

ABSENTEE LANDLORDS & CRIMINAL ACTIVITY

Article I. Licensing of Landlords

§ 1. Purpose.

A. The Town of West Seneca hereby finds and declares that the rental of non-owner-occupied dwelling units constitutes a business which impacts upon the public health, safety and general welfare of the residents of the Town of West Seneca. Residential non-owner-occupied rental properties may become a haven for drug use and various criminal or disruptive activities that can cause disorder in our community and affect the quality of life of others in the Town of West Seneca.

B. The Town Board of the Town of West Seneca desires to minimize and control the adverse effects caused by illegal and nuisance activities which may occur at these residential non-owner-occupied rental properties, thereby protecting the health, safety and welfare of our citizens; and preserving the quality of life, property values and the character of neighborhoods and businesses.

C. It is the purpose of this article to implement a registration requirement for the owners of residential non-owner-occupied rental properties in order to curb criminal activity and disorder of such non-owner-occupied rental properties in the Town of West Seneca.

§ 2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CRIMINAL ACTIVITY

Unlawful activity consisting of drug activity, weapons possession, assault, domestic violence, murder, assault, sexual assault, gang activity or other activity proscribed by the Penal Law of the State of New York.

CRIMINAL CONVICTION

The entry of a plea of guilty to or a verdict of guilty for one or more counts set forth in an accusatory instrument.

DWELLING

A non-owner-occupied single-family, two-family or multifamily dwelling which is rented or for rent.

DWELLING UNIT

An individual rental unit in a dwelling.

ILLEGAL DRUG ACTIVITY

Use or possession of a controlled substance or marihuana (marijuana), as defined by the New York State Penal Law.

NON-OWNER-OCCUPIED DWELLING

A dwelling which is owned by an owner who does not reside in the dwelling.

OWNER/LANDLORD

The owner or owners of a dwelling, or a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee or agent.

POLICE REPORT

A report issued by a Town police officer after said officer has responded to a complaint alleging the occurrence of criminal activity or a public nuisance.

PREMISES

A building or structure, or any part thereof.

PROPERTY MANAGER

A person or other entity designated by the owner to manage a dwelling on behalf of the owner.

PUBLIC NUISANCE

The following are declared to be public nuisances.

- A. Any premises, building, structure or real property used for the purposes of prostitution as defined by New York State Penal Law Article 230.
- B. Any premises, building, structure or real property used for purposes of indecency, obscene performances and/or promotion of obscene materials as defined by New York State Penal Law Article 235.
- C. Any premises, building, structure or real property used for purposes of illegal gambling activity as defined by New York State Penal Law Article 225.
- D. Any premises, building, structure or real property used for the purpose of illegal possession, use or sale of a firearm or weapon as defined by New York State Penal Law Article 265.
- E. Any premises, building, structure or real property used for the purpose of illegal sale, manufacturing or consumption of alcohol beverages as defined by the New York State Alcohol Beverage Control Law.

F. Any premises, building, structure or real property wherein there exists or has occurred a criminal nuisance as defined by the New York State Penal Law Section 240.45 or 240.46.

G. Activities affecting the quality of life of residents of the Town of West Seneca, including violations of the Town's Noise Law, alcohol-related incidents or other violations of the Code of the Town of West Seneca which are enforced by the Town Police Department.

RENTER/LESSEE/TENANT

Any person who rents a dwelling unit from an owner in the Town of West Seneca, In addition to its ordinary meaning, 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 30 consecutive days or longer.

TOWN

The Town of West Seneca.

§ 3. Landlord license; registration requirement.

A. License required. No person who owns one or more dwelling units in the Town shall allow a dwelling unit to be occupied or rented to another for occupancy unless the owner has first obtained a rental housing business license as hereafter provided.

B. Exemptions. The provisions of this article shall not apply to hotels, motels, bed-and-breakfast establishments, rooming or boarding houses, hospitals, nursing homes, or other dwelling units which offer or provide medical or nursing services if such units are subject to state or federal licensing or regulations concerning the safety of the users, patients or tenants. This article shall not apply to any one-family, two-family, three-family or four-family dwellings where the owner of said dwelling resides in one of the dwelling units of said dwelling.

C. Application for license. Within 30 days after the effective date of this law, the owner of dwelling units shall make written application for a rental housing business license to the Town Clerk's office. Such application shall be on a form furnished by the Town and shall set forth the following information, in addition to other information required by the Town from time to time which the Town deems necessary to administer, enforce and ensure compliance with the provisions of this article. Failure to provide such information shall be grounds to deny a rental housing business license:

(1) Names, addresses (business and residence) and telephone number(s) (business and residence) of owner;

(2) If the owner is an association, limited liability company, partnership, joint tenancy, tenancy in common or tenancy by the entirety, then the name, address and telephone number of each and every owner, member or general partner shall be indicated on the application;

(3) If the owner is a corporation, the principal place of business of the corporation must be provided, along with the name, title and residence address of all officers, directors and managing/general agents must be included on the application;

(4) If the owner has designated an agent or managing company to assist the owner with the management of the property, then the name, principal residence address, principal business address and telephone number of such agent or managing company must be included on the application;

(5) It shall be the responsibility of the owner to properly register any change of address, change of agent or change of any other pertinent information with the Town;

(6) For purposes of this article, a post office box shall not be accepted as the owner's business or residence address. Furthermore, the dwelling intended to be licensed shall not be accepted as the owner's address unless it is the principal place or residence of the owner;

(7) For purposes of this article, if the owner does not reside in or have its place of business in the County of Erie, then the owner must have a property manager located in the County of Erie. If the owner does not reside or have a business located in the County of Erie, then the owner must designate a property manager located in the County of Erie who can accept service of process.

(8) The owner shall specify the address to which all notices and invoices for fees are to be forwarded.

D. No license application fee. There is no fee for a rental housing business/landlord license under this law, but any license issued shall be renewed by the owner every two years.

E. Issuance or denial of license. After receipt of the owner's application for a rental housing business license, the Town Clerk and Town Attorney shall review same to ensure said application contains all of the required information. If the application is deemed complete, the Town Clerk's office, within 30 days, shall forward the owner a rental housing business license. If said application is deemed incomplete, the Town Clerk or Town Attorney shall notify the owner, and the owner shall have 30 days in which to supply the required information. If the required information is not supplied by the owner, the application shall be denied.

F. Effect of failure to make application or denial of rental housing business license. If the owner does not submit the rental housing business license application or fails to supply all of the information required on the application, the owner shall be subject to a fine of Five hundred dollars per owner for each thirty-day period until an acceptable application is submitted.

G. Recourse if fine is not paid. If the owner neglects or refuses to pay the fine(s) as stated in Subsection F of this section within 30 days after notification, the Town shall add any such fine(s) onto the owner's property tax bill, and it shall become a lien on the property/dwelling.

H. Term of license. A rental housing business license issued pursuant to this law shall be valid for a period of two years after its issuance, unless sooner revoked pursuant to this law.

I. Nontransferability of license. A rental housing business license issued pursuant to this law shall not be transferable to any person who has acquired ownership of a dwelling. A new owner is required to file a new application for a rental housing business license within 30 days after acquiring ownership.

§ 4. Criminal or public nuisance activity occurring on dwelling property.

A. In the event that a Town police officer responds to the dwelling unit for reports of criminal activity or public nuisance activity on the dwelling unit; finds that said activity was engaged in or facilitated by the renter, member of the household, guest or other party under the control of the renter; and issues a police report for same, the Town Attorney shall forward a notice to the owner or property manager stating that there was a police report of criminal activity or public nuisance activity on the dwelling property. The owner or property manager shall then take appropriate action to notify the tenant to cease any such activity, or evict said tenant. In the event that there is a subsequent incident at the same dwelling unit in the same activity year relating to activity engaged in, or facilitated by the same renter or a member of his/her household, guest or other party under the control of said renter, the Town Attorney shall forward by first-class mail a second notice of criminal activity or public nuisance activity to the owner or property manager. Subsequent incidents in the same activity year at the same dwelling unit will be followed by a notice to the owner or property manager, along with a notice of the imposition of the following fines:

- (1) Third incident in the same activity year: fine of \$50;
- (2) Fourth incident in the same activity year: fine of \$100;
- (3) Fifth incident in the same activity year: fine of \$500;
- (4) All further incidents in the same activity year: fine of \$1,000 per incident.

B. If the owner or property manager submits information to the Town Attorney that it is in the process of evicting the tenant in whose dwelling unit the criminal or public nuisance activity is occurring, future impositions of fines will cease. In the event that the owner neglects or refuses to pay the fine(s) as stated in this section within 30 days after notification, the Town shall add such fine(s) onto the dwelling's property tax bill, and it shall become a lien on the property/dwelling.

C. For purposes of this law, "activity year" shall mean the period of time commencing on September 1 of any year and ending on August 31 of the subsequent year.

§ 5. Crime-free/crime prevention lease addendum.

The owner or property manager of a dwelling under this law is encouraged to utilize a crime-free/crime prevention lease addendum, an example of which is annexed to this law, to assist the owner or property manager with the eviction of tenants who continue to conduct criminal or public nuisance activity in the dwelling unit.

§ 6. Tenant information.

The owner of each dwelling is required to maintain information concerning all of its tenants, including the number and names of all occupants, and the full address and telephone numbers of all tenants. In the event of criminal or public nuisance activity on the property, the owner or property manager shall cooperate with the Town Police Department by providing this information to the Town Police Department if so requested.

§ 7. Appeals.

Any owner or property manager who is notified of a fine under this law shall have the right to appeal the imposition of said fine to the Town Board of the Town of West Seneca. A written request for an appeal shall be made by the owner or property manager within 30 days after the date of the communication notifying the owner or property manager of the fine. The Town Board shall schedule a hearing within 30 days after receipt of said request for appeal. The owner or property manager shall appear at the hearing in person and shall have the right to representation by a person of his or her choice. The owner, property manager or his/her representative shall provide sworn testimony at said hearing. An appeal to the Town Board will stay the imposition of the fine until it renders its decision. The Town Board shall thereafter issue its written decision to uphold the fine or rescind the fine.

Article II. Eviction for Illegal Drug Activity or Public Nuisance

§ 8. Eviction for use or occupation of premises for illegal drug activity.

A special proceeding to evict a tenant from leased premises may be maintained upon the ground that the premises, or any part thereof, have been used or occupied for the purpose of illegal drug activity or a public nuisance as defined in § 2.

§ 9. Procedures.

The procedures applicable to summary proceedings to recover possession of real property under state law shall be applicable to any proceeding brought under this chapter.

§ 10. Service of notice, commencement of eviction proceedings.

A. The following persons, corporations and agencies may serve personally upon the owner or landlord, or upon his agent, of demised real property used or occupied, in whole or in part, for the use or possession of illegal drugs or the existence of a public nuisance, a written notice requiring the owner or landlord to make an application for the removal of the person(s) so using or occupying the premises:

(1) Any domestic corporation organized for the suppression of vice, subject to, or which submits visitation by the New York State Department of Social Services or the Erie County Department of Social Services, and possess a certificate from such department of such fact and of such conformity with regulations of the department.

(2) Any duly authorized enforcement agency of New York State, or a subdivision thereof, and/or the Town of West Seneca, 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.

B. 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 notice may bring a proceeding under this chapter for such removal as though the petitioner were the owner or the landlord of the premises, and shall have precedence over any similar proceeding thereafter brought by such owner or landlord or to the one theretofore brought by him and not prosecuted diligently and in good faith. Proof of illegal drug activity or a public nuisance at the demised premises or by the occupants thereof, or of those resorting thereto, shall constitute evidence of the unlawful use of the demised premises required to be stated in the petition for removal. Notwithstanding the provisions of § 11 and § 12 of this chapter, multiple instances of illegal drug activity or a public nuisance are not required to commence an eviction proceeding under this chapter. Both the person(s) in possession of the property and the owner or landlord shall be made respondents in the proceeding under this chapter.

§ 11. Multiple convictions constitute presumptive evidence.

Two or more convictions of any person or persons had, within a period of one year, for any of the offenses defined in Article 220 or 221 of the Penal Law or any of the offenses set forth as a public nuisance in § 2 arising out of conduct engaged in the same real property consisting of a dwelling as that term is defined in Subdivision 4 of the New York State Multiple Dwelling Law, shall be presumptive evidence of conduct constituting use and occupancy of the premises for the purpose of using and possessing illegal drugs or of the existence of a public nuisance and of the tenant's knowledge thereof.

§ 12. Other evidence of prohibited conduct as presumption of existence of illegal drug activity or a public nuisance.

Two or more incidents of the following activities at any building, structure or real property within one-year period prior to the commencement of a civil action by notice of such action as provided within this chapter shall be prima facie evidence of the existence of illegal drug activity or a public nuisance.

A. Service of an accusatory instrument charging any of the offenses defined in Article 220 and 221 of the New York State Penal Law occurring upon the property. For the purposes of this section, an accusatory instrument shall include, but not be limited to, any criminal information, misdemeanor and/or felony complaint filed in a court of competent jurisdiction.

B. Service of a search warrant on the building, structure or real property where controlled substances, marihuana (marijuana), drug paraphernalia and/or weapons are seized.

C. Recovery of illegal controlled substances, drug paraphernalia or illegal firearms or weapons on the building, structure or real property.

D. Investigative purchases of illegal controlled substances on the building, structure or real property by law enforcement agencies or their agents.

E. Two or more arrests or convictions for any of the activities set forth in the definition of a public nuisance in § 2 at any premises, building, structure or real property within a two-year period shall be prima facie evidence of the existence of a public nuisance.

§ 13. Civil penalties.

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 \$5,000 to the Town of West Seneca, in which subject premises is located, and the payment of reasonable attorneys' fees and the cost 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 constitute a lien upon the subject real property.

Town of West Seneca
Example of Landlord - Tenant Lease Addendum

This addendum to the lease executed by and between _____ as Owner/Landlord and _____ as Tenant(s) for leasing of the property at _____, is entered into this _____ day of _____, 20____, and includes the following provisions which are hereby agreed, incorporated into and made a part of said lease: Any violations of the ordinances or any other federal, state or local criminal nuisance, or property maintenance statutes, regulations, or ordinances may result in the EVICTION of the tenant who committed, allowed or facilitated the violation.

Tenants and all persons who reside in the leased premises, by assuming possession of the same, agree that the landlord or his agents may release to the Police Department, Fire Department or Building Department information concerning the identity of all occupants. Tenants who fail to provide the landlord the names of individuals who will be temporarily residing at the dwelling unit more than seven consecutive calendar days may be subject to EVICTION.

In consideration of the execution or renewal of a lease of the rental unit identified in this lease, Owner (or Owner's agent or representative) and Resident/Tenant agree as follows:

1. Tenant, any member of the Tenant's household, a guest or invitee in the dwelling unit or on the common grounds, or any other person in the dwelling unit or on the common grounds invited there in any way by the Tenant or a member of the Tenant's household, shall not engage or in any way be involved in criminal activity, including but not limited to:

- a) Drug-related criminal activity, meaning the manufacture, sale, distribution or use of a controlled substance, cannabis or methamphetamine (as defined in the New York Compiled Statutes).
- b) Facilitate any drug-related activity.
- c) Prostitution as defined in the New York Compiled Statutes.
- d) Criminal street gang activity as defined in the New York Compiled Statutes.
- e) Threatening or intimidating actions as prohibited in the New York Compiled Statutes.
- f) Assault as prohibited in the New York Compiled Statutes, including but not limited to unlawful discharge of firearms.
- g) Any breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the Landlord, his agent or other Tenants or involving imminent or actual serious damage as defined in the New York Compiled Statutes.

2. The Tenant and every member of the household shall not permit the dwelling unit to be used for criminal activity or to facilitate criminal activity, in the unit or on the common grounds, regardless of whether the individual engaging in such activities is a member of the household, a guest or invitee and regardless of whether the Tenant is present during any such offense.

3. VIOLATION OF ANY OF THE ABOVE PROVISIONS SHALL BE A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR TERMINATION OF THE TENANCY; PROVIDED, HOWEVER, A TENANT SHALL NOT BE RETALIATED AGAINST NOR EVICTED WHEN MERELY A VICTIM OF ANY CRIMINAL ACT PROHIBITED HEREIN, BUT SHALL BE RESPONSIBLE FOR THE ACTS OF HIS/HER GUESTS AND HOUSEHOLD MEMBERS. A single violation of any of the provisions hereof shall be deemed a serious violation and material noncompliance with the lease. IT IS UNDERSTOOD AND AGREED THAT A SINGLE VIOLATION SHALL BE GOOD CAUSE FOR IMMEDIATE TERMINATION OF THE LEASE UNDER THE NEW YORK COMPILED STATUTES. Unless otherwise provided by law, proof of violation shall not require criminal conviction, BUT SHALL BE BY A PREPONDERANCE OF THE EVIDENCE.

LANDLORD

TENANT
