

5041

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

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

AN ACT to amend the administrative code of the city of New York and the emergency tenant protection act of nineteen seventy-four, in relation to determining primary residency of rent regulated housing accommodations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Clause 10 of subparagraph (i) of paragraph 2 of subdivision
2 e of section 26-403 of the administrative code of the city of New York,
3 as amended by chapter 422 of the laws of 2010, is amended to read as
4 follows:
5 (10) Housing accommodations not occupied by the tenant, not including
6 subtenants or occupants, as his or her primary residence, as determined
7 by a court of competent jurisdiction. For the purposes of determining
8 primary residency, a tenant who is a victim of domestic violence, as
9 defined in section four hundred fifty-nine-a of the social services law,
10 who has left the unit because of such violence, and who asserts an
11 intent to return to the housing accommodation shall be deemed to be
12 occupying the unit as his or her primary residence. FOR PURPOSES OF
13 DETERMINING PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS CHAPTER, THE
14 FOLLOWING SHALL APPLY: (I) THE FAILURE TO FILE A CITY RESIDENT INCOME
15 TAX RETURN BY AN INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL
16 RESULT IN A DETERMINATION THAT THE TENANT DOES NOT OCCUPY THE HOUSING
17 ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER, THAT
18 THIS PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED AN
19 EXTENSION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER FACTOR EXISTS
20 WHICH WOULD EXCUSE THE TIMELY FILING OF THE RETURN; PROVIDED FURTHER,
21 THAT THE TIMELY FILING OF SUCH RETURN SHALL NOT, IN AND OF ITSELF,
22 RESULT IN A DETERMINATION THAT THE INDIVIDUAL DOES OCCUPY THE HOUSING

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

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1 ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE OR (II) A VOTE IS CAST BY
2 A TENANT DURING THEIR TENANCY IN ANY ELECTION HELD IN ACCORDANCE WITH
3 THE PROVISIONS OF THE ELECTION LAW CONDUCTED IN ANY ELECTION DISTRICT
4 OTHER THAN THE ONE DESIGNATED FOR THE HOUSING ACCOMMODATION LOCATED IN
5 THE CITY SHALL RESULT IN A DETERMINATION THAT THE TENANT DOES NOT OCCUPY
6 THE HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE. No action or
7 proceeding shall be commenced seeking to recover possession on the
8 ground that a housing accommodation is not occupied by the tenant as his
9 or her primary residence unless the owner or lessor shall have given
10 thirty days notice to the tenant of his or her intention to commence
11 such action or proceeding on such grounds.

12 S 2. Subparagraph (f) of paragraph 1 of subdivision a of section
13 26-504 of the administrative code of the city of New York, as amended by
14 chapter 422 of the laws of 2010, is amended to read as follows:

15 (f) not occupied by the tenant, not including subtenants or occupants,
16 as his or her primary residence, as determined by a court of competent
17 jurisdiction[, provided, however that no]. FOR PURPOSES OF DETERMINING
18 PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS CHAPTER, THE FOLLOWING
19 SHALL APPLY: (I) THE FAILURE TO FILE A CITY RESIDENT INCOME TAX RETURN
20 BY AN INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL RESULT IN
21 A DETERMINATION THAT THE TENANT DOES NOT OCCUPY THE HOUSING ACCOMMO-
22 DATION AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER, THAT THIS
23 PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED AN EXTEN-
24 SION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER FACTOR EXISTS WHICH
25 WOULD EXCUSE THE TIMELY FILING OF SUCH RETURN; PROVIDED FURTHER, THAT
26 THE TIMELY FILING OF SUCH RETURN SHALL NOT, IN AND OF ITSELF, RESULT IN
27 A DETERMINATION THAT THE INDIVIDUAL DOES OCCUPY THE HOUSING ACCOMMO-
28 DATION AS HIS OR HER PRIMARY RESIDENCE OR (II) A VOTE CAST BY A TENANT
29 DURING TENANCY IN ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF
30 THE ELECTION LAW CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE
31 DESIGNATED FOR THE HOUSING ACCOMMODATION LOCATED IN THE CITY SHALL
32 RESULT IN A FINDING THAT THE TENANT DOES NOT OCCUPY THE UNIT AS HIS OR
33 HER PRIMARY RESIDENCE. NO action or proceeding shall be commenced seek-
34 ing to recover possession on the ground that a housing accommodation is
35 not occupied by the tenant as his or her primary residence unless the
36 owner or lessor shall have given thirty days notice to the tenant of his
37 or her intention to commence such action or proceeding on such grounds.
38 SUCH ACTION OR PROCEEDING MAY BE BROUGHT AT ANY TIME DURING THE COURSE
39 OF A TENANT'S LEASE OR ANY RENEWAL LEASE. IN THE EVENT AN ACTION OR
40 PROCEEDING IS COMMENCED PRIOR TO THE DATE THAT AN OFFER OF A RENEWAL
41 LEASE IS OTHERWISE REQUIRED TO BE MADE BY THE OWNER TO THE TENANT, THE
42 COMMENCEMENT OF SUCH ACTION OR PROCEEDING SHALL SUBSTITUTE FOR THE
43 SERVICE OF ANY OTHER NOTICE PERTAINING TO SUCH RENEWAL, INCLUDING BUT
44 NOT LIMITED TO A NOTICE OF NON-RENEWAL OF SUCH LEASE. For the purposes
45 of determining primary residency, a tenant who is a victim of domestic
46 violence, as defined in section four hundred fifty-nine-a of the social
47 services law, who has left the unit because of such violence, and who
48 asserts an intent to return to the housing accommodation shall be deemed
49 to be occupying the unit as his or her primary residence. For the
50 purposes of this subparagraph where a housing accommodation is rented to
51 a not-for-profit hospital for residential use, affiliated subtenants
52 authorized to use such accommodations by such hospital shall be deemed
53 to be tenants, or

54 S 3. Paragraph 11 of subdivision a of section 5 of section 4 of chap-
55 ter 576 of the laws of 1974, constituting the emergency tenant

1 protection act of nineteen seventy-four, as amended by chapter 422 of
2 the laws of 2010, is amended to read as follows:

3 (11) housing accommodations which are not occupied by the tenant, not
4 including subtenants or occupants, as his or her primary residence, as
5 determined by a court of competent jurisdiction. FOR PURPOSES OF DETER-
6 MINING PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS ACT, THE FOLLOW-
7 ING SHALL APPLY: (I) THE FAILURE TO FILE A STATE RESIDENT INCOME TAX
8 RETURN BY AN INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL
9 RESULT IN A DETERMINATION THAT THE TENANT DOES NOT OCCUPY THE HOUSING
10 ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER, THAT
11 THIS PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED AN
12 EXTENSION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER FACTOR EXISTS
13 WHICH WOULD EXCUSE THE TIMELY FILING OF THE RETURN; PROVIDED FURTHER,
14 THAT THE TIMELY FILING OF SUCH RETURN SHALL NOT, IN AND OF ITSELF,
15 RESULT IN A DETERMINATION THAT THE INDIVIDUAL DOES OCCUPY THE HOUSING
16 ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE OR (II) A VOTE CAST BY A
17 TENANT DURING TENANCY IN ANY ELECTION HELD IN ACCORDANCE WITH THE
18 PROVISIONS OF THE ELECTION LAW CONDUCTED IN ANY ELECTION DISTRICT OTHER
19 THAN THE ONE DESIGNATED FOR THE HOUSING ACCOMMODATION LOCATED IN THE
20 CITY OF NEW YORK SHALL RESULT IN A FINDING THAT THE TENANT DOES NOT
21 OCCUPY THE HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE. SUCH
22 ACTION OR PROCEEDING MAY BE BROUGHT AT ANY TIME DURING THE COURSE OF A
23 TENANT'S LEASE OR ANY RENEWAL LEASE. IN THE EVENT AN ACTION OR PROCEED-
24 ING IS COMMENCED PRIOR TO THE DATE THAT AN OFFER OF A RENEWAL LEASE IS
25 OTHERWISE REQUIRED TO BE MADE BY THE OWNER TO THE TENANT, THE COMMENCE-
26 MENT OF SUCH ACTION OR PROCEEDING SHALL SUBSTITUTE FOR THE SERVICE OF
27 ANY OTHER NOTICE PERTAINING TO SUCH RENEWAL, INCLUDING BUT NOT LIMITED
28 TO A NOTICE OF NON-RENEWAL OF SUCH LEASE. For the purposes of determin-
29 ing primary residency, a tenant who is a victim of domestic violence, as
30 defined in section four hundred fifty-nine-a of the social services law,
31 who has left the unit because of such violence, and who asserts an
32 intent to return to the housing accommodation shall be deemed to be
33 occupying the unit as his or her primary residence. For the purposes of
34 this paragraph, where a housing accommodation is rented to a not-for-
35 profit hospital for residential use, affiliated subtenants authorized to
36 use such accommodations by such hospital shall be deemed to be tenants.
37 No action or proceeding shall be commenced seeking to recover possession
38 on the ground that a housing accommodation is not occupied by the tenant
39 as his or her primary residence unless the owner or lessor shall have
40 given thirty days notice to the tenant of his or her intention to
41 commence such action or proceeding on such grounds.

42 S 4. This act shall take effect immediately; provided that the amend-
43 ment to section 26-403 of the city rent and rehabilitation law made by
44 section one of this act shall remain in full force and effect only so
45 long as the public emergency requiring the regulation and control of
46 residential rents and evictions continues, as provided in subdivision 3
47 of section 1 of the local emergency housing rent control act; and
48 provided further that the amendment to section 26-504 of the rent
49 stabilization law of nineteen hundred sixty-nine made by section two of
50 this act shall expire on the same date as such law expires and shall not
51 affect the expiration of such law as provided under section 26-520 of
52 such law; and provided further that the amendment to section 5 of the
53 emergency tenant protection act of nineteen seventy-four made by section
54 three of this act shall expire on the same date as such act expires and
55 shall not affect the expiration of such act as provided in section 17 of
56 chapter 576 of the laws of 1974, as amended.