to be deposited, the court shall not exceed the amount of the regulated rent for the unit under any state, local or federal regulatory scheme, or the amount of the tenant's rent share under a state, local or federal subsidy program, or the amount of the tenant's share under an expired subsidy, unless the tenant has entered into an enforceable new agreement to pay the full lease rent.

(c) (i) The court shall not require the respondent to deposit the portion of rent or use and occupancy, if any, which is payable by direct government housing subsidy, any currently effective senior citizen

increase exemption authorized pursuant to sections four hundred sixty-seven-b and four hundred sixty-seven-c of the real property tax law, direct payment of rent or a two-party check issued by a social services district or the office of temporary and disability assistance, or rental assistance that is payable pursuant to court orders issued in litigation commenced in nineteen hundred eighty-seven in a proceeding in which the amount of shelter allowance is at issue on behalf of recipients of family assistance. In the event the respondent or other adult member of the respondent's household receives public assistance pursuant to title three or title ten of article five of the social services law, the respondent shall, when directed by the court to deposit rent and use or occupancy, only be required to deposit with the court the amount of the shelter allowance portion of the public assistance grant issued by the office of temporary and disability assistance or a social services district. In the event the respondent receives a fixed income, including but not limited to, social security income, supplemental security income pursuant to title sixteen of the federal social security act and title six of article five of the social services law, or pension income, the respondent shall not be required to deposit more than thirty percent of the monthly payments.

(ii) Any sum required to be deposited with the court pursuant to this subdivision shall be offset by payment, if any, made by the respondent pursuant to section two hundred thirty-five-a of the real property law or section three hundred two-c of the multiple dwelling law.

(d) (i) In the event that the respondent fails to deposit with the court or pay, as the case may be, upon the due date, all rent or use and occupancy which may become due subsequent to the issuance of the court's deposit order, the court upon an application of the petitioner may order an immediate trial of the issues raised in the respondent's answer. An "immediate trial" shall mean that no further adjournments of the proceeding upon respondent's sole request shall be granted, the case shall be assigned by the administrative judge to a trial ready part and such trial shall commence as soon as practicable and continue day to day until completed.

(ii) The court may extend any time provided for such deposit under this subdivision for good cause shown.

(iii) Upon the entry of the final judgment in the proceeding such

deposits shall be credited against any judgment amount awarded and, without further order of the court, be paid in accordance with the judgment.

(e) The court may dismiss any summary proceeding without prejudice and with costs to the respondent by reason of excessive adjournments requested by the petitioner.

(f) Under no circumstances shall the respondent's failure or inability to pay use and occupancy as ordered by the court constitute a basis to dismiss any of the respondent's defenses or counterclaims, with or without prejudice to their assertion in another forum.

**§ 746. Stipulations.** 1. In any proceeding under this article, if a stipulation is made, on the occasion of a court appearance in the proceeding, setting forth an agreement between the parties, other than a stipulation solely to adjourn or stay the proceeding, and either the petitioner or the respondent is not represented by counsel, the court shall fully describe the terms of the stipulation to that party on the record.

2. No stipulation required to be on the record by subdivision one of this section may be approved by the court unless the court first conducts an allocution on the record that shall, at a minimum, find the following:

(a) the identity of the parties and whether all necessary parties have been named in the proceeding;

(b) the authority of the signatory to the stipulation if the named party is not present; and

(c) shall further find:

(i) that the unrepresented party understands that he or she may try the case if he or she does not agree with the proposed stipulation or if an acceptable stipulation cannot be negotiated;

(ii) where the other party is represented, whether the party's attorney inappropriately gave legal advice to the unrepresented litigant or whether the unrepresented litigant is agreeing to the proposed stipulation as a result of undue duress;

(iii) whether the unrepresented respondent agrees with or contests any

allegation in the petition and predicate notices;

(iv) that the unrepresented party is aware of and understands claims or defenses he or she may have in the proceeding and is aware of the available options in light of those claims or defenses, especially where the stipulation provides for a surrender of the dwelling unit or the conversion of a nonpayment proceeding into a holdover proceeding;

(v) that the unrepresented litigant's claims or defenses are adequately addressed in the stipulation;

(vi) that the unrepresented party understands and agrees to the terms of the stipulation;

(vii) that the unrepresented party understands the effect of non-compliance with the terms of the stipulation by either side and what the deadlines and procedures are for addressing such non-compliance, including how to restore the case to the court calendar to obtain relief under or from the stipulation;

(viii) in all non-payment cases, including where the unrepresented party indicates that he or she intends to apply for public assistance benefits or to a charity to pay rent that is sought in the proceeding and that the court has determined to be owing to the petitioner, that an appropriate rent breakdown is included in the stipulation; and

(ix) that the unrepresented party understands the implications of a judgment against him or her and the legal requirement that the petitioner provide a satisfaction of judgment upon payment.

3. The court may use a court attorney to conference a case to determine the unrepresented party's claims or defenses and his or her understanding of all available options in light of those claims or defenses, or any of the other elements of the allocution required by this section. However, such conference may not substitute for an allocution by the court and, where it is used, the results shall be reported to the court, which shall note on the record that such conference occurred.

4. Notwithstanding the foregoing, where the court, in its discretion, determines that, in the interests of justice, inclusion in the allocution required by subdivision two of this section of one or more findings described in paragraph (c) of such subdivision is or are not

necessary given the history of the case, prior appearances or other factors, excluding a court attorney conference provided for in subdivision three above, such finding or findings may be omitted and the reason for such omission shall be set forth on the record.

**§ 747. Judgment.** 1. The court shall direct that a final judgment be entered determining the rights of the parties. The judgment shall award to the successful party the costs of the special proceeding.

2. The judgment shall not bar an action to recover the possession of real property. The judgment shall not bar an action, proceeding or counterclaim, commenced or interposed within sixty days of entry of the judgment, for affirmative equitable relief which was not sought by counterclaim in the proceeding because of the limited jurisdiction of the court.

3. If the proceeding is founded upon an allegation of forcible entry or forcible holding out the court may award to the successful party a fixed sum as costs, not exceeding fifty dollars, in addition to his disbursements.

4. The judgment, including such money as it may award for rent or otherwise, may be docketed in such books as the court maintains for recording the steps in a summary proceeding; unless a rule of the court, or the court by order in a given case, otherwise provides, such judgment need not be recorded or docketed in the books, if separately maintained, in which are docketed money judgments in an action.

**§ 749. Warrant.** 1. Upon rendering a final judgment for petitioner, the court shall issue a warrant directed to the sheriff of the county or to any constable or marshal of the city in which the property, or a portion thereof, is situated, or, if it is not situated in a city, to any constable of any town in the county, describing the property, stating the earliest date upon which execution may occur pursuant to the order of the court, and commanding the officer to remove all persons named in

the proceeding, provided upon a showing of good cause, the court may issue a stay of re-letting or renovation of the premises for a reasonable period of time.

2. (a) The officer to whom the warrant is directed and delivered shall give at least fourteen days' notice, in writing and in the manner prescribed in this article for the service of a notice of petition, to the person or persons to be evicted or dispossessed and shall execute the warrant on a business day between the hours of sunrise and sunset.

(b) Such officer shall check such property for the presence of a companion animal prior to executing such warrant and coordinate with such person or persons to be evicted or dispossessed to provide for the safe and proper care of such companion animal or animals. If such persons to be evicted or dispossessed cannot be found after reasonable efforts are made to coordinate with such persons, or if such person is found and declines to take possession of such animal or animals, such officer shall promptly coordinate with the duly incorporated humane society, duly incorporated society for the prevention of cruelty to animals or pound maintained by or under contract or agreement with the municipality in which the animal was found for the safe removal of such companion animal or animals. Such officer shall make reasonable efforts to provide notice to the person or persons to be evicted regarding the location of such companion animal or animals. Disposition of such companion animal or animals shall be in accordance with the provisions of sections one hundred seventeen and three hundred seventy-four of the agriculture and markets law, and all other laws, rules and regulations that govern the humane treatment of animals. "Companion animal," as used in this paragraph, shall have the same meaning as provided in subdivision five of section three hundred fifty of the agriculture and markets law.

3. Nothing contained herein shall deprive the court of the power to stay or vacate such warrant for good cause shown prior to the execution thereof, or to restore the tenant to possession subsequent to execution of the warrant. In a judgment for non-payment of rent, the court shall vacate a warrant upon tender or deposit with the court of the full rent due at any time prior to its execution, unless the petitioner

establishes that the tenant withheld the rent due in bad faith. Petitioner may recover by action any sum of money which was payable at the time when the special proceeding was commenced and the reasonable value of the use and occupation to the time when the warrant was issued, for any period of time with respect to which the agreement does not make any provision for payment of rent.

**\* § 749-a. New York city marshals.** A marshal of the city of New York shall provide notice of execution of a warrant of eviction by physical posting of the notice and by an electronic filing. For purposes of this section, "electronic filing" shall mean an electronic filing as described in section twenty-one hundred three-a of the New York city civil court act.

\* NB Repealed June 30, 2028

**§ 751. Stay upon paying rent or giving undertaking; discretionary stay outside city of New York.** The respondent may, at any time before a warrant is issued, stay the issuing thereof and also stay an execution to collect the costs, as follows:

1. Where the lessee or tenant holds over after a default in the payment of rent, or of taxes or assessments, he may effect a stay by depositing the amount of the rent due or of such taxes or assessments, and interest and penalty, if any thereon due, and the costs of the special proceeding, with the clerk of the court, or where the office of clerk is not provided for, with the court, who shall thereupon, upon demand, pay the amount deposited to the petitioner or his duly authorized agent; or by delivering to the court or clerk his undertaking to the petitioner in such sum as the court approves to the effect that he will pay the rent, or such taxes or assessments, and interest and penalty and costs within ten days, at the expiration of which time a warrant may issue, unless he produces to the court satisfactory evidence of the payment.

2. Where the lessee or tenant has taken the benefit of an insolvency

statute or has been adjudicated a bankrupt, he may effect a stay by paying the costs of the special proceeding and by delivering to the court or clerk his undertaking to the petitioner in such a sum as the court approves to the effect that he will pay the rent of the premises as it has become or thereafter becomes due.

3. Where he continues in possession of real property which has been sold by virtue of an execution against his property, he may effect a stay by paying the costs of the special proceeding, and delivering to the court or clerk an affidavit that he claims the possession of the property by virtue of a right or title acquired after the sale or as guardian or trustee for another; together with his undertaking to the petitioner in such a sum as the court approves to the effect that he will pay any costs and damages which may be recovered against him in an action to recover the property brought against him by the petitioner within six months thereafter; and that he will not commit any waste upon or injury to the property during his occupation thereof.

**§ 753. Stay in premises occupied for dwelling purposes.** 1. In a proceeding to recover the possession of premises occupied for dwelling purposes, other than a room or rooms in an hotel, lodging house, or rooming house, the court, on application of the occupant, may stay the issuance of a warrant and also stay any execution to collect the costs of the proceeding for a period of not more than one year, if it appears that the premises are used for dwelling purposes; that the application is made in good faith; that the applicant cannot within the neighborhood secure suitable premises similar to those occupied by the applicant and that the applicant made due and reasonable efforts to secure such other premises, or that by reason of other facts it would occasion extreme hardship to the applicant or the applicant's family if the stay were not granted. In determining whether refusal to grant a stay would occasion extreme hardship, the court shall consider serious ill health, significant exacerbation of an ongoing condition, a child's enrollment in a local school, and any other extenuating life circumstances affecting the ability of the applicant or the applicant's family to relocate and maintain quality of life. The court shall consider any

substantial hardship the stay may impose on the landlord in determining whether to grant the stay or in setting the length or other terms of the stay. In an application brought outside a city of one million or more, the term "neighborhood" shall be construed to mean (i) the same town, village or city where the applicant now resides, or (ii) if the applicant has school aged children residing with him or her, "neighborhood" shall mean the school district where such children attend or are eligible to attend.

2. Such stay shall be granted and continue effective only upon the condition that the person against whom the judgment is entered shall make a deposit in court of the entire amount, or such installments thereof from time to time as the court may direct, for the occupation of the premises for the period of the stay, at the rate for which the applicant was liable as rent for the month immediately prior to the expiration of the applicant's term or tenancy, plus such additional amount, if any, as the court may determine to be the difference between such rent and the reasonable rent or value of the use and occupation of the premises; such deposit may also include all rent unpaid by the occupant prior to the period of the stay. The amount of such deposit shall be determined by the court upon the application for the stay and such determination shall be final and conclusive in respect to the amount of such deposit, and the amount thereof shall be paid into court, in such manner and in such installments, if any, as the court may direct. A separate account shall be kept of the amount to the credit of each proceeding, and all such payments shall be deposited in a bank or trust company and shall be subject to the check of the clerk of the court, if there be one, or otherwise of the court. The clerk of the court, if there be one, and otherwise the court shall pay to the landlord or the landlord's duly authorized agent, the amount of such deposit in accordance with the terms of the stay or the further order of the court.

3. The provisions of this section shall not apply to a proceeding to recover possession upon the ground that an occupant is holding over and is objectionable if the landlord shall establish by competent evidence to the satisfaction of the court that such occupant is objectionable.

4. In the event that such proceeding is based upon a claim that the tenant or lessee has breached a provision of the lease, the court shall grant a thirty day stay of issuance of the warrant, during which time the respondent may correct such breach.

5. Any provision of a lease or other agreement whereby a lessee or tenant waives any provision of this section shall be deemed against public policy and void.

**§ 755. Stay of proceeding or action for rent upon failure to make repairs.** 1. (a) Upon proper proof that a notice or order to remove or cease a nuisance or a violation or to make necessary and proper repairs has been made by the municipal department charged with the enforcement of the multiple dwelling law, the multiple residence law, or any other applicable local housing code, or officer or officers thereof charged with the supervision of such matters, if the condition against which such notice or order is directed is, in the opinion of the court, such as to constructively evict the tenant from a portion of the premises occupied by him, or is, or is likely to become, dangerous to life, health, or safety, the court before which the case is pending may stay proceedings to dispossess the tenant for non-payment of rent or any action for rent or rental value. In any such proceeding, on the question of fact, as to the condition of the dwelling the landlord or petitioner shall have the burden of disproving the condition of the dwelling as such condition is described in the notice or order.

(b) Upon proper proof of the existence of a condition that is in the opinion of the court, such as to constructively evict the tenant from a portion of the premises occupied by him, or is or is, likely to become, dangerous to life, health, or safety, the court before which the case is pending may stay proceedings to dispossess the tenant for non-payment of rent, or any action for rent or rental value.

(c) The court shall in no case grant a stay where it appears that the condition against which the notice or order is directed has been created by the wilful or negligent act of the tenant or his agent. Such stay shall continue in force, until an order shall be made by the court

vacating it, but no order vacating such stay shall be made, except upon three days' notice of hearing to the tenant, or respondent, or his attorney, and proof that such notice or order has been complied with.

2. The tenant or respondent shall not be entitled to the stay unless he shall deposit with the clerk of the court the rent then due, which shall, for the purposes of this section, be deemed the same as the tenant was liable for during the preceding month or such as is reserved as the monthly rent in the agreement under which he obtained possession of the premises. The stay may be vacated upon three days' notice upon failure to deposit with the clerk the rent within five days after it is due, during the pendency of the proceeding or action.

3. During the continuance of the stay, the court may direct, in its discretion, upon three days notice to all parties, the release to a contractor or materialman of all or such part of the moneys on deposit as shall be sufficient to pay bills properly presented by such contractor or materialman for the maintenance of and necessary repairs to the building (including but not limited to payments for fuel, electricity, gas, janitorial services and repairs necessary to remove violations), upon a showing by the tenant that the landlord is not meeting his legal obligations therefor or direct such release to a municipal department to pay bills and expenses for such maintenance and repairs upon a showing that the landlord did not meet his legal obligation to provide such maintenance or perform repairs and that the department incurred expenses therefor. Upon the entry of an order vacating the stay the remaining money deposited shall be paid to the plaintiff or landlord or his duly authorized agent.

4. Neither party shall be entitled to any costs in any proceeding or action wherein the stay shall be granted except that costs may be awarded against the tenant or defendant in the discretion of the court in the event the condition complained of shall be found to be due to the wilful act of the tenant or defendant, such costs, however, not to exceed the sum of twenty-five dollars.

**§ 756. Stay of summary proceedings or actions for rent under certain conditions.** In the event that utilities are discontinued in any part of a dwelling because of the failure of the landlord or other person having control of said dwelling to pay for utilities for which he may have contracted, any proceeding to dispossess a tenant from said building or an action against any tenant of said building for rent shall be stayed until such time as the landlord or person having control of said dwelling pays the amount owing for said utilities and until such time as the utilities are restored to working order.

**§ 756-a. Stay of action or proceeding when a party's claim to title is in dispute.** 1. (a) A federal, state or local government agency may move for a stay of any proceeding to recover possession of or quiet title to real property relating to a residential dwelling unit or property, based on a pending good faith investigation into the theft or fraud in the title to, or the financing of, the premises that is the subject of any proceeding. Upon the agency's showing of the pendency of a good faith investigation, the court shall issue a stay of the proceeding, including staying execution of a warrant of eviction or enforcement of a judgment so long as the investigation is ongoing.

(b) Every six months, the court shall schedule a status conference with the government agency and any other parties to the action to review any stay and to determine if the investigation is still continuing in good faith and shall continue the stay of the proceeding until the government investigation is closed. If it should deem necessary, a court may review any supporting documents filed by the government agency in camera and to be filed under seal if deemed necessary by the government agency.

2. The court shall stay all proceedings to recover possession of or quiet title to real property relating to a residential dwelling unit or property, where a charging instrument is filed against a party to such proceeding for deed theft, larceny, offering a false instrument for filing, criminal possession of stolen property or any other law asserting theft or fraud in obtaining title to property and said charging instrument relates to the premises that are the subject of such

proceeding. The stay shall remain in effect until resolution of such criminal action.

3. The court shall stay all proceedings to recover possession of or quiet title to real property relating to a residential dwelling unit or property, where a federal, state or local government agency has commenced a civil action or proceeding relating to the theft or fraud in the title to, or the financing of, the premises that are the subject of such proceeding.

4. The court shall stay all proceedings under section seven hundred eleven or seven hundred thirteen of this article for ninety days to allow a party to file a complaint in the appropriate forum when the court makes a determination that there is a bona fide dispute between parties purporting to own the property that is the subject of the proceeding.

(a) A rebuttable presumption that a bona fide dispute to title exists shall be created when the party disputing petitioner's title, owns or owned the property that is the subject of the court proceeding during the last three years, or is a person interested in the property, as defined by section one hundred three of the surrogate's court procedure act.

(b) A party may seek an additional stay of the proceeding beyond the initial ninety day stay by the court if they were unable to file a complaint or seek a stay from another forum. In extending the stay, the court shall consider, without limitation, the totality of the circumstances including steps the parties have taken to resolve the dispute, the harm to the parties of a further stay, and the ability of the parties to advocate for themselves or retain counsel.

(c) This section shall not apply to any proceeding commenced pursuant to subdivision ten of section seven hundred thirteen of this article.

5. Nothing in this section shall diminish the court's own discretion to further stay a proceeding in the interests of justice.

6. Nothing in this section shall limit a party from seeking relief, including a stay of a proceeding under this article, in another court.

7. For purposes of this section, a proceeding to recover possession of or quiet title to real property shall include any proceeding under section seven hundred eleven or seven hundred thirteen of this article, an ejectment action or a writ of assistance pursuant to section two hundred twenty-one of this chapter, a foreclosure action, an action to enforce a mortgage note, or any other action affecting title to or encumbrance upon real property, or any other judicial or administrative proceeding to recover possession of or quiet title to real property.

8. For purposes of this section, a party shall include:

(a) a corporation, limited liability company, partnership or other entity where a charging instrument has been filed against an individual who has a financial or controlling interest in the entity that holds title to the property; or

(b) where a charging instrument has been filed against a seller of the property, including an individual or corporation, limited liability company, partnership or other entity, or where a charging instrument has been filed against an individual who has a financial or controlling interest in the entity that sold the property.

**§ 757. Eviction as the result of foreclosure.** In the event that a lessee is removed from real property pursuant to this article, and the leased real property was the subject of a foreclosure proceeding pursuant to this chapter or the subject of a tax foreclosure proceeding, the court records relating to any such lessee shall be sealed and be deemed confidential. No disclosure or use of such information relating to any such lessee shall be authorized, and the use of such information shall be prohibited.

**§ 761. Redemption by lessee.** Where the special proceeding is founded upon an allegation that a lessee holds over after a default in the payment of rent, and the unexpired term of the lease under which the premises are held exceeds five years at the time when the warrant is issued the lessee, his executor, administrator or assignee, at any time

within one year after the execution of the warrant, unless by the terms of the lease such lessee shall have waived his right to redeem, or such lessee, executor, administrator or assignee shall have subsequently waived the right to redeem by a written instrument filed and recorded in the office in which the lease is recorded, or if not so recorded, in the office in which deeds are required to be recorded of the county in which the leased premises are located, may pay or tender to the petitioner, his heir, executor, administrator or assignee, or if, within five days before the expiration of the year he cannot be found with reasonable diligence within the city or town wherein the property or a portion thereof is situated, then to the court which issued the warrant, all rent in arrears at the time of the payment or tender with interest thereupon and the costs and charges incurred by the petitioner. Thereupon the person making the payment or tender shall be entitled to the possession of the demised premises under the lease and may hold and enjoy the same according to the terms of the original demise, except as otherwise prescribed in section 765.

**§ 763. Redemption by creditor of lessee.** In a case specified in section 761, a judgment creditor of the lessee whose judgment was docketed in the county before the precept was issued, or a mortgagee of the lease whose mortgage was duly recorded in the county before the precept was issued, unless by the terms of the lease the lessee shall have waived his right to redeem, or such lessee, or his executor, administrator or assignee shall have subsequently waived the right to redeem by a written instrument filed and recorded in the office in which the lease is recorded, or if not so recorded, in the office in which deeds are required to be recorded of the county in which the leased premises are located, before such judgment was docketed or such mortgage recorded, or such judgment creditor or mortgagee himself shall have waived in writing his right to redeem, may at any time before the expiration of one year after the execution of the warrant, unless a redemption has been made as prescribed in section 761, file with the court which issued the warrant a notice specifying his interest and the sum due to him, describing the premises, and stating that it is his intention to redeem as prescribed in this section. If a redemption is

not made by the lessee, his executor, administrator or assignee within a year after the execution of the warrant, the person so filing a notice, or, if two or more persons have filed such notices the one who holds the first lien, at any time before two o'clock of the day, not a Sunday or a public holiday, next succeeding the last day of the year, may redeem for his own benefit in like manner as the lessee, his executor, administrator or assignee might have so redeemed. Where two or more judgment creditors or mortgagees have filed such notices, the holder of the second lien may so redeem at any time before two o'clock of the day, not a Sunday or a public holiday, next succeeding that in which the holder of the first lien might have redeemed; and the holder of the third and each subsequent lien may redeem in like manner at any time before two o'clock of the day, not a Sunday or a public holiday, next succeeding that in which his predecessor might have redeemed. But a second or subsequent redemption is not valid unless the person redeeming pays or tenders to each of his predecessors who has redeemed the sum paid by him to redeem and also the sum due upon his judgment or mortgage; or deposits those sums with the court for the benefit of his predecessor or predecessors.

**§ 765. Effect of redemption upon lease.** Where a redemption is made, as prescribed in this article, the rights of the person redeeming are subject to a lease, if any, executed by the petitioner since the warrant was issued, so far that the new lessee, his assigns, undertenants, or other representatives, upon complying with the terms of the lease, may hold the premises so leased until twelve o'clock, noon, of the first day of May next succeeding the redemption. And in all other respects, the person so redeeming, his assigns and representatives succeed to all the rights and liabilities of the petitioner under such a lease.

**§ 767. Order of redemption; liability of persons redeeming.** The person redeeming, as prescribed in this article or the owner of the property so redeemed, may present to the court which issued the warrant a petition setting forth the facts of the redemption and praying for an order establishing the rights and liabilities of the parties upon the

redemption, whereupon the court must make an order requiring the other party to the redemption to show cause at a time and place therein specified why the prayer of the petition should not be granted. The order to show cause must be made returnable not less than two nor more than ten days after it is granted; and it must be served at least two days before it is returnable. Upon the return thereof, the court must hear the allegations and proofs of the parties and must make such a judgment as justice requires. The costs and expenses must be paid by the petitioner. The judgment, or a certified copy thereof, may be recorded in like manner as a deed. A person, other than the lessee, who redeems as prescribed in this article succeeds to all the duties and liabilities of the lessee accruing after the redemption as if he was named as lessee in the lease.

**§ 768. Unlawful eviction.** 1. (a) It shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease with respect to such dwelling except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or a governmental vacate order by:

(i) using or threatening the use of force to induce the occupant to vacate the dwelling unit; or

(ii) engaging in a course of conduct which interferes with or is intended to interfere with or disturb the comfort, repose, peace or quiet of such occupant in the use or occupancy of the dwelling unit, to induce the occupant to vacate the dwelling unit including, but not limited to, the interruption or discontinuance of essential services; or

(iii) engaging or threatening to engage in any other conduct which prevents or is intended to prevent such occupant from the lawful occupancy of such dwelling unit or to induce the occupant to vacate the dwelling unit including, but not limited to, removing the occupant's possessions from the dwelling unit, removing the door at the entrance to the dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable, or changing the lock on such entrance door without supplying the occupant with a key.

(b) It shall be unlawful for an owner of a dwelling unit to fail to take all reasonable and necessary action to restore to occupancy an occupant of a dwelling unit who either vacates, has been removed from or is otherwise prevented from occupying a dwelling unit as the result of any of the acts or omissions prescribed in paragraph (a) of this subdivision and to provide to such occupant a dwelling unit within such dwelling suitable for occupancy, after being requested to do so by such occupant or the representative of such occupant, if such owner either committed such unlawful acts or omissions or knew or had reason to know of such unlawful acts or omissions, or if such acts or omissions occurred within seven days prior to such request.

2. Criminal and civil penalties. (a) Any person who intentionally violates or assists in the violation of any of the provisions of this section shall be guilty of a class A misdemeanor. Each such violation shall be a separate and distinct offense.

(b) Such person shall also be subject to a civil penalty of not less than one thousand nor more than ten thousand dollars for each violation. Each such violation shall be a separate and distinct offense. In the case of a failure to take all reasonable and necessary action to restore an occupant pursuant to paragraph (b) of subdivision one of this section, such person shall be subject to an additional civil penalty of not more than one hundred dollars per day from the date on which restoration to occupancy is requested until the date on which restoration occurs, provided, however, that such period shall not exceed six months.

#### ARTICLE 7-A

**SPECIAL PROCEEDINGS BY TENANTS OF DWELLINGS  
IN THE CITY OF NEW YORK AND THE COUNTIES OF NASSAU,  
SUFFOLK, ROCKLAND AND WESTCHESTER FOR JUDGMENT  
DIRECTING DEPOSIT OF RENTS AND THE USE THEREOF FOR THE  
PURPOSE OF REMEDYING CONDITIONS DANGEROUS TO LIFE,  
HEALTH OR SAFETY**

Section 769. Jurisdiction; court; venue.

770. Grounds for the proceeding.

- 771. Commencement; notice of petition; time and manner of service.
- 772. Contents of petition.
- 773. Answer.
- 774. Trial.
- 775. Defenses.
- 776. Judgment.
- 777. Application by mortgagee or lienor of record or other person having an interest in the property.
- 778. Appointment of administrator.
- 779. Presentation or settlement of accounts.
- 780. Waiver void.
- 781. "Owner" defined.
- 782. "Dwelling" defined.
- 783. Defense of warranty of habitability inapplicable.

**§ 769. Jurisdiction; court; venue.** 1. A special proceeding by tenants of a dwelling in the city of New York or the counties of Nassau, Suffolk, Rockland and Westchester for a judgment directing the deposit of rents into court and their use for the purpose of remedying conditions dangerous to life, health or safety may be maintained in the civil court of the city of New York, the district court of the counties of Suffolk and Nassau and the county courts or city courts in the counties of Rockland and Westchester.

2. The place of trial of the special proceeding shall be within the county in which the real property or a portion thereof from which the rents issue is situated.

**§ 770. Grounds for the proceeding.** 1. One-third or more of the tenants occupying a dwelling located in the city of New York or the commissioner of the department of the city of New York charged with enforcement of the housing maintenance code of such city, or in the counties of Nassau, Suffolk, Rockland and Westchester may maintain a special proceeding as provided in this article, upon the ground that there exists in such

dwelling or in any part thereof a lack of heat or of running water or of light or of electricity or of adequate sewage disposal facilities, or any other condition dangerous to life, health or safety, which has existed for five days, or an infestation by rodents, or any combination of such conditions; or course of conduct by the owner or the owner's agents of harassment, illegal eviction, continued deprivation of services or other acts dangerous to life, health or safety, or the issuance of an order to the owner of such dwelling by the commissioner of such department of the city of New York pursuant to the alternative enforcement program under section 27-2153 of the administrative code of the city of New York, provided that such dwelling has not been discharged from the program pursuant to such section and there has not been a determination that the owner has substantially complied with such order.

2. If the proceeding is instituted by the commissioner of the department of the city of New York charged with enforcement of the housing maintenance code of such city, one-third or more of the tenants may, at any time thereafter during the pendency of the proceeding or after final judgment pursuant to section seven hundred seventy-six or seven hundred seventy-seven of this article, petition for substitution of themselves in place and stead of such commissioner of such department. Such substitution shall be ordered by the court unless good reason to the contrary shall be shown.

**§ 771. Commencement; notice of petition; time and manner of service.**

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

2. The notice of petition shall specify the time and place of the hearing on the petition and state that if at such time, a defense to such petition is not interposed and established by the owner or any mortgagee or lienor of record, a final judgment may be rendered directing that the rents due on the date of entry of such judgment from the petitioning tenants and the rents due on the dates of service of

such judgment on all other tenants occupying such dwelling, from such other tenants, shall be deposited with the administrator appointed pursuant to section seven hundred seventy-eight of this article, and any rents to become due in the future from such petitioners and from all other tenants occupying such dwelling shall be deposited with such administrator as they fall due; and that such deposited rents shall be used, subject to the court's direction, to the extent necessary to remedy the condition or conditions alleged in the petition.

3. The notice of petition and petition shall be served upon the owner of such dwelling last registered with the department of housing preservation and development of such city pursuant to article forty-one of chapter twenty-six of the administrative code of the city of New York and in Nassau, Suffolk, Rockland and Westchester counties upon the person set forth as the owner on the last recorded deed to the rented property and upon every mortgagee and lienor of record, and upon the city of New York, at least five days before the time at which the petition is noticed to be heard.

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

5. Manner of service. a. Service of the notice of petition and petition shall be made by personally delivering them to the person or persons required to be served pursuant to subdivision three of this section. Service upon the city of New York shall be made by personal delivery to the commissioner of the city department charged with enforcement of the housing maintenance code of such city, or to an agent duly authorized to accept such service on his behalf. If service cannot with due diligence be made within the city upon an owner, mortgagee or lienor of record in such manner, it shall be made:

(1) upon the owner last registered with the department of housing preservation and development pursuant to article forty-one of chapter twenty-six of the administrative code of the city of New York and in Nassau, Suffolk, Rockland and Westchester counties upon the person set forth as the owner on the last recorded deed to the rented property by delivering to and leaving personally with the person designated pursuant

to article forty-one of chapter twenty-six of such code as managing agent of the subject dwelling, and in Nassau, Suffolk, Rockland and Westchester counties upon the person designated as the managing agent of the rented property if one shall have been designated, a copy of the notice of petition and petition;

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

b. If such personal service upon the person designated pursuant to article forty-one of chapter twenty-six of the administrative code of the city of New York as managing agent of the subject dwelling and in Nassau, Suffolk, Rockland and Westchester counties upon the person set forth as the owner on the last recorded deed to the rented property cannot be made with due diligence, service upon such last registered owner shall be made by affixing a copy of the notice and petition upon a conspicuous part of the subject dwelling; and in addition, within two days after such affixing, by sending a copy thereof by registered or certified mail, return receipt requested, to the owner at the last address registered by him with the department of housing preservation and development or, in the absence of such registration, to the address set forth in the last recorded deed with respect to such premises.

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

**§ 772. Contents of petition.** The petition shall:

1. Allege material facts showing that there exists in such dwelling or any part thereof one or more of the following: a lack of heat or of running water or of light or electricity or of adequate sewage disposal facilities, or any other condition dangerous to life, health or safety, which has existed for five days, or an infestation of rodents or course of conduct by the owner or his agents of harassment, illegal eviction,

continued deprivation of services or other acts dangerous to life, health or safety.

2. If the petitioners shall be tenants occupying the dwelling, they shall allege the number of petitioners making the petition and that they constitute one-third or more of the tenants of said dwelling in occupancy thereof.

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

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

5. State the relief sought.

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

**§ 774. Trial.** Where triable issues of fact are raised, they shall be tried by the court without a jury at the time when issue is joined. However, the court, in its discretion, may grant an adjournment of such trial at request of either party, if it determines that an adjournment is necessary to enable either of the parties to procure the necessary witnesses, or upon consent of all the parties who appear. Such adjournment shall not be for more than five days except by consent of all the parties who appear.

**§ 775. Defenses.** It shall be a sufficient defense to the proceeding, if the owner or any mortgagee or lienor of record establish that:

a. The condition or conditions alleged in the petition did not in fact exist or that such condition or conditions have been removed or remedied; or

b. Such condition or conditions has been caused by a petitioning tenant or tenants or members of the family or families of such petitioner or petitioners or of their guests or by other residents of the dwelling or their families or guests; or

c. Any tenant or resident of the dwelling has refused entry to the owner or his agent to a portion of the premises for the purpose of correcting such condition or conditions.

**§ 776. Judgment.** The court shall render a final judgment either

a. Dismissing the petition for failure to affirmatively establish the allegations thereof or because of the affirmative establishment by the owner or a mortgagee or lienor of record of a defense or defenses specified in section seven hundred seventy-five of this article; or

b. Directing that (1) the rents due on the date of the entry of such judgment from the petitioning tenants and the rents due on the dates of service of the judgment on all other residential and non-residential tenants occupying such dwelling from such other tenants, shall be deposited with the administrator appointed by the court, pursuant to section seven hundred seventy-eight of this article; (2) any rents to become due in the future from all tenants occupying such dwelling shall be deposited with such administrator as they fall due; (3) such deposited rents shall be used, subject to the court's direction, to the extent necessary to remedy the condition or conditions alleged in the petition and (4) upon the completion of such work in accordance with

such judgment, any remaining surplus shall be turned over to the owner, together with a complete accounting of the rents deposited and the costs incurred; and granting such other and further relief as to the court may seem just and proper. A certified copy of such judgment shall be served personally upon each non-petitioning tenant occupying such dwelling and upon the city of New York by service as provided in subdivision five of section seven hundred seventy-one of this article. If personal service on any such non-petitioning tenant cannot be made with due diligence, service on such tenant shall be made by affixing a certified copy of such judgment on the entrance door of such tenant's apartment, store or other unit and, in addition, within one day after such affixing, by sending a certified copy thereof by registered mail, return receipt requested, to such tenant. Any right of the owner of such dwelling to collect such rent moneys from any petitioning tenant of such dwelling on or after the date of entry of such judgment, and from any non-petitioning tenant of such dwelling on or after the date of service of such judgment on such non-petitioning tenant as herein provided, shall be void and unenforceable to the extent that such petitioning or non-petitioning tenant, as the case may be, has deposited such moneys with the administrator in accordance with the terms of such judgment, regardless of whether such right of the owner arises from a lease, contract, agreement or understanding heretofore or hereafter made or entered into or arises as a matter of law from the relationship of the parties or otherwise. It shall be a valid defense in any action or proceeding against any such tenant to recover possession of real property for the non-payment of rent or for use or occupation to prove that the rent alleged to be unpaid was deposited with the administrator in accordance with the terms of a judgment entered under this section.

**§ 777. Application by mortgagee or lienor of record or other person having an interest in the property.** a. If, after a trial, the court shall determine that the facts alleged in the petition have been affirmatively established by the petitioners, that no defense thereto specified in section seven hundred seventy-five of this article has been affirmatively established by the owner or a mortgagee or lienor of record, and that the facts alleged in the petition warrant the granting

of the relief sought, and if the owner or any mortgagee or lienor of record or other person having an interest in the property, shall apply to the court to be permitted to remove or remedy the conditions specified in such petition and shall (1) demonstrate the ability promptly to undertake the work required; and (2) post security for the performance thereof within the time, and in the amount and manner, deemed necessary by the court, then the court, in lieu of rendering judgment as provided in section seven hundred seventy-six of this article, may issue an order permitting such person to perform the work within a time fixed by the court but in no event more than sixty days from the date of the order of the court unless the court grants an extension of time for good cause shown. The provisions of this subdivision shall only be available to the mortgagee or lienor once with respect to any petition filed pursuant to this article.

b. If, after the issuance of an order pursuant to subdivision a of this section, but before the time fixed in such order for the completion of the work prescribed therein, it shall appear to the petitioners that the person permitted to do the same is not proceeding with due diligence, the petitions may apply to the court on notice to those persons who have appeared in the proceeding for a hearing to determine whether judgment should be rendered immediately as provided in subdivision c of this section.

c. If, upon a hearing authorized in subdivision b hereof, the court shall determine that such owner, mortgagee, lienor or other person is not proceeding with due diligence, or upon the failure of such owner, mortgagee, lienor or other person to complete the work in accordance with the provisions of said order, the court shall render a final judgment appointing an administrator as authorized in section seven hundred seventy-eight of this article. Such judgment shall direct the administrator to apply the security posted by such person to the removing or remedying of the condition or conditions specified in the petition. In the event that the amount of such security should be insufficient for such purpose, such judgment shall direct the deposit of rents with the administrator, as authorized by section seven hundred seventy-six of this article, to the extent of such deficiency. In the

event that such security should exceed the amount required to remove or remedy such condition or conditions, such judgment shall direct the administrator to file with the court, upon completion of the work prescribed therein, a full accounting of the amount of such security and the expenditures made pursuant to such judgment, and to turn over such surplus to the person who posted such security, together with a copy of such accounting.

**§ 778. Appointment of administrator.** 1. The court is authorized and empowered, in implementation of a judgment rendered pursuant to section seven hundred seventy-six or seven hundred seventy-seven of this article, to appoint a person other than the owner, a mortgagee or lienor, to receive and administer the rent moneys or security deposited with such owner, mortgagee or lienor, subject to the court's direction. The court may appoint the commissioner of the department of the city of New York charged with enforcement of the housing maintenance code of such city or the commissioner's designee as such administrator, provided that the commissioner or the commissioner's designee shall consent, in writing, to such appointment. Any administrator is authorized and empowered in accordance with the direction of the court, to order the necessary materials, labor and services to remove or remedy the conditions specified in the judgment, and to make disbursements in payment thereof; and to demand, collect and receive the rents from the tenants; and to institute all necessary legal proceedings including, but not limited to, summary proceedings for the removal of any tenant or tenants; and to rent or lease for terms not exceeding three years any part of said premises, however, the court may direct the administrator to rent or lease commercial parts of said premises for terms that the court may approve. In addition, such administrator is authorized and empowered in accordance with the direction of the court to accept and repay such moneys as may be received from the department charged with enforcement of the housing maintenance code of the city of New York for the purpose of managing the premises, replacing or substantially rehabilitating systems or making other repairs or capital improvements authorized by the court. All moneys expended by the department pursuant to the foregoing shall constitute a debt recoverable from the owner and

a lien upon the building and lot, and upon the rents and other income thereof. Such lien shall be enforced in accordance with the provisions of article eight of subchapter five of the housing maintenance code of the city of New York. Such administrator, shall, upon completion of the work prescribed in such judgment, file with the court a full accounting of all receipts and expenditures for such work. Such administrator shall dispose of the rents and other monies deposited with such administrator according to the following order of priority:

(a) Payment in full for all of the work specified in the judgment. Until all of the work specified in the judgment has been completed and payment for such work has been made, no other disbursements shall be permitted, except for fuel bills, fire and liability insurance, and bills for ordinary repairs and maintenance.

(b) Payment of a reasonable amount for the services of such administrator, including reimbursement of any legal fees incurred by such administrator in connection with management of the building.

(c) Payment of outstanding real property tax liens claimed by the city of New York.

(d) Payment of outstanding emergency repair liens filed and recorded by the city of New York and outstanding liens filed and recorded by the city pursuant to this section.

(e) Payment to the owner of any surplus remaining after payments of paragraphs (a) through (d) of this subdivision have been made.

2. Unless the administrator is the city of New York, the court may allow from the rent moneys or security on deposit a reasonable amount for services of such administrator.

3. Unless such administrator is the city of New York, the administrator so appointed shall furnish a bond, the amount and form of which shall be approved by the court. In its discretion and for good cause shown, the court may dispense with the necessity for a bond. The cost of a required bond shall be paid from the moneys so deposited.

4. Such administrator shall file a transcript of the judgment appointing him with the county clerk within fifteen days of his appointment.

5. The duties of such administrator shall not be affected by the appointment of a receiver in an action to foreclose a mortgage on the premises, except that the rights of the owner, including the right to any surplus, pursuant to paragraph (e) of subdivision one of this section, shall pass to the receiver. The court in which the action to foreclose a mortgage on the premises is pending may appoint such administrator to serve as receiver in that action in addition to his duties as administrator pursuant to this article.

6. Such administrator shall be liable only in his or her official capacity for injury to persons and property by reason of conditions of the premises in a case where an owner would have been liable; he or she shall not have any liability in his or her personal capacity. Appointment of an administrator pursuant to subdivision one of this section shall not relieve an owner of liability for injury to persons and property in such case.

7. No city or county specified in section seven hundred sixty-nine of this article shall be liable to any party, including such administrator or the owner, for injury to persons or property by reason of conditions of the premises or the acts or omissions of such administrator, except that when the city of New York is appointed administrator, liability shall be determined in accordance with subdivision six of this section.

8. The commissioner of the department of the city of New York charged with the enforcement of the housing maintenance code of such city shall promulgate rules and regulations regarding criteria for the selection of administrators to be appointed pursuant to this section and shall establish and maintain a list of persons approved by such department. Unless the administrator is the city of New York, any person appointed as an administrator within such city shall be selected from among the persons approved as administrators pursuant to such list.

9. Such administrator shall, within thirty days of appointment, file with the court a plan for the provision of essential services and for the correction of such other hazardous conditions as may exist at the

premises, specifying dates by which such services shall be provided and such conditions corrected. If such administrator cannot provide such services and correct such conditions by the dates specified in the plan, he shall be required to file with the court an amendment to the plan setting forth the reasons why such services and corrections could not be provided by such date and specifying new dates for such services and corrections. Such plan and any amendments to such plan shall be provided to the tenants by mail or by posting in a common area of the building and to the owner of record by mail.

\* 10. (a) Where a building for which an administrator has been appointed pursuant to this section is transferred to a new owner at any time following the appointment of such administrator, whether or not such building remains subject to such administrator, the department charged with enforcement of the housing maintenance code of the city of New York may enter into a regulatory agreement with such new owner. Such regulatory agreement may impose such terms and conditions upon the operation and repair of such building as such department may determine. Notwithstanding any general, special or local law to the contrary, such regulatory agreement may provide that, upon transfer of such building to the new owner, any outstanding liens filed with and recorded by the city pursuant to this section or pursuant to section three hundred nine of the multiple dwelling law shall immediately be reduced to zero, provided that such regulatory agreement shall require, in consideration for such reduction to zero, the provision of adequate, safe and sanitary housing accommodations for persons of low income for a period of not less than thirty years. Any regulatory agreement pursuant to this subdivision shall include a certification by the new owner of the real property that (i) the prior owner has no direct or indirect interest in such real property, and (ii) the prior owner has no direct or indirect interest in such new owner.

(b) On or about June thirtieth, two thousand nine and for every three years thereafter for as long as the program continues to be in effect, the city shall submit a report to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly. Each report following the initial report shall describe the program activities carried out during the three prior calendar years pursuant to this subdivision.

\* NB Repealed June 30, 2027

11. The court may only discharge an administrator if the owner has paid in full or entered into a payment agreement to pay in full all outstanding real property tax liens claimed by the city of New York, all outstanding emergency repair liens filed and recorded by the city of New York, all outstanding charges and liens assessed in connection to the alternative enforcement program authorized by section 27-2153 of the administrative code of the city of New York, and outstanding liens filed and recorded by the city pursuant to this section. The provisions of this subdivision shall not apply to buildings transferred pursuant to subdivision ten of this section.

**§ 779. Presentation or settlement of accounts.** The court shall require the keeping of written accounts itemizing the receipts and expenditures under an order issued pursuant to section seven hundred seventy-six or seven hundred seventy-seven of this article, which shall be open to inspection by the owner, any mortgagee or lienor or any other person having an interest in such receipts or expenditures provided, however, notwithstanding any other provision of law to the contrary, such information as may be in the possession of the city of New York with the department charged with the enforcement of the housing maintenance code of such city shall be available from such department for inspection only by the owner, tenant of such property, or person having a recorded interest in the property. Upon motion of the court or the administrator or of the owner, any mortgagee or lienor of record or of any person having an interest, the court may require a presentation or settlement of the accounts with respect thereto. Notice of a motion for presentation or settlement of such accounts shall be served on the owner, any mortgagee or other lienor of record who appeared in the proceeding and any person having an interest in such receipts or expenditures.

**§ 780. Waiver void.** Any provision of a lease or other agreement whereby any provision of this article for the benefit of a tenant,

resident or occupant of a dwelling is waived, shall be deemed against public policy and shall be void.

**§ 781. "Owner" defined.** As used in this article, the term "owner" shall mean and include the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, 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.

**§ 782. "Dwelling" defined.** As used in this article, the term "dwelling" shall mean 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, or is occupied as the residence or home of three or more families living independently of each other; or is a garden-type maisonette dwelling project as defined in the multiple dwelling law or other similar dwellings which in their aggregate are arranged or designed to provide three or more apartments, have common facilities such as but not limited to a sewer line, water main, or heating plant and are operated as a unit under common ownership, notwithstanding that certificates of occupancy were issued for portions thereof as one or two family dwellings or that the dwellings are not a multiple dwelling as defined in the multiple dwelling law.

**§ 783. Defense of warranty of habitability inapplicable.** Notwithstanding any other provision of law, in any proceeding for the payment of rent commenced by an administrator appointed pursuant to this article, the provisions of section two hundred thirty-five-b of the real property law pertaining to the warranty of habitability shall not be a defense to such a proceeding for rent which accrues during the period of time that a judgment or an order pursuant to this article is in effect, unless the court determines that the conditions upon which such defense

is based were caused by the failure of such administrator to perform his duties in a reasonable manner.

## ARTICLE 7-B

### **SPECIAL PROCEEDING FOR THE REMOVAL OF ABANDONED MANUFACTURED HOMES**

Section 790. Definitions.

791. Jurisdiction; courts; venue.

792. Grounds for the proceeding.

793. Commencement; notice of petition; time and manner of service.

794. Answer.

795. Judgment and warrant.

**§ 790. Definitions.** As used in this article the following terms shall have the following meanings:

1. The term "manufactured home resident" means one who rents space in a manufactured home park from a manufactured home park owner or operator for the purpose of locating his or her manufactured home or one who rents a manufactured home in a manufactured home park from a manufactured home park owner or operator.

2. The term "manufactured home owner" means one who holds title to a manufactured home.

3. The term "manufactured home park" means a contiguous parcel of privately owned land which is used for the accommodation of three or more manufactured homes occupied for year-round living.

4. The term "manufactured home" means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities,

and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include a "mobile home" as defined in subdivision five of this section, and shall include a structure which meets all the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development.

5. The term "mobile home" means a moveable or portable unit, manufactured prior to January first, nineteen hundred seventy-six, designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed without a permanent foundation for year-round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. "Mobile home" shall mean units designed to be used exclusively for residential purposes, excluding travel trailers.

**§ 791. Jurisdiction; courts; venue.** 1. A special proceeding to remove abandoned homes may be maintained in a supreme court, a court of civil jurisdiction in a city, a district court, or a county court.

2. The place of trial of the special proceeding shall be within the jurisdictional area of the court in which the real property or a portion thereof is situated.

**§ 792. Grounds for the proceeding.** A manufactured home park owner or operator of such manufactured home park may commence a special proceeding to obtain an order of the court granting a declaration that a manufactured home has been abandoned upon proof that:

1. The manufactured home has been vacant for a period of not less than one hundred eighty days without notice to the manufactured home park

owner or operator, provided however, that such period shall be ninety days in the event that a warrant of eviction with respect to such manufactured home has been issued;

2. The manufactured home resident has defaulted in the payment of rent for such period;

3. The manufactured home community owner or operator has notified all known holders of liens against such home. Prior to commencing a proceeding pursuant to this article, the manufactured home community owner or operator shall cause a search to be done of:

(a) for homes constructed (i) on or after July first, nineteen hundred ninety-four and designated by the manufacturer as a nineteen hundred ninety-five or later model year, or (ii) on or after January first, nineteen hundred ninety-four, for which the manufacturer did not designate a model year, the title records of the department of motor vehicles, or

(b) for all other homes, filings made under the Uniform Commercial Code, to determine whether there are any lien-holders with an existing interest in the manufactured home; and

4. At least two of the following factors apply:

(a) the manufactured home resident has removed substantially all of the personal property from the home;

(b) utility service to the home has been terminated or disconnected by the utility provider, or the manufactured home resident for at least sixty days;

(c) the home is in a state of substantial disrepair that makes the home uninhabitable; or

(d) other objective evidence of abandonment that the court finds reliable.

#### **§ 793. Commencement; notice of petition; time and manner of service.**

1. The special proceeding prescribed by this article shall be commenced by filing a petition and a notice of petition. The petition shall comply with the requirements of a complaint in an action and shall state that

if respondent shall fail at such time to interpose and establish any defense that he may have, he may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action, that a final judgment may be rendered if the court finds that the petitioner has made the requisite showing; and that the result of that final judgment shall be the loss of the resident's home.

2. The notice of petition, together with the petition and affidavits specified in the notice, shall be served upon the owner of the manufactured home in a manner prescribed by this section at least thirty days before the time at which the petition is noticed to be heard.

3. Service of the notice of petition and petition shall be made in the same manner as a summons in an action.

4. The notice of petition and petition, together with proof of service thereof, shall be filed with the court or clerk thereof within three days after service has been completed.

**§ 794. Answer.** At the time when the petition is to be heard, the owner shall answer in writing. If the notice of petition was served at least thirty days before the time at which it was noticed to be heard and it so demands, the answer shall be served at least three days before the time the petition is noticed to be heard and any reply shall be served at least one day before such time.

**§ 795. Judgment and warrant.** 1. Upon the issuance of a declaration that a manufactured home has been abandoned pursuant to this article, and upon motion of the manufactured home park owner or operator, the court shall issue a warrant directed to the sheriff of the county or to any constable or marshal of the city in which the property, or a portion thereof, is situated, or if it is not situated in a city, to any constable of any town in the county, describing the manufactured home and commanding the officer to remove the home from the manufactured home park within thirty days of delivery of the warrant. The actual cost of

removing and subsequent destruction of the home shall be a charge against the manufactured home park owner or operator.

2. The warrant shall clearly recite that a declaration of abandonment has been granted and that the home will be removed from the manufactured home park no later than the thirtieth day after the delivery of the order.

3. In lieu of ordering the sheriff to remove the home, the court may, upon good cause shown, provide for an alternate disposition of the home, including, but not limited to destruction; provided, however, that if the court provides for the sale of the home, and the sale price exceeds any amounts owed to the manufactured home park owner or operator, the excess shall be held in escrow for the benefit of the home owner. This subdivision shall not be construed to require the manufactured home park owner or operator to post a bond to secure the homeowner's equity in the home nor shall it be construed to require the manufactured home park owner or operator to store the home on the premises of the manufactured home park.

4. To the extent that any household goods or other personal property of the respondent remain in the home at the time of its disposition hereunder, the manufactured home community owner or operator shall provide for the storage of such household goods and personal property for a period of not less than three months from the date of the final order of the court providing for the disposition of the home. In the event that the household goods or other personal property are stored in a self-storage facility, an amount equal to the charges imposed for such storage may be recovered from the respondent. Upon the expiration of such period, the community owner or operator (a) shall have no further liability for the storage or safekeeping of such household goods or personal property, and (b) may provide for the destruction or other disposition of such household goods or personal property.

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.

796-a. Jurisdiction; court; venue.

796-b. Grounds for the proceeding.

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

796-d. Contents of petition.

796-e. Answer.

796-f. Trial.

796-g. Defenses.

796-h. Judgment.

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

796-j. Appointment of administrator.

796-k. Presentation or settlement of accounts.

796-l. Waiver void.

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

2. a course of conduct by the owner or the owner's agents of harassment, illegal eviction, continued deprivation of services or other acts dangerous to life, health or safety.

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

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

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

(a) the rents due on the date of entry of such judgment from the

petitioning tenants and the rents due on the dates of service of such judgment on all other tenants occupying such dwelling, from such other tenants, shall be deposited with the administrator appointed pursuant to section seven hundred ninety-six-j of this article;

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

(c) such deposited rents shall be used, subject to the court's direction, to the extent necessary to remedy the condition or conditions alleged in the petition.

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

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

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

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

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

(b) If such personal service upon the person set forth as the owner on the last recorded deed to the rented property cannot be made with due diligence, service upon such last registered owner shall be made by affixing a copy of the notice and petition upon a conspicuous part of

the subject dwelling; and in addition, within two days after such affixing, by sending a copy thereof by registered or certified mail, return receipt requested, to the owner at the address set forth in the last recorded deed with respect to such dwelling.

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

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

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

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

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

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

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

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

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

4. If the petitioners shall be tenants occupying the dwelling, they

shall allege the amount of rent due from each such petitioner, monthly.

5. State the relief sought.

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

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

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

1. The condition or conditions alleged in the petition did not in fact exist or that such condition or conditions have been removed or remedied; or

2. Such condition or conditions have been caused by a petitioning tenant or tenants or members of the family or families of such petitioner or petitioners or of their guests or by other residents of the dwelling or their families or guests; or

3. Any tenant or resident of the dwelling has refused entry to the owner or the owner's agent to a portion of the premises for the purpose

of correcting such condition or conditions.

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

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

(b)(i) Directing that:

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

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

(C) such deposited rents shall be used, subject to the court's direction, to the extent necessary to remedy the condition or conditions alleged in the petition; and

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

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

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

(b) Any right of the owner of such dwelling to collect such rent moneys from any petitioning tenant of such dwelling on or after the date

of entry of such judgment, and from any non-petitioning tenant of such dwelling on or after the date of service of such judgment on such non-petitioning tenant as herein provided, shall be void and unenforceable to the extent that such petitioning or non-petitioning tenant, as the case may be, has deposited such moneys with the administrator in accordance with the terms of such judgment, regardless of whether such right of the owner arises from a lease, contract, agreement or understanding heretofore or hereafter made or entered into or arises as a matter of law from the relationship of the parties or otherwise. It shall be a valid defense in any action or proceeding against any such tenant to recover possession of real property for the non-payment of rent or for use or occupation to prove that the rent alleged to be unpaid was deposited with the administrator in accordance with the terms of a judgment entered under this section.

**§ 796-i. Application by mortgagee or lienor of record or other person having an interest in the property.** 1. If, after a trial, the court shall determine that the facts alleged in the petition have been affirmatively established by the petitioners, that no defense thereto specified in section seven hundred ninety-six-g of this article has been affirmatively established by the owner or a mortgagee or lienor of record, and that the facts alleged in the petition warrant the granting of the relief sought, and if the owner or any mortgagee or lienor of record or other person having an interest in the property, shall apply to the court to be permitted to remove or remedy the conditions specified in such petition and shall (i) demonstrate the ability promptly to undertake the work required and (ii) post security for the performance of such work within the time, and in the amount and manner, deemed necessary by the court, then the court, in lieu of rendering judgment as provided in section seven hundred ninety-six-h of this article, may issue an order permitting such person to perform the work within a time fixed by the court.

2. If, after the issuance of an order pursuant to subdivision one of this section, but before the time fixed in such order for the completion of the work prescribed therein, it shall appear to the petitioners that

the person permitted to do the same is not proceeding with due diligence, the petitions may apply to the court on notice to those persons who have appeared in the proceeding for a hearing to determine whether judgment should be rendered immediately as provided in subdivision three of this section.

3. If, upon a hearing authorized in subdivision two of this section, the court shall determine that the owner, mortgagee, lienor or other person is not proceeding with due diligence, or upon the failure of the owner, mortgagee, lienor or other person to complete the work in accordance with the provisions of the order, the court shall render a final judgment appointing an administrator as authorized in section seven hundred ninety-six-j of this article. Such judgment shall direct the administrator to apply the security posted by such person to the removing or remedying of the condition or conditions specified in the petition. In the event that the amount of such security should be insufficient for such purpose, such judgment shall direct the deposit of rents with the administrator, as authorized by section seven hundred ninety-six-h of this article, to the extent of such deficiency. In the event that such security should exceed the amount required to remove or remedy such condition or conditions, such judgment shall direct the administrator to file with the court, upon completion of the work prescribed therein, a full accounting of the amount of such security and the expenditures made pursuant to such judgment, and to turn over such surplus to the person who posted such security, together with a copy of such accounting.

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

(b) The court may appoint the commissioner of the department charged with enforcement of the housing maintenance code in the municipality where the dwelling is located or the commissioner's designee as such

administrator, provided that the commissioner or the commissioner's designee shall consent, in writing, to such appointment.

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

(i) order the necessary materials, labor and services to remove or remedy the conditions specified in the judgment, and to make disbursements in payment thereof;

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

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

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

(v) in accordance with the direction of the court, to accept and repay such moneys as may be received from the department or departments charged with enforcement of the housing maintenance code in the municipality or municipalities where the dwelling is located for the purpose of managing the premises, replacing or substantially rehabilitating systems or making other repairs or capital improvements authorized by the court. All moneys expended by such department or departments pursuant to the foregoing shall constitute a debt recoverable from the owner and a lien upon the building and lot, and upon the rents and other income thereof.

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

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

(ii) payment of a reasonable amount for the services of the

administrator, including reimbursement of any legal fees incurred by the administrator in connection with management of the building.

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

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

(v) payment to the owner of the dwelling of any surplus remaining after payments of subparagraphs (i), (ii), (iii) and (iv) of this paragraph have been made.

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

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

4. The administrator shall file a transcript of the judgment appointing him or her with the clerk of the county in which the subject premises is located within fifteen days of his or her appointment.

5. The duties of the administrator shall not be affected by the appointment of a receiver in an action to foreclose a mortgage on the premises, except that the rights of the owner, including the right to any surplus, pursuant to subparagraph (v) of paragraph (d) of subdivision one of this section, shall pass to the receiver. The court in which the action to foreclose a mortgage on the premises is pending may appoint such administrator to serve as receiver in that action in addition to his or her duties as administrator pursuant to this article.

6.(a) Such administrator shall be liable only in his or her official capacity for injury to persons and property by reason of conditions of the premises in a case where an owner would have been liable; he or she shall not have any liability in his or her personal capacity.

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

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

8. The commissioner of the department charged with enforcement of the housing maintenance code in the municipality where the dwelling is located shall promulgate rules and regulations regarding criteria for the selection of administrators to be appointed pursuant to this section and shall establish and maintain a list of persons approved by such department. Any person appointed as an administrator within such municipality shall be selected from among the persons approved as administrators pursuant to such list. A city, town or village may establish and maintain such list itself or elect to have such list established and maintained by the commissioner of the department charged with enforcement of the housing maintenance code in the county in which a dwelling is located.

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

10. The court may only discharge an administrator if the owner has paid in full or entered into a payment agreement to pay in full all

outstanding real property tax liens claimed by any municipality in which the dwelling is located, all outstanding emergency repair liens filed and recorded by any municipality in which the dwelling is located and all outstanding liens filed and recorded by such municipality or municipalities pursuant to this section.

**§ 796-k. Presentation or settlement of accounts.** The court shall require the keeping of written accounts itemizing the receipts and expenditures for work performed under an order issued pursuant to section seven hundred ninety-six-h or seven hundred ninety-six-i of this article, which shall be open to inspection by the owner of the dwelling, or any mortgagee or lienor or any other person having an interest in such receipts or expenditures provided, however, that notwithstanding any other provision of law to the contrary, such information as may be in the possession of the department charged with the enforcement of the housing maintenance code of the municipality shall be available from such department for inspection only by the owner of the dwelling, the tenant of the dwelling, or a person having a recorded interest in the property. Upon motion of the court or the administrator or of the owner, any mortgagee or lienor of record or of any person having an interest, the court may require a presentation or settlement of the accounts with respect thereto. Notice of a motion for presentation or settlement of such accounts shall be served on the owner, any mortgagee or other lienor of record who appeared in the proceeding and any person having an interest in such receipts or expenditures.

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

**§ 796-m. Defense of warranty of habitability inapplicable.** Notwithstanding any other provision of law, in any proceeding for the payment of rent commenced by an administrator appointed pursuant to this

article, the provisions of section two hundred thirty-five-b of the real property law pertaining to the warranty of habitability shall not be a defense to such a proceeding for rent which accrues during the period of time that a judgment or an order pursuant to this article is in effect, unless the court determines that the conditions upon which such defense is based were caused by the failure of such administrator to perform his or her duties in a reasonable manner.

#### ARTICLE 7-D

### **SPECIAL PROCEEDINGS BY TENANTS FOR JUDGMENT DIRECTING REPAIRS OF CONDITIONS AND OTHER RELIEF IN RESIDENTIAL REAL PROPERTY CONSTITUTING VIOLATION OF APPLICABLE LOCAL OR STATE HOUSING STANDARDS OR REAL PROPERTY LAW § 235-b AND ANY OTHER APPROPRIATE RELIEF**

Section 797. Jurisdiction; courts; venue.

797-a. Person who may maintain proceeding.

797-b. Respondent.

797-c. Commencement; notice of petition; petition.

797-d. Time of service; order to show cause.

797-e. Manner of service of notice of petition and petition;  
when service complete.

797-f. Contents of the petition.

797-g. Notice to local housing standard enforcement agency.

797-h. Answer.

797-i. Trial.

797-j. Judgment.

**§ 797. Jurisdiction; courts; venue.** 1. Except as prohibited under subdivision three of this section, a special proceeding for judgment directing repairs of conditions and other relief in residential real property constituting violation of applicable local and state housing standards or section two hundred thirty-five-b of the real property law may be maintained in a county court, justice court, district court, or city court.

2. The place of trial of the special proceeding shall be within the

jurisdictional area of the court in which the residential real property or a portion thereof is situated.

3. A special proceeding pursuant to this article shall not be maintained in any court within the counties of Nassau, Suffolk, Richmond, New York, Bronx, Kings or Queens.

**§ 797-a. Person who may maintain proceeding.** 1. The proceeding may be maintained by any party, known herein as a tenant, who is an occupant of residential real property for thirty consecutive days or longer under an agreement not created by deed.

2. The proceeding may be maintained by one or more tenants of a residential property.

**§ 797-b. Respondent.** The following may be named as a respondent:

1. The person, corporation, limited liability company, general partnership, limited partnership, or any other entity holding title to the real property or an ownership interest in the property.

2. The person or organization listed on any state or local residential registration statement.

3. Anyone who has a legal obligation to maintain the premises consistent with the warranty of habitability: owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling, but not a receiver appointed pursuant to section three hundred nine of the multiple dwelling law.

4. A public housing authority or a governmental body that owns or manages the property.

**§ 797-c. Commencement; notice of petition; petition.** 1. The proceeding shall be commenced by the filing of a notice of petition and petition with the clerk of the court. A notice of petition may be issued by an attorney, judge, or clerk of the court.

2. The notice of petition shall specify the time and place of the hearing on the petition and state that if the respondent shall fail to appear at such time and place to interpose any defense, the respondent may be precluded from asserting such defense.

3. The office of court administration shall promulgate instructional materials in which tenant-petitioners may find guidance on how to commence the special proceedings. Such instructional materials shall be in plain, accessible language. Such instructional materials shall be published in English, Spanish and in other languages spoken by limited-English proficient individuals in any judicial district as needed.

**§ 797-d. Time of service; order to show cause.** 1. The notice of petition and petition shall be served at least ten and not more than seventeen days before the time at which the petition is to be heard.

2. The court may grant an order to show cause to be served in lieu of a notice of petition at a time and in a manner specified therein.

**§ 797-e. Manner of service of notice of petition and petition; when service complete.** 1. Personal service upon a natural person may be completed in the manner in which a summons is served under section three hundred eight of the civil practice law and rules.

2. Personal service upon a partnership may be completed in a manner in which a summons is served under sections three hundred eight, three hundred ten or three hundred ten-a of the civil practice law and rules.

3. Personal service on a corporation may be completed in a manner in which a summons is served under section three hundred eleven of the civil practice law and rules.

4. Personal service upon a limited liability company may be completed in a manner in which a summons is served under section three hundred eleven-a of the civil practice law and rules.

5. In the alternative, personal service may be completed on any natural person, partnership, corporation, or limited liability company by mailing the notice of petition and petition by certified and first-class mail to an address where local property tax bills are sent. If the jurisdiction in which the court sits has a rental registry requirement, service may be completed by mailing to the address for the real property in the registry.

6. Proof of service shall be filed with the clerk of the court within three days thereafter. Personal service on the respondent shall be complete upon personal delivery. Any authorized mail service pursuant to this subdivision shall be complete upon the filing of proof of service.

**§ 797-f. Contents of the petition.** 1. The petition shall be verified by the person authorized to maintain the proceeding under section seven hundred ninety-seven-a of this article or by a legal representative, attorney, or agent of such person pursuant to rule three hundred twenty of the civil practice law and rules. The attorney of such person may verify upon information and belief.

2. Every petition shall:

a. State the interest of the petitioner in the premises for which relief under this article is sought;

b. Describe the premises that is the subject of the petition;

c. State the facts upon which the special proceeding is based,

including those conditions constituting violation of applicable state or local housing standards or section two hundred thirty-five-b of the real property law; and

d. State the relief sought. Such relief may include an order to repair, a monetary judgment in favor of petitioner for diminished value of real property, and an order reducing future rent until violations have been cured.

**§ 797-g. Notice to local housing standard enforcement agency.** The clerk of the court shall mail a copy of the filed notice of petition and petition to the appropriate government agency charged with enforcing local or state housing standards within the court's jurisdiction.

**§ 797-h. Answer.** At or prior to the time the petition is to be heard the respondent may answer orally or in writing. If the answer is oral the substance thereof shall be recorded by the clerk or, if a particular court has no clerk, by the presiding judge or justice of such court, and maintained in the case record. The answer may contain any legal or equitable defense.

**§ 797-i. Trial.** Where triable issues of fact are raised, they shall be tried by the court unless, at the time the petition is noticed to be heard, a party demands a trial by jury, in which case trial shall be by jury. At the time when issue is joined, the court, at the request of either party shall adjourn the trial of the issue, not less than fourteen days, except by consent of all parties. A party's second or subsequent request for adjournment shall be granted in the court's sole discretion.

**§ 797-j. Judgment.** 1. The court shall direct that final judgment be entered determining the rights of the parties.

2. The judgment may include:

a. An order to repair conditions constituting violation of applicable local and state housing standards or section two hundred thirty-five-b of the real property law; and

b. Any other relief that the court may deem just.

## ARTICLE 8

### **WASTE AND OTHER ACTIONS AND RIGHTS OF ACTION FOR INJURY TO REAL PROPERTY**

Section 801. Who liable to action for waste.

803. Alterations or replacements of structures by person having estate for life or years.

811. Action for waste by heir, devisee or grantor of reversion.

812. Action for waste by ward against guardian.

813. Action for waste by grantee of real property sold under execution.

815. Judgment in action for waste against tenant of particular estate.

817. Action for waste against joint tenant or tenant in common.

821. View in action for waste.

831. Action by reversioner or remainderman.

833. Recovery of fee damages by the owner of a possessory estate for life or for years.

841. Action for nuisance.

843. Fences and structures; when private nuisance.

851. Action against certain persons holding over as trespassers.

853. Action for forcible or unlawful entry or detainer; treble damages.

861. Action for cutting, removing, injuring or destroying trees or timber, and damaging lands thereon.

871. Action for the removal of encroaching structures.

881. Access to adjoining property to make improvements or repairs.

882. Severability.

**§ 801. Who liable to action for waste.** An action for waste lies against a tenant by the curtesy, in dower, for life, or for years, or the assignee of such a tenant, who, during his estate or term, commits waste upon the real property held by him, without a special and lawful written license so to do; or against such a tenant who lets or grants his estate and still retaining possession thereof commits waste without a like license.

**§ 803. Alterations or replacements of structures by person having estate for life or years.** 1. When a person having an estate for life or for years in land proposes to make an alteration in, or a replacement of a structure or structures located thereon, then the owner of a future interest in such land can neither recover damages for, nor enjoin the alteration or replacement, if the person proposing to make such alteration or replacement complies with the requirements hereinafter stated as to the giving of security and establishes the following facts:

a. That the proposed alteration or replacement is one which a prudent owner of an estate in fee simple absolute in the affected land would be likely to make in view of the conditions existing on or in the neighborhood of the affected land; and

b. That the proposed alteration or replacement, when completed, will not reduce the market value of the interests in such land subsequent to the estate for life or for years; and

c. That the proposed alteration or replacement is not in violation of the terms of any agreement or other instrument regulating the conduct of the owner of the estate for life or for years or restricting the land in question; and

d. That the life expectancy of the owner of the estate for life or the unexpired term of the estate for years is not less than five years; and

e. That the person proposing to make such alteration or replacement, not less than thirty days prior to commencement thereof, served upon each owner of a future interest, who is in being and ascertained, a written notice of his intention to make such alteration or replacement, specifying the nature thereof, which notice was served personally or by registered mail sent to the last known address of each such owner of a future interest.

2. When the owner of a future interest in the affected land demands security that the proposed alteration or replacement, if begun, will be completed and that he be protected against responsibility for expenditures incident to the making of the proposed alteration or replacement, the court in which the action to recover damages or to enjoin the alteration or replacement is pending, or if no such action is pending, the supreme court, on application thereto, on such notice to the interested parties as the court may direct, shall fix the amount and terms of the security reasonably necessary to satisfy such demand. The furnishing of the security so fixed shall be a condition precedent to the making of the proposed alteration or replacement.

3. This section applies only to estates for life or for years created on or after September 1, 1937.

**§ 811. Action for waste by heir, devisee or grantor of reversion.** An heir or devisee may maintain an action for waste, committed in time of his ancestor or testator, as well as in his own time. The grantor of a reversion may maintain an action for waste committed before he aliened the same.

**§ 812. Action for waste by ward against guardian.** Such an action may also be maintained against a guardian by his ward, either before or after the termination of the guardianship, for waste committed upon the real property of the ward during the guardianship.

**§ 813. Action for waste by grantee of real property sold under execution.** Where real property is sold by virtue of an execution, the person to whom a conveyance is executed pursuant to the sale may maintain an action for waste, committed thereon after the sale, against the person who was then in possession of the property.

**§ 815. Judgment in action for waste against tenant of particular estate.** If the plaintiff recovers in an action for waste, other than an action brought as prescribed in section 817, the final judgment must award to him compensatory damages. Where the action is brought by the person next entitled to the reversion and it appears, in like manner, that the injury to the estate in reversion is equal to the value of the tenant's estate or unexpired term, the final judgment must also award to the plaintiff the forfeiture of the defendant's estate and the possession of the place wasted.

**§ 817. Action for waste against joint tenant or tenant in common. 1.** An action for waste may also be maintained by a joint tenant or tenant in common against his co-tenant who commits waste upon the real property held in joint tenancy or in common. If the plaintiff recovers therein he is entitled, at his election, either to a final judgment for compensatory damages or to have partition of the property as prescribed in subdivisions 2 and 3 of this section.

2. Where the plaintiff elects to have partition, if the pleadings, verdict, report, or decision do not determine the rights and interests of the several parties in the property so held in joint tenancy or in common, the court must ascertain them, by a reference or otherwise. If it appears that there are persons, not parties to the action, who must have been made parties to an action for partition of the property, they must be brought in by supplemental summons and, if necessary, supplemental pleadings must be made. When the rights and interests of all the parties are ascertained, an interlocutory judgment for the partition or sale of the property must be rendered and the subsequent proceedings therein must be the same as in an action for partition,

except as otherwise prescribed in subdivision 3.

3. The plaintiff may elect to take final judgment for the damages awarded to him, or that, in making the partition, or in dividing the proceeds of a sale, so much of the share of the defendant in the real property, or the proceeds thereof, as will be sufficient to compensate the plaintiff for his damages, and the costs of the action, other than the expenses of making the partition or sale, be laid off or paid, as the case may be, to the plaintiff. The residue of the property or proceeds, not laid off or distributed to the plaintiff or the defendant, must be laid off or paid to the persons entitled thereto, according to their respective rights and interests.

**§ 821. View in action for waste.** In an action for waste it is not necessary, either upon the execution of a writ of inquiry or upon the trial of an issue of fact, that the jury, the judge, or the referee should view the property. Where the trial is by a referee, or by the court without a jury, the referee or the judge may, in his discretion, view the property and direct the attorneys for the parties to attend accordingly. In any other case, the court may in its discretion, by order direct a view by the jury.

**§ 831. Action by reversioner or remainderman.** A person seized of an estate in remainder or reversion may maintain an action founded upon an injury done to the inheritance, notwithstanding any intervening estate for life or for years.

**§ 833. Recovery of fee damages by the owner of a possessory estate for life or for years.** When the ownership of land is divided into a possessory estate for life or for years and one or more future interests, and a person having none of these interests causes damage to such land, the damages recoverable by the owner of such possessory interest from the wrongdoing third person may include damages caused to interests in the affected land other than those owned by parties to the

action or proceeding when, but only when, all living persons who have either a possessory or a future interest in the affected land are parties thereto. The court in which any such recovery of damages occurs shall make such direction for the distribution of the damages recovered among the persons who are parties to the action or proceeding and for the protection of the interests of persons who are not parties thereto, as justice may require.

A tenant for life or for years in the land damaged is entitled to receive from the recovery, in satisfaction of the damage to his estate or interest, either a sum in gross or the earnings of a sum invested for his benefit. The determination as to whether a sum in gross or the earnings of a sum invested shall be awarded to the owner of such particular estate shall be governed by the provisions with respect to the proceeds of a sale in partition.

**§ 841. Action for nuisance.** An action for a nuisance may be maintained in any case where such an action might have been maintained under the laws in force immediately before the taking effect of article seventh of title one of chapter fourteenth of the code of civil procedure as added thereto by chapter one hundred seventy-eight of the laws of eighteen hundred eighty. A person by whom the nuisance has been erected and a person to whom the real property has been transferred may be joined as defendants in such an action. A final judgment in favor of the plaintiff may award him damages or direct the removal of the nuisance or both. This section does not affect an action wherein the complaint demands judgment for a sum of money only.

**§ 843. Fences and structures, when private nuisance.** Whenever the owner or lessees of land shall erect or shall have erected thereon any fence or structure in the nature of a fence which shall exceed ten feet in height, to exclude the owner or occupant of a structure on adjoining land from the enjoyment of light or air, the owner or occupant who shall thereby be deprived of light or air shall be entitled to maintain an action in the supreme court to have such fence or structure adjudged a

private nuisance. If it shall be so adjudged its continued maintenance may be enjoined. This section shall not preclude the owner or lessee of land from improving the same by the erection of any structure thereon in good faith.

**§ 851. Action against certain persons holding over as trespassers.** A person in possession of real property as guardian or trustee for an infant, or having an estate determinable upon one or more lives, who holds over and continues in possession after the determination of his trust or particular estate, without the express consent of the person then immediately entitled, is a trespasser. An action may be maintained against him or his executor or administrator, by the person so entitled, or his executor or administrator, to recover the full value of the profits received during the wrongful occupation.

**§ 853. Action for forcible or unlawful entry or detainer; treble damages.** If a person is disseized, ejected, or put out of real property in a forcible or unlawful manner, or, after he has been put out, is held and kept out by force or by putting him in fear of personal violence or by unlawful means, he is entitled to recover treble damages in an action therefor against the wrong-doer.

**§ 861. Action for cutting, removing, injuring or destroying trees or timber, and damaging lands thereon.** 1. If any person, without the consent of the owner thereof, cuts, removes, injures or destroys, or causes to be cut, removed, injured or destroyed, any underwood, tree or timber on the land of another or on the common or other land of a city, village, town or county, or damages the land in the course thereof, an action may be maintained against such person for treble the stumpage value of the tree or timber or two hundred fifty dollars per tree, or both and for any permanent and substantial damage caused to the land or the improvements thereon as a result of such violation. Such reparations shall be of such kind, nature and extent as will reasonably restore the lands affected by the violation to their condition immediately before

the violation and may be made by physical restoration of such lands and/or by the assessment of monetary payment to make such restoration.

2. In any action brought pursuant to subdivision one of this section, if the defendant establishes by clear and convincing evidence, that when the defendant committed the violation, he or she had cause to believe the land was his or her own, or that he or she had an easement or right of way across such land which permitted such action, or he or she had a legal right to harvest such land, then he or she shall be liable for the stumpage value or two hundred fifty dollars per tree, or both and reasonable costs associated with maintaining an action pursuant to this section. In such case, the defendant shall also be liable for any permanent and substantial damage caused to the land or the improvements thereon as a result of such violation. Such reparations shall be of such kind, nature and extent as will reasonably restore the lands affected by the violation to their condition immediately before the violation and may be made by physical restoration of such lands and/or by the assessment of monetary payment to make such restoration.

3. For the purposes of this section "stumpage value" shall mean the current fair market value of a tree as it stands prior to the time of sale, cutting, or removal. Stumpage value shall be determined by one or more of the following methods: the sale price of the tree in an arm's-length sale, a review of solicited bids, the stumpage price report prepared by the department of environmental conservation, comparison with like sales on trees on state or private lands, or other appropriate means to assure that a fair market value is established within an acceptable range based on the appropriate geographic area.

**§ 871. Action for the removal of encroaching structures.** 1. An action may be maintained by the owner of any legal estate in land for an injunction directing the removal of a structure encroaching on such land. Nothing herein contained shall be construed as limiting the power of the court in such an action to award damages in an appropriate case in lieu of an injunction or to render such other judgment as the facts may justify.

2. This section shall not be deemed to repeal or modify any existing statute or local law relating to encroaching structures.

**§ 881. Access to adjoining property to make improvements or repairs.**

1. As used in this section: (a) the term "document" shall include but not be limited to copies of any plans, specifications, surveys, engineering reports or evidence of insurance for the work to be performed on adjoining property;

(b) the term "licensee" shall refer to the owner or lessee, as applicable, who seeks entry onto an adjoining property;

(c) the term "adjoining owner" shall refer to the owner or its lessee of the property adjoining that of the licensee;

(d) the term "refuse", "refusal", or "refused" shall be deemed to include instances where more than one written notice has been served, by certified mail, on the owner and has not been responded to within sixty days;

(e) the term "state entity" shall refer to any department, division, agency, office, public authority, or public benefit corporation of the state of New York, or any affiliate or subsidiary agencies of such department, division, agency, office, public authority, or public benefit corporation.

2. When a licensee seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the licensee in a commercially reasonable manner without entering the premises of an adjoining owner, other than a state entity, and permission so to enter has been refused, the licensee may commence a special proceeding for a license so to enter pursuant to article four of the civil practice law and rules. The petition and affidavits, if any, shall state the facts making such entry necessary and the date or dates on which entry is sought. Any adjoining owner named as a party in such proceeding shall, at the request of the licensee, provide such licensee with such information as shall allow the licensee to identify the lessees of the adjoining owner and join them in the proceeding. Such license shall be granted by the court in an appropriate case and upon

such other terms as justice requires. The licensee shall be liable to the adjoining owner for actual damages occurring as a result of the entry.

3. The purposes for which a licensee may seek permission to enter an adjoining property pursuant to this section may include:

(a) Preconstruction survey to document the existing conditions of the adjoining property;

(b) The installation, maintenance, inspection, repair, replacement and/or removal of: (i) vibration, crack or optical monitoring devices on or within any existing improvements on the adjoining property; (ii) sheds, bridges, netting or other protective covering over the roof, facades, windows, skylights, mechanical equipment, chimneys or other exterior portions of buildings or yards, walkways, driveways or other open areas on the adjoining property; (iii) scaffolding on or over the adjoining property; (iv) sheeting, shoring, bracing or other retaining structures needed for demolition, support or excavation; (v) where required by code, regulation or local law, any necessary foundation or building supports, including, wall ties, tie-backs, anchors, straps and underpinning, for any demolition, new or existing improvements on the premises of the licensee or adjoining owner, including, party walls; or (vi) flashing, sealing or other materials or equipment needed to establish the weather-proof integrity of any wall, foundation or other exterior portion of a building on the adjoining property;

(c) Temporary projections or intrusions into the airspace of the adjoining property as necessary to complete the proposed improvements or repairs;

(d) Temporary or at the licensee's sole option permanent relocation, extension or offsetting of any chimneys, vents, flues, exhausts or other rooftop equipment on the adjoining property, as required by applicable law;

(e) Construction staging necessary to complete any work on the adjoining property; or

(f) The undertaking of such other measures as may be required by applicable law or good construction practice.

4. The grant of any permission pursuant to this section shall be

subject to the following conditions:

(a) The exercise of any right of entry to the adjoining property shall be upon reasonable prior notice to the adjoining owner, as applicable and as the court may establish, except in cases of an emergency posing an immediate threat to the safety of persons or property;

(b) The duration of the license based on a good faith projection of the dates and estimated duration of any entry to the adjoining property. The licensee shall thereafter make commercially reasonable efforts to adhere to such dates and durations and if unable to do so make a request to the court for an extension of such license;

(c) Where permission includes a right to install, maintain, inspect, repair, replace or remove any devices, structures, materials or equipment on the adjoining property, the grantee licensee shall provide to the adjoining owner, as applicable, copies of any relevant documents prior to commencement of such work;

(d) The licensee shall provide the adjoining owner and its lessee or lessees, as applicable and as made known to the licensee by the adjoining owner, with relevant documents confirming the licensee and/or any contractor, consultant or agent thereof that accesses the adjoining property pursuant to a license granted pursuant to this section maintains commercial general liability insurance, provided such documents are sufficient to enable the adjoining owner and/or its lessee or lessees, as applicable, to make a third-party claim under such insurance in the event that such licensee and/or any contractor, consultant or agent thereof damages the adjoining property or any persons thereupon; and

(e) The licensee shall be required to reasonably compensate the adjoining owner for the loss of use and enjoyment of the adjoining premises including diminution in value.

5. The court, in granting a license or otherwise resolving a proceeding brought pursuant to this section, shall be authorized to:

(a) consider evidence that either party failed to comply with the terms of any existing or previously existing license respecting the same property;

(b) obligate the licensee to reimburse the adjoining owner for reasonable fees incurred in connection with the review of relevant

documents for the installation, maintenance, inspection, repair, replacement or removal of devices, structures, materials or equipment on the adjoining property; and

(c) insure for damage to property and persons if there is unique, physical occurrence causing physical damage to property or persons caused by the access.

6. Notwithstanding subdivision five of this section, where the adjoining property to which the licensee seeks access is owned, leased or otherwise occupied by a state entity, the court shall not grant a license.

**§ 882. Severability.** If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

## ARTICLE 9

### **ACTION FOR PARTITION**

Section 901. By whom maintainable.

903. Necessary defendants.

904. Permissible defendants.

905. Complaint.

907. Trial of title or interest.

911. Ascertainment of rights of parties before interlocutory judgment on default or admission or where party is an infant, absentee or unknown defendant.

913. Inquiry as to creditors.

915. Interlocutory judgment.

916. Interlocutory judgment directing partial partition.

917. Interlocutory judgment directing partition in common.

918. Interlocutory judgment directing sale or exception of lien or dower interest.

919. Interlocutory judgment directing credit on sale.

921. Actual partition.

- 922. Meeting of commissioners; report of actual partition;  
confirming or setting aside report.
- 923. Security for credit on sale.
- 925. Report of sale; confirmation.
- 927. Contents of judgment after actual partition.
- 928. Effect of judgment after actual partition.
- 929. Lien of creditor upon share partitioned.
- 931. Contents of judgment after sale.
- 933. Effect of judgment after sale.
- 941. Judgment as to parties having interest in entire property.
- 943. Judgment directing compensation to equalize partition.
- 945. Judgment adjusting rents and profits.
- 947. Judgment affecting state tax claim.
- 951. Recording of judgment.
- 961. Disposition of proceeds of sale.
- 962. Payment of proceeds into court where there are liens.
- 963. Payment of proceeds out of court where there are liens.
- 964. Payment of proceeds into court in cases involving  
decedent's property.
- 965. Payment of proceeds out of court in cases involving  
decedent's property.
- 966. Payment of proceeds directly to parties in cases involving  
decedent's property.
- 967. Payment of proceeds to owner of particular or future  
estate.
- 968. Manner of payment of proceeds to owner of particular or  
future estate.
- 969. Shares of infant, incompetent or conservatee.
- 970. Shares of unknown or absent owner.
- 971. Security for refund.
- 973. Report of disposition of proceeds.
- 981. Costs and expenses.
- 991. Proceeding for share of unknown heirs; presumption of  
death; service.
- 992. Judgment in proceeding for share of unknown heirs.
- 993. Uniform partition of heirs property act.

**§ 901. By whom maintainable.** 1. A person holding and in possession of real property as joint tenant or tenant in common, in which he has an estate of inheritance, or for life, or for years, may maintain an action for the partition of the property, and for a sale if it appears that a partition cannot be made without great prejudice to the owners.

2. A person holding a future estate as defined in sections forty, forty-a or forty-b of the real property law or a reversion as joint tenant or tenant in common may maintain an action for the partition of the real property to which it attaches, according to his respective share, subject to the interest of the person holding the particular estate, but no sale of the premises in such an action shall be made except with the consent in writing, to be acknowledged or proved and certified in like manner as a deed to be recorded, of the person owning and holding such particular estate. If partition or sale cannot be made without great prejudice to the owners, the complaint shall be dismissed; dismissal shall not affect the right of any party to bring a new action after the determination of such particular estate.

3. A person entitled as a joint tenant or a tenant in common by reason of his being an heir of a person who died holding and in possession of real property, may maintain an action for partition, whether he is in or out of possession, notwithstanding an apparent devise to another by the decedent, and possession under such a devise. The plaintiff shall establish that the apparent devise is void.

4. In the event the estate of a decedent is the owner of an estate in common in real property, the executor or administrator may bring a partition action or intervene in a pending partition action on behalf of the estate if, upon application duly made, the surrogate approves.

**§ 903. Necessary defendants.** Each of the following persons shall be made a party to the action:

1. Every person having an undivided share, in possession or otherwise,

in the property, as tenant in fee, for life, by the curtesy or for years;

2. Every person entitled to the reversion, remainder or inheritance of an undivided share, after the determination of a particular estate therein;

3. Every person who, by any contingency, is or may become entitled to a beneficial interest in an undivided share in the property, provided that where a future estate or interest is limited in any contingency to the persons who shall compose a certain class upon the happening of a future event, it shall be sufficient to make parties to the action the persons who would have been entitled to such estate or interest if such event had happened immediately before the commencement of the action;

4. Every person having an inchoate right of dower in an undivided share in the property;

5. Every person having a right of dower in the property, or any part thereof, which has not been admeasured; and

6. An executor or administrator, where letters testamentary or of administration have been issued on the estate of the decedent from whom the plaintiff's title to the real property is derived, and the action is brought within eighteen months after such letters were issued; or where the person of whose estate the executor or administrator has been appointed should, if living, be a party to the action. If no executor or administrator has been appointed for the estate of such a person, that fact must be stated in the complaint.

**§ 904. Permissible defendants.** The plaintiff, at his election, may make defendant in the action:

1. A tenant by the curtesy or for life or for years, of the entire property, or whoever may be entitled to a contingent or vested remainder or reversion in the entire property, or a person having a lien or

interest which attaches to the entire property. A person specified in this subdivision who is not made a party is not affected by the judgment in the action.

2. A person having a lien on an undivided share or interest in the property. The nature of the lien and the share or interest to which it attaches shall be specified.

3. An unknown person entitled to an estate or interest in the property sold. The court shall provide for the protection of his rights, as far as may be, as if he were known and had appeared.

4. The state.

**§ 905. Complaint.** The complaint shall describe the property with reasonable certainty, specify the rights, shares and interests therein of each of the parties, as far as the same are known to the plaintiff, and contain any other allegation required by statute. If a party, or the share, right or interest of a party, be unknown to the plaintiff; or if a share, right or interest be uncertain or contingent; or if the ownership of the inheritance depend upon an executory devise; or if a remainder be contingent, so that the party cannot be named; such facts shall be stated in the complaint. The complaint shall state whether the parties own any other lands in common.

**§ 907. Trial of title or interest.** 1. The title or interest of any party in the property may be put in issue. When any defendant, not a tenant in common or joint tenant with plaintiff, puts in issue title or interest, all subsequent proceedings as to such defendant, including the trial, judgment and execution, shall be the same as if it were an action to recover real property.

2. An issue of fact joined in the action is triable by a jury.

**§ 911. Ascertainment of rights of parties before interlocutory judgment on default or admission or where party is an infant, absentee or unknown defendant.**

If a defendant has made default in appearing or pleading, or the rights of the parties are not controverted, or a party be an infant, absentee or unknown, the court shall ascertain the rights, shares and interests of the several parties in the property, by a reference or otherwise, before interlocutory judgment is rendered.

**§ 913. Inquiry as to creditors.** 1. Before an interlocutory judgment for the sale of real property is rendered the court shall ascertain, by reference or otherwise, whether there is any creditor not a party who has a lien on the undivided share or interest of any party. A search certified by the clerk or by the clerk and register of the county where the property is situated that there is no such outstanding lien is sufficient proof of the absence of such creditor.

2. Where a reference is directed, the referee shall cause a notice to be published once in each week for four successive weeks in such newspaper published in the county wherein the place of trial is designated as shall be designated by the court directing said reference, and also, where the court so directs, in a newspaper published in each county wherein the property is situated, requiring each person not a party to the action who, at the date of the order, had a lien upon any undivided share or interest in the property, to appear before the referee at a specified place and on or before a specified day to prove his lien and the true amount due or to become due to him by reason thereof. The referee shall report to the court with all convenient speed the name of each creditor whose lien is satisfactorily proved before him, the nature and extent of the lien, the date thereof and the amount due or to become due thereupon.

**§ 915. Interlocutory judgment.** The interlocutory judgment shall determine the right, share or interest of each party in the property, as

far as the same has been ascertained. Where the property or any part thereof is so circumstanced that a partition thereof cannot be made without great prejudice to the owners, the interlocutory judgment, except as otherwise expressly prescribed in this article, shall direct that the property or the part so circumstanced be sold at public auction. Otherwise, an interlocutory judgment in favor of the plaintiff shall direct that partition be made between the parties according to their respective rights, shares and interests and shall designate three reputable and disinterested freeholders as commissioners to make the partition so directed.

**§ 916. Interlocutory judgment directing partial partition.** Where the right, share and interest of a party has been ascertained, and the rights, shares or interests of the other parties as between themselves remain unascertained, an interlocutory judgment for a partition shall direct a partition as between the party whose share has been so determined and the other parties to the action. Where the rights, shares and interests of two or more parties have been thus ascertained and determined, the interlocutory judgment may also direct the partition among them of a part of the property proportionate to their aggregate shares. In either case, the court, from time to time, as the other rights, shares and interests are ascertained, may render an interlocutory judgment directing the partition, in like manner, of the remainder of the property. Where an interlocutory judgment is rendered in a case specified in this section, the court may direct the action to be severed, and final judgment to be rendered with respect to the portion of the property set apart to the parties whose rights, shares and interests are determined, leaving the action to proceed as against the other parties with respect to the remainder of the property; and if necessary, the court may direct that one of those parties be substituted as plaintiff.

**§ 917. Interlocutory judgment directing partition in common.** Where two or more parties desire to enjoy their shares in common with each other, the interlocutory judgment may direct partition to be so made as

to set off to them their shares of the real property partitioned, without partition as between themselves, to be held by them in common.

**§ 918. Interlocutory judgment directing sale or exception of lien or dower interest.** 1. An interlocutory judgment directing the sale of the property may direct that the premises sold shall be free from the lien of every debt of a decedent, from whom the plaintiff's title is derived, or of a decedent who, if living, should be a party to the action, except debts which were a lien upon the premises before the death of such decedent.

2. Where a party has an existing right of dower in the entire property directed to be sold, at the time when an interlocutory judgment for a sale is rendered in an action for partition, the court shall determine whether the interests of all the parties require that the right of dower should be excepted from the sale or that it should be sold. If a sale of the property, including the right of dower, is directed, the interest of the party entitled to the right of dower shall pass thereby; and the purchaser, his heirs and assigns, shall hold the property free and discharged from any claim by virtue of that right.

**§ 919. Interlocutory judgment directing credit on sale.** The court, in the interlocutory judgment for a sale, shall direct the terms of credit which may be allowed for any portion of the purchase-money.

**§ 921. Actual partition.** 1. The commissioners designated by the interlocutory judgment shall forthwith proceed to make partition as directed by such judgment, unless it appears to them that partition thereof, or of a particular lot, tract or other portion thereof, cannot be made without great prejudice to the owners; in which case, they shall make a written report of that fact to the court.

2. The commissioners shall divide the property into distinct parcels and allot the several parcels to the respective parties, quality and

quantity being relatively considered, according to the respective rights and interest of the parties as fixed by the interlocutory judgment. They shall designate the several parcels by suitable monuments. They may employ a surveyor, with the necessary assistants, to aid them.

3. Where a party has a right of dower in the property, or a part thereof, which has not been admeasured, or has an estate by the curtesy or for life or for years in an undivided share of the property, the commissioners may allot to that party his share without reference to the duration of the estate. They may make partition of the share so allotted to that party, among the parties who are entitled to the remainder or reversion thereof, to be enjoyed by them upon the determination of the particular estate, where, in the opinion of the commissioners, such a partition can be made without prejudice to the rights of the parties.

**§ 922. Meeting of commissioners; report of actual partition; confirming or setting aside report.** 1. All the commissioners shall meet together in the performance of any of their duties, but the acts of a majority so met are valid. They shall make a full report of their proceedings, under their hands, specifying therein the manner in which they have discharged their trust, describing the property divided and the share or interest in a share allotted to each party, with the quantity, courses and distances or other particular description of each share, and a description of the monuments; and specifying the items of their charges. Their report shall be acknowledged or proved, and certified, in like manner as a deed to be recorded, and shall be filed in the office of the clerk.

2. The court shall confirm or set aside the report, and, if necessary, may appoint new commissioners.

3. If the commissioners report that the property, or a particular lot, tract or other portion thereof is so circumstanced that a partition thereof cannot be made without great prejudice to the owners, the court may render a supplemental interlocutory judgment reciting the facts and directing that the property or the distinct parcel so circumstanced be

sold.

**§ 923. Security for credit on sale.** The portion of the purchase-money for which credit is allowed in the interlocutory judgment shall be secured at interest by a mortgage upon the property sold, with a bond of the purchaser; and by such additional security, if any, as the court prescribes. The officer making the sale may take separate mortgages and other securities in the name of the county treasurer of the county in which the property is situated for such convenient portions of the purchase-money as are directed by the court to be invested; and in the name of the owner, for the share of any known owner of full age who desires to have it invested.

**§ 925. Report of sale; confirmation.** 1. Immediately after completing the sale, the officer making it shall file with the clerk his report thereof under oath, containing a description of each parcel sold, the name of the purchaser and the price.

2. The court shall confirm or set aside the report.

**§ 927. Contents of judgment after actual partition.** Upon the confirmation by the court of the report of the commissioners making partition, final judgment shall be entered directing that each of the parties who is entitled to possession of a distinct parcel allotted to him, be let into the possession thereof, either immediately, or after the determination of the particular estate, as the case requires.

**§ 928. Effect of judgment after actual partition.** A final judgment after actual partition is binding and conclusive upon the following persons, except parties and persons claiming under them whose rights and interests are expressly left unaffected:

1. The plaintiff; each defendant upon whom the summons was served,

either personally or without the state or by publication; and his legal representatives.

2. Each person claiming from, through or under such a party, by title accruing after the filing of the judgment-roll, or after the filing in the proper county clerk's office of a notice of the pendency of the action.

3. Each person not in being when the interlocutory judgment is rendered who, by the happening of any contingency becomes afterwards entitled to a beneficial interest attaching to, or an estate or interest in, a portion of the property, the person first entitled to which, or other virtual representative whereof, was a party specified in the first subdivision of this section.

**§ 929. Lien of creditor upon share partitioned.** After actual partition the lien of a creditor having a lien on an undivided share or interest in the property, who is or is not made a party, shall attach only to the share or interest assigned to the party upon whose share or interest the lien attached; which shall be first charged with its just proportion of the costs and expenses of the action, in preference to the lien.

**§ 931. Contents of judgment after sale.** A final judgment confirming a sale shall direct the officer making it to execute the proper conveyances and take the proper securities pursuant to the sale, and also direct application of the proceeds.

**§ 933. Effect of judgment after sale.** A final judgment after sale is binding and conclusive upon the same persons upon whom a final judgment for actual partition is binding and conclusive; and it bars each of those persons who is not a purchaser at the sale from all right, title and interest in the property sold. It is also a bar against each person not a party who, at the time when it is entered, has a general lien by judgment or decree on the undivided share or interest of a party, if

notice was given to appear before the referee and make proof of liens, as prescribed in this article, and also against each person made a party who then has a specific lien on any such undivided share or interest; but a person having any such specific lien appearing of record at the time of the filing of the notice of the pendency of the action, who is not made a party, is not affected by such judgment.

**§ 941. Judgment as to parties having interest in entire property.** If a tenant by the curtesy or for life or for years of the entire property, or a person entitled to a contingent or vested remainder or reversion in the entire property, or a creditor, or other person, having a lien or interest which attaches to the entire property, be made a defendant in the action, the final judgment either may award to such a party his entire right and interest, or the proceeds thereof, or where the right or interest is contingent, direct that the proceeds or share thereof be substituted for the property and invested for whoever may eventually be entitled thereto, or may reserve and leave unaffected his right and interest, or any portion thereof.

**§ 943. Judgment directing compensation to equalize partition.** Where it appears that partition cannot be made equal between the parties according to their respective rights without prejudice to the rights or interests of some of them, the final judgment may award compensation to be made by one party to another for equality of partition. But compensation cannot be so awarded against a party who is unknown or whose name is unknown. Nor can it be awarded against an infant unless it appears that he has personal property sufficient to pay it and that his interests will be promoted thereby.

**§ 945. Judgment adjusting rents and profits.** The court may adjust the rights of a party as against any other party by reason of the receipt by the latter of more than his proper proportion of the rents or profits of a share.

**§ 947. Judgment affecting state tax claim.** A judgment affecting adversely the title, interest or claim of the state based upon a tax deed, shall provide in effect as follows:

1. That the state shall have a lien upon such real property or part thereof described in such tax deed, prior and superior to all other liens, (a) for the amount of the unpaid taxes not adjudged illegal in such action for which such real property was sold or liable to be sold in the first instance and for which such tax deed was issued, together with fees, charges and interest; (b) for the amount of the unpaid taxes not adjudged illegal in such action for which such real property was subsequently sold or liable to be sold, together with fees, charges and interest; (c) for the amount of all taxes, fees and charges admitted or paid by the state upon such real property to the date of the entry of such judgment, together with interest thereon from the date of such admission or payment. In the determination of the amount of such lien, establishment of payments of taxes on said land by the adjudged or admitted owner of the property during any of the same years in which payments were also made by the state shall reduce the lien of the state by the larger of the two tax payments for each of the years affected by duplicate payments, and in the event that wholly identical areas are not affected by the duplicate payments the court shall have power to apportion and adjust the amount of the lien as equity may require.

2. That the state may foreclose such lien as a mortgage on real property is foreclosed, provided such lien remains unpaid after the expiration of one year from the entry of such judgment.

The remedy provided by this section for recovery of tax payments shall be in addition to any other remedy now or hereafter available in law or in equity.

**§ 951. Recording of judgment.** A copy, which is certified as correct, of the final judgment may be recorded in the office for recording deeds in each county in which any real property affected is situated.

**§ 961. Disposition of proceeds of sale.** The proceeds of a sale, after deducting the costs and expenses chargeable against them shall be immediately awarded as directed by the final judgment, to the parties whose rights and interests have been sold, in proportion thereto. The sum chargeable upon any share to satisfy a lien thereon shall be paid to the creditor, or retained, subject to the order of the court; and the remainder except as otherwise prescribed in this article, shall be paid by the officer making the sale, to the party owning the share or his legal representatives or into court for his use. The proceedings to ascertain and settle the liens upon an undivided share shall not affect any other party to the action or delay the paying over or investing of money to or for the benefit of any other party upon whose share or interest in the property there does not appear to be any existing lien.

**§ 962. Payment of proceeds into court where there are liens.** If there is any existing lien upon the share or interest of a party in the property, the interlocutory judgment directing the sale shall direct the officer making it to pay into court the portion of the money arising from the sale of the share or interest of that party after deducting the portion of the costs and expenses for which it is liable.

**§ 963. Payment of proceeds out of court where there are liens. 1.** Where the proceeds of a sale are paid into court, in a case specified in section 962, the party may apply to the court for an order directing that the money, or such part as he claims, be paid to him, and the court shall make such an order as justice requires. The party shall by affidavit show the amount actually due on each incumbrance, and the name and residence of the owner of the incumbrance, as far as they are known or can be ascertained with due diligence, and showing service of a notice of the application on each owner of an incumbrance. Service of the notice within the state shall be personal, or by leaving it at the owner's residence with some person of suitable age and discretion, at least fourteen days previous to the application. Service without the

state, if personal, shall be made at least twenty days previous to the application. If the owner of the incumbrance resides without the state, and the place of his abode cannot be ascertained with reasonable diligence, notice may be served on him by publishing it in such newspaper or newspapers as the court may direct, once in each week for the four weeks immediately preceding the application.

2. When the whole amount of the unsatisfied liens upon an undivided share has been ascertained, the court shall order the portion of the money so paid into court on account of that share to be distributed among the creditors having the liens, according to the priority of each of them. Where the incumbrancer is not a party to the action, the clerk or other officer by whom a lien is paid off shall procure satisfaction to be acknowledged or proved, as required by law, and shall cause the incumbrance to be duly satisfied or cancelled of record. The expense of so doing shall be paid out of the portion of the money in court belonging to the party by whom the incumbrance was payable.

**§ 964. Payment of proceeds into court in cases involving decedent's property.** Where the property has been sold free from the lien of debts, a final judgment, entered before eighteen months have elapsed from the granting of letters of administration or letters testamentary upon the estate of a decedent from whom the plaintiff derived his title, shall direct that the proceeds of the sale remaining after the payment of the costs, referee's fees, expenses of sale, and liens established before the death of the decedent, including any sum allowed to a widow in satisfaction of her right of dower, therein directed to be paid, be paid forthwith into court by the referee making such sale.

A final judgment in such case, entered before eighteen months have elapsed from the granting of letters of administration or letters testamentary upon the estate of a deceased person, who, if living, should be a party to the action, shall direct that the share of the proceeds of such sale, which would have been his, if living, be paid into court by such referee.

**§ 965. Payment of proceeds out of court in cases involving decedent's property.** Money paid into court under section 964 may be paid out of court to such parties as are entitled thereto by order of the court made upon motion of any party, and upon:

1. Notice of motion to the executors or administrators of the decedent and the furnishing of an undertaking that the moving party will pay any and all claims, not exceeding the amount paid into court, when required by order of the court or by order of the surrogate of the surrogate's court in a proceeding to mortgage, lease or sell the real property of such decedent; except that where a final accounting has been had in the estate of such decedent in a surrogate's court, and certified copies of the account and decree of final settlement, showing that all of the debts of the decedent have been paid in full, is filed with the court having jurisdiction of the fund, the court may dispense with the furnishing of an undertaking; or

2. The furnishing of the certificate of the surrogate of the county of which any such decedent was a resident at the time of his death, showing that eighteen months have elapsed since the issuing of letters testamentary or letters of administration, as the case may be, upon the estate of said decedent, and that no proceedings for the mortgage, lease or sale of the real property of such decedent for the payment of his debts or funeral expenses, or both, is pending, and the certificate of the county clerk of the county where the real property sold under the interlocutory judgment is located, showing that no notice of pendency of action in respect to such real property has been filed in his office. The certificate of the surrogate required herein may be executed in the name of the surrogate by the clerk of the surrogate's court under the seal of the court.

**§ 966. Payment of proceeds directly to parties in cases involving decedent's property.** Where the property has been sold free from the lien of debts and the court is furnished with the certificates described in subdivision 2 of section 965, the final judgment shall direct payment of

the proceeds of sale to such parties as are entitled thereto.

**§ 967. Payment of proceeds to owner of particular or future estate.** A party who has a right of dower, or is a tenant for life or for years, in or of an undivided share of the property sold, or has an inchoate right of dower or any other future right or estate, vested or contingent, or any person not in being who by any contingency may become entitled to any interest or estate in the property sold, is entitled to have a proportion of the proceeds of the sale invested, secured or paid over, in such manner as the court deems calculated to protect the rights and interests of the parties.

**§ 968. Manner of payment of proceeds to owner of particular or future estate.** Whenever the whole or a part of the proceeds of a sale represents the interest of a particular estate, and also represents one or more other interests subsequent thereto, the power to determine whether the owner of the particular estate shall receive, in satisfaction of his estate or interest, a sum in gross or shall receive the earnings, as they accrue, of a sum invested for his benefit in permanent securities at interest, rests in the discretion of the court, except that if all parties affected shall have agreed either to the payment of a sum in gross or the investment of the proceeds the court shall, by order, give effect to such agreement. The application of the owner of any such particular estate for the award of a sum in gross shall be granted unless the court finds that unreasonable hardship is likely to be caused thereby to the owner of some other interest in the affected real property. The application for the award of a sum in gross by the owner of some interest in the affected real property other than the owner of the particular estate shall be granted if the court finds that the granting of such application is equitable under the circumstances.

**§ 969. Shares of infant, incompetent or conservatee.** Where a party entitled to receive a portion of the proceeds of sale is an infant,

incompetent or conservatee, such portion may be disposed of as follows:

1. The court may direct it to be invested in permanent securities in the name and for the benefit of the infant, incompetent or conservatee, or it may direct it to be paid over to the general guardian of the infant, committee of the incompetent or conservator of the conservatee, when the guardian, committee conservator shall have executed an undertaking to such infant, incompetent or conservatee; or,

2. Where a general guardian, committee or conservator has been appointed, upon proof that it will be for the best interest and advantage of the estate of such infant, incompetent or conservatee person, the court may authorize and direct such guardian, committee or conservator, in the name of such infant, incompetent person or conservatee, to make application for an award of a sum in gross as provided in section 968; or,

3. If any of the moneys arising from the proceeds of such sale shall have been paid to the county treasurer, and on due proof that such money has remained uninvested in permanent securities for the space of three months, the court may direct the same to be paid to the general guardian, committee or conservator of such infant, incompetent or conservatee upon his giving an undertaking for the faithful execution of his trust; where said sum in hands of county treasurer does not exceed the sum of one thousand dollars the court may direct the same to be paid in accordance with subdivision five of this section; or,

4. In the case of an infant, incompetent or conservatee residing without the state and having in the state or country where he or she resides a general guardian, committee or conservator, or person duly appointed under the laws of such state or country to the control, and entitled by the laws of such state or country to the custody, of the money of such infant, incompetent or conservatee, the court, upon satisfactory proof of such facts and of the sufficiency of the undertaking given by such general guardian, committee or conservator or person in such state or country by the certificate of a judge of a court of record of such state or country, or otherwise, may direct that the

portion of such infant, incompetent or conservatee arising upon such sale shall be paid over to such general guardian, committee or conservator or person; or,

5. If the portion of the proceeds arising upon such sale which belongs to an infant, incompetent or conservatee residing within or without the state does not exceed one thousand dollars, the court may direct that the same may be paid to his father, or to his mother or to some competent person with whom the infant, incompetent or conservatee resides, or who has some interest in his welfare, for the use and benefit of such infant, incompetent or conservatee.

**§ 970. Shares of unknown or absent owner.** Where a person has been made a defendant as an unknown person, or where the name of a defendant is unknown, or where the summons has been served upon a defendant without the state or by publication, and he has not appeared in the action, the court shall direct his portion to be paid into court and invested in permanent securities at interest, for his benefit, until claimed by him or his legal representatives.

**§ 971. Security for refund.** The court, in its discretion, may require any person, before he receives his portion of the proceeds of the sale to give such security as it directs, to the state, or the county treasurer, who shall hold it for the use and benefit of the persons interested, or to such parties or other persons as it prescribes, to refund the same, or a portion thereof, with interest, if it thereafter appears that he was not entitled thereto.

**§ 973. Report of disposition of proceeds.** Within sixty days after the entry of final judgment, unless such time be extended by an order of the court entered in the office of the clerk within said sixty days, the officer making the sale shall file with the clerk his report under oath of the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payments were ordered to be made.

**§ 981. Costs and expenses.** 1. The final judgment for the partition of the property must also award that each defendant pay to the plaintiff his proportion of the plaintiff's costs, including the additional allowance. The sum to be paid by each must be fixed by the court according to the respective rights of the parties, and specified in the judgment.

2. If a defendant is unknown, his proportion of the costs shall be fixed and specified in like manner. An execution against an unknown defendant may be issued to collect the costs awarded against him as if he were named in the judgment; and his right, share or interest in the property may be sold by virtue thereof as if he were named in the execution.

3. Where final judgment confirming a sale is rendered, the costs of each party to the action and the expenses of the sale, including the officer's fees, shall be deducted from the proceeds of the sale and distributed as the court shall order. But the court, in its discretion, may direct that the costs and expenses of any trial, reference or other proceeding in the action be paid out of the share of any party in the proceeds, or may render judgment against any party therefor. Where a proportion of the proceeds is to be paid to or invested for the benefit of any person, as prescribed in any provision of this article, the amount thereof must be determined by the residue of the entire proceeds remaining after deducting the costs and expenses chargeable against them.

4. The officer making the sale shall pay out of the proceeds, unless the judgment otherwise directs, all taxes, assessments and water rates, which are liens upon the property sold, and redeem the property sold from any sales for unpaid taxes, assessments or water rates, which have not apparently become absolute. The sums necessary to make those payments and redemptions are deemed expenses of the sale.

5. After actual partition, the fees and expenses of the commissioners,

including the expense of a survey when it is made, shall be taxed under the direction of the court, and the amount thereof shall be paid by the plaintiff and allowed as part of his costs.

6. Fees of surveyor or commissioner in action for partition. The fees of a surveyor and a surveyor's assistant, employed as prescribed by law in an action for partition, and of a commissioner appointed as prescribed by law to make partition, shall be the same as those provided by section 1052 of this chapter for services rendered in an action for dower.

**§ 991. Proceeding for share of unknown heirs; presumption of death; service.** 1. Where a portion of the proceeds of the sale is paid into court for unknown heirs and is unclaimed by any person entitled thereto for twenty-five years after such payment the unknown heirs are presumed to have been dead at the time of the sale. A special proceeding may be commenced for the distribution of such proceeds to the persons entitled thereto.

2. The notice of petition and petition shall be served upon the unknown heirs or their representatives, the known heirs, their next of kin, representatives or distributees, and all persons interested in such proceeds. Service shall be made at least twenty days before the time at which the petition is noticed to be heard. Each of the known persons within the state, and the comptroller of the state if any proceeds have been paid over to him by a county treasurer, shall be served personally. All other persons shall be served in the manner prescribed for the service by publication of a summons.

**§ 992. Judgment in proceeding for share of unknown heirs.** Unknown heirs or their representatives not appearing shall be barred from any interest and the court shall render a judgment that the interest of such unknown heirs was vested in the known heirs of the ancestor from whom the unknown heirs derived title and that the proceeds be paid out of court to the persons entitled thereto.

**§ 993. Uniform partition of heirs property act.** 1. Short title. This section shall be known as the "uniform partition of heirs property act".

2. Definitions. For purposes of this section, the following terms shall have the following meanings:

(a) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from such other individual.

(b) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not such other individual's ascendant or descendant.

(c) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from such other such individual.

(d) "Determination of value" means a court order determining the fair market value of heirs property under subdivision six or ten of this section or adopting the valuation of the property agreed to by all co-tenants.

(e) "Heirs property" means real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:

(i) there is no agreement in a record binding all of the co-tenants which governs the partition of the property;

(ii) any of the co-tenants acquired title from a relative, whether living or deceased;

(iii) the property is used for residential or agricultural purposes; and

(iv) any of the following applies:

(A) twenty percent or more of the interests are held by co-tenants who are relatives;

(B) twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased;

(C) twenty percent or more of the co-tenants are relatives of each other; or

(D) any co-tenant who acquired title from a relative resides in the property.

(f) "Partition by sale" means a court-ordered sale of the entire heirs

property, or the portion thereof in which any co-tenant who acquired title from a relative resides, whether by auction, sealed bids, or open-market sale conducted under subdivision ten of this section.

(g) "Partition in kind" means partition or division of heirs property into physically distinct and separately titled parcels.

(h) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(i) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than under this section.

3. Applicability; relation to other law. (a) This section applies to partition actions filed on or after the effective date of this section.

(b) In any action to partition real property, the court shall determine, after notice and the right to be heard afforded to each party, whether the property is heirs property. If the court determines that the property is heirs property, the property shall be partitioned in accordance with this section unless all of the co-tenants otherwise agree in a record.

(c) This section shall supplement the general partition statute of this article and, if an action is governed by this section, shall replace the provisions of such general partition statute that are inconsistent with this section.

4. Service; notice by posting. (a) This section shall not limit or affect the method by which service of a complaint in a partition action may be made.

(b) If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than ten days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign shall state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

5. Settlement conference. (a) In any partition action of heirs property, plaintiffs shall file proof of service within twenty days of such service, however service is made, and the court shall hold a mandatory conference within sixty days after the date when a request for judicial intervention is filed, or on such adjourned date as has been agreed to by the parties, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties with respect to the subject property including, but not limited to, as set forth in this section.

(b) Upon the filing of a request for judicial intervention, the court shall promptly send a notice to parties advising them of the time and place of the settlement conference, the purpose of the conference and the requirements of this section. The notice shall be in a form prescribed by the office of court administration, or, at the discretion of the office of court administration, the administrative judge of the judicial district in which the action is pending. Plaintiff shall post a copy of the settlement conference notice in a conspicuous place on the property within twenty days of the date of the notice.

(c) The settlement conference may be adjourned or reconvened from time to time as appropriate during the pendency of the partition action. At any conference held pursuant to this section, the plaintiffs and the defendants shall appear in person or by counsel, and each party's representative at the conference shall be fully authorized to dispose of the entirety or any portion of the case. If the defendant is appearing pro se, the court shall advise the defendant of the nature of the action and his or her rights and responsibilities as a defendant.

(d) At the first settlement conference held pursuant to this section, if the defendant has not filed an answer or made a pre-answer motion to dismiss, the court shall (i) advise the defendant of the requirement to answer the complaint, (ii) explain what is required to answer a complaint in court, (iii) advise that the ability to contest the partition action and assert defenses may be lost if an answer is not interposed, (iv) set a deadline for any co-tenants requesting partition by sale, and (v) provide information about available resources for legal assistance. A defendant who appears at the settlement conference but who failed to file a timely answer, pursuant to rule three hundred twenty of

the civil practice law and rules, shall be presumed to have a reasonable excuse for the default and shall be permitted to serve and file an answer, without any substantive defenses deemed to have been waived, within thirty days of initial appearance at the settlement conference. The default shall be deemed vacated upon service and filing of an answer.

(e) Both the plaintiffs and defendants shall negotiate in good faith to reach a mutually agreeable resolution including, but not limited to, a tenancy in common agreement, a co-tenant buyout and the allocation, mechanics and financing thereof as provided in subdivision seven of this section, a partition in kind as provided in subdivisions eight and nine of this section, an open market sale as provided in subdivision ten of this section, or any other agreement or loss mitigation that is fair and reasonable considering the totality of factors listed in paragraph (a) of subdivision nine of this section.

(f) If the parties do not reach a mutually agreeable resolution, the referee, judicial hearing officer, or other staff designated by the court to oversee the settlement conference process shall make a report of findings of fact, conclusions of law and recommendations for relief to the court concerning any party's failure to negotiate in good faith pursuant to paragraph (e) of this subdivision. If the court determines a plaintiff has failed to negotiate in good faith, the partition action shall be dismissed.

(g) Any motions submitted by any party to the action may be held in abeyance while the settlement conference process is ongoing, except for motions concerning (i) a determination of the percentage interests, if any, owned by any alleged co-tenant if such interests are in dispute and (ii) compliance with this rule and its implementing rules including applications to extend in the interests of justice any deadlines fixed herein.

(h) In addition to any other qualifications otherwise required, each commissioner appointed under section nine hundred fifteen of this article and any officer appointed to conduct a sale shall be disinterested, impartial and not related to a party to or participant in the action.

6. Determination of value. (a) If the court determines that the

property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the heirs property for purposes of subdivision seven of this section as follows, utilizing paragraph (d) of this subdivision, unless it has determined that paragraph (b) or (c) of this subdivision apply.

(b) If all co-tenants have agreed to the value of the property or to another method of valuation, the court shall adopt such value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice of the value to the parties.

(d) If paragraph (b) or (c) of this subdivision do not apply, the court shall order an appraisal by a disinterested real estate appraiser licensed in this state to determine the fair market value of the property. Any determination of value under paragraph (c), (d), (f) or (g) of this subdivision shall assume sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) Not later than ten days after an appraisal is filed under paragraph (d) of this subdivision, the court shall send notice to each party with a known address, stating:

(i) the appraised fair market value of the property plus the allowed cost of the appraisal;

(ii) that the appraisal is available at the clerk's office; and

(iii) that a party may file with the court an objection to the appraisal not later than thirty days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to paragraph (d) of this subdivision, the court shall conduct a hearing to determine the fair market value of the property not sooner than thirty days after a copy of the notice of the appraisal is sent to each party under paragraph (e) of this subdivision, whether or not an objection to the appraisal is filed under subparagraph (iii) of paragraph (e) of this subdivision. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under paragraph (f) of this subdivision, but

before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

7. Co-tenant buyout. (a) Every co-tenant who requests or joins a request for partition of heirs property by sale has thereby agreed that his or her interest may be acquired in accordance herewith at the value determined under subdivision six of this section by the co-tenants who have not sought or joined in the request for partition by sale. Upon determination that the property is heirs property and prior to the determination of value under subdivision six of this section, the court shall send notice to all parties identifying the owners of interests that have sought partition by sale, the percentage interests such owners allege to hold and of the right of the remaining co-tenants to avert partition by sale by exercising the right to purchase all of the interests of the co-tenants who requested partition by sale.

(b) Not later than forty-five days after the notice of the determination of value under subdivision six of this section is sent and by the date specified in such notice, any co-tenant, except a co-tenant that requested partition by sale, may give notice to the court of the total amount of percentage interests subject to purchase that he or she elects to buy; provided, however, the court shall make a determination of each co-tenant's percentage ownership interest in the property prior to sending notice of the determination of value if such interest is in dispute and shall consider all facts as determined by the court and presented by the parties, and all laws and rules that govern the transfer, succession and acquisition of title through probate, intestacy or otherwise.

(c) The purchase price for percentage interests shall be the value of the entire parcel determined under subdivision six of this section multiplied by the aggregate amount of the percentage interests subject to purchase.

(d) After expiration of the period in paragraph (b) of this subdivision, the following rules apply:

(i) If one or more co-tenants have elected in the aggregate to buy at least the total amount of percentage interests subject to purchase, the court shall notify all the parties of such fact.

(ii) If the electing co-tenants' offers equal or exceed the amount of percentage interests subject to purchase, the court shall allocate the right to buy those interests among the electing co-tenants based on each electing co-tenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all co-tenants electing to buy, reserving priority, first, to electing co-tenants who acquired the interest from a relative and reside in the property and, second, to all other electing co-tenants who acquired their interest from a relative, and send notice to all the parties of the foregoing and of the price to be paid by each electing co-tenant.

(iii) If co-tenants with the right to elect fail to elect to purchase the entirety of the interests of the co-tenants whose interests are subject to purchase, the court shall send notice to all the parties of such fact and resolve the partition action under paragraphs (a) and (b) of subdivision eight of this section.

(e) If the court sends notice to the parties under subparagraph (i) or (ii) of paragraph (d) of this subdivision, the court shall set a date, not sooner than sixty days after the date the notice was sent, by which electing co-tenants must pay their apportioned price into the court. After this date, the following rules apply:

(i) If all electing co-tenants timely pay his or her apportioned price to the court, the court shall issue an order reallocating all the interests of the co-tenants and disburse the amounts held by the court to the persons entitled to them.

(ii) If no electing co-tenant timely pays his or her apportioned price, the court shall resolve the partition action under paragraphs (a) and (b) of subdivision eight of this section as if the interests of the co-tenants that requested partition by sale were not purchased.

(iii) If one or more, but not all, of the electing co-tenants fail to pay their apportioned price on time, the court, on motion, shall give notice to the electing co-tenants that paid their apportioned price of percentage of the unpurchased interests remaining and the price for all such interests.

(f) Not later than twenty days after the court gives notice pursuant to subparagraph (iii) of paragraph (e) of this subdivision, any co-tenant that paid his or her apportioned price may elect to purchase all of the remaining interest by paying the entire price to the court.

After the twenty day period, the following rules shall apply:

(i) If only one co-tenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to such co-tenant. The court shall issue promptly an order reallocating the interests of all of the co-tenants and disburse the amounts held by the court to the persons entitled to such amounts.

(ii) If no co-tenant pays the entire price for the remaining interest, the court shall resolve the partition action under paragraphs (a) and (b) of subdivision eight of this section as if the interests of the co-tenants that requested partition by sale were not purchased.

(iii) If more than one co-tenant pays the entire price for the remaining interest, the court shall reapportion those remaining interests among those paying co-tenants, based on each paying co-tenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all co-tenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the co-tenants' interests, disburse the amounts held by the court to the persons entitled to such amounts, and promptly refund any excess payment held by the court.

(g) Not later than forty-five days after the court sends notice to the parties pursuant to paragraph (a) of this subdivision, any co-tenant entitled to buy an interest under this subdivision may request the court to authorize the sale as part of the pending action of the interests of co-tenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely request under paragraph (g) of this subdivision, the court, after a hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(i) a sale authorized under this subdivision may occur only after the purchase prices for all interests subject to sale under paragraphs (a), (b), (c), (d), (e) and (f) of this subdivision have been paid to the court and such interests have been reallocated among the co-tenants as provided in such paragraphs; and

(ii) the purchase price for the interest of a non-appearing co-tenant is based on the court's determination of value under subdivision six of

this section.

8. Partition alternatives. (a) If all the interests of all co-tenants that requested partition by sale are not purchased by other co-tenants pursuant to subdivision seven of this section, or if after conclusion of the buyout under subdivision seven of this section, a co-tenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in subdivision nine of this section, finds that partition in kind will result in great manifest prejudice to the co-tenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

(b) If the court does not order partition in kind under paragraph (a) of this subdivision, the court shall order partition by sale pursuant to subdivision ten of this section provided that, if no co-tenant timely requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to paragraph (a) of this subdivision, the court may require that one or more co-tenants pay one or more other co-tenants amounts so that the payments, taken together with the value of the in kind distributions to the co-tenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the co-tenants that are unknown, cannot be located, or the subject of a default judgment, if the co-tenants interests were not bought out pursuant to subdivision seven of this section, a part of the property representing the combined interests of such co-tenants as determined by the court and such part of the property shall remain undivided.

9. Considerations for partition in kind. (a) In determining under subdivision eight of this section whether partition in kind would result in great manifest prejudice to the co-tenants as a group, the court shall consider the following:

(i) whether the heirs property practicably can be divided among the co-tenants;

(ii) whether partition in kind would apportion the property in such a

way that the aggregate fair market value of the parcels resulting from the division would be materially less than the amount reasonably expected to be realized if the property were sold as a whole, taking into account the conditions under which a court-ordered sale likely would occur;

(iii) evidence of the collective duration of ownership or possession of the property by a co-tenant and one or more predecessors in title or predecessors in possession to the co-tenant who are or were relatives of the co-tenant or each other;

(iv) a co-tenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the co-tenant;

(v) the lawful use being made of the property by a resident or other co-tenant and the degree to which any such co-tenant would be harmed if the co-tenant could not continue the same use of the property;

(vi) the degree to which the co-tenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property;

(vii) the price, terms and conditions of the acquisition of the co-tenant's interest in the property if such co-tenant is not a relative of the person from whom it acquired his or her interest; and

(viii) any other relevant factor.

(b) The court shall not consider any one factor in paragraph (a) of this subdivision to be dispositive without weighing the totality of all relevant factors and circumstances.

10. Open-market sale, sealed bids, or auction. (a) If the court orders a sale of heirs property, notwithstanding section two hundred thirty-one of this chapter, such sale shall be an open-market sale under this subdivision unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the co-tenants as a group.

(b) If the court orders an open-market sale and the parties, not later than ten days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court

shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under paragraph (b) of this subdivision obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(i) the broker shall comply with the reporting requirements in subdivision eleven of this section; and

(ii) the sale may be completed in accordance with the laws of this state other than this section.

(d) If the broker appointed under paragraph (b) of this subdivision does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after a hearing, may:

(i) order that the property continue to be offered for an additional time, by the same or a substitute broker, in accordance with paragraph (b) of this subdivision; or

(ii) if it determines that doing so would not be in the best interests of the parties, approve the highest outstanding offer.

(e) If after the court has appointed a substitute broker and there are no reasonable offers for the property, the court may order the property be sold by sealed bids or an auction and, the court shall set terms and conditions of the sale. If the court orders an auction, the auction shall be conducted in accordance with section two hundred thirty-one of this chapter.

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the net proceeds.

11. Report of open-market sale. (a) Unless required to do so within a shorter time by this article, a broker appointed under paragraph (b) of subdivision ten of this section to offer heirs property for open-market sale shall file a report with the court not later than seven days after

receiving an offer to purchase the property for at least the value determined under subdivision six or ten of this section.

(b) The report required by paragraph (a) of this subdivision shall contain the following information:

- (i) a description of the property to be sold to each buyer;
- (ii) the name of each buyer;
- (iii) the proposed purchase price;
- (iv) the terms and conditions of the proposed sale, including the terms of any owner financing;
- (v) the amounts to be paid to lienholders;
- (vi) a statement of contractual or other arrangements or conditions of the broker's commission; and
- (vii) other material facts relevant to the sale.

12. Prohibition on initiation of a partition action. No partition action related to an heirs property may be initiated by a party that purchased or otherwise acquired their share or shares by means other than inheritance, and who did not inherit their share or shares directly from a person who was a co-tenant prior to the property becoming heirs property or from a co-tenant who was an heir thereto.

13. Right of first refusal. (a) When a co-tenant receives a bona fide offer from a non-co-tenant to purchase a share or shares of an heirs property and the co-tenant intends to accept or respond with a counteroffer, the co-tenants who inherited their share or shares of the property, or the co-tenants who are relatives to those co-tenants who inherited their share or shares of the property shall have the right to purchase such shares for the identical price, terms, and conditions of the offer or counteroffer, with first priority to any co-tenant who occupies the property as their primary residence and second priority to any co-tenant who otherwise utilizes the property.

(b) It shall be the duty of the non-co-tenant who made the initial offer for the share or shares of the property as well as the co-tenant who received the offer to exercise all due diligence to identify all of the other co-tenants to the property and notify such co-tenants of the pending offer. Such notice shall include the names, addresses, phone numbers and electronic mail addresses of all of the other co-tenants.

Notice shall be made in the same manner as set forth in section three hundred eight of the civil practice law and rules. The other co-tenants shall have one hundred eighty days from the date they are notified of the offer to match such offer.

(c) In the event that the other co-tenants are not notified of the offer and the sale is completed, and the offeror did not exercise the required due diligence to notify the other co-tenants of the heirs property, the other co-tenants shall have the right to purchase the shares from the non-relative co-tenant for the price paid by such non-relative co-tenant, plus any applicable interest at a rate of two percent per annum. Such right shall expire one hundred eighty days after the other co-tenants to the heirs property are made aware of the sale.

## ARTICLE 10

### **ACTION FOR DOWER**

Section 1001. Limitation of action for dower.

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**§ 1001. Limitation of action for dower.** 1. An action for dower must be commenced by a widow within two years after the death of her husband, if the husband dies on or after April 6, 1954.

2. If the husband died before April 6, 1954, an action for dower must be commenced by his widow within two years from April 6, 1954. If the widow had, on April 6, 1954, less than two years under existing law in which to bring an action for dower, the time so remaining is not enlarged by this section. Nothing herein contained shall revive a cause of action barred on April 6, 1954.

**§ 1002. Action barred by assignment of dower.** The acceptance by a widow of an assignment of dower in satisfaction of her claim upon the property in question bars an action for dower and may be pleaded by any defendant.

**§ 1011. Necessary defendants.** Where the property in which dower is claimed is actually occupied, the occupant thereof must be made

defendant in the action. Where it is not so occupied, the action must be brought against some person exercising acts of ownership thereupon, or claiming title thereto, or an interest therein, at the time of the commencement of the action.

**§ 1012. Who may be joined as defendants.** 1. In either of the cases specified in section 1011, any other person claiming title to, or the right to the possession of, the real property in which dower is claimed may be joined as defendant in the action.

2. The people of the state of New York may be made a party defendant in an action for dower where the people of the state of New York have an interest in or a lien upon the lands affected thereby, in the same manner as a private person. In such a case the summons must be served upon the attorney-general, who must appear in behalf of the people. But where the people of the state of New York are made a party defendant, as herein provided, the complaint shall set forth, in addition to the other matters required, detailed facts showing the particular nature of the interest in or the lien on the said real property of the people of the state of New York and the reason for making the people a party defendant. Upon failure to state such facts the complaint shall be dismissed as to the people of the state of New York.

**§ 1013. Actions where defendants claim in severalty.** In an action to recover dower, in a distinct parcel of real property of which the plaintiff's husband died seized, or in all the real property which he aliened by one conveyance, all the persons in possession of, or claiming title to, the property, or any part thereof, may be made defendants, although they possess or claim title to different portions thereof in severalty.

**§ 1021. Damages may be recovered; how estimated.** Where a widow recovers, in an action therefor, dower in property, of which her husband died seized, she may also recover, in the same action, damages for

withholding her dower, to the amount of one-third of the annual value of the mesne profits of the property, with interest; to be computed, where the action is against the heir, from her husband's death, or, where it is against any other person, from the time when she demanded her dower of the defendant; and in each case, to the time of the trial, or application for judgment, as the case may be; but not exceeding six years in the whole. The damages shall not include any thing for the use of permanent improvements, made after the death of the husband.

**§ 1022. Damages in action against alienee of husband.** Where a widow recovers dower, in a case not specified in section 1021, she may also recover, in the same action, damages for withholding her dower, to be computed from the commencement of the action; but they shall not include any thing for the use of permanent improvements, made since the property was aliened by her husband. In all other respects, the same must be computed as prescribed in section 1021.

**§ 1023. Damages where several parcels are affected.** Sections 1021 and 1022 do not authorize the recovery, against a defendant who is joined with others, of damages for withholding dower, in any portion of the property not occupied or claimed by him.

**§ 1024. Damages apportioned between heir and alienee.** Where a widow recovers dower in real property aliened by the heir of her husband, she may recover, in a separate action against him, her damages for withholding her dower, from the time of the death of her husband to the time of the alienation, not exceeding six years in the whole. The sum recovered from him must be deducted from the sum which she would otherwise be entitled to recover from the grantee; and any sum recovered as damages from the grantee, must be deducted from the sum, which she would otherwise be entitled to recover from the heir.

**§ 1025. Damages against grantee of premises subject to dower.** If the

defendant, in an action for dower, aliens the real property in question after the filing of a notice of pendency of action and an execution against him for the plaintiff's damages is returned wholly or partly unsatisfied, an action may be maintained by the plaintiff against any person who has been in possession of the property under the defendant's conveyance, to recover the unsatisfied portion of the damages, for a time not exceeding that during which he possessed the property.

**§ 1031. Complaint.** The complaint in an action for dower must describe the property claimed with common certainty, by setting forth the name of the township or tract and the number of the lot, if there is any, or in some other appropriate manner, so that from the description, possession of the property claimed may be delivered where the plaintiff is entitled thereto, and must set forth the name of the plaintiff's husband.

**§ 1041. Interlocutory judgment for admeasurement.** If the defendant makes default in appearing or pleading or if the right of the plaintiff to dower is not disputed by the answer, or if it appears, by the verdict, report, or decision upon a trial, that the plaintiff is entitled to dower in the real property described in the complaint an interlocutory judgment must be rendered which, except as otherwise prescribed in this article, must direct that the plaintiff's dower in the property, particularly describing it, be admeasured by a referee, designated in the judgment, or by three reputable and disinterested freeholders, designated therein, as commissioners for that purpose.

**§ 1043. Dower, how admeasured.** The referee or the commissioners must execute their duties in the following manner:

1. They must, if it is practicable, and, in their opinion, for the best interests of all the parties concerned, admeasure and lay off, as speedily as possible, as the dower of the plaintiff, a distinct parcel, constituting the one-third part of the real property of which dower is to be admeasured, designating the part so laid off by posts, stones, or

other permanent monuments.

2. In making the admeasurement, they must take into consideration any permanent improvements, made upon the real property, after the death of the plaintiff's husband, or after the alienation thereof by him; and, if practicable, those improvements must be awarded within the part not laid off to the plaintiff; or, if it is not practicable so to award them, a deduction must be made from the part laid off to the plaintiff, proportionate to the benefit which she will derive from so much of those improvements, as is included in the part laid off to her.

3. If it is not practicable, or if, in the opinion of the referee or commissioners, it is not for the best interests of all the parties concerned, to admeasure and lay off to the plaintiff a distinct parcel of the property, as prescribed in the foregoing subdivisions of this section, they must report that fact to the court.

4. They may employ a surveyor, with the necessary assistants, to aid in the admeasurement.

**§ 1044. Report thereupon.** All the commissioners must meet together in the performance of any of their duties; but the acts of a majority so met are valid. The referee, or the commissioners, or a majority of them, must make a full report of their proceedings, specifying therein the manner in which they have discharged their trust, with the items of their charges, and a particular description of the portion admeasured and laid off to the plaintiff; or, if they report that it is not practicable, or, in their opinion, it is not for the best interests of all the parties concerned, to admeasure and lay off a distinct parcel of the property of which dower is to be admeasured, they must state the reasons for that opinion and all the facts relating thereto. The report must be acknowledged or proved, and certified, in like manner as a deed to be recorded, and must be filed in the office of the clerk.

**§ 1045. Setting aside report.** Upon the application of any party to the

action, and upon good cause shown, the court may set aside the report, and, if necessary, may appoint new commissioners, or a new referee, who must proceed, as prescribed in this article, with respect to those first appointed.

**§ 1051. Fees and expenses.** The fees and expenses of the commissioners, or of the referee, including the expense of a survey, when it is made, must be taxed under the direction of the court; and the amount thereof must be paid by the plaintiff, and allowed to her, upon the taxation of her costs.

**§ 1052. Fees of surveyor or commissioner in action for dower.** A surveyor, employed as prescribed by law, in an action for dower, or to determine dower, is entitled to five dollars for each day actually and necessarily occupied in surveying, laying out, marking, or mapping land therein. Each assistant so employed is entitled to two dollars for each day actually and necessarily occupied in serving under the surveyor's direction. Each commissioner appointed as prescribed by law to admeasure dower is entitled to five dollars for each day's actual and necessary service.

**§ 1061. Final judgment.** Upon the report being confirmed by the court, final judgment must be rendered. If the referee or commissioners have admeasured and laid off to the plaintiff a distinct parcel of the property, the judgment must award to her, during her natural life, the possession of that parcel, describing it, subject to the payment of all taxes, assessments, and other charges, accruing thereupon after she takes possession. If the referee or the commissioners report, that is not practicable, or that, in his or their opinion, it is not for the best interests of all the parties concerned, so to admeasure and lay off a distinct parcel of the property, the final judgment must direct, that a sum, fixed by the court, and specified therein, equal to one-third of the rental value of the real property, as ascertained by a reference or otherwise, be paid to the plaintiff, annually or oftener, as directed in

the judgment, during her natural life, for her dower in the property; and that the sum so to be paid, be and remain a charge upon the property, during her natural life. The final judgment may also award damages for the withholding of dower.

**§ 1062. Plaintiff may recover sum awarded; court may modify judgment.**

The plaintiff may, from time to time, maintain an action against the owner, or a person who was the owner of the property, to recover any instalment of the sum, so awarded to her for her dower, which became due during his ownership, and remains unpaid. Or, if an instalment remains due and unpaid, she may maintain an action to procure a sale of the property, and enforce the payment of the instalments, due and to become due, out of the proceeds of the sale. Such an action must be conducted as if the charge upon the real property was a mortgage to the same effect. If, at any time, it is made to appear to the court that the rental value of the real property has materially increased or diminished, the court may, by an order, to be made upon notice to all the persons interested, modify the final judgment by increasing or diminishing the sum to be paid to the plaintiff.

**§ 1063. Junior incumbrances; not affected by admeasurement.** Where a portion of the property is admeasured and laid off to the plaintiff as her dower, a lien which is inferior to the plaintiff's right of dower attaches, during the life of the plaintiff, to the residue, or to the portion or share of the residue which was subject to it, as if the portion laid off to the plaintiff had not been a part of the property.

**§ 1064. Appeal not to stay execution if undertaking is given.** An appeal from a final judgment awarding to the plaintiff possession of the part admeasured and laid off to her does not stay the execution thereof unless the court, or a judge thereof, grants an order directing such a stay. Such an order shall not be granted if an undertaking is given on the part of the respondent, with one or more sureties approved by the court, or a judge thereof, to the effect that, if the judgment appealed

from is reversed or modified, and restitution is awarded, she will pay to the person entitled thereto the value of the use and occupation of the part so admeasured and laid off to her, or of the portion restitution of which is awarded, during the time she holds possession thereof, by virtue of the judgment.

**§ 1071. Plaintiff may consent to receive a gross sum.** In an action for dower, the plaintiff may, at any time before an interlocutory judgment is rendered, by reason of the defendant's default in appearing or pleading, or, where an issue of fact is joined, at any time before the commencement of the trial, file with the clerk a consent to accept a gross sum, in full satisfaction and discharge of her right of dower in the real property described in the complaint. Such a consent must be in writing, and acknowledged or proved, and certified, in like manner as a deed to be recorded. A copy thereof, with notice of the filing, must be served upon each adverse party who has appeared, or who appears after the filing.

**§ 1072. Defendant may consent to pay it; proceedings thereupon.** At any time after a consent is filed, as prescribed in section 1071, and before an interlocutory judgment is rendered, any defendant may apply to the court, upon notice, for an order granting him leave to pay such a gross sum. Thereupon the court may, in its discretion, and upon such terms as justice requires, ascertain the value of the plaintiff's right of dower in the property, by a reference or otherwise, and make an order directing payment by the applicant of the sum so ascertained, within a time fixed by the order, not exceeding sixty days after service of a copy thereof and directing the execution by the plaintiff of a release of her right of dower, upon receipt of the money. Obedience to the order may be enforced, either by punishment for contempt, or by striking out the pleading of the offending party and rendering judgment against him or her, in both modes.

**§ 1073. Interlocutory judgment for sale.** Where the plaintiff's consent

has been filed as prescribed in section 1071 and she is entitled to an interlocutory judgment in the action, the court must, upon the application of either party, ascertain, by reference or otherwise, whether a distinct parcel of the property can be admeasured and laid off to the plaintiff, as tenant in dower, without material injury to the interests of the parties. If it appears to the court that a distinct parcel cannot be so admeasured and laid off, the interlocutory judgment must, except in the case specified in the section 1074, direct that the property be sold by the sheriff, or by a referee designated therein; and that, upon the confirmation of the sale, each party to the action, and every person deriving title from, through, or under a party, after the filing of the judgment-roll, or of a notice of the pendency of the action as prescribed by law, be barred of and from any right, title, or interest in or to the property sold.

**§ 1074. Direction that a part be laid off.** In a case specified in section 1071, where the property, or a part thereof, consists of one or more vacant or unimproved lots, the plaintiff's consent may contain a stipulation to take a distinct parcel, out of those lots, in lieu of a gross sum. In that case, the interlocutory judgment, instead of directing a sale, may direct if it appears to be just so to do, that commissioners be appointed to admeasure and lay off to the plaintiff a distinct parcel, out of the vacant or unimproved lots; and, if there is any other property, that it be sold, and a gross sum be paid to her out of the proceeds thereof, as prescribed in sections 1075, 1076, 1077 and 1078. The plaintiff's title to each distinct parcel, admeasured and laid off to her, as prescribed in this section, is that of an estate of inheritance in fee simple. In admeasuring and laying off the same, the commissioners must consider quantity and quality relatively, according to the value of the plaintiff's right of dower in the vacant or unimproved lots, out of which the admeasurement is to be made; which must be ascertained, in proportion to the value of those lots, as prescribed in sections 1075, 1076, 1077 and 1078, for fixing a gross sum to be paid to her out of the proceeds of a sale.

**§ 1075. Liens to be ascertained.** Before an interlocutory judgment is rendered for the sale of the property, the court must direct a reference to ascertain whether any person not a party, has a lien upon the property, or any part thereof. But the court may direct or dispense with such reference, in its discretion, where a party produces a search, certified by the clerk, or by the clerk and register as the case requires, of the county where the property is situated and it appears therefrom, and by the affidavits, if any, produced therewith, that there is no such outstanding lien. Except as otherwise expressly prescribed in this article, the proceedings upon and subsequent to the reference must be the same as prescribed by law where a reference is made in an action for partition to ascertain whether there is a creditor not a party who has a lien on the share or interest of a party.

**§ 1076. Satisfaction or protection of lien.** Where the interlocutory judgment directs a sale, if the right of dower of the plaintiff is inferior to any other lien upon the property, the judgment may, in the discretion of the court, direct that the property be sold either subject to the lien, or discharged from the lien; and, in the latter case, that the officer making the sale pay the amount of the lien out of the proceeds of the sale.

**§ 1077. Payment of taxes, assessments and water rates out of proceeds.** Where a judgment, rendered in an action for dower directs a sale of the real property, the officer making the sale must, out of the proceeds, unless the judgment otherwise directs, pay all taxes, assessments, and water rates which are liens upon the property sold and redeem the property sold from any sales for unpaid taxes, assessments, or water rates which have not apparently become absolute. The sums necessary to make those payments and redemptions are deemed expenses of the sale.

**§ 1078. Report of sale.** Immediately after completing the sale and executing the proper conveyance to the purchaser, the officer making the sale must make and file with the clerk a report thereof, showing the

name of the purchaser and the purchase-price paid by him, or, if the property was sold in parcels, the name of each purchaser and the price and a description of the parcel sold to him, the sums which the officer has paid out of the proceeds of the sale, pursuant to the interlocutory judgment, the purpose for which each payment was made, the amount and items of his fees and expenses, and the net amount of the proceeds, after deducting the payments.

**§ 1079. Final judgment upon confirming sale.** Upon confirming the sale, the court must ascertain, by a reference or otherwise, the rights and interests of each of the parties in and to the proceeds of the sale, and also what gross sum of money is equal to the value of the plaintiff's dower in the net proceeds of the sale, calculated upon the principles applicable to life annuities. The court must thereupon render final judgment confirming the sale and directing that the gross sum so ascertained be paid to the plaintiff, in full satisfaction of her right of dower and that the remainder of the proceeds of the sale be distributed among the persons entitled thereto.

**§ 1081. Certain provisions made applicable.** The provisions of law relating to a sale in partition and to the distribution, investment, and care of the proceeds, apply, as far as they are applicable, to a sale made as prescribed in this article and to the distribution of the proceeds of a sale, as prescribed in section 1079.

**§ 1091. Action to recover property by revisioner or remainderman, after determination of particular estate.** Where a tenant for life, or for a term of years, suffers a judgment to be taken against him, by consent or by default, in an action for dower, the heir or person owning the reversion or remainder, may, after the determination of the particular estate, maintain an action to recover the property.

**§ 1093. Collusive recovery not to prejudice infant.** Where a widow, not

having a right to dower, recovers dower against an infant, by the default or collusion of his guardian, the infant shall not be prejudiced thereby; but when he comes of full age, he may bring an action of ejectment against the widow, to recover the property so wrongfully awarded for dower, with damages from the time when she entered into possession, although that is more than six years before the commencement of the action.

## ARTICLE 11

### **PROCEEDING TO DISCOVER THE DEATH OF A TENANT FOR LIFE**

- Section 1101. Petition for production of tenant for life.
- 1102. Contents of petition.
  - 1103. Service of petition and notice.
  - 1104. Proceedings upon presentation of petition.
  - 1105. Service of order; powers of court or referee.
  - 1106. Habeas corpus.
  - 1107. Report of referee.
  - 1111. Dismissal of petition when order complied with.
  - 1112. When life tenant deemed dead and petitioner let into possession.
  - 1121. Commission to be issued if life tenant is without the state.
  - 1122. General provisions respecting the commission.
  - 1123. Petitioner to give notice of its execution.
  - 1124. Execution thereof.
  - 1125. Proceedings on return of commission.
  - 1131. Costs.
  - 1141. Property; when restored.
  - 1142. Remedy of person evicted for rents and profits.
  - 1143. Order not conclusive in ejectment.

**§ 1101. Petition for production of tenant for life.** A person entitled to claim real property after the death of another who has a prior estate therein may, not oftener than once in each calendar year, apply by petition to the supreme court, at a special term thereof, held within

the judicial district wherein the property or a part thereof is situated, for an order directing the production of the tenant for life, as prescribed in this article, by a person, named in the petition, against whom an action of ejectment to recover the real property can be maintained, if the tenant for life is dead or, where there is no such person, by the guardian, husband, trustee, or other person, who has, or is entitled to, the custody of the person of the tenant for life, or the care of his estate.

**§ 1102. Contents of petition.** The petition must be in writing and verified by the affidavit of the petitioner, to the effect that the matters of fact therein set forth are true. It must contain:

a. A description of the real property and a statement of the petitioner's interest therein and of such other facts as show that the case is within the provisions of section 1101;

b. An averment that the petitioner believes that the person upon whose life the prior estate depends is dead, together with a statement of the grounds upon which the petitioner's belief is founded.

**§ 1103. Service of petition and notice.** A copy of the petition, including the affidavit, together with notice of the time and place at which the petition will be presented, must be personally served, at least fourteen days before its presentation, upon the person required, by the prayer thereof, to produce the tenant for life.

**§ 1104. Proceedings upon presentation of petition.** Upon the presentation of the petition and affidavit, with due proof, by affidavit, of service of a copy thereof, and of the notice, if sufficient cause to the contrary is not shown by the adverse party, the court must either issue a commission, as prescribed in the following sections of this article or make an order, directing the adverse party, at a time and place therein specified, before the court, or a referee

therein designated, to produce the person upon whose life the prior estate depends, or, in default thereof, to prove that he is living.

**§ 1105. Service of order; powers of court or referee.** Where an order requiring the production of the tenant for life, or proof that he is living, is made as prescribed in section 1104, a certified copy thereof must be served, at least fourteen days before the time therein specified, upon the person required to make the production or proof, or upon his attorney. Upon presentation of proof of service, by affidavit, the court or the referee must, at the time and place specified in the order, or at the time and place to which the hearing may be adjourned, hear the allegations and proofs of the parties, respecting the identity of any person produced, with the person whose death is in question or, if the latter person is not produced, respecting the reasons for the failure to produce him, and whether he is living. Where a referee is appointed, he has the same powers, and is entitled to the same compensation, as a referee appointed for the trial of an issue in a civil action in a court of record.

**§ 1106. Habeas corpus.** If it appears, by affidavit, to the satisfaction of the court, that the person required to be produced is imprisoned within the state, for any cause, except upon a sentence for a felony, or is kept or detained, within the state, by any person, the court may, either before or after making the order for production, issue a writ of habeas corpus to bring him before it, or before the referee, as the case requires. The writ must be served and executed, and disobedience thereto may be punished, as where a writ of habeas corpus is issued, to inquire into the cause of the detention of a prisoner.

**§ 1107. Report of referee.** The referee must deliver his report to the petitioner, or file it with the clerk, within ten days after the case is closed. He must state therein whether any person was or was not produced before him as being the person whose death is in question. He must append thereto, in the form of depositions, the proofs, if any,

respecting the identity of any person so produced with the person whose death is in question or if no one is so produced, upon the question whether the latter person is living. He must also state in his report his conclusions upon the questions controverted before him.

**§ 1111. Dismissal of petition when order complied with.** If it appears to the satisfaction of the court, upon the referee's report and the proofs thereto appended or, where a referee is not appointed, upon the allegations and proofs of the parties before the court, that the party required to produce the tenant for life, or to prove his existence, has fully complied with the order, the court must make an order dismissing the petition and requiring the petitioner to pay the costs of the proceedings.

**§ 1112. When life tenant deemed dead and petitioner let into possession.** If it appears from the referee's report, or upon the hearing before the court, that the person upon whose life the prior estate depends was not produced and if the party required to produce him, or to prove his existence has not proved to the satisfaction of the court that he is living, a final order must be made, declaring that he is presumed to be dead, for the purpose of the proceedings, and directing that the petitioner be forthwith let into possession of the real property, as if that person was actually dead.

**§ 1121. Commission to be issued if life tenant is without the state.** If before or at the time of the presentation of the referee's report to the court, or, where a referee is not appointed, at any time before the final order is made, the party upon whom the petition and notice are served presents to the court presumptive proof, by affidavit, that the person whose death was in question is, or lately was, at a place certain without the state, the court must make an order requiring the petitioner to take out a commission, directed to one or more persons residing at or near that place, either designated in the order or to be appointed upon a subsequent application for the commission, for the purpose of

obtaining a view of the person whose death is in question and of taking such testimony respecting his identity as the parties produce. The order must also direct that the proceedings upon the petition be stayed until the return of the commission and that the petition be dismissed, with costs, unless the petitioner takes out the commission within a time specified in the order, and diligently procures it to be executed and returned at his own expense.

**§ 1122. General provisions respecting the commission.** It is not necessary, unless the court specially so directs, that the witnesses to be examined should be named in the commission, or that interrogatories should be annexed thereto. The commission must be executed and returned, and the deposition taken must be filed and used, as prescribed by law for depositions taken without the state for use within the state, except as otherwise specially prescribed in this article.

**§ 1123. Petitioner to give notice of its execution.** The petitioner must give to the adverse party, or his attorney, written notice of the time when, and the place where, the commissioner or commissioners will attend, for the purpose of executing the commission, as follows:

a. If the place, where the commission is to be executed, is within the United States, or the dominion of Canada, he must give at least two months' notice;

b. If it is within any of the West India islands, he must give at least three months' notice;

c. In every other case, he must give at least four months' notice.

Notice may be given, as required by this section, by serving it as prescribed by law for the service of a paper upon an attorney in a civil action in the supreme court.

**§ 1124. Execution thereof.** The commissioner or commissioners possess the same powers, and must proceed in the same manner, as a referee, appointed by an order requiring the production of the tenant for life, or proof of his existence; except that they cannot proceed unless a person is produced before them, as being the person whose death is in question. The return to the commission must expressly state whether any person was or was not so produced. The testimony respecting the identity of a person so produced must be taken, unless otherwise specially directed by the court, as prescribed by law, for taking the deposition of a witness upon oral interrogatories except that it is not necessary to give any other notice of the time and place of examination than that prescribed in section 1123.

**§ 1125. Proceedings on return of commission.** Upon the return of the commission, the proceedings are the same as upon the report of a referee, as prescribed in sections 1111 and 1112; but the court may, in its discretion, receive additional proofs from either party.

**§ 1131. Costs.** Where costs of a special proceeding taken as prescribed in this article are awarded, they must be fixed by the court at a gross sum, not exceeding fifty dollars, in addition to disbursements. Where provision is not specially made in this article for the award of costs, they may be denied, or awarded to or against either party, as justice requires.

**§ 1141. Property; when restored.** The possession of real property, which has been awarded to the petitioner as prescribed in this article, upon the presumption of the death of the person upon whose life the prior estate depends, must be restored, by the order of the court, to the person evicted, or to his heirs or legal representatives, upon the petition of the latter and proof, to the satisfaction of the court, that the person presumed to be dead is living. The proceedings upon such an application are the same as prescribed in this article upon the application of the person to whom possession is awarded.

**§ 1142. Remedy of person evicted for rents and profits.** A person evicted as prescribed in this article may, if the presumption upon which he is evicted is erroneous, maintain an action against the person who has occupied the property, or his executor or administrator, to recover the rents and profits of the property, during the occupation, while the person upon whose life the prior estate depends is or was living.

**§ 1143. Order not conclusive in ejectment.** A final order made as prescribed in this article, awarding to the petitioner the possession of real property is presumptive evidence only, in an action of ejectment brought against him by the person evicted, or in an action brought as prescribed in section 1142, of the life or death of the person, upon whose life the prior estate depends.

## ARTICLE 12

### **OTHER ACTIONS AND PROCEEDINGS BETWEEN CO-OWNERS OR OWNERS OF SUCCESSIVE INTERESTS**

Section 1201. Action by joint tenant or tenant in common; may maintain action against co-tenant.

1211. Action by joint tenant, tenant in common or tenant by the entirety for extinguishment of missing co-tenant's estate upon deposit of its value.

1221. Action to sell preemptive rights against the city of New York.

**§ 1201. Action by joint tenant or tenant in common; may maintain action against co-tenant.** A joint tenant or a tenant in common of real property, or his executor or administrator, may maintain an action to recover his just proportion against his co-tenant who has received more than his own just proportion, or against his executor or administrator.

**§ 1211. Action by joint tenant, tenant in common or tenant by the entirety for extinguishment of missing co-tenant's estate upon deposit of its value.** 1. Where real property is held by two or more persons in their own right as tenants in common, joint tenants or tenants by the entirety and one of such tenants is missing under circumstances which afford reasonable ground to believe that he is dead, the other tenants or tenant may maintain an action in the supreme court to obtain a determination of the value of the estate of the missing co-tenant and a judgment extinguishing the estate of the missing co-tenant upon payment into court for his credit of the amount so determined to be the value of his estate.

Persons known or unknown who are or may be the devisees or distributees of a missing co-tenant may be joined as defendants in such action.

2. (a) Service upon the missing co-tenant shall be made in the manner provided for service in an action in which the complaint demands judgment that the person to be served be excluded from a vested or contingent interest in specific real property in this state. In addition, the court, at any stage of such action, may direct that notice of the action be published at or near the place where the co-tenant, when last heard from, was known or believed to be.

(b) The court may, in its discretion, appoint a guardian ad litem to represent the interests of the missing co-tenant, or of persons who are or may be his devisees or distributees.

3. A finding of reasonable ground to believe that the missing co-tenant is dead may be made, for purposes of this section, either (a) upon proof that the co-tenant has been absent from his usual place of abode for seven successive years last past, and that a diligent search has been made to discover evidence that he is living and that no such evidence has been found, or (b) upon proof of other circumstances from which the probability that the missing co-tenant is dead may reasonably be inferred, although the period of his absence is less than seven years, provided that such period is not less than one year.

4. Relief extinguishing the estate of the missing person shall be deemed equitable and shall be granted in the discretion of the court. However, no such relief shall be granted if the court shall find as a fact that the missing person is dead. In such event, the judgment dismissing the complaint shall state such determination, but shall not be deemed an adjudication of death of the missing person for any purpose other than the dismissal of the complaint and shall not be controlling in any other action or proceeding, whether or not between the same parties, in which the fact of death of the missing person is in issue.

5. The finding of reasonable ground to believe that the missing person is dead shall be made, and the value of the property and of the estate of the missing co-tenant shall be determined, by the court without a jury or by a referee.

6. The value of the estates of tenants by the entirety shall be deemed equal. The proportionate shares of joint tenants and tenants in common shall be determined in like manner as in an action for partition.

7. Costs of the action, and fees and disbursements of a guardian ad litem appointed to represent the interests of the missing co-tenant or his devisees or distributees shall be assessed against the parties in such proportions as the court shall direct and the part thereof assessed against the missing person shall be charged against the value of the estate of the missing person.

8. A judgment extinguishing the estate of the missing co-tenant shall be conclusive even though the missing person was in fact alive, or was in fact dead, at the date of the entry thereof, and shall be conclusive against (a) any person claiming under the missing person by title accruing or conveyance recorded after the filing of the judgment-roll, or of the notice of pendency of the action, and (b) any person claiming under the missing co-tenant who is made a party to the action. The judgment shall also have like effect as a conveyance made by the missing co-tenant or by the missing co-tenant and the other co-tenant or co-tenants, conveying the premises to the co-tenant or co-tenants in accordance with their interests resulting from the judgment. The court

may direct that an instrument of conveyance in conformity with the judgment be executed and delivered by the sheriff in the name of the co-tenant.

**§ 1221. Action to sell preemptive rights against the city of New York.**

1. In all cases where several persons are the owners, or claim to be the owners of any real estate or chattels real lying within the bounds of the city of New York, having different estates, or estates in common therein, in possession, remainder, or reversion, and which such persons shall, by virtue of such ownership, or claim to such ownership, be entitled, or claim to be entitled, by law to a preemptive right to have, take, or demand the grant or lease of any other land, or easement in land, from such city, the supreme court shall have power, and such court is hereby vested with full power and authority, on the application of either of such owners, or of such city, to decree an absolute sale and conveyance of such right of preemption, and to make such disposition of the net moneys arising from such sale, after the payment of the costs and expenses of the proceedings, as shall be just and proper, according to the rights and interests of such several owners.

2. Whenever any owner shall reside in the city of New York, notice of such intended application shall be served personally on such owner, or by leaving the same at his dwelling-house with some person of suitable age and discretion at least twenty days before such application is made; and in all cases where such owner shall reside out of such city and within any of the United States, and such place of residence be known to the applicant, such notice shall be served by mail, addressed to such owner at his place of residence, at least three months before such application is made. Proof of such service by affidavit shall be made to the court before any order of sale shall be made. Any of the parties to such suit may become the purchaser on such sale.

3. In all cases where any owner shall be an infant, a guardian shall be appointed for such infant, who shall give the like security, and possess the like powers, and discharge the like duties as in cases for the partition of lands.

4. Such sale shall be made and conducted on like notice by the like officer, and in the same manner and form as sales of real estate on the foreclosure of a mortgage by virtue of a decree or order of such court, and a deed of conveyance for such right of preemption shall in like manner be executed and delivered to the purchaser, which deed shall vest in the purchaser absolutely all the claim, right, title, and interest of the owner of such right of preemption, and every of them, of, in or to such right of preemption thus sold and conveyed; provided always, in every case the applicant shall give six weeks' previous notice of such intended application if the owners entitled by law to such preemption right are residents, and six months' previous notice of such intended application if the owners entitled by law to such preemption right are non-residents of the state, by publication for three months successively, twice in each week, in two of the daily papers published in such city prior to such application to the court for an order of sale; and provided also, that the court shall be satisfied that such order of sale shall not interfere with or impair the obligation contained in any lease or contract made by such city to or with any person or persons whatsoever.

5. Whenever a right of dower, whether inchoate or consummate, a tenancy by curtesy, or any other estate for life or for years shall have existed in the preemptive rights so sold and conveyed, the owner of such particular estate in the rights sold is entitled to receive from the moneys arising from such sale either a sum in gross or the earnings of a sum invested for his benefit. The determination as to whether a sum in gross or the earnings of a sum invested shall be awarded to the owner of such particular estate shall be governed by the provisions of section 968 with respect to the proceeds of a sale in partition.

## ARTICLE 13

### **ACTION TO FORECLOSE A MORTGAGE**

Section 1301. Separate action for mortgage debt.

1302. Foreclosure of certain residential mortgages.

1302-a. Defense of lack of standing; not waived.

- 1303. Foreclosures; required notices.
- 1304. Required prior notices.
- 1305. Notice to tenants.
- 1306. Filing with superintendent.
- 1307. Duty to maintain foreclosed property.
- 1308. Inspecting, securing and maintaining vacant and abandoned residential real property.
- 1309. Expedited application for judgment of foreclosure and sale for vacant and abandoned property.
- 1310. Vacant and abandoned property; statewide vacant and abandoned property electronic registry.
- 1311. Necessary defendants.
- 1312. Representative defendants.
- 1313. Permissible defendants.
- 1315. Action by owner of junior participating interest.
- 1320. Special summons requirement in private residence cases.
- 1321. Default or admission.
- 1325. Receiver.
- 1331. Notice of pendency.
- 1341. Payment into court of amount due.
- 1351. Judgment of sale.
- 1352. Judgment foreclosing right of redemption.
- 1353. Conveyance.
- 1354. Distribution of proceeds of sale.
- 1355. Report of sale; confirmation.
- 1361. Application for surplus; reference.
- 1362. Payment of surplus out of court.
- 1371. Deficiency judgment.
- 1391. Proceeding for share of unknown heirs.
- 1392. Foreclosure actions involving abandoned properties.
- 1393. Mortgages in default.

**§ 1301. Separate action for mortgage debt.** 1. Where final judgment for the plaintiff has been rendered in an action to recover any part of the mortgage debt, an action shall not be commenced or maintained to foreclose the mortgage, unless an execution against the property of the

defendant has been issued upon the judgment to the sheriff of the county where he resides, if he resides within the state, or if he resides without the state, to the sheriff of the county where the judgment-roll is filed; and has been returned wholly or partly unsatisfied.

2. The complaint shall state whether any other action has been brought to recover any part of the mortgage debt, and, if so, whether any part has been collected.

3. While the action is pending or after final judgment for the plaintiff therein, no other action shall be commenced or maintained to recover any part of the mortgage debt, including an action to foreclose the mortgage, without leave of the court in which the former action was brought. The procurement of such leave shall be a condition precedent to the commencement of such other action and the failure to procure such leave shall be a defense to such other action. For purposes of this subdivision, in the event such other action is commenced without leave of the court, the former action shall be deemed discontinued upon the commencement of the other action, unless prior to the entry of a final judgment in such other action, a defendant raises the failure to comply with this condition precedent therein, or seeks dismissal thereof based upon a ground set forth in paragraph four of subdivision (a) of rule thirty-two hundred eleven of the civil practice law and rules. This subdivision shall not be treated as a stay or statutory prohibition for purposes of calculating the time within which an action shall be commenced and the claim interposed pursuant to sections two hundred four and two hundred thirteen of the civil practice law and rules.

4. If an action to foreclose a mortgage or recover any part of the mortgage debt is adjudicated to be barred by the applicable statute of limitations, any other action seeking to foreclose the mortgage or recover any part of the same mortgage debt shall also be barred by the statute of limitations.

**§ 1302. Foreclosure of certain residential mortgages.** 1. Any complaint served in a proceeding initiated on a residential mortgage covering a

one to four family dwelling pursuant to this article must contain an affirmative allegation that at the time the proceeding is commenced, the plaintiff:

(a) is the owner and holder of the subject mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner and holder of the subject mortgage and note; and

(b) has complied with all of the provisions of section five hundred ninety-five-a of the banking law and any rules and regulations promulgated thereunder, and section six-l or six-m of the banking law, for loans governed by section six-l or six-m of the banking law, and section thirteen hundred four of this article for all residential mortgage loans covering a one to four family dwelling.

2. It shall be a defense to an action to foreclose a mortgage that the terms of the home loan or the actions of the lender violate any provision of section six-l or six-m of the banking law or section thirteen hundred four of this article, for loans governed by these provisions.

**§ 1302-a. Defense of lack of standing; not waived.** Notwithstanding the provisions of subdivision (e) of rule thirty-two hundred eleven of the civil practice law and rules, any objection or defense based on the plaintiff's lack of standing in a foreclosure proceeding related to a home loan, as defined in paragraph (a) of subdivision six of section thirteen hundred four of this article, shall not be waived if a defendant fails to raise the objection or defense in a responsive pleading or pre-answer motion to dismiss. A defendant may not raise an objection or defense of lack of standing following a foreclosure sale, however, unless the judgment of foreclosure and sale was issued upon defendant's default.

**§ 1303. Foreclosures; required notices.** 1. The foreclosing party in a mortgage foreclosure action, involving residential real property shall provide notice to:

(a) any mortgagor if the action relates to an owner-occupied

one-to-four family dwelling; and

(b) any tenant of a dwelling unit in accordance with the provisions of this section.

2. The notice to any mortgagor required by paragraph (a) of subdivision one of this section shall be delivered with the summons and complaint. Such notice shall be in bold, fourteen-point type and shall be printed on colored paper that is other than the color of the summons and complaint, and the title of the notice shall be in bold, twenty-point type. The notice shall be on its own page.

3. The notice to any mortgagor required by paragraph (a) of subdivision one of this section shall appear as follows:

Help for Homeowners in Foreclosure

New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully.

Summons and Complaint

You are in danger of losing your home. If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home. Please read the summons and complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself.

Sources of Information and Assistance

The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process.

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at (enter number) or visit the Department's website at (enter web address).

Rights and Obligations

YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale.

Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law.

Foreclosure rescue scams

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

3-a. No later than sixty days after the effective date of this subdivision, the department of financial services shall publish a Consumer Bill Of Rights, in consultation with all stakeholders, which shall detail the rights and responsibilities of the plaintiff and defendant in a foreclosure proceeding. Such Bill of Rights shall be updated on an annual basis and as appropriate.

4. The notice to any tenant required by paragraph (b) of subdivision one of this section shall be delivered within ten days of the service of the summons and complaint. Such notice shall be in bold, fourteen-point type, and the paragraph of the notice beginning with the words "ALL RENT-STABILIZED" and ending with the words "FULL HEARING IN COURT" shall be printed entirely in capital letters and underlined. The foreclosing party shall provide its name, address and telephone number on the notice. The notice shall be printed on colored paper that is other than the color of the summons and complaint, and the title of the notice shall be in bold, twenty-point type. The notice shall be on its own page. For buildings with fewer than five dwelling units, the notice

shall be delivered to the tenant, by certified mail, return receipt requested, and by first-class mail to the tenant's address at the property if the identity of the tenant is known to the plaintiff, and by first-class mail delivered to "occupant" if the identity of the tenant is not known to the plaintiff. For buildings with five or more dwelling units, a legible copy of the notice shall be posted on the outside of each entrance and exit of the building.

5. The notice required by paragraph (b) of subdivision one of this section shall appear as follows:

Notice to Tenants of Buildings in Foreclosure

New York State Law requires that we provide you this notice about the foreclosure process. Please read it carefully.

We, (name of foreclosing party), are the foreclosing party and are located at (foreclosing party's address). We can be reached at (foreclosing party's telephone number).

The dwelling where your apartment is located is the subject of a foreclosure proceeding. If you have a lease, are not the owner of the residence, and the lease requires payment of rent that at the time it was entered into was not substantially less than the fair market rent for the property, you may be entitled to remain in occupancy for the remainder of your lease term. If you do not have a lease, you will be entitled to remain in your home until ninety days after any person or entity who acquires title to the property provides you with a notice as required by section 1305 of the Real Property Actions and Proceedings Law. The notice shall provide information regarding the name and address of the new owner and your rights to remain in your home. These rights are in addition to any others you may have if you are a subsidized tenant under federal, state or local law or if you are a tenant subject to rent control, rent stabilization or a federal statutory scheme.

ALL RENT-STABILIZED TENANTS AND RENT-CONTROLLED TENANTS ARE PROTECTED UNDER THE RENT REGULATIONS WITH RESPECT TO EVICTION AND LEASE RENEWALS. THESE RIGHTS ARE UNAFFECTED BY A BUILDING ENTERING FORECLOSURE STATUS.

THE TENANTS IN RENT-STABILIZED AND RENT-CONTROLLED BUILDINGS CONTINUE TO BE AFFORDED THE SAME LEVEL OF PROTECTION EVEN THOUGH THE BUILDING IS THE SUBJECT OF FORECLOSURE. EVICTIONS CAN ONLY OCCUR IN NEW YORK STATE PURSUANT TO A COURT ORDER AND AFTER A FULL HEARING IN COURT.

If you need further information, please call the New York State Department of Financial Services' toll-free helpline at (enter number) or visit the Department's website at (enter web address).

6. The department of financial services shall prescribe the telephone number and web address to be included in either notice.

7. The department of financial services shall post on its website or otherwise make readily available the name and contact information of government agencies or non-profit organizations that may be contacted by mortgagors for information about the foreclosure process, including maintaining a toll-free helpline to disseminate the information required by this section.

**§ 1304. Required prior notices.** 1. Notwithstanding any other provision of law, with regard to a home loan, at least ninety days before a lender, an assignee or a mortgage loan servicer commences legal action against the borrower, or borrowers at the property address and any other address of record, including mortgage foreclosure, such lender, assignee or mortgage loan servicer shall give notice to the borrower in at least fourteen-point type which shall include the following:

"YOU MAY BE AT RISK OF FORECLOSURE. PLEASE READ THE FOLLOWING NOTICE  
CAREFULLY"

"As of \_\_\_, your home loan is \_\_\_ days and \_\_\_ dollars in default. Under New York State Law, we are required to send you this notice to inform you that you are at risk of losing your home.

Attached to this notice is a list of government approved housing counseling agencies in your area which provide free counseling. You can also call the NYS Office of the Attorney General's Homeowner Protection Program (HOPP) toll-free consumer hotline to be connected to free

housing counseling services in your area at 1-855-HOME-456 (1-855-466-3456), or visit their website at <http://www.aghomehelp.com/>. A statewide listing by county is also available at [http://www.dfs.ny.gov/consumer/mortg\\_nys\\_np\\_counseling\\_agencies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm). Qualified free help is available; watch out for companies or people who charge a fee for these services.

Housing counselors from New York-based agencies listed on the website above are trained to help homeowners who are having problems making their mortgage payments and can help you find the best option for your situation. If you wish, you may also contact us directly at \_\_\_\_\_ and ask to discuss possible options.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If you have not taken any actions to resolve this matter within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence.)

If you need further information, please call the New York State Department of Financial Services' toll-free helpline at (show number) or visit the Department's website at (show web address).

**IMPORTANT:** You have the right to remain in your home until you receive a court order telling you to leave the property. If a foreclosure action is filed against you in court, you still have the right to remain in the home until a court orders you to leave. You legally remain the owner of and are responsible for the property until the property is sold by you or by order of the court at the conclusion of any foreclosure proceedings. This notice is not an eviction notice, and a foreclosure action has not yet been commenced against you.

1-a. Notwithstanding any other provision of law, with regard to a reverse mortgage home loan, at least ninety days before a lender, an

assignee or a mortgage loan servicer commences legal action against the borrower or borrowers at the property address and any other addresses of record, including reverse mortgage foreclosure, such lender, assignee or mortgage loan servicer shall give notice to the borrower in at least fourteen-point type except for the heading which shall be in at least sixteen-point type which shall include the following:

"YOU COULD LOSE YOUR HOME TO FORECLOSURE.  
PLEASE READ THE FOLLOWING NOTICE CAREFULLY.

Date

Borrower's address

Loan Number:

Property Address:

Dear Borrower(s):

As of \_\_\_\_\_, we as your lender or servicer claim that your reverse mortgage loan is \_\_\_\_ days in default. Under New York State Law, we are required to send you this notice to inform you that you may be at risk of losing your home.

We, the lender or servicer of your loan, are claiming that your reverse mortgage loan is in default because you have not complied with the following conditions of your loan:

\_\_\_\_\_ You are not occupying your home as your principal residence

\_\_\_\_\_ You did not submit the required annual certificate of occupancy

\_\_\_\_\_ The named borrower on the reverse mortgage has died

\_\_\_\_\_ You did not pay property taxes

{Servicer name} paid your property taxes for the following  
time periods:\_\_\_\_\_

\_\_\_\_\_ {quarter/year}

\_\_\_\_\_ You did not maintain homeowner's insurance

{Servicer name} purchased homeowner's insurance for you on the  
following date(s) and for the following cost(s):

\_\_\_\_\_

\_\_\_\_\_ You did not pay water/sewer charges

{Servicer name} paid water/sewer charges for you on the  
following date(s) and for the following cost(s):

\_\_\_\_\_

\_\_\_\_\_ You did not make required repairs to your home

If the claim is based on your failure to pay property or water and sewer

charges or maintain homeowner's insurance, you can cure this default by making the payment of \$\_\_\_\_\_ for the advancements we made towards these payments on your behalf.

You have the right to dispute the claims listed above by contacting us, by calling \_\_\_\_\_ or sending a letter to \_\_\_\_\_. This may include proof of payments made for property taxes or water and sewer charges or a current declaration page from your insurance company, or any other proof to dispute the servicer's claim.

If you are in default for failure to pay property charges (property taxes, homeowner's insurance and/or water/sewer charges) you may qualify for a grant, loan, or re-payment plan to cure the default balance owed. If you are in default due to the death of your spouse, you may be considered an eligible "Non-Borrowing Spouse" under a HUD program which allows you to remain in your home for the rest of your life.

If you are over the age of 80 and have a long term illness, you may also qualify for the "At-Risk Extension," which allows you to remain in your home for one additional year and requires an annual re-certification.

Attached to this notice is a list of government-approved housing counseling agencies and legal services in your area which provide free counseling. You can also call the NYS Office of the Attorney General's Homeowner Protection Program (HOPP) toll-free consumer hotline to be connected to free housing counseling services in your area at

1-855-HOME-456 (1-855-466-3456), or visit their website at <http://www.aghomehelp.com>. A statewide listing by county is also available at

[http://www.dfs.ny.gov/consumer/mortg\\_nys\\_np\\_counseling\\_agencies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm).

You may also call your local Department of Aging for a referral or call 311 if you live in New York City.

Qualified free help is available; watch out for companies or people who charge a fee for these services.

You may also contact us directly at \_\_\_\_\_ and ask to discuss all possible options to allow you to cure your default and prevent the foreclosure of your home. While we cannot ensure that a resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If you have not taken any actions to resolve this matter within 90 days from the date this notice was mailed, we may commence legal action

against you (or sooner if you cease to live in the dwelling as your primary residence).

If you need further information, please call the New York State Department of Financial Services' toll-free helpline at 877-226-5697 or visit the Department's website at <http://www.dfs.ny.gov>.

IMPORTANT: You have the right to remain in your home until you receive a court order telling you to leave the property. If a foreclosure action is filed against you in court, you still have the right to remain in the home until a court orders you to leave. You legally remain the owner of and are responsible for the property until the property is sold by you or by order of the court at the conclusion of any foreclosure proceedings. This notice is not an eviction notice, and a foreclosure action has not yet been commenced against you."

A lender, assignee or mortgage loan servicer of a reverse mortgage home loan which provides notice to the borrower as required by this subdivision is not required to provide notice to such borrower with regard to such loan pursuant to subdivision one of this section.

2. The notices required by this section shall be sent by such lender, assignee (including purchasing investor) or mortgage loan servicer to the borrower, by registered or certified mail and also by first-class mail to the last known address of the borrower, and to the residence that is the subject of the mortgage. The notices required by this section shall be sent by the lender, assignee or mortgage loan servicer in a separate envelope from any other mailing or notice. Notice is considered given as of the date it is mailed. The notices required by this section shall contain a current list of at least five housing counseling agencies serving the county where the property is located from the most recent listing available from department of financial services. The list shall include the counseling agencies' last known addresses and telephone numbers. The department of financial services shall make available on its websites a listing, by county, of such agencies. The lender, assignee or mortgage loan servicer shall use such lists to meet the requirements of this section.

3. The ninety day period specified in the notices contained in

subdivisions one and one-a of this section shall not apply, or shall cease to apply, if the borrower has filed for bankruptcy protection under federal law, or if the borrower no longer occupies the residence as the borrower's principal dwelling. Nothing herein shall relieve the lender, assignee or mortgage loan servicer of the obligation to send such notices, which notices shall be a condition precedent to commencing a foreclosure proceeding.

4. The notices required by this section and the ninety day period required by subdivisions one and one-a of this section need only be provided once in a twelve month period to the same borrower in connection with the same loan and same delinquency. Should a borrower cure a delinquency but re-default in the same twelve month period, the lender shall provide a new notice pursuant to this section.

5. For any borrower known to have limited English proficiency, the notices required by subdivisions one and one-a of this section shall be in the borrower's native language (or a language in which the borrower is proficient), provided that the language is one of the six most common non-English languages spoken by individuals with limited English proficiency in the state of New York, based on United States census data. The department of financial services shall post the notices required by subdivisions one and one-a of this section on its website in the six most common non-English languages spoken by individuals with limited English proficiency in the state of New York, based on the United States census data.

6. (a) (1) "Home loan" means a loan, including an open-end credit plan, in which:

- (i) The borrower is a natural person;
- (ii) The debt is incurred by the borrower primarily for personal, family, or household purposes;
- (iii) The loan is secured by a mortgage or deed of trust on real estate improved by a one to four family dwelling, or a condominium unit, in either case, used or occupied, or intended to be used or occupied wholly or partly, as the home or residence of one or more persons and which is or will be occupied by the borrower as the borrower's principal

dwelling; and

(iv) The property is located in this state.

(2) A home loan shall include a loan secured by a reverse mortgage that meets the requirements of clauses (i) through (iv) of subparagraph one of this paragraph.

(b) "Lender" means a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of the banking law or an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of the banking law.

7. The department of financial services shall prescribe the telephone number and web address to be included in the notice.

**§ 1305. Notice to tenants.** 1. Definitions. For the purposes of this section, the following definitions shall apply:

(a) "Residential real property" shall mean real property located in this state improved by any building or structure that is or may be used, in whole or in part, as the home or residence of one or more persons, and shall include any building or structure used for both residential and commercial purposes.

(b) "Successor in interest" shall mean any person or entity who or which acquires title in a residential real property as a result of a judgment of foreclosure and sale, or other disposition during the pendency of the foreclosure proceeding, or at any time thereafter but prior to the expiration of the time period as provided for in subdivision two of this section.

(c) "Tenant" shall mean any person who appears as a lessee on a lease of one or more dwelling units of a residential real property that is subordinate to the mortgage on such residential real property; or who at such time is a party to an oral or implied rental agreement with the mortgagor and obligated to pay rent to the mortgagor or such mortgagor's representative, for the use or occupancy of one or more dwelling units of a residential real property.

2. Notwithstanding any other provision of law, a tenant of a unit not subject to rent control or rent stabilization shall have the right to

remain in occupancy of the unit of the subject residential real property where he or she resides on the date of service of the notice required by subdivision three of this section for the greater of: (a) a period of ninety days from the date of the service of such notice; or (b) for the remainder of the lease term if the tenant occupied the premises at the commencement of the foreclosure action or received a notice pursuant to section thirteen hundred three of this article; or (c) for the remainder of the lease term, provided that the lease agreement was entered into in good faith pursuant to this section and federal law, up to a maximum of three years, for tenants who did not occupy the premises at the commencement of the foreclosure action and therefore did not receive the original notice of service required pursuant to section thirteen hundred three of this article; provided that if a successor in interest who acquires title to such residential real property intends to occupy a single unit as his or her primary residence and the unit is not subject to a federal or state statutory system of subsidy or other federal or state statutory scheme, the successor may limit for one unit only, the tenant's right of occupancy to ninety days. For a lease to qualify under this subdivision, the tenant under such lease may not be the owner of the residential real property, and such lease must require the payment of rent for such unit that is not substantially less than the fair market rent for the unit, unless the unit is subject to federal or state statutory system of subsidy or other federal or state statutory scheme. A tenant under paragraph (a), (b), or (c) of this subdivision shall continue such tenancy subject to any limitations in this subdivision under the same terms and conditions as were in effect at the time of entry of the judgment of foreclosure and sale, or if no such judgment was entered, upon the terms and conditions that were in effect at the time of the transfer of ownership of such property. For purposes of this section, "fair market rent" shall mean rent for a unit of residential real property of similar size, location and condition.

3. Notwithstanding any other provision of law, and consistent with subdivision two of this section, a successor in interest of residential real property shall provide written notice to all tenants in the same manner as required by subdivision four of section thirteen hundred three of this article: (a) that they are entitled to remain in occupancy of

such property for the remainder of the lease term, or a period of ninety days from the date of mailing of such notice, whichever is greater, on the same terms and conditions as were in effect at the time of entry of the judgment of foreclosure and sale, or if no such judgment was entered, upon the terms and conditions as were in effect at the time of transfer of ownership of such property; and (b) of the name and address of the new owner. Any person or entity who or which becomes a successor in interest after the issuance of the ninety-day notice provided for in this subdivision, shall notify all tenants of its name and address and shall assume such interest subject to the right of the tenant to maintain possession as provided in this subdivision.

4. Acceptance of rental payments by any successor in interest on terms provided in subdivision three of this section shall not affect the right of the successor in interest to evict such tenant, as provided by law, upon the expiration of the time period as provided in subdivision two of this section or earlier if the tenant does not pay rent pursuant to any lease or oral or implied rental agreement in effect at the time of issuance of the judgment of foreclosure, or if no such judgment was issued, upon the terms and conditions as were in effect at the time of transfer of ownership of such property.

5. The rights conferred upon a tenant by subdivision two of this section shall be in addition to any other rights of such tenant, under law, including those rights conferred upon: (a) any tenant not named in the foreclosure action; or (b) any tenant whose tenancy is subsidized by the federal government, this state or any political subdivision of this state; or (c) any tenant whose tenancy is subject to rent control, rent stabilization, or federal statutory schemes.

**§ 1306. Filing with superintendent.** 1. Each lender, assignee or mortgage loan servicer shall file with the superintendent of financial services (superintendent) within three business days of the mailing of the notice required by subdivision one of section thirteen hundred four of this article or subsection (f) of section 9-611 of the uniform commercial code the information required by subdivision two of this

section. Notwithstanding any other provision of the laws of this state, this filing shall be made electronically as provided for in subdivision three of this section. Any complaint served in a proceeding initiated pursuant to this article shall contain, as a condition precedent to such proceeding, an affirmative allegation that at the time the proceeding is commenced, the plaintiff has complied with the provisions of this section.

2. Each filing delivered to the superintendent shall be on such form as the superintendent shall prescribe, and shall include at a minimum, the name, address, last known telephone number of the borrower, and the amount claimed as due and owing on the mortgage, and such other information as will enable the superintendent to ascertain the type of loan at issue. The superintendent may subsequently request such readily available information as may be reasonably necessary to facilitate a review of whether the borrower might benefit from counseling or other foreclosure prevention services.

3. Within one hundred eighty days of the effective date of this section, or such later time as the superintendent may determine, the superintendent shall develop with the assistance of the commissioner of the division of housing and community renewal, an electronic database that shall be capable of receiving all filings required by this section.

4. The information provided to the superintendent pursuant to this section shall not be subject to article six of the public officers law or paragraphs (a), (c) and (d) of subdivision one or subdivision six of section ninety-four of the public officers law. All such information shall be used by the superintendent exclusively for the purposes of monitoring on a statewide basis the extent of foreclosure filings within this state, to perform an analysis of loan types which were the subject of a pre-foreclosure notice and directing as appropriate available public and private foreclosure prevention and counseling services to borrowers at risk of foreclosure. The superintendent may share information contained in the database with housing counseling agencies designated by the division of housing and community renewal as well as with other state agencies with jurisdiction over housing, for the

purpose of coordinating or securing help for borrowers at risk of foreclosure.

5. The superintendent is hereby authorized to promulgate such rules and regulations as shall be necessary to implement the purposes of this section.

**§ 1307. Duty to maintain foreclosed property.** 1. A plaintiff who commences a mortgage foreclosure action, including a lender, an assignee or a mortgage loan servicer, seeking a judgment of foreclosure and sale pursuant to section thirteen hundred fifty-one of this article, involving residential real property, as defined in section thirteen hundred five of this article, that is vacant, or becomes vacant after commencement of the action or the issuance of such judgment, or is abandoned by the mortgagor but occupied by a tenant, as defined under section thirteen hundred five of this article, shall maintain such property until such time as ownership has been transferred through the closing of title in foreclosure, or other disposition, and the deed for such property has been duly recorded; provided, however, that if a municipality or governmental entity holds a mortgage subordinate to one or more mortgages on the residential real property, the municipality or governmental entity shall not be subject to the requirements of this section.

2. Such plaintiff shall have the right to peaceably enter upon such property, or to cause others to peaceably enter upon the property for the limited purpose of inspections, repairs and maintenance as required by this section, or as otherwise ordered by court; provided, however, that if the property is occupied by a tenant, at least seven days notice must be given to such tenant, unless emergency repairs are required in which case reasonable notice shall be provided to the tenant.

(a) A residential property is deemed vacant for the purposes of this section if the residential property meets the definition of a "vacant and abandoned residential property" under section thirteen hundred nine of this article or there is an order or finding by a court of competent jurisdiction or by the municipality in which the residential property is

located that the property is vacant;

(b) A residential property is deemed abandoned by the mortgagor if:

(i) All owners of the residential property have indicated in writing that they have abandoned all rights of possession to the residential property;

(ii) There is an order or finding by a court of competent jurisdiction or by the municipality in which the residential property is located, either on the initiative of the court or municipality or in response to a complaint filed with the court or municipality by a tenant in lawful occupancy, that the property was abandoned by the mortgagor; or

(iii) The plaintiff receives a complaint from a tenant in lawful occupancy of the residential property indicating that the owner of the residential property has ceased maintaining the property and:

(1) The plaintiff posts a notice on the residential property that would be reasonably visible to the owner of the property indicating that the property is deemed abandoned and the owner must contact the plaintiff at a number listed on the notice if the owner still occupies or claims the right to occupy the property; and

(2) The plaintiff has received no communication within one week of posting the notice of the owner's intention to occupy the property.

(c) Such plaintiff shall have the right to peaceably enter upon such property, or to cause others to peaceably enter upon the property for the limited purpose of inspections, repairs and maintenance as required by this section, or as otherwise ordered by court; provided, however, that if the property is occupied by a tenant, at least seven days notice must be given to such tenant, unless emergency repairs are required in which case reasonable notice shall be provided to the tenant.

(d) Any plaintiff that enters a residential property without a good faith basis for believing that the property is vacant or abandoned and who does not comply with the requirements of paragraph (b) of this subdivision shall be subject to a penalty of five hundred dollars that may be sought by the owner of the residential property or any tenant in lawful possession of such property. This penalty may be recovered by a property owner or tenant in lawful occupancy of such property either within the foreclosure action pending against the subject residential real property or in a separate action commenced to collect the penalty.

3. The municipality in which such residential real property is located, any tenant lawfully in possession, and a board of managers of a condominium in which the premises are located or a homeowners association if said premises are subject to the rules and regulations of such an association, shall have the right to enforce the obligations described in this section in any court of competent jurisdiction after at least seven days notice to the plaintiff in the foreclosure action unless emergency repairs are required. Any entity acting pursuant to this subdivision shall have a cause of action in any court of competent jurisdiction against the plaintiff in the foreclosure action to recover costs incurred as a result of maintaining the property. The authority provided by this subdivision shall be in addition to, and shall not be deemed to diminish or reduce, any rights of the parties described in this section under existing law against the mortgagor of such property for failure to maintain such property.

4. In the event the mortgagor of the property commences a proceeding in bankruptcy court prior to the completion of the public auction ordered in the judgment of sale, the duties created by this section shall be suspended during the pendency of the bankruptcy proceeding or until such time as an order has been entered in that proceeding lifting or removing the automatic stay of the foreclosure sale.

5. For the purposes of this section "maintain" shall mean keeping the subject property in a manner that is consistent with the standards set forth in the New York property maintenance code chapter 3 sections 301, 302 (excluding 302.2, 302.6 and 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1; provided, however, that if the property is occupied by a tenant, then such property must also be maintained in a safe and habitable condition.

6. A plaintiff shall be relieved of its responsibilities to maintain the residential real property that is the subject of a foreclosure action for the period that a receiver of such property is serving.

7. Nothing contained in this section shall diminish in any way the obligations pursuant to any state or local law of the mortgagor of the

property or a receiver of rents and profits appointed in an action to foreclose a mortgage to maintain the property prior to the closing of title pursuant to a foreclosure sale.

8. This section shall not preempt, reduce or limit any rights or obligations imposed by any local laws with respect to property maintenance and the locality's ability to enforce those laws.

**§ 1308. Inspecting, securing and maintaining vacant and abandoned residential real property.** Notwithstanding any other provision of law to the contrary, the following subdivisions of this section shall only apply to vacant and abandoned one to four family residential real property, and any duties and responsibilities so prescribed by this section shall only apply to the first lien mortgage holder. Vacant and abandoned residential real property shall be defined pursuant to section thirteen hundred nine of this article. For each calendar year this section shall not apply to state or federally chartered banks, savings banks, savings and loan associations, or credit unions which: (1) originate, own, service and maintain their mortgages or a portion thereof; and (2) have less than three-tenths of one percent of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year. For any state or federally chartered banks, savings banks, savings and loan associations, or credit unions which originate, own, service and maintain between three-tenths of one percent and five-tenths of one percent of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year, the application of this section shall be prospective only.

1. Subject to bankruptcy filings, cease and desist orders, threats of violence, or active loss mitigation efforts, within ninety days of a borrower's delinquency, the servicer authorized to accept payment of the loan shall complete an exterior inspection of the subject property to

determine occupancy. Thereafter, throughout the delinquency of the loan, the servicer shall conduct an exterior inspection of the property every twenty-five to thirty-five days, at different times of the day.

2. If a borrower is delinquent and subject to property inspections pursuant to subdivision one of this section, the servicer shall secure and maintain the residential real property pursuant to subdivisions three, four, five, six, and seven of this section where the servicer has a reasonable basis to believe that the residential real property is vacant and abandoned, as defined in section thirteen hundred nine of this chapter, and is not otherwise restricted from accessing the property.

3. Within seven business days of determining that the property is vacant and abandoned based on the criteria set forth in subdivision two of this section, the servicer shall post a notice on an easily accessible part of the property that would be reasonably visible to the borrower, property owner or occupant, and monitor the property for any change in occupancy or contact with the borrower, property owner or occupant, and monitor to ensure that the notice remains posted so long as the duty to maintain applies. The posted notice shall provide the servicer's toll free number or similar contact information.

4. If the posted notice is not responded to or persists for seven consecutive calendar days without contact with the borrower, property owner or occupant indicating that the property is not vacant or abandoned, or if an emergent property condition that could reasonably damage, destroy or harm the property arises, the servicer shall:

(a) in cases where the property contains two or more points of ingress or egress, replace no more than one door lock to provide subsequent access to the property;

(b) secure, replace or board up broken doors and windows;

(c) secure any part of the property that may be deemed an attractive nuisance including, but not limited to, a water feature that could create a drowning risk, refrigerator or freezer units, outbuildings, wells or septic tanks;

(d) take reasonable measures to ensure that pipes, ducts, conductors,

fans and blowers do not discharge harmful gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate waste directly upon abutting or adjacent public or private property or that of another tenant;

(e) where appropriate, winterize the applicable plumbing and heating systems;

(f) provide basic utilities including, but not limited to, water, electricity, natural gas, propane and sewer service, as appropriate and when allowed by the local utility provider, that are needed for the operation of a sump pump or dehumidifier, or when there are jointly owned or shared utilities with adjoining properties or units, except for turning off water service to prevent flooding or water leaks in the property, or when other utility service could reasonably create a hazard to the property or an unauthorized occupant or person entering the property;

(g) remove and remediate any significant health and safety issues, including outstanding code violations;

(h) take reasonable measures to prevent the growth of harmful mold;

(i) respond to government inquiries regarding property condition, subject to restrictions regarding financial privacy;

(j) ensure that the notice required to be posted in subdivision three of this section remains posted on an easily accessible part of the property that would be reasonably visible to the borrower, property owner or occupant so long as the duty to maintain applies; and

(k) pay homeowners' association, condominium common charges as defined in section three hundred thirty-nine-e of the real property law or cooperative fees as needed to maintain the property.

5. At no time shall a servicer remove personal property from the property unless:

(a) the personal property poses a significant health and safety issue;  
or

(b) there is an uncontested order to do so by a governmental entity.

6. A servicer who has determined a property to be vacant and abandoned and who has secured the same shall take reasonable and necessary actions to maintain the property until the earlier of the following events:

(a) an occupant of the property has asserted his or her right to occupy the property, or the servicer or its agents have received threats of violence;

(b) the borrower has filed for bankruptcy;

(c) a court has ordered the servicer to stop any maintenance of the property;

(d) a homeowners' association or cooperative has prevented the servicer from gaining access to or maintaining the property;

(e) the property has been sold or transferred to a new owner;

(f) the servicer or investor subject to the provisions of this section has released the lien on the property; or

(g) the mortgage note has been assigned, transferred or sold to another servicer.

7. Reasonable and necessary actions to maintain the property include, but are not limited to:

(a) ensuring that the property remains secure pursuant to subdivisions four, five and six of this section; and

(b) maintaining property in a manner consistent with the standards set forth in sections 301, 302 (excluding 302.2, 302.6 and 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1 of the New York property maintenance code, to the extent that the mortgage servicer or its agents are able to obtain necessary or required permits or approvals.

8. (a) Violations of this section may be heard before a hearing officer or a court of competent jurisdiction. If it shall appear to the satisfaction of the hearing officer or the court, based on the preponderance of the evidence, that the mortgagee or agent of a mortgagee has violated this section, a civil penalty may be issued by the hearing officer or the court in the amount of up to five hundred dollars per day per property for each day the violation persisted.

(b) The superintendent of financial services may, as appropriate and in his or her sole discretion, pursue any suspected violation of this section. Before taking such action, the superintendent shall give the lender, assignee or mortgage loan servicer at least seven days' notice of the violation.

(c) In addition to the authority granted to the department of financial services, the municipality in which such residential real property is located, shall have the right to enforce the obligations described in this section in any court of competent jurisdiction after at least seven days' notice to the lender, assignee or mortgage loan servicer, unless the property requires emergency repairs to address a threat to public health, safety or welfare, in which case the municipality may enter and maintain the property to cure the emergency, provided however, notice shall be provided to the lender, assignee or mortgage loan servicer as soon as practicable. Any municipality acting pursuant to this subdivision shall have a cause of action in any court of competent jurisdiction against the lender, assignee or mortgage loan servicer to recover costs incurred as a result of maintaining the property. Such entity shall provide the department of financial services with written notice at least ten days prior to bringing an action pursuant to this subdivision; provided, however, that failure to comply with this notice requirement shall not be a defense to the entity proceeding pursuant to this subdivision. The authority provided by this subdivision shall be in addition to, and shall not be deemed to diminish or reduce, any rights of the parties described in this section under existing law against the mortgagor of such property for failure to maintain such property. Any civil penalty imposed pursuant to paragraph (a) of this subdivision in an action brought by a municipality pursuant to this paragraph shall be retained by such municipality.

(d) The department of financial services is authorized and empowered to adopt such rules and regulations as may, in the judgment of the superintendent of financial services, be necessary for the effective implementation, administration, operation and enforcement of this section.

9. A servicer who peacefully enters a vacant and abandoned property in order to maintain pursuant to this section shall be immune from liability when such servicer is making reasonable efforts to comply with the statute.

10. The provisions of this section are subject to federal laws, court orders and investor and insurer guidelines.

11. For all state or federally chartered banks, savings banks, savings and loan associations, credit unions, or servicers for which the provisions of this section do not apply, pursuant to the opening paragraph of this section, any agreement between such state or federally chartered banks, savings banks, savings and loan associations, credit unions, or servicers and the department of financial services that is associated with the maintenance and repair of vacant and abandoned property shall remain in full force and effect between the aforementioned parties for so long as the terms and conditions of such agreement remain in effect.

12. The department of financial services shall issue such rules and regulations necessary to implement the terms of this section, including but not limited to rules and regulations pertaining to the reporting of financial information that state or federally chartered banks, savings banks, savings and loan associations, or credit unions must provide to implement this section.

13. No local law, ordinance, or resolution shall impose a duty to maintain vacant and abandoned property as defined in section thirteen hundred nine of this article in a manner inconsistent with the provisions of this section that are related to maintenance as provided under subdivisions three, four, five, six and seven of this section, or establish related penalties nor other monetary obligations, with respect to a state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property.

No local law, ordinance, or resolution shall impose a duty to maintain vacant and abandoned property upon any state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property for which the provisions of this section, pursuant to the opening paragraph of this section, do not apply.

**§ 1309. Expedited application for judgment of foreclosure and sale for vacant and abandoned property.** 1. The plaintiff in any foreclosure proceeding may make an application by notice of motion or order to show cause for a judgment of foreclosure and sale on the grounds that the subject property is vacant and abandoned. The motion or order to show cause shall include the last known address of the borrower and the property address. Notwithstanding subdivision (m) of rule thirty-four hundred eight of the civil practice law and rules no such application may be made until the defendant's time to answer the complaint in the foreclosure proceeding shall have expired. Such application shall be served on defendant, regardless of whether a defendant has filed an answer or appeared in the case. Such application shall: (a) state in bold letters, on the first page of the notice of motion or order to show cause: (i) "The plaintiff in this lawsuit has applied for an expedited judgment of foreclosure and sale of your property on the ground that it is vacant and abandoned"; (ii) "Your property may be foreclosed upon and sold without any further proceedings if you do not respond to this motion by or on the return date, which is \_\_\_\_"; (iii) "You have the right to stay in your property until a court orders you to leave"; and (iv) "You may respond to this motion by either submitting a written document or by appearing in court on the return date."; (b) be supported by affidavit and other proof, including but not limited to: (i) proof of ownership of the mortgage and the note, (ii) photographs evidencing that the subject property is vacant and abandoned as provided for under subdivision two of this section, and (iii) if available, utility company records or other documentation evidencing the vacant and abandoned status of the premises; (c) set forth, supported by documentary evidence, the sums alleged to be due and owing upon the subject mortgage and note, including the current principal balance and a detailed and itemized account of each fee, each cost, and a calculation of interest accrued; and (d) request that the court confirm the sums due and owing upon the subject mortgage and note without appointment of a referee. The court shall promptly send a notice to the defendant of the plaintiff's notice of motion or order to show cause for a judgement of foreclosure and sale on the grounds that the subject property is vacant and abandoned. The notice shall advise the defendant that the lender is asking the court to expedite a judgement of foreclosure and sale of his

or her property on the ground that it is vacant and abandoned and about the time and place of the court date. The notice shall be in a form prescribed by the courts, or, at the discretion of the courts.

2. (a) As used in this section, "vacant and abandoned residential property" means residential real property, as defined in section thirteen hundred five of this article, with respect to which the plaintiff has proven, by preponderance of the evidence, that it has conducted at least three consecutive inspections of such property, with each inspection conducted twenty-five to thirty-five days apart and at different times of the day, and at each inspection (i) no occupant was present and there was no evidence of occupancy on the property to indicate that any persons are residing there; and (ii) the residential real property was not being maintained in a manner consistent with the standards set forth in New York property maintenance code chapter 3 sections 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1 and 308.1.

(b) Residential real property will also be deemed vacant and abandoned if:

(i) A court or other appropriate state or local governmental entity has formally determined, following due notice to the borrower at the property address and any other known addresses, that such residential real property is vacant and abandoned; or

(ii) Each borrower and owner has separately issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy to indicate that any persons are residing there.

(c) Evidence of lack of occupancy shall include but not be limited to the following conditions: (i) overgrown or dead vegetation; (ii) accumulation of newspapers, circulars, flyer or mail; (iii) past due utility notices, disconnected utilities, or utilities not in use; (iv) accumulation of trash, refuse or other debris; (v) absence of window coverings such as curtains, blinds, or shutters; (vi) one or more boarded, missing or broken windows; (vii) the property is open to casual entry or trespass; or (viii) the property has a building or structure that is or appears structurally unsound or has any other condition that presents a potential hazard or danger to the safety of persons.

(d) Residential real property will not be deemed vacant and abandoned if, on the property:

(i) There is an unoccupied building that is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion;

(ii) There is a building occupied on a seasonal basis, but otherwise secure;

(iii) There is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute of which the servicer has actual notice;

(iv) There is a building damaged by a natural disaster and one or more owner intends to repair and reoccupy the property; or

(v) There is a building occupied by the mortgagor, a relative of the mortgagor or a tenant lawfully in possession.

3. In connection with an application for a judgment of foreclosure and sale on the ground that the subject property is vacant and abandoned, the court may require the plaintiff or an agent to appear to provide testimony in support of the application.

4. The court shall make a written finding as soon as practicable as to whether the plaintiff has proved that the property to be foreclosed upon pursuant to this section is vacant and abandoned pursuant to subdivision two of this section and, if the court determines that the property is vacant and abandoned, it shall set forth: (a) the evidence relied upon by the court in finding that the property is vacant and abandoned; (b) the evidence showing that the plaintiff is the owner and holder of the subject mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner of same; and (c) the sums due and owing upon the subject mortgage and note after a review of the detailed and itemized account of each fee, each cost, and a calculation of interest accrued.

5. With respect to foreclosure actions brought pursuant to this section:

(a) A judgment of foreclosure and sale shall not be entered pursuant to this section if the mortgagor or any other defendant has filed an

answer, appearance, other written objection that is not withdrawn, or has otherwise demonstrated an intention to contest the foreclosure action.

(b) A denial of a judgment of foreclosure and sale pursuant to this section where the court does not find that the mortgaged property is vacant and abandoned shall not be deemed to be on the merits for purposes of any other proceeding with respect to such real property.

6. It shall be unlawful for a lender, assignee, mortgage loan servicer, or a third party agent or other person acting on behalf of a lender, assignee or mortgage loan servicer to enter residential real property that is not vacant and abandoned for the purpose of forcing, intimidating, harassing or coercing a lawful occupant of such residential property to vacate that property in order to render the property vacant and abandoned, or to otherwise force, intimidate, harass, or coerce a lawful occupant of residential real property to vacate that property so that it may be deemed vacant and abandoned, provided however, a lender, assignee, mortgage loan servicer, or a third party agent or other person acting on behalf of a lender, assignee or mortgage loan servicer who peacefully enters a vacant and abandoned property in order to render the property vacant and abandoned shall be immune from liability when such lender, assignee, mortgage loan servicer, third party agent or other person acting on behalf of a lender, assignee or mortgage loan servicer is making reasonable efforts to comply with this section.

7. The chief administrative judge of the courts shall adopt such rules as he or she deems necessary to expeditiously implement the provisions of this section.

**§ 1310. Vacant and abandoned property; statewide vacant and abandoned property electronic registry.** 1. The department of financial services shall maintain a statewide vacant and abandoned property registry in the form of an electronic database. The department of financial services may, in accordance with the applicable provisions of the state finance law, retain a private contractor to administer such database for the

purposes of satisfying this requirement. The information provided to the department of financial services pursuant to this section shall be deemed and treated confidential, provided however, the superintendent of financial services, in her or his sole discretion, may release the information if it is in the best interest of the public. Any such released information shall continue to be treated confidentially by the parties. The department of financial services shall, upon written request, provide public officials of any state district, county, city, town or village with access to information specific to such public official's district, county, city, town or village maintained on such database to further the purposes of this section, section thirteen hundred seven of this article or article nineteen-A of this chapter, or any other related law, code, rule, regulation or ordinance.

2. A lender, assignee or mortgage loan servicer shall submit or cause to be submitted to the department of financial services information required by the superintendent of financial services about any vacant and abandoned residential real property, as that term is defined in subdivision two of section thirteen hundred nine of this article, or as the superintendent of financial services may otherwise define that term, within twenty-one business days of when the lender, assignee or mortgage loan servicer learns, or should have learned, that such property is vacant and abandoned. Such information shall, at a minimum, include: (a) the current name, address and contact information for the lender, assignee or mortgage loan servicer responsible for maintaining the vacant property; (b) whether a foreclosure action has been filed for the property in question, and, if so, the date on which the foreclosure action was commenced; and (c) the last known address and contact information for the mortgagor(s) of record.

3. Where any of the information contained in a lender's, assignee's or mortgage loan servicer's initial submission to the registry has materially changed since such submission, such lender, assignee or mortgage loan servicer shall make an amended submission to the registry not later than thirty days after the lender, assignee or mortgage loan servicer learns, or reasonably should have learned, of the new or changed information.

4. The department of financial services is authorized and empowered to adopt such rules and regulations as may in the judgment of the superintendent of financial services necessary for the effective administration and operation of such registry, including but not limited to rules and regulations governing access to the registry and specifying the manner and frequency of registration and the information that must be provided. The superintendent of financial services may amend such regulations from time to time as necessary to effectuate the purpose of this section and section thirteen hundred seven of this article.

5. The department of financial services shall establish and maintain a toll-free hotline that neighbors of real property that is, or appears to be, vacant and abandoned residential real property, as such term is defined in subdivision two of section thirteen hundred nine of this article, and other community residents can use to report to the superintendent of financial services any hazards, blight or other concerns related to such property. The department of financial services shall include on its official public website information about such toll-free hotline.

No local law, ordinance, or resolution shall impose a duty to register vacant and abandoned property as defined in section thirteen hundred nine of the article in a manner inconsistent with the provisions of this section that are related to registration as provided under section thirteen hundred ten of this article or establish related penalties or other monetary obligation, with respect to a state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property.

No local law, ordinance, or resolution shall impose a duty to maintain vacant and abandoned property upon any state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property for which the provisions of this section, pursuant to the opening paragraph of section thirteen hundred eight of this article, do

not apply.

**§ 1311. Necessary defendants.** Each of the following persons, whose interest is claimed to be subject and subordinate to the plaintiff's lien, shall be made a party defendant to the action:

1. Every person having an estate or interest in possession, or otherwise, in the property as tenant in fee, for life, by the curtesy, or for years, and every person entitled to the reversion, remainder, or inheritance of the real property, or of any interest therein or undivided share thereof, after the determination of a particular estate therein.

2. Every person having a right of dower or an inchoate right of dower in the real property or any part or share thereof.

3. Every person having any lien or incumbrance upon the real property which is claimed to be subject and subordinate to the lien of the plaintiff.

4. Where the mortgage is upon any of the public utilities regulated by the public service law, the public service commission.

**§ 1312. Representative defendants.** 1. Where a trust has been created by will or by deed or by declaration of trust, the trustees of such trust who shall have duly qualified shall be made parties defendant and shall represent all persons who are or may become entitled to a beneficial interest in the property or an undivided share thereof or in the proceeds of sale thereof under and by virtue of said trust and all remaindermen who are or may become entitled to the reversion, remainder or inheritance of the property or the proceeds of sale thereof either before or after the termination of said trust, without naming such beneficiaries or remaindermen as parties defendant. Service of the summons and complaint upon any one of such duly qualified trustees shall be sufficient service upon the trust estate and upon all persons who are

or may become entitled to a beneficial interest in the property or an undivided share thereof or in the proceeds of sale thereof and all remaindermen who are or may become entitled to the reversion, remainder or inheritance of the property or the proceeds of sale thereof either before or after the termination of said trust.

2. Whenever the duly qualified executors under a will are made parties defendant they shall represent all of the legatees named in the will and the successors and assigns of such legatees, irrespective of whether or not such legacies are a charge upon the real property, and such legatees, their successors and assigns need not be named as parties defendant. Service of the summons and complaint upon any one of such duly qualified executors shall be sufficient service upon the executors under said will and upon all legatees named in said will, their successors and assigns, irrespective of whether or not such legacies are a charge upon the real property.

**§ 1313. Permissible defendants.** Any person who is liable to the plaintiff for payment of the debt secured by the mortgage may be made a defendant in the action. The state may be made a party defendant to an action for the foreclosure of a mortgage on real property, where it has an interest in or a lien on the property subsequent to the lien of the mortgage sought to be foreclosed in said action, in the same manner as a private person.

**§ 1315. Action by owner of junior participating interest.** An action may be maintained by the owner of a junior participating share or interest in a bond or note secured by a mortgage on real, or on real and personal property, for the payment of principal and interest and for foreclosure of such bond or note and mortgage in its entirety, or in the alternative, subject to the interest of the owner of the senior share, notwithstanding that the entire mortgage debt may be due and payable according to its terms, in the event that the owner of the senior share, to whom is given the right in the participating agreement to enforce such bond or note and mortgage shall fail or refuse to commence an

action for the enforcement of such bond or note and mortgage in any manner permitted thereby, after ten days' written notice and demand to commence any such action, following default in the performance of any of the terms and covenants of such bond or note and mortgage. Upon such failure or refusal, such junior participant may exercise any and all options and remedies provided in such bond or note and mortgage or otherwise available to any holder thereof.

**§ 1320. Special summons requirement in private residence cases.** In an action to foreclose a mortgage on a residential property containing not more than three units, in addition to the usual requirements applicable to a summons in the court, the summons shall contain a notice in boldface in the following form:

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME

If you do not respond to this summons and complaint by serving a copy of the answer on the attorney for the mortgage company who filed this foreclosure proceeding against you and filing the answer with the court, a default judgment may be entered and you can lose your home.

Speak to an attorney or go to the court where your case is pending for further information on how to answer the summons and protect your property.

Sending a payment to your mortgage company will not stop this foreclosure action.

YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY FOR THE PLAINTIFF (MORTGAGE COMPANY) AND FILING THE ANSWER WITH THE COURT.

**§ 1321. Default or admission.** 1. If the defendant fails to answer within the time allowed or the right of the plaintiff is admitted by the answer, upon motion of the plaintiff, the court shall ascertain and determine the amount due, or direct a referee to compute the amount due

to the plaintiff and to such of the defendants as are prior incumbrancers of the mortgaged premises, and to examine and report whether the mortgaged premises can be sold in parcels and, if the whole amount secured by the mortgage has not become due, to report the amount thereafter to become due. Where the defendant is an infant, and has put in a general answer by his guardian, or if any of the defendants be absentees, the order of reference also shall direct the referee to take proof of the facts and circumstances stated in the complaint and to examine the plaintiff or his agent, on oath, as to any payments which have been made. The order of reference shall also include the name and telephone number of the mortgage servicer for a plaintiff involving a mortgage foreclosure of a one- to four-family residential property.

2. When he moves for judgment, the plaintiff shall show whether any of the defendants who have not appeared are absentees.

**§ 1325. Receiver.** 1. Where the action is for the foreclosure of a mortgage providing that a receiver may be appointed without notice, notice of a motion for such appointment shall not be required.

2. Where a receiver has been appointed, upon the application of the plaintiff or of any holder of a certificate evidencing an undivided interest in the mortgage or mortgage debt and upon proof that no answer has been interposed affecting the validity of the mortgage or the amount due thereon, or asserting any prior lien, or asserting a plea of tender of payment of the amount due, or which if sustained would affect in any way the right of the plaintiff to a judgment in foreclosure and to the payment of the amount claimed by the plaintiff in his complaint to be due, the court may direct that the receiver of the rents appointed in such action apply, during the pendency of the action, the rents received by him towards the payment of accrued interest on the mortgage, provided due provision shall have been made for the payment of taxes, administration expenses, fees and charges and such reserve as the court may direct. Any monies so paid over by the receiver shall be deducted from the amount of the judgment in said action.

2-a. Where a receiver has been appointed, the order of appointment shall direct the owner or lessee of the mortgaged premises to turn over to the receiver all security deposits received by such owner or lessee and shall further direct the receiver to hold the security subject to such disposition thereof as shall be provided in a further order of the court to be made and entered in the foreclosure action, in accordance with the provisions of section 7-105 of the general obligations law.

3. In a city with a population of one million or more persons an order appointing a receiver to receive the rents and profits of a multiple dwelling shall provide that the receiver:

(a) register with any municipal department as provided by applicable law; and

(b) expend rents and income and profits as described in subdivision two of this section, except that a priority shall be given to the correction of immediately hazardous and hazardous violations of housing maintenance laws within the time set by orders of any municipal department, or, if not practicable, seek a postponement of the time for compliance.

**§ 1331. Notice of pendency.** The plaintiff, at least twenty days before a final judgment directing a sale is rendered, shall file in the clerk's office of each county where the mortgaged property is situated a notice of the pendency of the action, which shall specify, in addition to other particulars required by law, the date of the mortgage, the parties thereto and the time and place of recording.

**§ 1341. Payment into court of amount due.** Where an action is brought to foreclose a mortgage upon real property upon which any part of the principal or interest is due, and another portion of either is to become due, and the defendant pays into court the amount due for principal and interest and the costs of the action, together with the expenses of the proceedings to sell, if any, the court shall:

1. Dismiss the complaint without costs against plaintiff, if the

payment is made before judgment directing sale; or

2. Stay all proceedings upon judgment, if the payment is made after judgment directing sale and before sale; but, upon a subsequent default in the payment of principal or interest, the court may make an order directing the enforcement of the judgment for the purpose of collecting the sum then due.

**§ 1351. Judgment of sale.** 1. The judgment shall direct that the mortgaged premises, or so much thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale and the costs of the action, and which may be sold separately without material injury to the parties interested, be sold by or under the direction of the sheriff of the county, or a referee within ninety days of the date of the judgment. The judgment shall also include the name and telephone number of the mortgage servicer for a plaintiff involving a mortgage foreclosure of a one- to four-family residential property.

2. Where the mortgage debt is not all due, and the mortgaged property is so circumstanced that it can be sold in parcels without injury to the interests of the parties, the final judgment shall direct that no more of the property be sold in the first place than is sufficient to satisfy the sum then due, with the costs of the action and expenses of the sale. Upon a subsequent default in the payment of principal or interest the plaintiff may apply for an order directing the sale of the residue, or of so much thereof as is necessary to satisfy the amount then due, with the costs of the application and the expenses of the sale. The plaintiff may apply for and obtain such an order as often as a default happens. If it appears that the mortgaged property is so circumstanced that a sale of the whole will be most beneficial to the parties, the final judgment may direct that the whole property be sold discharged from the entire mortgage debt and that the proceeds of the sale, after deducting the costs of the action and the expenses of the sale, be either applied to the satisfaction of the whole sum secured by the mortgage, with such a rebate of interest as justice requires; or be first applied to the payment of the sum due, and the balance, or so much thereof as is

necessary, be invested at interest for the benefit of the plaintiff, to be paid to him from time to time as any part of the principal or interest becomes due, or may, at the option of the mortgagee, direct that the whole property be sold to satisfy the debt then due with the costs of the action and expenses of the sale, subject to the continuing lien of the mortgage for the amount of the debt not then due and unpaid according to its terms. The provisions of this section shall not limit or affect the plaintiff's right to judgment and sale in an action specified in section 1315.

3. If it appears to the satisfaction of the court that there exists no more than one other mortgage on the premises which is then due and which is subordinate only to the plaintiff's mortgage but is entitled to priority over all other liens and encumbrances except those described in subdivision 2 of section 1354, upon motion of the holder of such mortgage made without valid objection of any other party, the final judgement may direct payment of the subordinate mortgage debt from the proceeds in accordance with subdivision 3 of section 1354.

**§ 1352. Judgment foreclosing right of redemption.** Where real property has been sold pursuant to a judgment in an action to foreclose a mortgage, and an action is thereafter brought to foreclose or extinguish a right of redemption in such real property, the judgment, instead of directing a sale of the property, shall fix the right of any person having a right of redemption therein or the right to foreclose a subordinate mortgage or other lien and shall provide that a failure to redeem or commence an action for the foreclosure of such mortgage or other lien within such time shall preclude such person having a right of redemption or the holder of such mortgage or other lien from redeeming such property or foreclosing such mortgage or other lien, and thereafter such person having a right of redemption or the holder of such mortgage or other lien shall be excluded from claiming any title or interest in such property and all title or interests of such person having a right of redemption in, or the right to foreclose a subordinate mortgage or other lien against such property shall thereby be extinguished and terminated.

**§ 1353. Conveyance.** 1. After the property has been sold, the officer conducting the sale shall execute a deed to the purchaser. The plaintiff, or any other party, may become a purchaser. If the plaintiff (or its affiliate, as defined in paragraph (a) of subdivision one of section six-1 of the banking law) is the purchaser, such party shall place the property back on the market for sale or other occupancy: (a) within one hundred eighty days of the execution of the deed of sale, or (b) within ninety days of completion of construction, renovation, or rehabilitation of the property, provided that such construction, renovation, or rehabilitation proceeded diligently to completion, whichever comes first, provided however, a court of competent jurisdiction may grant an extension for good cause.

2. Before a deed is executed to the purchaser, the plaintiff shall file the mortgage and any assignment not shown to have been lost or destroyed in the office of the clerk, unless it is in a form which can be recorded; in which case it shall be recorded in the counties where the lands are situated; the expense of filing or recording and entry shall be allowed in the taxation of costs; and, if filed with the clerk, he shall enter in the minutes the time of filing.

3. The conveyance vests in the purchaser the same estate only that would have vested in the mortgagee if the equity of redemption had been foreclosed. Such a conveyance is as valid as if it were executed by the mortgagor and mortgagee, and, except as provided in section 1315 and subdivision 2 of section 1341, is an entire bar against each of them and against each party to the action who was duly summoned and every person claiming from, through or under a party by title accruing after the filing of the notice of the pendency of the action.

**§ 1354. Distribution of proceeds of sale.** 1. The officer conducting the sale shall pay, out of the proceeds, unless otherwise directed, the expenses of the sale, and pay to the plaintiff, or his attorney, the amount of the debt, interest and costs, or so much as the proceeds will

pay and take the receipt of the plaintiff, or his attorney, for the amount so paid, and file the same with his report of sale.

2. The officer conducting the sale shall pay out of the proceeds all taxes, assessments, and water rates which are liens upon the property sold, and redeem the property sold from any sales for unpaid taxes, assessments or water rates which have not apparently become absolute. In any city having a population of three hundred thousand or more or any city having a population between one hundred twenty-five thousand and one hundred seventy-five thousand, such officer shall pay out of the proceeds any liens or incumbrances placed by a city agency upon the real property which have priority over the foreclosed mortgage. The sums necessary to make those payments and redemptions are deemed expenses of the sale. The provisions of this subdivision shall not apply to any judgment in an action wherein any municipal corporation of this state is the plaintiff and the purchaser at the foreclosure sale thereunder.

3. The officer conducting the sale after fully complying with the provisions of subdivisions one and two of this section and if the judgment of sale has so directed shall pay to the holder of any subordinate mortgage or his attorney from the then remaining proceeds the amount then due on such subordinate mortgage, or so much as the then remaining proceeds will pay and take the receipt of the holder, or his attorney for the amount so paid, and file the same with his report of sale.

4. All surplus moneys arising from the sale shall be paid into court by the officer conducting the sale within five days after the same shall be received.

**§ 1355. Report of sale; confirmation.** 1. Within thirty days after completing the sale and executing the proper conveyance to the purchaser, unless such time be extended by the court within said thirty days, the officer making the sale shall file with the clerk his report under oath of the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payments were made.

2. A motion to confirm such report of sale shall not be made within three months after the filing of the report and shall in any event be made not later than four months after the filing of such report, except that if there be no surplus moneys arising from the sale of the mortgaged premises under such judgment, an application for confirmation of the report of sale may be made at any time after the report shall have been filed eight days. Where the report of sale shows surplus money the party moving for confirmation of the report of sale shall present with his motion papers a proper voucher for the surplus moneys showing that they have been paid into court, a certificate of the clerk specifying the notices of claim to the surplus moneys, if any, so filed with him, and an affidavit showing any other unsatisfied lien on the property.

**§ 1361. Application for surplus; reference.** 1. Any person claiming the surplus moneys arising upon the sale of mortgaged premises, or any part thereof, either in his own name, or by his attorney, at any time before the confirmation of the report of sale, may file with the clerk in whose office the report of sale is filed, a written notice of such claim, stating the nature and extent of his claim and the address of himself or his attorney.

2. On the motion for confirmation, or at any time within three months thereafter, on notice to all parties who have appeared in the action or filed claims, on motion of any party to the action, or any person who has filed a notice of claim on the surplus moneys, the court, by reference or otherwise, shall ascertain and report the amount due to him or any other person who has a lien on such surplus moneys, and the priority of the several liens thereon and order distribution of surplus moneys.

3. The owner of the equity of redemption, or any party who has appeared in the action or any person who files a notice of claim or who has a recorded lien against the property shall be given notice by mail or in such other manner as the court shall direct, to attend any hearing

on disposition of surplus money.

**§ 1362. Payment of surplus out of court.** 1. Upon confirmation of the report of sale, or upon such proceedings as are provided in section 1361, the court shall order the payment of the surplus proceeds of sale out of court to such persons as are entitled thereto.

2. If the property sold has included a right to dower, whether inchoate or consummate, a tendency by curtesy, or any other estate for life or years, the owner of such particular estate in the real property sold is entitled to receive from the surplus, in satisfaction of his estate or interest, either a sum in gross or the earnings of a sum invested for his benefit. The determination as to whether a sum in gross or the earnings of a sum invested shall be awarded to the owner of such particular estate shall be governed by the provisions of section 968 with respect to the proceeds of a sale in partition.

3. If real property or an interest in real property which is liable to be disposed of as prescribed in article thirteen of the surrogate's court act, be sold to satisfy a mortgage or other lien thereon, which mortgage or lien accrued during the decedent's lifetime, the surplus money shall be paid in to the surrogate's court having jurisdiction to issue letters testamentary or of administration upon the estate of the decedent, in the following cases: (a) If eighteen months have not elapsed since the date when letters testamentary or of administration were first issued. (b) If a proceeding for a judicial settlement of the accounts of such executor or administrator has been commenced within eighteen months from the date of the issue of such letters and is still pending. (c) If no such letters have been issued and two years have not elapsed since the death of the decedent.

**§ 1371. Deficiency judgment.** 1. If a person who is liable to the plaintiff for the payment of the debt secured by the mortgage is made a defendant in the action, and has appeared or has been personally served with the summons, the final judgment may award payment by him of the

whole residue, or so much thereof as the court may determine to be just and equitable, of the debt remaining unsatisfied, after a sale of the mortgaged property and the application of the proceeds, pursuant to the directions contained in such judgment, the amount thereof to be determined by the court as herein provided.

2. Simultaneously with the making of a motion for an order confirming the sale, provided such motion is made within ninety days after the date of the consummation of the sale by the delivery of the proper deed of conveyance to the purchaser, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date such premises were bid in at auction or such nearest earlier date as there shall have been any market value thereof and shall make an order directing the entry of a deficiency judgment. Such deficiency judgment shall be for an amount equal to the sum of the amount owing by the party liable as determined by the judgment with interest, plus the amount owing on all prior liens and encumbrances with interest, plus costs and disbursements of the action including the referee's fee and disbursements, less the market value as determined by the court or the sale price of the property whichever shall be the higher.

3. If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist.

4. Notwithstanding the foregoing provisions and irrespective of whether a motion for a deficiency judgment shall have been made or, if made, shall have been denied, the court shall direct that all moneys remaining in the hands of a receiver of the rents and profits appointed

in the action, after the payment of the receiver's fees and the expenses of the receivership, or any moneys remaining in the hands of a mortgagee in possession or an assignee of the rents and profits of the premises, shall be paid to the plaintiff to the extent of the amount, if any, by which the judgment of foreclosure and sale exceeds the amount paid for the property upon the sale.

**§ 1391. Proceeding for share of unknown heirs.** Sections 991 and 992 shall apply to an action to foreclose a mortgage on real property.

**§ 1392. Foreclosure actions involving abandoned properties.** If a property has been certified abandoned pursuant to section nineteen hundred seventy-one of this chapter, or deemed vacant and abandoned pursuant to section thirteen hundred nine of this article, the city, village, or town in which the property is located may commence a proceeding in a court of competent jurisdiction in the county in which the property is located to compel any or all mortgagees to: (a) if the note is in default, the mortgagee shall commence a foreclosure procedure within three months and shall meet all deadlines to ensure the case is ready to be moved to judgment within a reasonable time period but not to exceed one year; (b) if a foreclosure has already been commenced, file the necessary motions and within three months paperwork to move the case to judgment foreclosure within three months; or (c) issue a certificate of discharge of the mortgage within three months and file a satisfaction of the mortgage with the appropriate local office.

**§ 1393. Mortgages in default.** 1. No local law, ordinance or resolution shall allow for the registration of residential mortgages in default prior to a mortgagee filing a notice of pendency in a court of competent jurisdiction.

2. No such local law, ordinance or resolution shall require a homeowner or occupant to register.

3. Any local law, ordinance or resolution that allows for the registration of residential mortgages in default may impose a registration fee not exceeding seventy-five dollars annually. A mortgagee and/or its agents are prohibited from passing along such fees to the mortgagor in default.

4. For the purposes of this section, a mortgage default occurs when a mortgagor fails to fulfill its obligations under a mortgage agreement.

5. "Registration" shall mean the collection, publication or posting, public or otherwise, of residential mortgages in default by a local governing body or an agency thereof, or any third-party entity that contracts with such local governing body.

6. "Notice of pendency" shall have the same meaning as defined in section sixty-five hundred one of the civil practice law and rules.

7. A local governing body, through a local law, ordinance or resolution, may impose a fine on a mortgagee for noncompliance with this section or any local law, ordinance or resolution that allows for the registration of residential mortgages in default. A mortgagee and/or its agents are prohibited from passing along such fines to the mortgagor in default.

8. The provisions of this section shall supersede any local law, ordinance, or resolution requiring the registration of mortgages in default that was enacted prior to the effective date of this section.

## **ARTICLE 15**

### **ACTION TO COMPEL THE DETERMINATION OF A CLAIM TO REAL PROPERTY**

Section 1501. Who may maintain an action.

1503. Action to determine claims where foreclosure of mortgage was void or voidable.

1511. Additional parties.

1513. Guardians ad litem.

- 1515. Complaint.
- 1517. Answer.
- 1519. Proceedings.
- 1521. Judgment.
- 1522. Accounting in certain cases.
- 1523. Judgment of foreclosure in certain cases.
- 1531. Effect of judgment.
- 1541. Article applies to corporations and to the people of the  
state of New York.
- 1551. Effect of article.

**§ 1501. Who may maintain an action.** 1. Where a person claims an estate or interest in real property; or where he claims such estate or interest as executor or administrator of a deceased person; or where a municipal corporation has purchased an estate or interest in real property at a sale conducted by it for unpaid taxes against the property and the time within which redemption from such sale may be made has expired and such municipal corporation claims it; such person or municipal corporation, as the case may be, may maintain an action against any other person, known or unknown, including one under disability as hereinafter specified, to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant might make; provided, however, that where the estate or interest claimed by the plaintiff is for a term of years, the action may not be maintained unless the balance remaining of such term of years is not less than five.

2. Such action may be maintained, even though the defendant's claim appears to be invalid on its face, or the court may have to determine the death of a person, or any statutory limitation of time, or any other question of fact or law upon which an adjudication of the adverse claims of the parties may depend.

3. An action against a woman who claims a right of dower in the whole or a part of the property cannot be commenced until the expiration of

four months after the death of defendant's husband.

4. Where the period allowed by the applicable statute of limitation for the commencement of an action to foreclose a mortgage, or to enforce a vendor's lien, has expired, any person having an estate or interest in the real property subject to such encumbrance may maintain an action against any other person or persons, known or unknown, including one under disability as hereinafter specified, to secure the cancellation and discharge of record of such encumbrance, and to adjudge the estate or interest of the plaintiff in such real property to be free therefrom; provided, however, that no such action shall be maintainable in any case where the mortgagee, holder of the vendor's lien, or the successor of either of them shall be in possession of the affected real property at the time of the commencement of the action. In any action brought under this section it shall be immaterial whether the debt upon which the mortgage or lien was based has, or has not, been paid; and also whether the mortgage in question was, or was not, given to secure a part of the purchase price.

5. The interest had by any mortgagee or contract vendee of real property or by any successor in interest of either of them, is an "interest in real property" as that phrase is used in this article of the real property actions and proceedings law.

6. Where a person, as defined in subdivision seven of section 10.00 of the penal law, has been convicted of a criminal offense in connection with a deed theft or fraudulent transaction involving real property, the conviction creates a rebuttable presumption that such deed transfer was fraudulent. This section also applies where a grantee of a fraudulent deed is an entity that is beneficially owned by such convicted person. A defendant may in such action produce proof to establish by a preponderance of the evidence that such deed was not procured through fraud.

**§ 1503. Action to determine claims where foreclosure of mortgage was void or voidable.** When real property has been sold pursuant to a

judgment in an action to foreclose a mortgage under article 13 of this chapter or pursuant to article 14 of this chapter, or has been conveyed to the mortgagee or the designee of such mortgagee by deed in lieu of foreclosure, and it appears from the public records or from the allegations of the complaint that such judgment, sale or conveyance was or may have been, for any reason, void or voidable as against any person, including an owner of the real property mortgaged, the purchaser or such mortgagee or designee, or the successor of any such person, in possession of such real property, may maintain an action as provided in this article to determine the right of any person to set aside such judgment, sale or conveyance or to enforce an equity of redemption or to recover possession of the property, or the right of any junior mortgagee to foreclose a mortgage. Such action may be maintained even though an action against the defendant to foreclose the mortgage under which the judgment, sale or conveyance was made, or to extinguish a right of redemption, would be barred by the statutes of limitation.

**§ 1511. Additional parties.** 1. In an action brought under this article, the person in possession shall be made a party to the action, and when such person claims the right of possession, or an interest in the real property, under another, such other person shall also be made a party.

2. Where it appears to the court that a person not a party to the action may have an estate or interest in the real property which may in any manner be affected by the judgment, the court, upon application of such person, or of any party to the action, or on its own motion, may direct that such person be made a party.

**§ 1513. Guardians ad litem.** If it shall appear by the complaint or is otherwise made to appear to the court at any time before a final judgment, that a defendant is or might be an infant, or incompetent to manage himself or his affairs, or that a future interest in the affected real property has been so limited that as yet there are neither certain nor presumptive owners thereof in being or ascertained, such court shall

appoint a guardian ad litem who shall represent and protect such infant or incompetent, or the possible interests of the person or persons who eventually may become entitled to such real property or to an interest therein under such limitation, and in case of the death or failure or inability of such guardian to act, a successor, who shall appear for such infant or incompetent or for such possible interests until the termination of such action.

**§ 1515. Complaint.** 1. The complaint must state that the action is brought pursuant to this article and must set forth facts showing:

a. The plaintiff's estate or interest in the real property, the particular nature of such estate or interest, and the source from or means by which the plaintiff's estate or interest immediately accrued to him; and if his estate or interest therein is for a term of years, that the balance remaining of such term of years is not less than five.

b. That the defendant claims, or that it appears from the public records or from the allegations of the complaint, that the defendant might claim an estate or interest in the real property, adverse to that of the plaintiff, and the particular nature of such estate or interest. Where the people of the state of New York are made a party defendant, as provided in this article, the summons and complaint must be served upon the attorney-general who must appear in behalf of the people, and the complaint shall set forth detailed facts showing the particular nature of the estate or interest and the reason for making the people a party defendant. Upon failure to state such facts, the complaint shall be dismissed as to the people of the state of New York.

c. Whether any defendant is known or unknown, and whether any defendant is or might be an infant, have a developmental disability or mental illness, or abuse alcohol.

d. Whether the judgment will or might affect a person or persons not in being or ascertained at the commencement of the action, who by any contingency contained in a devise or grant or otherwise, could afterward

become entitled to a beneficial estate or interest in the property involved; and whether every person in being who would have been entitled to such estate or interest if such event had happened immediately before the commencement of the action is named as a party thereto.

2. The complaint must describe the property claimed with common certainty, by setting forth the name of the township or tract and the number of the lot, if there is any, or in some other appropriate manner, so that from the description possession of the property claimed may be delivered where the plaintiff is entitled thereto, and may contain an allegation that no personal claim is made against any defendant other than a defendant who shall assert a claim adverse to the claim of the plaintiff set forth in the complaint. The demand for judgment may be to the effect that the defendant and every person claiming under him be barred from all claim to an estate or interest in the property described in the complaint, or that possession be awarded the plaintiff, or it may combine two or more of said demands with other demand for appropriate relief.

3. In an action brought as specified in subdivision 3 of section 1501, if the complaint admits the defendant's right of dower in the property described therein, or in any part thereof, it must demand judgment that her dower be admeasured.

**§ 1517. Answer.** The defendant may, in his answer, deny any material allegation of the complaint controverted by him, or any knowledge or information thereof sufficient to form a belief, or may set forth facts constituting a defense; and thereupon he may demand judgment dismissing the complaint. He may also set forth facts as a counterclaim for the same cause of action; or the defendant may set forth facts showing that he has an estate or interest in said property; and thereupon he may demand any judgment to which he would be entitled in an action brought by him to recover that estate or to enforce in any manner the interest which he asserts in such property; or he may combine any two or more of said demands.

**§ 1519. Proceedings.** 1. In an action maintained under this article, the proceedings shall be governed by the provisions regulating civil actions, except as otherwise provided in this article.

2. When service of the summons on any defendant is made by publication, the order for such service shall direct that any papers required by such order to be mailed to such defendant shall be sent by registered mail, and when such mailing is required shall also direct that an affidavit, by or on behalf of the plaintiff, be filed stating that such papers were mailed as required by such order.

3. Whenever a claim of right to immediate possession is in issue, the person in possession shall be presumed to have the right to such possession, but such presumption may be rebutted.

4. Where any party claims the real property in question, or any part thereof, by virtue of an estate in reversion or in remainder, whether vested or contingent, and the verdict, report, or decision finds that he has such an estate, it must specify the time when, or the contingency upon which, he will be entitled to possession.

5. Where the complaint demands, as provided in subdivision 3 of section 1515 of this article, that the defendant's dower be admeasured, and the defendant does not, by her answer, set forth facts showing that she is entitled to a greater right of dower, or another estate or interest in the property, than that admitted by the plaintiff, and demand judgment therefor, as if she were the plaintiff in an action for dower, the court must render an interlocutory judgment, directing her dower to be admeasured, with or without damages for its detention, as in an action for dower. The subsequent proceedings shall be the same, as if the defendant had, as plaintiff, recovered an interlocutory judgment in an action for dower.

**§ 1521. Judgment.** 1. Final judgment in the action shall declare the validity of any claim to any estate or interest established by any party

to the action. The judgment shall also declare that any party whose claim to an estate or interest in the property has been adjudged invalid, and every person claiming under him, by title accruing after the filing of the judgment-roll, or of the notice of the pendency of the action, as prescribed by law, be forever barred from asserting such claim to an estate or interest the invalidity of which is established in the action, and may direct that any instrument purporting to create any such estate or interest be delivered up or cancelled of record or be reformed of record as the facts may require. Judgment may also be given awarding possession of real property to any party together with his damages for the withholding of such property and two or more of such forms of judgment may be awarded in the same action.

2. If one of the parties to the action is the people of the state and the judgment adversely affects the title, interest or claim of the people of the state based upon a tax deed, the judgment shall also provide in effect as follows:

a. That the people of the state of New York shall have a lien upon such real property or part thereof described in such tax deed, prior and superior to all other liens, (1) for the amount of the unpaid taxes not adjudged illegal in such action for which such real property was sold or liable to be sold in the first instance and for which such tax deed was issued, together with fees, charges and interest; (2) for the amount of the unpaid taxes not adjudged illegal in such action for which such real property was subsequently sold or liable to be sold, together with fees, charges and interest; (3) for the amount of all taxes, fees and charges admitted or paid by the people upon such real property to the date of the entry of such judgment, together with interest thereon from the date of such admission or payment. In the determination of the amount of such lien, establishment of payments of taxes on said land by the adjudged or admitted owner of the property during any of the same years in which payments were also made by the people of the state of New York shall reduce the lien of the people by the larger of the two tax payments for each of the years affected by duplicate payments, and in the event that wholly identical areas are not affected by the duplicate payments the court shall have power to apportion and adjust the amount of the lien as

equity may require;

b. That the people of the state of New York may foreclose such lien as a mortgage on real property is foreclosed, provided such lien remains unpaid after the expiration of one year from the entry of such judgment.

The remedy provided by this subdivision for recovery of tax payments shall be in addition to any other remedy now or hereafter available in law or in equity.

3. If a judgment described in subdivision 1 or subdivision 2 is taken upon the defendant's default in appearing or pleading, it shall not award costs to either party, unless it be taken upon a default in answering after the decision of a motion addressed to the complaint. A defendant against whom no personal claim is made in the complaint shall not be entitled to costs unless awarded by the court when such defendant asserts in his answer and establishes a claim in said lands adverse to the claim of the plaintiff in said action.

4. Where a verdict, report, or decision is rendered, as prescribed by subdivision 4 of section 1519, final judgment to that effect must be rendered accordingly, without damages. In such a case, an execution for the delivery of the possession of the property may be issued upon the judgment; but only by the special order of the court, made upon an application by the defendant, or a person claiming under him, and upon satisfactory proof that the time has arrived when, or the contingency has happened upon which, the applicant is entitled to possession by the terms of the judgment.

5. Where the judgment directs that an instrument be delivered up, cancelled or reformed of record, or that real property be conveyed, if the direction is disobeyed, the court, by order, besides punishing the disobedience as a contempt, may require the sheriff to take, and deposit or deliver, the instrument or to convey the real property, or to perform the required acts in conformity with the direction of the court.

**§ 1522. Accounting in certain cases.** In an action brought under section 1503 the court shall direct such accounting as justice requires in the circumstances for rents and profits of the property or the value of the use and occupation during the period subsequent to the original sale or conveyance in lieu of foreclosure during which possession of the property was held by the plaintiff or by any other party to the action.

**§ 1523. Judgment of foreclosure in certain cases.** 1. In an action under section 1503 if it shall appear to the court that there was a defect in the original foreclosure proceedings and such defect was not occasioned by the fraud or wilful neglect of the plaintiff, the judgment may foreclose or reforeclose the mortgage pursuant to article 13 of this chapter, notwithstanding that an action to foreclose the mortgage would otherwise be barred; provided, however, that no recovery shall be granted for any residue of the debt, remaining unsatisfied, if an action to foreclose the mortgage would otherwise be barred.

2. If it shall appear to the court in any such action that the defect in the foreclosure proceedings was not due to fraud or wilful neglect of the plaintiff and that the defendant or the person under whom he claims was not actually prejudiced thereby, the judgment may fix a time for redemption of the property and provide that a failure to redeem within such time shall thereafter preclude the defendant from redeeming the property or claiming any right, title or interest therein.

3. If a redemption of the property is ordered, the court must direct that the value of any improvement to the property made subsequent to the original sale or conveyance in lieu of foreclosure shall be added in computing the amount necessary to redeem the premises, in the same manner as if the value of such improvements was a portion of the mortgage debt.

4. If a new sale of the premises is ordered, the court may include in the judgment a provision awarding to the plaintiff the value of any improvements to the property made subsequent to the original sale or conveyance in lieu of foreclosure, in the same manner as if the value of

such improvements was a portion of the mortgage debt.

5. The relief provided for in subdivision two of this section shall not be granted unless

a. the mortgage was executed after September 1, 1951, or

b. the defendant whose right title or interest will be extinguished by failure to redeem the property within the time fixed by the judgment held such right to redeem only by virtue of a subordinate mortgage or other lien, and an action to foreclose such right of redemption would not be barred at the time this act shall take effect.

The relief provided for in subdivision four of this section shall not be granted unless the improvements were made after September 1, 1951, except to the extent that a recovery, allowance or credit for or on account of the value of any improvements, including improvements made prior to the effective date of this act, might be granted, in any other action or proceeding, to the person maintaining the action provided for in section 1503.

**§ 1531. Effect of judgment.** 1. A final judgment in favor of either party, in an action brought as prescribed in this article, is conclusive, as to the title established in the action, against the other party, known or unknown, including an infant or a person with a mental disability, and also against every person claiming from, through or under that party, by title accruing after the filing of the judgment roll, or of the notice of the pendency of the action, as prescribed by law; also against each person not in being or ascertained at the commencement of the action, who by any contingency contained in a devise or grant or otherwise, could afterward become entitled to a beneficial estate or interest in the property involved, provided that every person in being who would have been entitled to such estate or interest if such event had happened immediately before the commencement of the action is a party thereto, or that a guardian ad litem is appointed, as prescribed by section 1513 of this article.

2. A new trial of said action after judgment shall not be granted as a matter of right, but the court may, in its discretion in the interest of justice, grant a new trial upon an application made by any party within one year after said judgment. Upon any new trial of an action brought as prescribed in this article, the record of the evidence given upon the previous trial may be again offered to the court by either party, and may be received in evidence, in case the same evidence cannot be again procured. The courts may make such rules and orders as to preserving the record of the evidence given in such actions and perpetuating the proofs produced therein, either with or without the awarding of any other relief to the party whose proofs are so perpetuated, as shall be necessary or proper, and may embrace such directions in the judgment.

**§ 1541. Article applies to corporations and to the people of the state of New York.** An action may be maintained, as prescribed in this article, by or against a corporation, or by or against an unincorporated association, as if it were a natural person, or such an action may be maintained by or against the receiver or other successor of any such corporation or association, or by or against the people of the state of New York, and the use of the masculine gender or of the term person in this article includes the people of the state of New York.

**§ 1551. Effect of article.** Nothing contained in this article shall be construed to limit any other remedy in law or equity.

## ARTICLE 16

### **JUDICIAL AUTHORIZATION OF SALE, LEASE, MORTGAGE, ACQUISITION, EXCHANGE OR VOLUNTARY PARTITION**

Section 1601. Application by trustee for court authorization to mortgage, to lease, to sell, to acquire or to exchange real property or for confirmation of a lease of real property.

1602. Application by owner of present or future interest for

court authorization to mortgage, to lease or to sell real property.

- 1603. Court to which application is to be made.
- 1604. When application shall be granted.
- 1605. Contents of petition.
- 1606. Notice of application.
- 1607. Service of notice upon presumptive members of class.
- 1608. Guardians ad litem.
- 1609. Final order upon the application.
- 1610. Final order authorizing acquisition or exchange of land or confirming lease; execution and binding force.
- 1611. Final order; appointment of referee.
- 1612. Report of agreement for confirmation.
- 1613. Order of confirmation; contents and subsequent procedures.
- 1614. Binding force of mortgage, sale or lease duly made with judicial approval.
- 1615. Date of creation of affected interests.
- 1616. Application to compensation arising out of appropriation of real property by the state.
- 1641. Executors', fiduciaries' and trustees' conveyances to certain corporations in exchange for certain stocks and bonds authorized and regulated.
- 1651. Proceedings for voluntary partition of infant's, incompetent's or conservatee's real property.

**§ 1601. Application by trustee for court authorization to mortgage, to lease, to sell, to acquire or to exchange real property or for confirmation of a lease of real property.** 1. When the assets of a trust include an interest in real property, the trustee may apply to the court designated in section 1603, and in the case of a testamentary trust, to the court having jurisdiction thereof, for an order authorizing such trustee to mortgage, to lease or to sell such real property or a part thereof; or to acquire land adjacent to such real property or to exchange a portion of such real property for lands adjacent to such real property when either such acquisition or exchange would tend to improve the boundary lines of such real property; or to confirm a lease for a

term longer than ten years made by a trustee of such real property without obtaining prior authorization by a court.

2. An application for an order authorizing a trustee to acquire land adjacent to real property in which the trustee has an interest, or as to which he has a power of sale, may also be made when such real property and the adjacent land to be acquired have the same building or physically connected buildings thereon.

**§ 1602. Application by owner of present or future interest for court authorization to mortgage, to lease or to sell real property.** When the ownership of real property is divided into one or more possessory interests and one or more future interests, the owner of any interest in such real property or in the proceeds to be derived therefrom on a directed sale thereof, except the owner of a possessory estate in fee simple absolute therein, may apply to the court designated in section 1603 for an order directing that said real property, or a part thereof, be mortgaged, leased or sold. If any such owner is an infant or otherwise under disability, the application can be made on behalf of such person, by the person duly authorized by law to care for his property interests.

**§ 1603. Court to which application is to be made.** An application made pursuant to the provisions of either section 1601 or section 1602 shall be made to a term of the supreme court held within the judicial district in which the real property, or a part thereof, is situated.

**§ 1604. When application shall be granted.** The court to which an application has been duly made pursuant to the provisions of either section 1601 or section 1602 is authorized to grant such application upon such terms as to it shall seem proper, if satisfied from the proceedings theretofore duly had, that the act to be authorized is expedient; or that the lease sought to be confirmed is one, the authorization of which would be expedient. The granting of such an

application is not necessarily precluded by the fact that it is opposed by one or more persons having interests in the affected real property; or by the fact that the granting thereof will be in contravention of a provision contained in the instrument creating some or all of the interests in the affected real property.

**§ 1605. Contents of petition.** An application made pursuant to the provisions of either section 1601 or section 1602 shall be by duly verified petition which must contain the following:

1. A description of the affected real property with reasonable certainty;
2. A specification of the rights, shares and interest in such real property, and of the names of the owners thereof, as far as the same are known to the petitioner, together with the facts determining such interests and each of them;
3. The special facts alleged to make the granting of the application proper in accordance with the provisions of section 1604;
4. Any other allegation required by statute, or by rule of court.

**§ 1606. Notice of application.** 1. The notice of an application made pursuant to the provisions of either section 1601 or section 1602 shall be given to each person in being who has an interest in the affected real property, or in the proceeds to be derived therefrom upon a directed sale thereof; or who is a beneficiary of a trust created relative thereto; or who has a power to appoint or to dispose of an interest therein, or in its proceeds; or who is an appointee under such a power theretofore exercised.

2. Such notice shall be given in the manner following:

- a. If such person is a competent adult within this state, by service

upon him personally of a written notice stating the time, place and purpose of the application, at least eight days prior to the presentation thereof;

b. In all other cases in such manner as the court which the application is to be made shall prescribe.

**§ 1607. Service of notice upon presumptive members of class.** When an interest in the affected real property has been limited to a class, service of the notice of the application upon those persons in being who are the presumptive members of such class at the moment immediately before the application is made shall be sufficient service as to such interest. If no such presumptive members of the class exist, the provisions of section 1608 apply.

**§ 1608. Guardians ad litem.** 1. On the return day of the motion made pursuant to the provisions of either section 1601 or section 1602 the court shall appoint a guardian ad litem for any minor or other person under disability who is a party to the proceeding and is not represented by a duly acting guardian, committee or conservator.

2. On the return day of the motion made pursuant to the provisions of either section 1601 or section 1602, if it appears that a future interest in the affected real property has been so limited that as yet there are neither certain nor presumptive owners thereof in being or ascertained, the court shall appoint a guardian ad litem to represent and to protect the possible interests of the person or persons who eventually may become entitled to such real property, or to an interest therein, under such limitation. The granting of an application is not necessarily precluded by the fact that as yet no person other than the applicant is in being, who can acquire a beneficial or possessory interest in the affected real property.

**§ 1609. Final order upon the application.** After taking proof of the

facts, either before the court or a referee, and hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted in whole or in part, the final order shall specify the real property to be mortgaged, leased, sold, acquired, exchanged or as to which a previously made lease is to be confirmed, and the terms and conditions upon which the authorized transaction is to be consummated or approved.

**§ 1610. Final order authorizing acquisition or exchange of land or confirming lease; execution and binding force.** When the final order authorizes the acquisition or exchange of land, the trustee, upon whose application the order was made, shall execute the provisions of such order. Any acquisition or exchange of land so made or any previously made lease which is confirmed, shall have the same binding force upon the interests of the beneficiaries of such trust and upon the interests of all other persons in such real property as is stated in section 1614.

**§ 1611. Final order; appointment of referee.** When the final order authorizes a mortgage, lease or sale upon the application of a person who is not trustee, the court in such final order must appoint a referee to execute the authorized transaction. When the application has been made by a trustee, such trustee shall execute the authorized transaction.

**§ 1612. Report of agreement for confirmation.** Before a mortgage, lease or sale is made pursuant to a final order described in section 1609, the trustee or referee must enter into an agreement therefor, subject to the approval of the court, and must report this agreement to the court under oath.

**§ 1613. Order of confirmation; contents and subsequent procedures. 1.** When the agreement reported to the court pursuant to the provisions of section 1612 appears to the court to conform in all particulars to the

final order authorizing the transaction, an order shall be made approving and confirming the agreement and directing the trustee or referee to execute and to deliver the mortgage, lease or deed of such real property which is required thereby. No order of confirmation shall be withheld on the ground that the market value of such real property has changed between the execution of such agreement and the hearing of the application for confirmation thereof.

2. The order of confirmation, in the discretion of the court, shall direct the payment to each participant in the proceeding of the reasonable disbursements made or incurred by him in the course of the proceeding, and shall make such reasonable allowances, as to the court seem proper, to persons who have served in the proceeding as referee, guardian ad litem, or counsel; and shall direct the mode of payment of all these allowances.

3. The order of confirmation shall also include such provisions as justice may require for the application, safeguarding, management and distribution of the fund to be derived from the ordered transaction. The statutory provisions applicable to the safeguarding, management or distribution of the fund produced by a sale in an action for partition shall apply to the proceeds derived from a sale authorized by this section, so far as this is practical.

**§ 1614. Binding force of mortgage, sale or lease duly made with judicial approval.** A mortgage, lease or conveyance duly executed and delivered in accordance with an order of confirmation, made pursuant to the provisions of section 1613, binds the interests of the applicant therefor and of all other persons who either are parties to such proceeding or are represented therein or are not entitled to notice thereof under the provisions of section 1606.

**§ 1615. Date of creation of affected interests.** The procedure authorized by sections 1601 through 1614 shall apply equally to interests created on or after September 1, 1937; to interests created

before that date but subsequent to the enactment of some statute, replaced by former sections one hundred seven through one hundred seven-m of the real property law, authorizing the like sale, mortgage, lease or other binding of such interests by a judicially authorized conveyance; and to all other interests, whenever created.

**§ 1616. Application to compensation arising out of appropriation of real property by the state.** 1. The procedure authorized by sections 1601 through 1614 as to a sale of real property, covering all created interests as mentioned therein and qualified in section 1615, shall, so far as practicable, apply also to an application concerning payment of compensation arising out of any appropriation by the state of real property or of any interest therein, for public purpose, in the same manner that such procedure would apply, but for such appropriation, to an application thereunder for an order directing that the real property in question, or a part thereof, be sold.

2. For the purpose, however, of the relief sought under the provisions of this section, all references in this and in any of the above enumerated sections to a trustee or a trust shall be construed as relating only to a trust estate created by an instrument other than a will and under which the trustee has no valid power of sale over the subject property. Where, however, a valid power of sale is given the trustee under such instrument, he is hereby authorized to execute the transaction in the same manner a testamentary trustee may do under section two hundred fifty-c of the surrogate's court act, and which execution, including all releases given thereunder by such nontestamentary trustee, shall in similar scope be binding and conclusive on all persons and interests as covered thereby in said last mentioned section.

3. In the case of any such appropriation where relief is sought under this section, the relevant proof to be taken and the hearing and examination to be had before final order under the provisions of section 1609 shall be as to whether the compensation offered by the state, or any agency or department thereof, by way of a provisionally executed

agreement of adjustment or otherwise, for the total value of such appropriated property or interest and of all legal damages caused by such appropriation, represents the fair market value of such property or interest and just compensation therefor and for all legal damages caused by such appropriation, including the damages, if any, sustained by the entry upon, use or occupation of, or injury to, said property by the state prior to completion of appropriation. If the court is satisfied as to the adequacy of said offer, it shall, in the final order in the proceeding, authorize the applicant if acting as trustee, and, if not, then a referee to be appointed thereunder to execute the authorized transaction, to enter into or adopt any such agreement of adjustment with, and in form submitted by, the state or any agency or department thereof for the total compensation so offered; and on report under oath to the court by such trustee or referee of any such agreement of adjustment so undertaken by either of them, if it appears to the court to conform in all particulars to the final order authorizing the transaction, an order shall be made approving and confirming such agreement of adjustment and directing such trustee or referee, upon consummation thereof, in behalf of all persons in interest as to the property affected by said appropriation, or as to the proceeds to be derived therefrom in said transaction, who shall have become bound by said proceeding under the provisions of section 1614 to execute and deliver to the state and/or any agency or department thereof, a release of all claims on the part of such persons in interest with respect to the total compensation offered as aforementioned, together with any and all other documents and instruments which may be required by the state or any agency or department thereof to give full effect to such release, and which release and attendant documents and instruments shall, upon such execution and delivery thereof, become and remain binding and conclusive on all of the aforesaid persons in interest.

4. Said order of confirmation shall, in the discretion of the court, provide for payment out of said total compensation of reasonable disbursements and of such allowances as to the court may seem proper, in the manner and respectively to the participants and persons mentioned in section 1613, and shall also authorize said trustee or referee to receive the net proceeds therefrom after such payment and to apply,

safeguard, manage and distribute said remaining fund as directed in said order of confirmation and in accordance with the relevant provisions of section 1613.

**§ 1641. Executors', fiduciaries' and trustees' conveyances to certain corporations in exchange for certain stocks and bonds authorized and regulated.** 1. Whenever an executor, trustee, guardian of an infant, committee of a person incompetent to manage himself or his affairs, conservator of a person unable to care for his affairs, or other person or persons acting in a fiduciary capacity, or a life tenant, is authorized to sell any real property or any interest therein pursuant to a power contained in a deed or will, or pursuant to a judgment or order of the supreme court in an action or special proceeding pursuant to any provision of law, or pursuant to a statutory power to sell or exchange any real property, or any interest therein, or whenever a trustee of an express trust is seized of a legal title to an undivided share or interest in any real property, and the said property has been or is about to be conveyed to a corporation formed or to be formed for such purpose, and two-thirds in number and amount of interest of the adult beneficiaries and also two-thirds in number and amount of interest of the adult persons having a vested interest or estate in possession, reversion or remainder in such real property have agreed, or desire to agree that their interests and estates shall be exchanged for the stock and bonds or either the stock or bonds of such corporation, then the said executor, trustee, guardian, committee, conservator or other person or persons acting in a fiduciary capacity, or the life tenant or tenants, may, with the approval of the supreme court, convey such real property or interest to such corporation in exchange for the stock or bonds of such corporation, or a proportionate amount thereof, provided, however, that such corporation shall be prohibited by its certificate of incorporation from investing in any stocks, bonds or other securities other than real property which are not under the laws of this state a proper subject for the investment of trust funds, and provided further that if the interest of a trust estate in any real property to be so exchanged is an undivided part or share therein, such undivided part or share of the trust estate may be so exchanged if it shall appear to the

court to be for the best interest of such estate.

2. The supreme court shall not grant an order permitting such an exchange and conveyance unless it appears to the satisfaction of such court that a written notice stating the time and place of the application for such leave has been served upon every beneficiary and also upon every person in being having a vested interest or estate in possession, reversion or remainder, in such real property at least eight days before the making thereof, if such beneficiary or other person is an adult within the state; or if a minor, incompetent, conservatee, or absentee, until proof of the service on such beneficiary or other person of such notice as the court or a justice thereof prescribes.

3. The court shall appoint a guardian for any minor and for any person unable to manage himself or his affairs who shall not be represented by a committee or conservator duly appointed.

4. The application must be by petition duly verified, must be made by the executor, trustee, guardian of an infant, committee, conservator, or such other person or persons acting in a fiduciary capacity, or a life tenant who has been so authorized to sell or exchange, or by the trustee of an express trust seized of a legal title to an undivided share or interest in real property; and shall set forth the reasons for such exchange and conveyance and the nature thereof and the peculiar facts which make it proper that the application shall be granted, but when the interest of a trust estate in any real property is an undivided part or share thereof, it shall be sufficient to show by such petition that the exchange will be for the best interests of such estate. After taking proof of the facts either before the court or a referee, and hearing the parties and fully examining into the matter, the court must direct judgment upon the application. In case the application is granted, the judgment must authorize the said executor, trustee, guardian of an infant, committee, conservator, or other person or persons acting in a fiduciary capacity or life tenant, to make such exchange and conveyance upon such terms and conditions as the court may therein prescribe.

5. Whenever it shall appear from the papers submitted upon the

application that there are conflicting claims in respect to the ownership of or the right to sell and convey such real property or any interest therein, the court may, within the demand for relief as evidenced by the notice of application, and if all adult beneficiaries, and also all adult persons having a vested interest or estate in possession, reversion or remainder in such real property under such conflicting claims consent thereto, direct that the stock and bonds or either the stock or bonds to be given by the corporation in exchange for such real property or interest therein shall be issued to and held by a trust company authorized to hold moneys paid into court upon such terms and conditions and with such powers as the court shall prescribe until the further order of the court.

**§ 1651. Proceedings for voluntary partition of infant's, incompetent's or conservatee's real property.** 1. Where an infant, person with a mental disability, or conservatee holds real property, in joint tenancy or in common, the general guardian of the infant, or the committee of the person with a mental disability, or conservator of the conservatee, may apply to the supreme court or to the county court of the county wherein the real property is situated, for authority to agree to a partition of the real property. Where such application affects the interests of an incompetent person or a conservatee who has been committed to a state institution, and is an inmate thereof, notice of such application must be given to the superintendent, acting superintendent or state officer having special jurisdiction over the institution where the incompetent person or conservatee is confined. Irrespective of the location of any real property held by an infant in joint tenancy or in common, his general guardian may make such application to the surrogate's court which appointed such guardian. A certified copy of the decree entered in the surrogate's court on such application must be recorded in the office of the clerk of each county in which is situated property affected by such decree.

2. Such an application must be by a petition, which must describe the real property proposed to be partitioned; must state the rights and interests of the several owners thereof; must specify the particular

partition proposed to be made; and must be verified by affidavit. The court may order notice of the application to be given to such persons as it thinks proper.

3. If, after due inquiry into the merits of the application, by a reference or otherwise, the court is of the opinion that the interests of the infant, or person with a mental disability, or conservatee, will be promoted by the partition proposed, it may make an order authorizing the petitioner to agree to the partition proposed, and in the name of the infant, person with a mental disability, or conservatee, to execute releases of his right and interest in and to that part of the property which falls to the shares of the other joint-tenants or tenants in common. The court may, in its discretion, for the furtherance of the interests of said infant, person with a mental disability, or conservatee, direct partition to be so made as to set off to him or them his or their share in common with any of the other owners, provided the consent in writing thereto of such owners shall be first obtained.

4. Releases so executed have the same validity and effect, as if they were executed by the person in whose behalf they are executed, and as if the infant was of full age, person with a mental disability, was of sound mind, and competent to manage his affairs, or the conservatee was competent to manage his affairs.

## ARTICLE 17

### **SPECIAL PROCEEDING FOR DISPOSITION OF REAL PROPERTY OF INFANT, INCOMPETENT OR CONSERVATEE**

Section 1701. Definitions.

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1712. By whom maintainable.

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- 1761. Distribution of proceeds of disposition.
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- 1764. Distribution of proceeds where there is an interest of an infant not in being.
- 1765. Distribution of proceeds to guardian of infant, committee of incompetent or conservator of conservatee.
- 1766. Distribution of proceeds on death of infant, incompetent or conservatee.

**§ 1701. Definitions.** As used in this article:

1. The term "incompetent person" means a person incompetent to manage his affairs of whose property a committee has been appointed pursuant to section 78.07 of the mental hygiene law.

2. The term "conservatee" means a person who has suffered substantial impairment of his ability to care for his property or has become unable to provide for himself or others dependent upon him for support for whom a conservator of his property has been appointed, pursuant to section 77.01 of the mental hygiene law.

3. The term "interest in real property" includes any term, estate or other interest in real property, vested or contingent, of an infant in being, an incompetent person, or a conservatee including an inchoate right of dower and a possibility of reverter, and also the contingent interest of an infant not in being.

4. The term "possibility of reverter" means the possibility that upon breach of a condition or termination of an estate by limitation the right of re-entry will vest in, or real property will revert to, an infant, incompetent person or conservatee or his heirs solely or in common with others.

5. The term "dispose of" means to sell, convey, exchange, mortgage, release or lease.

6. The term "guardian, committee or conservator" refers to the general or testamentary guardian or guardian appointed by deed of the property of the infant, or the committee of the property of the incompetent person or patient appointed pursuant to the provisions of section 78.03 or 78.07 of the mental hygiene law, the conservator of the property of a conservatee appointed pursuant to the provisions of article seventy-seven of the mental hygiene law, or to the guardian of the infant, incompetent person or conservatee appointed as prescribed by this article.

**§ 1711. Grounds.** In any of the following cases, a special proceeding may be maintained to dispose of the real property or an interest in real property of an infant, incompetent person or conservatee.

1. Where his personal property, together with the income of the real property are insufficient for the payment of his debts or for the maintenance and necessary education of himself and his family.

2. Where his interests require or will be substantially promoted by disposition, because the real property or interest in real property is exposed to waste or dilapidation, or is wholly or substantially unproductive, or because funds are needed to preserve or to improve the same, or because of other peculiar reasons or circumstances.

3. Where he is seized or possessed of the real property, or interest in real property, by way of mortgage, or only in trust for another.

4. Where a valid contract for the sale or conveyance of the real property or interest in real property has been made, but a conveyance thereof cannot be made because the person in whom the title is vested is an infant, an incompetent, or a conservatee.

5. Where his interest will be substantially promoted by releasing or joining with others in releasing for a valuable consideration the possibility of reverter.

6. Where his interest will be substantially promoted by the exchange of a portion of his real property for lands adjacent to such real property if such exchange would tend to improve the boundary line of such real property.

**§ 1712. By whom maintainable.** The special proceeding may be maintained by the general or testamentary guardian of the property of the infant, by the committee of the property of the incompetent person or the conservator of the property of the conservatee, or by any relative or other person in behalf of the infant, incompetent person, or conservatee or by an infant of the age of fourteen years or over in his own behalf.

The special proceeding may be maintained, in a case specified in subdivisions 3 and 4 of section 1711, by a person entitled to the conveyance; and, also, in a case specified in subdivision 4 of that section, by the executor or administrator of the person who made the contract, or of a person who died seized or possessed of the real property or interest in real property, or by an heir or devisee of either of those persons, to whom the real property or interest in real property has descended or was devised. Where the proceeding is in behalf of an infant of the age of fourteen years or over the infant shall join therein.

**§ 1721. Notice of petition.** Notice of petition shall be given, in the discretion of the court, to such persons and in such manner as the court

may direct. If the proceeding affects the interest of an incompetent person or of a conservatee, notice shall be given to either the committee of property or the conservator of property, and if the incompetent person or conservatee has been committed to a state institution and is an inmate thereof, also to the attorney-general and to the director having jurisdiction over the institution where the incompetent or conservatee is confined. If the proceeding affects the interest of an infant who has a general or testamentary guardian of the property, notice shall be given to such guardian.

**§ 1722. Contents of petition.** The petition shall state:

1. The name, age and residence of the infant, incompetent person or conservatee.
2. The grounds of the proceeding.
3. A description of the real property or interest to be disposed of and of the incumbrance, if any, thereon.
4. The name and residence of the guardian of the infant, committee of the incompetent person or conservator of the conservatee and, where a guardian ad litem is to be appointed, the name and residence of the person proposed as the guardian ad litem, the relationship he bears to the infant, incompetent person, or conservatee and the security proposed to be given.
5. In a proceeding pursuant to subdivision four of section seventeen hundred eleven of this article, that the contract was made after the advertisement of the real property for sale for a period of four successive weeks by a notice of sale posted conspicuously on the premises, and by publication of a notice of sale in the manner prescribed by section two hundred thirty-one of this chapter for publication of a notice of sale of real property made in pursuance of a judgment, provided, however, that the court may, upon cause shown, shorten such time or dispense with such advertisement.

**§ 1731. Infant, incompetent or conservatee a ward of court.** From the time of the filing of a petition, by or in behalf of an infant, incompetent person or conservatee, praying for an order to dispose of his real property, or interest in real property, the infant, incompetent person or conservatee is considered a ward of the court with respect to that real property or interest and the income and proceeds thereof. The court shall have power to make such orders as may be necessary to further justice and to protect and conserve the rights and interests of the infant, incompetent person or conservatee.

**§ 1741. Reference.** 1. The court may appoint a referee to receive evidence and report his opinion thereon.

2. The referee's report shall include conclusions as to: what, if any, form, terms and conditions of disposition of the real property or interest would be beneficial to the infant, incompetent person or conservatee, and the reasons therefor; whether the infant, incompetent person or conservatee is in absolute need of some and what portion of the proceeds of such disposition, for a purpose specified in the petition, in addition to what he might earn by his own exertions; the value of the property or interest to be disposed of, specifically, as to each separate lot or parcel, with the incumbrances, if any, thereon, and whether there is any person entitled to dower or a life estate, or estate for years.

**§ 1742. Appraisal.** When the court deems it necessary for the protection of the interests of the infant, incompetent person or conservatee, it may appoint a competent, disinterested person as appraiser, who after taking an oath fairly to appraise the real property, shall go upon the premises, and make an appraisal of the property and report the result thereof to the court. The fee of the appraiser shall be fixed by the court and be included in the costs of the proceedings. A transcript of the proof and the report of the referee

or appraiser, if any, shall be filed with the final order.

**§ 1743. Judgment.** The judgment may direct that the real property, or interest in real property, or a part thereof, be disposed of by the guardian, committee or conservator and contain directions respecting the time, manner and conditions of the disposition.

**§ 1744. Security.** 1. Before the guardian, committee or conservator executes and delivers the deed, mortgage, release or lease pursuant to the judgment or receives any portion of the proceeds arising from the transaction, he shall give security for the faithful performance of his trust, for the paying over and investing of and accounting for all moneys received by the guardian, committee or conservator in the special proceeding and for the observance of the provisions of law and the directions of the court in relation to the trust. Such security shall have the same force and effect as if it had been filed before the guardian, committee or conservator acted on behalf of the infant, incompetent person or conservatee and the application to the court was made in the proceeding.

2. The court may, by order, dispense wholly or in part with the giving of security if the sureties on the undertaking, if any, theretofore filed by the general or testamentary guardian of the property of the infant, the committee of the property of the incompetent person, or conservator of the property of the conservatee as well as such guardian, committee, or conservator consent to its extension to cover the special proceeding, and the court deems such extended undertaking sufficient to protect the interests of the infant, incompetent person or conservatee in such proceeding. The consent shall be in writing and shall be filed with the order dispensing with the giving of security.

**§ 1745. Report and confirmation of agreement and of conveyance.** 1. Before disposition of the property can be made pursuant to the judgment, the guardian, committee or conservator must enter into an agreement

therefor, subject to the approval of the court, and must report the agreement to the court under oath. Such agreement may be made either before or after the commencement of the proceeding, and if made and reported prior to the entry of the judgment, such judgment may include a confirmation thereof.

2. Upon the confirmation of the agreement, either by the judgment or by a subsequent order, the guardian, committee or conservator shall execute and deliver a deed, mortgage, release or lease as directed by such judgment or order.

3. Where the judgment directs the execution of a conveyance in the first instance for the purpose of fulfilling a contract, or because the property is held by way of mortgage, or in trust only, the guardian, committee or conservator executing the conveyance shall report the conveyance to the court under oath.

**§ 1746. When particular estates to be included in disposition.** When the real property, or interest in real property, directed to be sold is subject, absolutely or contingently, to a right of dower or an estate for life, or for years, in the whole or any part thereof, the person having the prior right or estate may manifest in writing his consent, either to receive from the proceeds of the sale a gross sum to be fixed according to the principles of law applicable to annuities, in satisfaction of his right or estate, or to have a proportionate share of the proceeds of the sale invested, and the interest thereof paid to him, from the time of the investment or of the commencement of his right or estate, as justice requires, until the determination of his right or estate. Upon filing the consent with the clerk, the judgment, in the discretion of the court, may direct a sale of the entire property to which the right or estate attaches.

**§ 1747. When reversionary estates to be included in sale.** When the interest of the infant, incompetent person or conservatee, consists of a right of dower or an estate for life, or for years, the judgment may

authorize the guardian, committee or conservator to join, with the person or persons holding the reversionary estate, in a conveyance of the property to which the interest attaches, so as to release the right of dower, or fully convey the particular estate, on receiving from the proceeds of the sale a gross sum in satisfaction of that interest, or a proportionate part of the proceeds, to be invested until the determination of the particular estate.

**§ 1751. Sale contrary to will or conveyance prohibited.** Real property, or an interest in real property, shall not be disposed of, as prescribed in this article, contrary to the provisions of a will by which it was devised, or of a conveyance or other instrument by which it was transferred, to the infant, incompetent person or conservatee.

**§ 1753. Effect of disposition.** A deed, mortgage, release or lease made in good faith, as prescribed in this article, upon an application in behalf of an infant, incompetent person or conservatee, has the same validity and effect as if executed by the person in whose behalf it was executed, and as if the infant were of full age or the incompetent person or conservatee were of sound mind and competent to manage his affairs. It shall be valid and effectual to vest in any purchaser an interest of an infant not in being at the time of the said sale, and any mortgage so executed shall be a valid lien and charge upon the contingent interest of an infant not in being at the time of the execution and delivery of the same. A release of an inchoate right to dower as authorized by this article shall have the same effect as if the wife had joined with the husband in a deed or conveyance of the property affected thereby and had duly acknowledged the same in the manner required by law to pass the estate of married women. The failure to conduct the proceeding strictly in accordance with the provisions of this article shall not invalidate the disposition if the interests of the infant, incompetent person or conservatee have not been prejudiced.

**§ 1755. Proceeds of sale deemed real property.** A sale of real

property, or of an interest in real property other than a possibility of reverter, of an infant or incompetent person, does not give to the infant or incompetent person any other or greater interest in the proceeds of the sale than he had in the property or interest sold. Those proceeds are deemed property of the same nature as the estate or interest sold until the infant arrives at full age or the incompetency is removed. The proceeds of the release of a possibility of reverter shall be deemed and treated as if they were proceeds of real property of which the infant was seized and possessed. If the incompetent person dies after the sale, having specifically devised the property sold, the provisions of section thirty-six of the decedent estate law shall apply to the devise.

**§ 1761. Distribution of proceeds of disposition.** 1. After the disposition of real property as provided in this article, the court shall direct the distribution of the proceeds.

2. The court shall direct the payment from the proceeds of all debts, in equal proportion, without giving a preference to a debt founded upon a specialty or upon which judgment has been taken.

3. The court shall direct the investment of any portion of the proceeds belonging to the infant, incompetent person or conservatee which is not needed for the payment of debts, or the safe keeping, or the immediate maintenance and education of himself or his family, or for the preservation or improvement of his real property or his interest in real property.

4. The court shall require a report, under oath, of the disposition and investment of the proceeds to be made as soon as practicable, and must compel periodical accounts to be rendered thereafter by each person who is intrusted with the proceeds or any part thereof.

**§ 1762. Distribution of proceeds to owner of particular or reversionary estate.** 1. When real property has been disposed of so as to

include a particular reversionary estate, as provided in sections 1746 and 1747, the court shall direct that the value of such estate be paid from the proceeds of disposition.

2. The manner of payment may be either in a gross sum or by the investment of a just proportion of the proceeds until the termination of the prior estate or the commencement of a future estate.

3. If a prior estate has been included, income from the invested proceeds shall be paid to the owner of such estate. But no such payment shall be made nor shall any gross sum be paid to such owner until an effectual release of the right or estate of the person so consenting, executed to the satisfaction of the court, and duly acknowledged or proved, and certified, in like manner as a deed to be recorded, has been filed with the clerk.

4. If a future estate has been included, the invested proceeds shall be paid to the owner of such estate at the time of the commencement thereof.

**§ 1763. Distribution of proceeds upon release of inchoate right of dower.** Where an inchoate right of dower is released as prescribed in this article and such release is to accompany a sale by the husband of the property to which the inchoate right of dower attaches, the court shall make an order requiring one-third of the amount realized on the sale of the property to which the inchoate right of dower attached to be invested by the guardian, committee or conservator, or paid into the court to be held for the benefit of the husband during his life and upon his death for the benefit of the wife during her life, or the court may direct said amounts to be paid to the husband upon his giving an undertaking in the amount of at least double the amount so received for such release, conditioned for the repayment as the court shall direct by his executors or administrators of such amount upon the death of the husband, or the court may ascertain the sum in gross representing the present value of such inchoate right of dower and direct the payment of that sum to the guardian, committee or conservator for the wife. Where

an inchoate right of dower is released as prescribed in this article, and, at the time of the commencement of the proceeding, the property to which the inchoate right of dower attaches has already been sold by the husband, and the wife has not joined in the conveyance or otherwise released her inchoate right of dower, the court shall make an order that, as the consideration for the release, or as part of the consideration therefor, there be paid to the guardian, committee, or conservator or into the court an amount to be fixed by the court as equal to one-third of the fair market value of the property, to be invested by the guardian, committee or conservator or held by the court for the benefit of the person making such payment during the life of the husband, and upon his death for the benefit of the wife during her life, and upon her death to be returned to the person making such payment or to his executors, administrators or assigns; or in lieu of such payment, the court may allow an undertaking to be given in the amount of at least double the amount so fixed as equal to one-third of the fair market value of the property, conditioned for the payment as the court shall direct, upon the death of the husband leaving the wife surviving, of the said sum so fixed as equal to one-third of the fair value of the property, to be held for the benefit of the wife during her life and upon her death to be returned to the person giving such undertaking or to his executors, administrators or assigns; or, in lieu of such payment or undertaking, the court may ascertain the sum in gross representing the present value of such inchoate right of dower in the fair market value of the property and direct the payment of that sum to the guardian, committee or conservator for the wife.

**§ 1764. Distribution of proceeds where there is an interest of an infant not in being.** In case by any contingency, infants not in being may thereafter become possessed of any interest in the real property disposed of, the court, in case of a sale, shall cause the proceeds of the sale, after paying the costs and expenses of the same, to be placed at interest for the benefit of the persons who are or who ultimately may be entitled to the same, and shall not authorize the distribution of the same in advance of said contingency, except upon a petition of some person entitled thereto and upon filing an undertaking in such amount as

the court shall direct, conditioned that in case of any contingency by which any infant not then in being shall thereafter become entitled to any of the proceeds of the sale, that said petitioner will pay to said person or persons his or their proportionate share of the money so paid over to said petitioner. In the case of the mortgaging of said real estate, the proceeds of the same, after paying costs and expenses, shall be paid out and disbursed under the direction of the court only for the purpose of paying lawful charges thereon, or repairing, improving, building upon or otherwise enhancing in value any real estate so mortgaged as aforesaid.

**§ 1765. Distribution of proceeds to guardian of infant, committee of incompetent or conservator of conservatee.** 1. Proceeds or income of proceeds invested as provided in subdivision 3 of section 1761 may be paid on order of court on such undertaking as it may require.

2. If the proceeds do not exceed one thousand dollars, the court may direct that the same be paid to the father or mother of the infant, or to some competent person with whom the infant resides, or who has some interest in his welfare, for the use and benefit of such infant.

3. In the case of an infant residing without the state, and having in the state or country where he resides a general guardian or person duly appointed under the laws of such state or country to the control, and entitled by the laws of such state or country to the custody, of the money of said infant, the court, upon satisfactory proof of such facts and of the sufficiency of the security given by such general guardian or person in such state or country, by the certificate of a judge of a court of record of such state or country, or otherwise, may direct that the portion of such infant arising upon a sale pursuant to this article shall be paid over to such general guardian or person.

**§ 1766. Distribution of proceeds on death of infant, incompetent or conservatee.** If the infant should die before arriving at full age, or the incompetent person should die before the incompetency is removed, or

the conservatee should die before the conservatorship is terminated not leaving any personal property, or not leaving sufficient personal property to pay funeral expenses and expenses that may be necessary or necessarily incurred, then in each case, the proceeds of disposition of real property are to be deemed personal property so far as may be necessary to pay the funeral and other necessary expenses. The proceeds are to be paid, upon order of the surrogate's court or court having jurisdiction of the estate of the deceased, to an administrator appointed by the surrogate to administer upon decedent's estate, and after paying all funeral expenses and expenses of administration and any indebtedness, the remainder, if any there be, upon the order of the surrogate, shall be paid into the hands of the trustee who held the same, to be distributed as the law directs.

## ARTICLE 18

### **SPECIAL PROCEEDING FOR RELEASE OF CLAIM AGAINST STATE OF INFANT OR INCOMPETENT FOR APPROPRIATION OF REAL PROPERTY**

Section 1801. Grounds.

1802. By whom maintained.

1803. Notice of petition.

1804. Contents of petition.

1805. Security.

1806. Judgment.

1807. Payment of compensation; release.

1808. Distribution of proceeds of compensation.

**§ 1801. Grounds.** In any case, where the person entitled to compensation from the state, by reason of the appropriation by the state of real property, or of any easement therein, or of a term, estate, inchoate right of dower, or other right or interest in real property, and of legal damages caused by any such appropriation, and of damages sustained by any entry upon, use or occupation of, or injury to such real property by the state prior to completion of appropriation, is an infant, a person incompetent to manage his affairs by reason of mental illness or other cause, or a conservatee as designated in article

seventy-seven of the mental hygiene law, and whose interest in such real property or rights thereunder as aforementioned is not governed by a trust expressed in a will creating the estate nor subject to a valid power of sale contained in such will which does not expressly prohibit the giving of a release to the state because of such appropriation, a special proceeding may be commenced in the county where the appropriated property or a part thereof is situated, for leave to release to the state the claim for compensation of such infant, incompetent person or conservatee, in the manner provided in this article, for the amount of consideration therefor offered by the state. This article shall also apply to the contingent interest of an infant not in being.

**§ 1802. By whom maintained.** 1. Except as provided in subdivision two, the special proceeding may be maintained only by the general or testamentary guardian or guardian appointed by deed of the property of the infant, or by the committee of the property of the incompetent person, or by the conservator of the property of a conservatee. Where it is maintained in behalf of an infant of the age of fourteen years or upwards, the infant must join therein.

2. Where the value of the claim does not exceed one thousand dollars, the special proceeding may be maintained by the father, or mother, or some competent person with whom the infant, incompetent person or conservatee resides, or who has some interest in his welfare. Where, however, there is an existing general or testamentary guardian of the property of such infant, or a committee of the property of such incompetent person, or a conservator of the property of such conservatee, the proceeding may be maintained only by such representative.

**§ 1803. Notice of petition.** Notice of petition shall be given, in the discretion of the court, to such persons and in such manner as the court may direct.

**§ 1804. Contents of petition.** The petition shall state: 1. The name and residence of the petitioner, the facts concerning his appointment and qualification as a person by whom the proceeding is maintainable, and a statement as to the amount of any existing undertaking given by him in such capacity then in force and effect, whether or not any such existing undertaking includes the value of the property appropriated. If an undertaking had been dispensed with by the surrogate in any case where such property was derived by the infant through his father or mother under the instrument by which a guardian was appointed, such fact shall be disclosed to the court.

2. The name, age and residence of the infant, incompetent or conservatee.

3. The particulars with regard to such appropriation, including the nature and extent of the property appropriated and a description.

If a survey map has been filed in the appropriation proceeding, a copy of such a map shall be attached to and made part of the petition.

4. The nature and extent of the property, if any, entered upon, used, occupied or injured by the state prior to completion of such appropriation.

5. The amount offered by the state in full compensation.

6. The facts in relation to the value of the interest to be released.

7. Whether any previous application has been made, and, if so, the time and disposition.

8. Where the value of the claim does not exceed one thousand dollars, that either the petitioner or a competent, disinterested person acquainted with the facts, whose affidavit is made a part of the petition, has made a careful investigation of the facts relating to the offer, and that as a result of such investigation he has found and verily believes that the amount of compensation so offered by the state,

for the interest or undivided interest of said infant, incompetent person, or conservatee represents the fair market value of the property appropriated and just compensation therefor and for the legal damages caused by such appropriation, and the damages, if any, sustained by the entry upon, use or occupation of, or injury to such property by the state prior to completion of appropriation. In any case involving an infant of the age of fourteen years or upwards or a conservatee, his written consent to the acceptance in his behalf of the amount so offered shall accompany the petition, unless the aforesaid infant is classed in the petition as an incompetent person, in which event such consent shall not be required.

**§ 1805. Security.** On presentation of the petition, where the value of the claim exceeds one thousand dollars, the court shall fix the amount of security or additional security, if any, to be given by such general or testamentary guardian, committee or conservator, for the faithful performance of his trust, to cover the amount of compensation to be received by the infant, incompetent or conservatee because of such appropriation. The court shall dispense with the giving of security, on facts submitted in the petition, in any case where the surrogate had done likewise as to such guardian under the provisions of the surrogate's court procedure act with respect to the property so appropriated.

**§ 1806. Judgment.** Upon examining into the truth of the allegations of the petition, and hearing the allegations and proofs of the parties, presented orally or by affidavit, as to the value of the interest of the infant, incompetent person or conservatee in the property so appropriated, including the legal damages caused by such appropriation, and the damages, if any, sustained by the entry upon, use or occupation of, or injury to such property by the state prior to completion of appropriation, and, upon inquiring into the facts and circumstances and duly considering the matter, if it shall appear to the satisfaction of the court that the amount of compensation offered to be paid by the state represents the fair market value of the property appropriated and

just compensation for the legal damages caused by such appropriation and the damages, if any, sustained by the entry upon, use or occupation of, or injury to such property by the state prior to completion of appropriation, and that the interest of the infant, incompetent person or conservatee will be substantially promoted by releasing or joining with others in releasing any such claim for the amount of compensation offered therefor by the state, the court may render a judgment authorizing petitioner to enter into an agreement with the state, in such form as may be submitted by the state or any agency or department thereof, for the amount of compensation offered by the state and approved by the court and authorizing and directing petitioner to execute and deliver to the state a release of such claim and any documents or instruments as may be required by the state to give full effect to such release and authorizing and directing petitioner to receive the amount in full payment of such claim for compensation.

**§ 1807. Payment of compensation; release.** 1. Upon the payment of such compensation by the state in the manner provided by the judgment, the state shall be released of and from any and all claims, damages and liability arising from or growing out of such appropriation, and in and to every matter and thing in anywise related to said property so appropriated.

2. The failure to conduct the proceeding for the release of any claim against the state of an infant, incompetent person or conservatee as covered by this article, shall not invalidate or render ineffective such release if the interests of the infant, incompetent person or conservatee have not been prejudiced.

**§ 1808. Distribution of proceeds of compensation.** 1. Where compensation exceeds one thousand dollars, it shall be deemed property of the same nature, and the disposition thereof shall be made in the same manner, as the disposition of proceeds of a sale, mortgage, release or lease of real property of infant or incompetent.

2. Where compensation does not exceed one thousand dollars, after deducting therefrom the payment of any attorney's fees and the expenses, if any as allowed by the court, the proceeds shall be administered by the petitioner for the use and benefit of the infant, incompetent person or conservatee, including the application thereof for the purposes, in the manner, under the limitations and through the medium provided for in the mental hygiene law of the state of New York and official rules and regulations adopted pursuant thereto as to funds belonging to a patient, in any case where such ward is an incompetent person or conservatee confined as a patient to a state institution under the jurisdiction of the department of mental hygiene of the state of New York.

## ARTICLE 19

### **DISCHARGE OR EXTINGUISHMENT OF ENCUMBRANCES, CLAIMS AND INTERESTS**

- Section 1901. Release of rents reserved by leases in perpetuity.
1911. Action to extinguish inchoate right of dower.
1921. Discharge of mortgage.
- 1921-a. Partial release from lien of mortgaged premises.
1931. Discharge of record of ancient mortgages presumed paid.
1932. Discharge of record of ancient mortgage where time of maturity is dependent on contingent event related to use of premises.
1933. When county clerk or register to discharge mortgage of record.
1941. When special proceeding to quiet title may be maintained.
1942. Petition in special proceeding to quiet title.
1943. Order for publication of notice to persons interested.
1944. Hearing and final order upon non-appearance of adverse claimants.
1945. Hearing and final order upon appearance of adverse claimants.
1946. Notice of pendency to be filed and recorded.
1951. Extinguishment of non-substantial restrictions on the use of land.
1953. Effect of certain special limitations and conditions

subsequent.

- 1954. Action to limit existing possibilities of reverter and rights of entry restricting the use of land.
- 1955. Modification or extinguishment of certain restrictions on the use of land held for charitable purposes.

**§ 1901. Release of rents reserved by leases in perpetuity.** 1. Any person interested in lands held under a lease in perpetuity, upon which no rent has been paid for at least twenty years, may present his petition to the courts mentioned in this section asking that it be declared that the rents and reversion have been released to the owner of the fee. Such petition shall be verified, shall describe the lease and allege that the rents and reversion have been released, and shall state such facts as the petitioner can ascertain relative to the execution of a release and the identity of the persons who would otherwise be the present owners of the rents and reversion and the last known owner thereof.

2. Such petition may be presented to the supreme court or to the county court of the county where the lands are situated. The court may thereupon order all persons interested to show cause at a certain time and place why the rents and reversion should not be declared to have been released. A description of the lease and lands affected thereby and the name of the last known owner of the rents and reversion shall be specified in such order, and the order shall be published in such newspaper or newspapers and for such time as the court shall direct. The court may also direct the order to be personally served upon such persons as it shall designate.

3. The court may issue commissions to take the testimony of witnesses and may refer the petition to a referee to take and report proofs of the facts stated in the petition. Upon being satisfied that the matters alleged in the petition are true, the court may make an order declaring that the rents and reversion have been released to the owner of the fee. The nonpayment of rent under any such lease for twenty years shall be presumptive evidence of such a release.

4. The entry of such order in the office of the clerk of the county where such lands are situated shall have the same effect as a release of such rents and reversion to such owner then duly executed and recorded. The county clerk shall note on the margin of the record of the original lease a minute of the entry of such order.

**§ 1911. Action to extinguish inchoate right of dower.** 1. An owner of land subject to an inchoate right of dower may maintain an action in the supreme court against the possessor of such right to have the right extinguished. In such action the court shall find the present cash value of the inchoate right of dower according to the law applicable to annuities and survivorships. It shall also determine whether the payment to the defendant of the sum found, in lieu of her right, would be unduly prejudicial to her. If the court determines that such payment would not be unduly prejudicial, the court, upon proof of payment of such sum to the defendant or upon payment into court for her credit, shall make an order declaring the inchoate right of dower extinguished.

2. Nothing herein contained shall be construed to affect section 967 or article 17 of this chapter, or section two hundred and forty-eight of the surrogate's court act.

**§ 1921. Discharge of mortgage.** 1. (a) After payment of authorized principal, interest and any other amounts due thereunder or otherwise owed by law has actually been made, and in the case of a credit line mortgage as defined in section two hundred eighty-one of the real property law on written request, a mortgagee of real property situate in this state, unless otherwise requested in writing by the mortgagor or the assignee of such mortgage, must execute and acknowledge before a proper officer, in like manner as to entitle a conveyance to be recorded, a satisfaction of mortgage, and thereupon within thirty days arrange to have the satisfaction of mortgage: (i) presented for recording to the recording officer of the county where the mortgage is recorded, or (ii) if so requested by the mortgagor or the mortgagor's

designee, to the mortgagor or the mortgagor's designee. Failure by a mortgagee to present a certificate of discharge for recording shall result in the mortgagee being liable to the mortgagor in the amount of five hundred dollars if such mortgagee fails to present such certificate within thirty days, shall result in the mortgagee being liable to the mortgagor in the amount of one thousand dollars if such mortgagee fails to present a certificate of discharge for recording within sixty days or shall result in the mortgagee being liable to the mortgagor in the amount of one thousand five hundred dollars if such mortgagee fails to present a certificate of discharge for recording within ninety days. For the purposes of such liability under this subdivision, the term "mortgagee" shall not include a person, partnership, association, corporation or other entity which makes less than five mortgage loans in any calendar year. The mortgagee shall within forty-five days deliver the note and the mortgage and where a title is registered under article twelve of the real property law, the registration copy of the mortgage and any registration certificates in the mortgagee's possession to the mortgagor or the mortgagor's designee making such payment and request if required as aforesaid. Delivery of a satisfaction of mortgage in accordance with the terms of section two hundred seventy-five of the real property law shall be deemed to satisfy the requirements of this section regarding the satisfaction of mortgage.

(b) No mortgagee shall return, destroy, or otherwise refuse to accept a payment made pursuant to the terms of a payoff letter, including but not limited to terms regarding the location and the manner of payment specified by the mortgagee, even if such payment does not cover the full amount of principal, interest, and any other amounts due and owing under the mortgage, provided, however, if there is a defect with the payment that prevents the mortgagee from identifying with reasonable diligence the mortgage for which such payment is made, the mortgagee may refuse to accept such payment and return the payment to the remitter. The mortgagee shall apply such payment to the unpaid principal, interest or any other amounts due under the mortgage, provided that a payment made pursuant to a payoff statement shall not result in the execution of a satisfaction of mortgage pursuant to paragraph (a) of this subdivision or in the issuance of a certificate of discharge of mortgage pursuant to subdivision one of section two hundred seventy-five of the real property

law unless the payment covers the full amount of principal, interest, and any other amounts due and owing under the mortgage.

2. Upon the failure or refusal of any such mortgagee to comply with the foregoing provisions of this section any person having an interest in the mortgage or the debt or obligation secured thereby or in the mortgaged premises may apply to the supreme court or a justice thereof, or to the county court or a judge thereof, in or of any county in which the mortgaged premises or any part thereof are situated in whole or in part, upon a petition, for an order to show cause why an order should not be made by such court canceling and discharging the mortgage of record, and directing the register or clerk of any county in whose office the same may have been recorded to mark the same upon his records as canceled and discharged, and further ordering and directing that the debt or other obligation secured by the mortgage be canceled, upon condition that in the event such mortgage is not paid, the sums tendered pursuant to the foregoing provisions of this section be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part. Said petition must be verified in like manner as a verified pleading in an action in the supreme court and it must set forth the grounds of the application.

3. In any case where an actual tender, as provided in subdivision one of this section, cannot with due diligence be made within this state, any person having an interest in the mortgage or the debt or obligation secured thereby, or in the mortgaged premises, may apply to the supreme court or a justice thereof, or to the county court or a judge thereof, in or of any county in which the mortgaged premises, or any part thereof are situated in whole or in part, upon petition setting forth the grounds of the application and verified as aforesaid, for an order to show cause why an order should not be made by said court canceling and discharging the mortgage of record, and directing the register or clerk of any county in whose office the same may have been recorded to mark the same upon his records as canceled and discharged and further ordering and directing that the debt or other obligation secured by the mortgage be canceled, upon condition that the principal sum of the

mortgage or any unpaid balance thereof, with interest up to the date when said order shall be entered and the aforesaid fees allowed by law, be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part.

4. In the case of a mortgage secured by property improved by a one-to-six family, owner occupied, residential structure or residential condominium unit, if the mortgagee fails within ninety days to deliver the satisfaction of mortgage and/or fails within ninety days to deliver the note and the mortgage and any other documents as required by subdivision one of this section and if the mortgage is not otherwise satisfied the mortgagee shall be liable to such person in the amount of five hundred dollars or the economic loss to such person, whichever is greater. If the mortgagee has delivered such satisfaction of mortgage in a timely manner and has certified that the note and/or mortgage are not in its possession as of such date, the mortgagee shall not be liable under this section if the mortgagee agrees to defend and hold harmless the mortgagor by reason of the inability or failure of the mortgagee to furnish the note or mortgage within the time period prescribed in this subdivision; provided that in connection with mortgage loans purchased prior to July twenty-seven, nineteen hundred ninety-one by the state of New York mortgage agency pursuant to section two thousand four hundred five or two thousand four hundred-five-b of the public authorities law, the state of New York mortgage agency, its successors or assigns shall not be liable under this section if it does not defend and hold harmless the mortgagor by reason of the inability or failure of the state of New York mortgage agency, its successors or assigns to furnish the note or mortgage within the time period prescribed in this subdivision. Damages imposed by this subdivision shall be in addition to the other costs and fees allowed in this section.

5. (a) In the case of a mortgage secured by property improved by a one-to-six family, owner occupied, residential structure or residential condominium unit, if within ninety days of receipt of payment, and request if required, the mortgagee fails to deliver to the mortgagor or the mortgagor's designee the satisfaction of mortgage, the note and the

mortgage and any other documents as required by subdivision one of this section, any attorney-at-law may execute, acknowledge and upon payment of an additional filing fee of fifty dollars cause to be filed with the recording officer of the county where the mortgage is recorded, an affidavit which complies with this section. Unless the mortgagee shall file a verified objection to such affidavit within thirty-five days of being filed, as of the date thirty-five days subsequent to its filing, such affidavit shall be recorded and satisfy the lien of such mortgage on the mortgaged premises.

(b) The affidavit shall state that:

(i) The affiant is an attorney-at-law and that the affidavit is made on behalf of and at the request of the mortgagor or any person who has acquired title to the mortgaged premises;

(ii) The mortgagor made a proper request of the mortgagee for the execution of the satisfaction of mortgage pursuant to subdivision one of this section;

(iii) The mortgagor has received a payoff statement for the loan secured by the mortgage, and shall annex as evidence a copy of the payoff statement;

(iv) The affiant has ascertained that the mortgagee received payment of the loan in accordance with the payoff statement, and shall annex as evidence, copies of the check negotiated by the mortgagee or documentary evidence of such payment;

(v) The affiant, at least thirty days after the mortgagee received payment, has given the mortgagee written notice together with a copy of the proposed affidavit, delivered by certified or registered mail, return receipt requested, to the attention of the person or department set forth in the payoff statement, of the affiant's intention to execute and record an affidavit in accordance with this section; and

(vi) The mortgagee has not responded in writing to such notification or all requests by the mortgagee for payment have been complied with at least fifteen days prior to the date of the affidavit.

(c) Such affidavit shall identify the mortgagor and the mortgagee, state the date of the mortgage, the liber and page of the land records where the mortgage is recorded and give similar information with respect to any recorded assignment of the mortgage.

(d) The affiant shall attach to the affidavit photostatic copies of

the documentary evidence that payment has been received by the mortgagee, including mortgagee's endorsement of any check, and a photostatic copy of the payoff statement and certify each to be a copy of the original document.

(e) Within five days of the filing of such affidavit the register or clerk of every county in whose office said mortgage has been recorded shall give the mortgagee written notice, delivered by certified or registered mail, return receipt requested, to the attention of the person or department set forth in the payoff statement, as annexed to the affidavit filed hereunder, of the filing of such affidavit, which notice shall include the following notice in capital letters:

"THIS NOTICE IS MADE UNDER SECTION 1921 OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW. FAILURE TO FILE WITH THIS OFFICE WITHIN THIRTY DAYS OF THIS NOTICE A VERIFIED OBJECTION TO THE DISCHARGE OF THE MORTGAGE DESCRIBED IN THIS NOTICE WILL RESULT IN SUCH MORTGAGE BEING CANCELED AND DISCHARGED OF RECORD."

Unless the register or clerk of such county shall receive from the mortgagee, within thirty-five days of the date of filing of such affidavit, a verified objection by the mortgagee to the discharge of said mortgage, the register or clerk shall record the affidavit and supporting documents and mark the mortgage described in the affidavit canceled and discharged of record and such recorded affidavit shall have the same force and effect as a duly executed satisfaction of mortgage recorded in accordance with section three hundred twenty-one of the real property law. If the register or clerk of such county shall receive from the mortgagee, within thirty-five days of the date of filing of such affidavit, a verified objection by the mortgagee to the discharge of said mortgage, the register or clerk shall return the original affidavit and the verified objection to the attorney filing such affidavit without marking the mortgage described in the affidavit canceled or discharged of record. The clerk or register of such county shall additionally transmit a copy of the affidavit and the verified objection to its applicable appellate division of the supreme court, committee on professional standards, for such further proceedings as determined appropriate by such committee.

(f) The county clerk or register shall index the affidavit in the same manner as a satisfaction of mortgage and shall record such instrument

upon payment of the same fees as for a satisfaction of mortgage.

(g) (i) Any attorney who prepares an affidavit and negligently causes the affidavit to contain false information shall be liable to the mortgagee for any monetary damages and subject to other applicable sanctions under law.

(ii) Any person who supplies false information for the affidavit shall be liable to the mortgagee for any monetary damages and subject to other applicable sanctions under law.

(h) A banking or other organization having the original or copies thereof, shall furnish, within sixty days of receiving a written request, a copy of the front and reverse sides of a check issued to satisfy the mortgage obligation by such banking or other organization, needed for completion of an affidavit in accordance with this subdivision.

6. Eight days' notice of the application for either of the orders provided for in subdivisions two and three of this section shall be given to the then mortgagee of record and also, if the petition show that there is a mortgage not of record, to such mortgagee. Such notice shall be given in such manner as the court or the judge or justice thereof to whom the petition is presented may direct, and said court or judge or justice may require such longer notice to be given as may seem proper. If sufficient cause be shown the court or judge or justice thereof may issue such order to show cause returnable in less than eight days.

7. Upon the return day of such order to show cause, the court, upon proof of due service thereof and on proof of the identity of the mortgagee and of the person presenting the petition, shall inquire in such manner as it may deem advisable, into the truth of the facts set forth in the petition, and in case it shall appear that said principal sum or any unpaid balance thereof and interest and the said fees allowed by law have been duly paid or tendered but not accepted and said satisfaction of mortgage has been duly presented for execution, or that such tender and presentation could not have been made within this state with due diligence, then, in the event such mortgage is not paid, the court shall make an order directing the sums so tendered, or in a case

where such tender could not have been made as aforesaid, directing the principal sum or any unpaid balance thereof, with interest thereon to the date of entry of said order together with all other amounts due thereunder pursuant to subdivision three of this section and the aforesaid fees allowed by law, to be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the application herein is made, and directing and ordering that upon such payment the debt or other obligation secured by the mortgage be canceled and further directing the register or clerk of any and every county in whose office said mortgage shall have been recorded to mark said mortgage canceled and discharged of record upon the production and delivery to such register or clerk of a certified copy of the order and the receipt of such officer, showing that the amount required by said order has been deposited with him, which certified copy of said order and which receipt shall be recorded, filed and indexed by any such register or clerk in the same manner as a certificate of discharge of a mortgage. Said receipt need not be acknowledged to entitle it to be recorded. The court in its discretion, when granting any such order after application therefor pursuant to subdivision two of this section, may award costs and reasonable attorney's fees to the person making the application, in the absence of the showing of a valid reason for the failure or refusal to execute the satisfaction of mortgage and deliver the same, the note and mortgage and any other documents required under subdivision one of this section. The money deposited shall be payable to the mortgagee, his personal representative or assigns, upon an order of the supreme court or county court, directing the payment thereof to him upon such evidence as to his right to receive the same as shall be satisfactory to the court.

8. Wherever any register or clerk shall record any order and receipt as hereinbefore specified, he shall mark the record of said mortgage as follows:

"Canceled and discharged by order of the ..... Court, County of ....., dated ..... and filed ....., " and thereupon the lien of such mortgage shall be deemed to be discharged and the debt secured thereby shall be deemed to be canceled. Said register or clerk shall be permitted to

charge for recording and filing said order and receipt, the same fees to which he is now entitled for recording and filing a certificate of satisfaction of a mortgage.

9. When used in this section:

(a) "Mortgagee" means (i) the current holder of the mortgage of record or the current holder of the mortgage, or (ii) any person to whom payments are required to be made or (iii) their personal representatives, agents, successors, or assigns.

(b) "Attorney-at-law" means any person admitted to practice law in this state and in good standing.

(c) "Payoff statement" means a statement setting forth the unpaid balance of the mortgage, including principal, interest and other charges pursuant to the loan documents, together with a per diem rate for interest accruing after the date to which the unpaid balance has been calculated. The payoff statement furnished by a banking organization or corporate mortgagee shall include a name of an individual employed by such banking organization or corporate mortgagee or department of such banking organization or corporate mortgagee to whom inquiry concerning the payoff statements are to be addressed in addition to the address of the banking organization or corporation for use in connection with the affidavit under subdivision five of this section.

(d) "Banking organization" shall have the same meaning as provided in subdivision eleven of section two of the banking law and shall include any institution chartered or licensed by the United States or any state.

(e) "Note" shall include any written evidence of indebtedness.

**§ 1921-a. Partial release from lien of mortgaged premises.** 1. Whenever the owner of mortgaged property situate in this state shall be entitled, pursuant to the terms of the mortgage encumbering such property, to obtain the release of a portion thereof from the lien of such mortgage, then, upon (1) delivery by such owner to the mortgagee of a partial release from lien of mortgaged premises, in a form entitled to be recorded, describing the portion of the mortgaged premises so entitled to be released, together with the fees allowed by law for the taking of the acknowledgment of a deed, (2) proof that all requirements set forth

in such mortgage as conditions precedent to the execution and delivery by the mortgagee of such partial release have been satisfied, and (3) payment, or tender of payment, to the mortgagee of all sums required under the terms of the mortgage to be paid to obtain such partial release, such mortgagee must execute and acknowledge before a proper officer, in like manner as to entitle a conveyance to be recorded, the partial release theretofore delivered to such mortgagee or such other partial release from lien of mortgaged premises as may be required to be executed under the terms of the mortgage, which release shall be in recordable form.

2. Upon the failure or refusal of any such mortgagee to comply with the foregoing provisions of this section, any owner of the mortgaged premises may apply to the supreme court or a justice thereof, or to the county court or a judge thereof, in or of any county in which the mortgaged premises or any part thereof are situated in whole or in part, upon a petition, for an order to show cause why an order should not be made by such court releasing of record from the lien of said mortgage the parcel or parcels of land described in said release, and directing the register or clerk of any county in whose office the same may have been recorded to mark the same upon his records as released as to the parcel or parcels described in such order, and further ordering and directing that the debt or other obligation secured by the mortgage be reduced in the amount tendered or paid, upon condition that in the event such mortgage or part thereof is not paid, the sums tendered pursuant to the foregoing provisions of this section be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part for the purpose of paying said sum over to the mortgagee. Said petition must be verified in like manner as a verified pleading in an action in the supreme court and it must set forth the grounds of the application.

3. In any case where an actual tender, as provided in subdivision one of this section, cannot, with due diligence, be made, any owner of the mortgaged premises may apply to the supreme court or a justice thereof, or to the county court or a judge thereof, in or of any county in which

the mortgaged premises, or any part thereof are situated in whole or in part, upon petition setting forth the grounds of the application and verified as aforesaid, for an order to show cause why an order should not be made by said court releasing of record the parcel or parcels described in said release from the lien of the mortgage, and directing the register or clerk of every county in which the mortgaged premises are located to mark the same upon his records as released as to the parcel or parcels described in such order and further ordering and directing that the debt or other obligation secured by the mortgage be reduced, upon condition that the prerequisites for obtaining such release set forth in subdivision one of this section and the sum of the mortgage required to be paid pursuant to the terms and conditions of said mortgage and fees allowed by law or the mortgage, be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part until such time as said sums may be claimed by the mortgagee.

4. Eight days' notice of the application for either of the orders provided for in subdivisions two and three of this section shall be given to the mortgagee. Such notice shall be given in such manner as the court or the judge or justice thereof to whom the petition is presented may direct, and said court or judge or justice may require such longer notice to be given as may seem proper. If sufficient cause be shown the court or judge or justice thereof may issue such order to show cause returnable in less than eight days.

5. Upon the return day of such order to show cause, the court, upon proof of due service thereof and on proof of the identity of the mortgagee and of the person presenting the petition, shall inquire, in such manner as it may deem advisable, into the truth of the facts set forth in the petition, and in case it shall appear that said sum or sums required to be paid pursuant to the terms and conditions of the mortgage and the fees allowed by law have been duly paid or tendered but not accepted, said partial release from lien of mortgage instrument has been duly presented for execution, or that such tender and presentation could not have been made with due diligence and the prerequisites for obtaining such release as set forth in subdivision one of this section

have been met, then, in the event that portion of the lien of such mortgage required to be released pursuant to the terms and conditions thereof is not so released, the court shall make an order directing the sums so tendered, or in a case where such tender could not have been made as aforesaid, directing the sum or sums so required and the fees allowed by law, to be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the application herein is made, and directing and ordering that upon such payment the debt or other obligation secured by the mortgage be reduced and further directing the register or clerk of every county in which the mortgaged premises are located to mark said mortgage reduced of record upon the production and delivery to such register or clerk of a certified copy of the order and the receipt of such officer showing that the amount required by said order and which receipt shall be recorded, filed and indexed by any such register or clerk in the same manner as a certificate of discharge of a release from lien of mortgaged premises. Said receipt need not be acknowledged to entitle it to be recorded. The court in its discretion, when granting any such order after application therefor pursuant to subdivision two of this section, may award costs and reasonable attorneys' fees to the person making the application, in the absence of the showing of a valid reason for the failure or refusal to execute the partial release from lien of mortgaged premises and deliver the same. The money deposited shall be payable to the mortgagee, his representatives or assigns, less any court costs and reasonable attorneys' fees allowed by the court as herein provided which shall be paid to the owner of the mortgaged premises who has made application for the order herein referred to upon an order of the supreme court or county court, directing the payment thereof to such owner upon such evidence as to his right to receive the same as shall be satisfactory to the court.

6. Wherever any register or clerk shall record any order and receipt as hereinbefore specified, he shall mark the record of said mortgage, if same be recorded, as follows:

"Part of the premises herein described have been released from lien of this mortgage by order of the \_\_\_\_\_ court, County of \_\_\_\_\_, dated \_\_\_\_\_ and filed \_\_\_\_\_ a description of the

property so released being contained in such order" and thereupon the lien of such mortgage shall be deemed to be released as to the premises so described in such order and the debt or obligation secured thereby shall be deemed to be reduced as provided in such order. Said register or clerk shall be permitted to charge for recording and filing said order and receipt, the same fees to which he is entitled for recording and filing a certificate of release of lien of mortgaged premises.

7. The word "mortgagee" whenever used in this section shall be construed to include the persons entitled to enforce or satisfy the mortgage and the personal representatives, successors and assigns, of such persons.

8. Nothing contained in this section shall limit or abridge any rights or remedies otherwise available at law or in equity to the owner of the mortgaged premises or any other person having an interest in such mortgaged premises.

**§ 1931. Discharge of record of ancient mortgages presumed paid.** 1. The mortgagor, his heirs or any person having any interest in any lands described in any mortgage of real estate in this state, which is recorded in this state, or mentioned in a deed recorded in this state, and which, from the lapse of time, is presumed to be paid, or in any moneys into which said lands have been converted under a decree of a court of competent jurisdiction, and which are held in place of such lands to answer such mortgage, may present his petition together with an official search of the recording officer in whose office the mortgage is recorded, or a search prepared by a person duly licensed and admitted to practice law in this state or by a title company duly incorporated and authorized to transact business in this state showing assignments of record, if any, to the courts mentioned in this article, asking that such mortgage may be discharged of record.

2. Such petition shall be verified; it shall describe the mortgage, and when and where recorded, or if such mortgage is not recorded that the same may be adjudged to have been paid and to be no longer a lien

upon the lands therein described, and shall allege that such mortgage is paid; that the mortgagee has, or, if there be more than one mortgagee, that all of them have been dead for more than five years; or if such mortgage has been assigned by an instrument in writing for that purpose executed and acknowledged, so as to entitle the same to be recorded, and such instrument of assignment has been recorded in the office of the clerk of the county where the mortgaged premises or some portion thereof is situated, and the assignee or assignees of said mortgage have been dead for more than five years, such petition shall state such facts, and no statement respecting the mortgagee or mortgagees or the names and places of residence of their heirs shall be required; or if such mortgagee be a corporation or association, that such corporation or association has ceased to exist and do business as such for more than five years; the time and place of his or their death, and place of residence at the time of his or their death; whether or not letters testamentary or of administration have been taken out, or, if said mortgagee or mortgagees, or assignee or assignees at the time of his or their death resided out of this state, whether or not letters testamentary or of administration have been taken out in the county where such mortgaged premises are situated; or if a corporation or association, its last place of business; the names and places of residence, as far as the same can be ascertained, of the heirs of such mortgagee or mortgagees, or assignee or assignees; or, if such mortgagee be a corporation or association, then the names of one or more of the receivers, if any were appointed, or of the person who has the care of the closing up of the business of such corporation or association, and that such mortgage has not been assigned or transferred, and if such mortgage has been assigned, state to whom and the facts in regard to the same.

Provided, however, that if such mortgage has been duly assigned, by indorsement thereof or otherwise, but not acknowledged so as to entitle the same to be recorded, then it shall be competent for the court, at any time within the period aforesaid, upon proof that all the matters hereinbefore required to be stated in said petition are true, and that the assignee of such mortgage if living, or his personal representative if dead, has been paid the amount due thereon, to make an order that

such mortgage be discharged of record.

Provided, further, that in case of a mortgage which was recorded or adjudged to have been paid and no longer a lien, more than fifty years prior to the presentation of such petition, if the petitioner is unable with reasonable diligence to ascertain the facts herein required to be stated in the petition, other than the fact of payment, the petition may set forth the best knowledge and information of the petitioner in respect thereto and what efforts have been made to ascertain such facts, and if the court shall be satisfied that the petitioner has made reasonable effort to ascertain such facts, and that the same cannot be ascertained with reasonable diligence, it may then, in its discretion, proceed upon said petition as hereinafter provided.

3. Such petition may be presented to the supreme court in the county in which the mortgaged premises are situated, or to the county court of such county.

4. The court, upon the presentation of such petition, shall make an order requiring all persons interested to show cause at a certain time and place, why such mortgage should not be discharged of record. The names of the mortgagor, mortgagee and assignee, if any, the date of the mortgage and where recorded, and the town or city in which the mortgaged premises are situate, shall be specified in the order. The order shall be published in such newspaper or newspapers, and for such time as the court shall direct. The court may also direct the order to be personally served upon such persons as it shall designate.

5. The court may issue commissions to take the testimony of witnesses and may refer it to a referee to take and report proofs of the fact stated in the petition. The certificate of the proper surrogate or surrogates, whether or not letters testamentary or of administration have been issued, shall be evidence of the fact; and the certificate of the clerk of the county or counties in which the mortgaged premises have been situate, since the date of the said mortgage, shall be evidence of the assignment of such mortgage, or of a notice of the pendency of an action to foreclose such mortgage, and of such other matters as may be

therein stated; or if a notice of the pendency of an action to foreclose such mortgage has been filed, then his certificate that such mortgage has never been foreclosed. Unless the allegation of payment shall be denied, and evidence be given tending to rebut the presumption of payment, arising from lapse of time, such lapse of time shall be sufficient evidence of payment. Upon being satisfied that the matters alleged in the petition are true, the court may make an order that the mortgage be discharged of record.

**§ 1932. Discharge of record of ancient mortgage where time of maturity is dependent on contingent event related to use of premises.** 1. The lien of every mortgage or conveyance of real estate in this state given as security for the payment of money, recorded more than seventy-five years ago, where the time of maturity thereof is dependent solely upon the occurrence of a contingent event relating to use of the mortgaged premises for religious purposes, and where the reason for such use no longer applies to the mortgaged premises because of changes in the type of neighborhood in which the premises are situated, may be discharged of record by judgment of the supreme court in the county where the mortgaged premises are situated, or of the county court of such county, in the manner provided in this section.

2. The court, upon presentation of a petition, together with an official search of the recording officer in whose office the mortgage is recorded or a search prepared by a person duly licensed and admitted to practice law in this state or by a title company duly incorporated and authorized to transact business in this state showing such recordation and assignments of record, if any, the petition showing such contingent event relating to the use of the mortgaged premises for religious purposes and that the reason for such use no longer applies to the mortgaged premises because of changes in the type of neighborhood in which the mortgaged premises are situated, and showing that the petitioner has made reasonable effort to locate the mortgagee or other person or persons authorized to execute and deliver a satisfaction of such mortgage or conveyance but has been unable to do so after the exercise of reasonable diligence, shall make an order requiring all

persons interested to show cause at a certain time and place, why such mortgage should not be discharged of record. Such order to show cause and the publication and service thereof shall comply with the requirements of section 1931 of this chapter, and the proceedings on the return of such order to show cause shall comply with the requirements of section 1931 of this chapter except as to the allegation of payment and evidence to rebut the presumption thereof.

3. Any judgment of the court thereon discharging the mortgage of record shall be made only upon proof of such contingent event relating to use of the mortgaged premises for religious purposes, and of the changes in the type of neighborhood in which the mortgaged premises are situated, showing that the reason for such use no longer applies to the mortgaged premises, and upon proof of the other matters alleged in the petition; and any such judgment shall be made without prejudice to the right, if any, of the mortgagee, his representatives or assigns or other person or persons to receive or collect the mortgage debt in any action or proceeding not affecting such mortgaged premises.

**§ 1933. When county clerk or register to discharge mortgage of record.** The county clerk, upon being furnished with an order discharging a mortgage of record, as provided in section 1931 or section 1932, and, in the city of New York, the register, upon being furnished with a certified copy of such order, and upon payment of the fees allowed by law for discharging mortgages, shall record the order and discharge the mortgage of record.

**§ 1941. When special proceeding to quiet title may be maintained.** Whenever real property shall have been conveyed by a sheriff or referee, pursuant to a judicial decree, which decree has been lost or destroyed, and the defendants (other than lienors or incumbrancers) named in the notice of pendency of the action in which such decree was made, or those who might claim under them, or either of them, are dead, unknown or their whereabouts can not after diligent inquiry be ascertained, the person who has been, or he and those having his estate who have been,

for ten years in actual possession of such property claiming it in fee under said sheriff's or referee's deed, which deed shall have been recorded at least ten years, may maintain a special proceeding for the purpose of establishing judicially his or their title to such real property.

**§ 1942. Petition in special proceeding to quiet title.** 1. A person or persons, desiring to institute a proceeding under section nineteen hundred forty-one, must present a petition to the supreme court at a special term to be held in the judicial district in which the real property is situated, setting forth the facts proving to the satisfaction of the court, that the case is one of those specified in that section, and must describe the property with common certainty, and state what, if any, liens or incumbrances exist thereon, and the names of the persons, if any, besides the petitioners, who have been in the actual possession of the property during the past ten years claiming title as owners thereof in fee, and how such title was derived, and shall also annex to said petition a duly certified copy of the sheriff's or referee's deed recorded ten years since under which petitioners claim title.

2. In case the property described in said sheriff's or referee's deed shall have been subdivided, the owner or owners of the several parcels thereof may unite in the same petition and proceeding.

**§ 1943. Order for publication of notice to persons interested.** Upon the presentation of such petition, duly verified, the said court shall make an order for the publication of a notice requiring all persons claiming any interest in the real property described in such petition to appear before the court at a special term thereof, to be held at a time and place to be therein specified, not less than three months nor more than six months thereafter, and show cause, if any they have, why they should not be forever barred from maintaining any action or proceeding for the recovery of the real property, which shall be substantially described as set forth in said petition, and which notice shall also

contain a reference to the time and place of record of the sheriff's or referee's deed referred to in the petition. Said publication shall be made once a week for three months successively prior to the return day named in said notice in two newspapers designated in the order as most likely to give notice to any claimant of the property.

**§ 1944. Hearing and final order upon non-appearance of adverse claimants.** Upon the return day named in said notice the court shall proceed summarily to inquire into the truth of the matters set forth in the petition, and may appoint a referee for that purpose, and if there shall be no appearance by any person claiming any adverse interest to the petitioners in the real property described in the petition, the court may make a final order declaring that the title of the petitioner to such real property has been judicially established, which final order, together with the petition and order for and proof of publication of the notice, and the proofs taken before the court or referee shall be filed in the office of the clerk of the county in which the real property is situated, and such final order shall be evidence of the facts so declared to be established thereby in all courts and places, and thereafter no action or proceeding for the recovery of the real property described in said final order or any part thereof, or of any interest therein, shall be maintained by any person named as a defendant in the notice of pendency of action referred to in section 1941, or by any person or persons claiming under such defendant or either of them.

**§ 1945. Hearing and final order upon appearance of adverse claimants.** If any person shall appear on the return day of said notice and claim in writing an interest in the real property adverse to that of the petitioners, stating the nature of his claim and his place of residence, the court may proceed in like manner to inquire into the truth of the facts stated in the petition and may make a final order in like manner and with like effect as above provided, except that such final order shall not affect in any way any person who shall have appeared on the return day and asserted a claim adverse to the petitioners, as herein provided for.

**§ 1946. Notice of pendency to be filed and recorded.** No final order pursuant to section 1944 or section 1945 shall be made until the petitioners named in said proceedings, or their attorney, shall file in the clerk's office of the county in which such real property is situated a notice of the pendency of the said special proceeding, containing the names of all the persons claiming to be then owners of the property in fee, pursuant to said sheriff's or referee's deed, the object of the proceeding, together with a brief description of said property. Each county clerk with whom such notice is filed must immediately record it in the book kept in his office for recording of notices of pendency of an action, and index it to the name of each person claiming to be owner as aforesaid, and said clerk shall be entitled to receive for his services the same fees therefor as are now allowed by law for filing, recording and indexing a notice of pendency of action.

**§ 1951. Extinguishment of non-substantial restrictions on the use of land.** 1. No restriction on the use of land created at any time by covenant, promise or negative easement, or created on or after September 1, 1958, by a special limitation or condition subsequent governed by section 1953, shall be enforced by injunction or judgment compelling a conveyance of the land burdened by the restriction or an interest therein, nor shall such restriction be declared or determined to be enforceable, if, at the time the enforceability of the restriction is brought in question, it appears that the restriction is of no actual and substantial benefit to the persons seeking its enforcement or seeking a declaration or determination of its enforceability, either because the purpose of the restriction has already been accomplished or, by reason of changed conditions or other cause, its purpose is not capable of accomplishment, or for any other reason.

2. When relief against such a restriction is sought in an action to quiet title or to obtain a declaration with respect to enforceability of the restriction or to determine an adverse claim arising from the restriction, or is sought by way of defense or counterclaim in an action

to enforce the restriction or to obtain a declaration with respect to its enforceability, if the court shall find that the restriction is of no actual and substantial benefit to the persons seeking its enforcement or seeking a declaration or determination of its enforceability, either because the purpose of the restriction has already been accomplished or, by reason of changed conditions or other cause, its purpose is not capable of accomplishment, or for any other reason, it may adjudge that the restriction is not enforceable by injunction or as provided in subdivision 2 of section 1953 and that it shall be completely extinguished upon payment, to the person or persons who would otherwise be entitled to enforce it in the event of a breach at the time of the action, of such damages, if any, as such person or persons will sustain from the extinguishment of the restriction.

**§ 1953. Effect of certain special limitations and conditions**

**subsequent.** 1. Except as provided in subdivision 4, a special limitation or condition subsequent created on or after September 1, 1958 shall be governed by this section in any case where it expressly or by necessary result restricts the use of land, but if such special limitation or condition subsequent also creates a possibility of reverter or right of entry conditioned upon an event other than breach of such a restriction, it shall be governed by this section to the extent only that the right of entry or possibility of reverter is conditioned upon breach of such express or implied restriction on the use of land.

2. No reverter shall occur and no possessory estate shall result by reason of such special limitation, and no right of entry shall accrue by reason of breach of such condition subsequent, but upon the happening of such a breach the person or persons who would have such possessory estate or right of entry except for this section, may maintain an action in the supreme court to compel a conveyance to him or them of the land, or the interest therein, which is subject to the special limitation or condition subsequent.

3. The relief provided in subdivision 2 shall be granted only to protect a substantial interest in enforcement of the restriction,

established by the person or persons in whose favor the relief is granted. The action provided for in this section shall be subject to any defense that might be interposed in an action to enjoin a violation of the restriction if it were created by covenant of the person or persons against whom the relief is sought, and the court may deny such relief, or impose conditions upon the granting thereof, or grant alternative relief, upon like cause and in like manner as in an action for such injunction. If it appears that the relief provided in subdivision 2 would be inequitable, the court may, in lieu thereof, restrain the repetition or continuation of a breach of the restriction, or it may grant the relief provided in subdivision 2 upon such terms as justice may require to avoid a forfeiture of the value of improvements or other unjust enrichment.

4. This section shall not apply where the special limitation or condition subsequent was created in a conveyance or devise, whether or not in trust, for benevolent, charitable, educational, public or religious purposes and restricts the use of land to such a purpose or to a particular application or means of carrying out such purpose, or was created by a lease for a term of less than one hundred years and restricts use of the leased premises.

**§ 1954. Action to limit existing possibilities of reverter and rights of entry restricting the use of land.** 1. This section shall apply to a special limitation or condition subsequent created prior to September 1, 1958 which would be subject to section 1953 if it had been created on or after September 1, 1958.

2. The owners of the estate subject to the special limitation or condition subsequent, or one or more of such owners, may maintain an action to obtain a judgment that the special limitation or condition subsequent be governed by section 1951 and section 1953, or that it be so governed to the extent of particular terms of the special limitation or condition subsequent, or to the extent of a particular part of the land burdened by the restriction. Such action may be maintained against one or more of the persons who would have a possessory estate resulting

from the occurrence of the reverter or a right of entry for breach of the condition if a breach of the restriction had occurred at the time the action is commenced, to obtain such a judgment with respect to the interests of the parties to the action.

3. Except as provided in subdivision 4, the court may grant the relief described in subdivision 2 if it finds that the primary purpose of the special limitation or condition subsequent was to restrict the use of land and that the tenor of the restriction, the circumstances in which it was imposed, and the conditions in which it operates at the time of the action are such that the special limitation or condition subsequent unreasonably limits the use and development of the land or unreasonably impairs the certainty of titles.

4. The relief provided in this section shall not be granted if the court finds that a breach of the restriction has already occurred.

5. If the complaint in any such action is dismissed on the ground that a breach of the restriction has already occurred at the time the action is brought or relief is denied on such ground, the right of entry for breach of the condition or any cause of action to recover possession of the land, owned by a person who was a party to the action, or a person claiming through or under him, must be asserted in the same action or by action commenced within six months from the entry of the judgment therein, and if such action is not commenced within that time the right of entry, or the possessory estate resulting from the occurrence of the reverter, shall be extinguished to the extent that it is vested at the time of the entry of the judgment in persons who are parties to the action, or thereafter vests in persons claiming through or under them by title accruing after the filing of a notice of pendency of the action.

6. The action provided in this section may be commenced at any time.

**§ 1955. Modification or extinguishment of certain restrictions on the use of land held for charitable purposes.** 1. Where land is held, whether or not in trust, for benevolent, charitable, educational, public or

religious purposes and the use of such land is restricted to such purpose or to a particular application of or means of carrying out such purpose by a special limitation or condition subsequent created in the conveyance or devise under which the land is so held, or by an agreement to convey, reconvey or surrender the land or the estate so held upon a contingency relating to its use, an action may be brought in the supreme court to obtain relief from such restriction as provided in this section.

2. No action for the relief provided in this section shall be commenced until the expiration of two years from the creation of the special limitation or condition subsequent, or the making of the agreement. The attorney-general shall be a party to such action.

3. In determining whether relief shall be granted, and the nature of such relief, the court shall consider and shall make findings with respect to the following:

(a) whether the primary purpose of the special limitation, condition subsequent or agreement to convey, reconvey or surrender was to restrict the use of the land;

(b) whether the purpose of the restriction was to ensure that the substantial value of the land or of the estate subject to the special limitation, condition subsequent or agreement, rather than the land itself, or such estate itself, be devoted to and employed for a benevolent, charitable, educational, public or religious purpose.

If the findings with respect to (a) and (b) are such as to make the following matters relevant or appropriate for consideration, the court shall also consider and make findings with respect to the following:

(c) whether the existence of the restriction is substantially impeding the owner of the land, or of the estate subject to the special limitation, condition subsequent or agreement, in the furtherance of the benevolent, charitable, educational, public or religious purposes for which the land is held;

(d) whether the person or persons who would have a right of entry, possessory estate resulting from the occurrence of a reverter, or right to conveyance, reconveyance or surrender of the land or estate in the

event of breach of the restriction at the time of the action will suffer substantial damage by reason of extinguishment or modification of the restriction, and, in such event, whether damages or restitution of the land, or its value, in whole or in part, should be awarded to such person or persons.

4. The judgment of the court may include, in the discretion of the court, an adjudication (a) that the restriction is discharged in whole or in part, or that its tenor is modified as provided in the judgment; (b) that the holder of the land or estate therein subject to the restriction be authorized or directed to convey, lease, mortgage or otherwise dispose of the land or estate therein free of the restriction and that the purchaser under such disposition shall take free of the restriction; (c) directing the use to which the avails of any such disposition shall be put; (d) declaring the interests that the owners of the possibility of reverter or right of entry, or persons having an interest pursuant to the agreement, shall have in any property paid for in whole or in part with the proceeds of the disposition; (e) awarding damages for such injury as a party to the action may sustain by reason of extinguishment or modification of the restriction. The judgment may include such other provisions as will in the opinion of the court further the benevolent, charitable, educational, public or religious purposes for which the land is held and such other provisions as equity may require.

5. This section shall apply to a special limitation or condition subsequent created or agreement made either before or after September 1, 1958, except that it shall not apply (a) where a right of entry or right to a conveyance, reconveyance or surrender of the property has accrued or a reverter has occurred prior to that date, or (b) where the conveyance creating the restriction was made by or the agreement creating the restriction was made with the United States, the state of New York or any governmental unit, subdivision or agency of the United States or the state of New York.

#### ARTICLE 19-A

**SPECIAL PROCEEDING TO CONVEY TITLE TO  
ABANDONED DWELLING TO CITY, TOWN OR VILLAGE**

- Section 1970. Applicability.
1971. Certification of abandonment.
- 1971-a. Destruction of abandoned dwellings.
1972. Notice.
1973. Commencement of proceeding.
1974. Decision and judgment of court.

**§ 1970. Applicability.** The department or agency of a city, town or village, responsible for the enforcement of the multiple dwelling law, the multiple residence law, or any other law, code or ordinance governing the occupancy and maintenance of residential 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 dwelling which has been abandoned by the owner. This article shall not apply to a one-family or two-family dwelling occupied by the owner thereof.

**§ 1971. Certification of abandonment.** 1. The department may make a finding that a dwelling is abandoned if:

(a) In the case of an occupied dwelling, the owner 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 dwelling has become a danger to life, health or safety as a result of the owner's failure to assume his 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 pursuant to article seven-A of this chapter shall not prevent the department from making a finding that a dwelling is abandoned; or

(b) In the case of a vacant dwelling, 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 dwelling; or

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

(c) In the case of a building for which an administrator has been appointed pursuant to article seven-A of this chapter.

(i) no motion for the termination of the judgment entered pursuant to article seven-A of this chapter 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 pursuant to article seven-A of this chapter.

2. When the department finds that a dwelling 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 dwelling in a prominent and conspicuous location, a notice that the building has been found to be an abandoned building and that it is a crime to take, remove or otherwise damage any fixture or part of the building structure.

**§ 1971-a. Destruction of abandoned dwellings.** "Destruction of an abandoned dwelling" occurs when a person, having no right to do so or permission of the department or the owner to take, remove or otherwise damage the fixtures or the structure of the building, nor any reasonable ground to believe that he has such right or permission, intentionally removes or damages any fixture or part of the structure of a building which has been certified as abandoned in accordance with the provisions of section nineteen hundred seventy-one of this chapter.

**§ 1972. 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 dwelling 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 section six thousand 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 section 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 dwelling, a copy of the certification. Service shall be made personally or by posting in a conspicuous place upon the dwelling and mailing a copy by registered or certified mail to the last known owner at such owner's last known address. In the case of a dwelling subject to the provisions of section three hundred twenty-five of the multiple dwelling law, such mailing may be made to the last registered owner at his last registered address. The copy of the certification shall be accompanied by a notice stating that proceedings pursuant to this title 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;

(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.

**§ 1973. Commencement of proceeding.** 1. After all provisions of section nineteen hundred seventy-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 dwelling 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 seventy-two 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 seventy-two of this title 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 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.

**§ 1974. Decision and judgment of court.** 1. If any party to the proceeding contests the issue of abandonment, the burden of proving that the dwelling 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 his 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 seventy-three of this chapter based on a finding of abandonment pursuant to paragraph (c) of subdivision one of section nineteen hundred seventy-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 dwelling is abandoned, the

court shall enter a final judgment in favor of the petitioner. The fact that an administrator has been appointed pursuant to article seven-A of this chapter shall not prevent the court from entering a final judgment in favor of the petitioner upon a finding by the court that the dwelling is abandoned. The final judgment shall direct such officer of the city, town or village in which the dwelling 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.

\* 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.
- 1983. Commencement of proceeding.
- 1984. Decision and judgment of the court.

\* NB Repealed June 30, 2028

\* **§ 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 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.

\* NB Repealed June 30, 2028

\* **§ 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 that has the potential to injure or endanger the health and safety of others or to unreasonably annoy others and that 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.

\* NB Repealed June 30, 2028

**\* § 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 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 certified mail or overnight courier 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 forty-five days of receipt 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 certified mail or overnight courier.

\* NB Repealed June 30, 2028

**\* § 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.

\* NB Repealed June 30, 2028

**\* § 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 one hundred twenty 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 one hundred twenty days after such deed vesting title in a city, town, or village has been recorded.

\* NB Repealed June 30, 2028

## ARTICLE 20

### **ENFORCEMENT OF COVENANTS AND EASEMENTS; RECOVERY OF DAMAGES FOR BREACH OF COVENANT OR INJURY TO EASEMENT**

Section 2001. Action to enforce certain covenants restricting use of land or for damages for breach to be brought within two years.

**§ 2001. Action to enforce certain covenants restricting use of land or for damages for breach to be brought within two years.** 1. This section applies to actions to enforce a covenant or agreement restricting the use of land or to recover damages for breach thereof, including an action predicated on infringement of an easement or other interest created by the covenant or agreement, to the extent that the restriction relates to structures that may be erected on the premises and limits such structures with respect to set-back or sidelines, the area that may be built upon, the location, independent character or number of structures, height, or general purpose for which they shall be designed or typically suited.

2. An action to enforce the covenant or agreement by compelling the removal or alteration of a structure, or to recover damages for breach of the covenant or agreement, or to recover damages for infringement of an easement or other interest in the premises so restricted, cannot be maintained unless it is commenced (a) before the expiration of two years from the completion of the structure concerned, or (b) before September one, nineteen hundred sixty-five, whichever shall be later.

3. a. For the purposes of this section, where the breach of the restriction upon which the action is predicated consists of a replacement, enlargement or alteration of a previously existing

structure which did not constitute or involve a violation of the restriction, or where a previously existing structure constituted a violation for which action is barred as provided in this section and a replacement, enlargement or alteration is made constituting or creating a different or more extensive violation, the completion of the replacement, enlargement or alteration shall be deemed the completion of the structure.

b. The date of issuance of a certificate of occupancy or, if no such certificate shall have been issued, the date of actual occupancy of the structure or of the structure as replaced, enlarged or altered, shall be deemed the date of completion of the structure.

4. The application of this section is not affected by any disability or lack of knowledge on the part of any person, and is not affected by the fact that the person against whom the action might have been brought within the period herein provided was during that time a non-resident or absent from the state.

5. If an action governed by this section is not commenced within the time herein provided it shall be conclusively presumed that the right of action for the relief for which that action might have been brought has been released.

6. Nothing in this section shall be construed in any manner to limit any other statute or rule of law or equity by reason of which, at a date previous to the expiration of the period provided in this section, the restriction is or may be deemed extinguished or held unenforceable, or unenforceable by judgment compelling the removal or alteration of a structure.

#### ARTICLE 20-A

##### **ENFORCEMENT OF LIENS BY A HOMEOWNERS' ASSOCIATION**

Section 2010. Enforcement of liens by a homeowners' association.

**§ 2010. Enforcement of liens by a homeowners' association.** At least ninety days prior to the commencement of a foreclosure action to enforce a lien for unpaid common charges, assessments, fees or fines owed to an incorporated homeowners' association, which is permitted pursuant to the governing documents of such association, the board or other entity representing the association shall provide notice to the owner at the property address and any other address of record, in at least fourteen-point type, that the association intends to file an action for foreclosure to enforce the lien and shall state the address of the property and the specific amount due.

## ARTICLE 21

### **EFFECTIVE DATE; LAWS REPEALED**

Section 2101. Effective date.

2111. Laws repealed.

**§ 2101. Effective date.** This act shall take effect September 1, 1963.

**§ 2111. Laws repealed.** The following sections of the real property law are hereby repealed:

Section three, as added by chapter three hundred seventy-four of the laws of nineteen hundred twenty-two;

Section seventy-two;

Section one hundred ninety-a, as added by chapter sixteen of the laws of nineteen hundred thirty-eight;

Sections one hundred seven, one hundred seven-a, one hundred seven-b, one hundred seven-c, one hundred seven-d, one hundred seven-e, one hundred seven-f, one hundred seven-g, one hundred seven-h, one hundred seven-i, one hundred seven-j, one hundred seven-k, one hundred seven-l, one hundred seven-m, and one hundred seven-n, as added by chapter one

hundred forty-one of the laws of nineteen hundred thirty-seven;

Section one hundred seven-o, as added by chapter six hundred fifty of the laws of nineteen hundred fifty-six;

Section one hundred sixteen, as last amended by chapter three hundred seventy-eight of the laws of nineteen hundred thirty-five;

Section three hundred thirty-three-b, as amended by chapter three hundred thirty-one of the laws of nineteen hundred forty-five and subdivision five having been amended by chapter one hundred forty-eight of the laws of nineteen hundred fifty-eight;

Section three hundred forty, as amended by chapter three hundred thirty-four of the laws of nineteen hundred forty-three;

Sections three hundred forty-one, three hundred forty-two, and three hundred forty-three;

Section three hundred forty-three-a, as added by chapter three hundred nine of the laws of nineteen hundred sixty;

Section three hundred forty-four, as amended by chapter eighty-five of the laws of nineteen hundred forty-eight;

Section three hundred forty-six and section three hundred forty-seven, as added by chapter eight hundred sixty-four of the laws of nineteen hundred fifty-eight;

Section three hundred forty-eight, as added by chapter eight hundred sixty-six of the laws of nineteen hundred fifty-eight;

Section three hundred forty-nine, as added by chapter eight hundred sixty-three of the laws of nineteen hundred fifty-eight;

Section three hundred sixty and section three hundred sixty-one, as amended by chapter nine hundred sixty-one of the laws of nineteen

hundred forty-six;

Section three hundred sixty-two, as amended by chapter two hundred forty of the laws of nineteen hundred nine;

Sections three hundred sixty-three, three hundred sixty-four, three hundred sixty-five and three hundred sixty-six;

Section four hundred sixty, as added by chapter four hundred eighty-six of the laws of nineteen hundred fifty-four;

Sections four hundred sixty-one, four hundred sixty-two, four hundred sixty-three, four hundred sixty-four, four hundred sixty-five, four hundred sixty-six, four hundred sixty-seven, four hundred sixty-eight, four hundred sixty-nine, four hundred seventy, four hundred seventy-one, four hundred seventy-two, four hundred seventy-three, four hundred seventy-four, four hundred seventy-five, four hundred seventy-six, four hundred seventy-seven, four hundred seventy-eight, four hundred seventy-nine, four hundred eighty, four hundred eighty-one, four hundred eighty-two, four hundred eighty-three, four hundred eighty-four, four hundred eighty-five, four hundred eighty-six, four hundred eighty-seven, four hundred eighty-eight, four hundred eighty-nine, four hundred ninety and four hundred ninety-one, as added by chapter nine hundred thirty of the laws of nineteen hundred twenty;

Section five hundred, as added by chapter five hundred sixty-one of the laws of nineteen hundred forty-three subdivision four having been added by chapter one hundred five of the laws of nineteen hundred forty-eight;

Section five hundred-a, as added by chapter six hundred ten of the laws of nineteen hundred fifty-one;

Section five hundred-b, as added by chapter eight hundred ninety-four of the laws of nineteen hundred fifty-six;

Section five hundred one, as added by chapter five hundred sixty-one

of the laws of nineteen hundred forty-three;

Sections five hundred two, five hundred three, and five hundred four, as so renumbered and last amended by chapter five hundred sixty-one of the laws of nineteen hundred forty-three;

Section five hundred five, as added by chapter five hundred sixty-one of the laws of nineteen hundred forty-three;

Section five hundred six, such section having been added by chapter five hundred sixty-one of the laws of nineteen hundred forty-three, subdivision three having been amended by chapter six hundred eighty of the laws of nineteen hundred forty-four and subdivision one having been amended by chapter five hundred fifty-six of the laws of nineteen hundred fifty-four;

Sections five hundred six-a and five hundred six-b, as added by chapter six hundred ten of the laws of nineteen hundred fifty-one;

Section five hundred seven, as so renumbered and last amended by chapter five hundred sixty-one of the laws of nineteen hundred forty-three and section five hundred eight as amended by chapter five hundred sixty-five of the laws of nineteen hundred twenty-five and so renumbered by chapter five hundred sixty-one of the laws of nineteen hundred forty-three;

Section five hundred nine, as added by chapter five hundred sixty-one of the laws of nineteen hundred forty-three;

Sections five hundred twenty, five hundred twenty-one, five hundred twenty-two, and five hundred twenty-three, as added by chapter nine hundred thirty of the laws of nineteen hundred twenty;

Sections five hundred twenty-four and five hundred twenty-five, as amended by chapter seven hundred ninety-seven of the laws of nineteen hundred thirty-five;

Section five hundred twenty-six, as added by chapter nine hundred thirty of the laws of nineteen hundred twenty;

Section five hundred twenty-seven, as amended by chapter three hundred four of the laws of nineteen hundred forty-four;

Sections five hundred twenty-eight, five hundred twenty-nine, five hundred thirty, five hundred thirty-one and five hundred thirty-two, as added by chapter nine hundred thirty of the laws of nineteen hundred twenty;

Section five hundred thirty-two-a, as added by chapter eight hundred sixty-nine of the laws of nineteen hundred sixty-one;

Sections five hundred thirty-three, five hundred thirty-four, five hundred thirty-five, and five hundred thirty-six, as added by chapter nine hundred thirty of the laws of nineteen hundred twenty;

Section five hundred thirty-seven, as added by chapter one hundred sixty-five of the laws of nineteen hundred thirty-seven;

Section five hundred thirty-eight, as amended by chapter eight hundred forty-nine of the laws of nineteen hundred forty-seven;

Section five hundred thirty-nine, as added by chapter three hundred twenty-one of the laws of nineteen hundred forty-two;

Sections five hundred forty, five hundred forty-one, five hundred forty-two, five hundred forty-three, five hundred forty-four, five hundred forty-five, five hundred forty-six, five hundred forty-seven, five hundred forty-eight, five hundred forty-nine, five hundred fifty, five hundred fifty-one, five hundred fifty-two, and five hundred fifty-three, as added by chapter nine hundred thirty of the laws of nineteen hundred twenty;

Section five hundred fifty-four, subdivision three having been amended by chapter five hundred twelve of the laws of nineteen hundred

twenty-three;

Sections five hundred fifty-five, five hundred fifty-six, five hundred fifty-seven, five hundred fifty-eight and five hundred fifty-nine, as added by chapter nine hundred thirty of the laws of nineteen hundred twenty;

Section five hundred sixty, as amended by chapter eight hundred forty-nine of the laws of nineteen hundred forty-seven;

Sections five hundred sixty-one, five hundred sixty-two and five hundred sixty-three, as added by chapter nine hundred thirty of the laws of nineteen hundred twenty;

Sections five hundred seventy, five hundred seventy-one, five hundred seventy-two, five hundred seventy-three, five hundred seventy-four, five hundred seventy-five, five hundred seventy-six, five hundred seventy-seven, five hundred seventy-eight, five hundred seventy-nine, five hundred eighty, five hundred eighty-one, five hundred eighty-two, five hundred eighty-three, five hundred eighty-four, five hundred eighty-five, five hundred eighty-six, and five hundred eighty-seven, as added by chapter nine hundred thirty of the laws of nineteen hundred twenty;

Section five hundred ninety, as amended by chapter five hundred ninety-seven of the laws of nineteen hundred thirty-five;

Sections five hundred ninety-one, five hundred ninety-two and five hundred ninety-three, as added by chapter nine hundred thirty of the laws of nineteen hundred twenty.