

3671

2013-2014 Regular Sessions

I N S E N A T E

February 11, 2013

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,
14 THERE SHALL BE A PRESUMPTION, REBUTTABLE BY THE TENANT, THAT THE TENANT
15 DOES NOT OCCUPY SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESI-
16 DENCE, WHERE:

17 (I) SUCH TENANT IS REQUIRED BY LAW TO FILE AN INCOME TAX RETURN AND
18 SUCH TENANT EITHER (A) FAILS TO FILE ONE OR MORE CITY RESIDENT INCOME
19 TAX RETURNS OR (B) SUCH TENANT FILES ONE OR MORE FEDERAL, STATE OR LOCAL
20 INCOME TAX RETURNS BASED UPON A RESIDENCE OTHER THAN THE HOUSING ACCOM-
21 MODATION WHICH IS SUBJECT TO THIS CHAPTER, PROVIDED, HOWEVER, THAT WHERE
22 A TENANT IS THE RECIPIENT OF A PROPERTY TAX EXEMPTION OR ANY OTHER TAX

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

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1 BENEFIT ARISING FROM OR ATTRIBUTABLE TO THE OWNERSHIP OF SUCH OTHER
2 RESIDENCE, THE PRESUMPTION THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING
3 ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE SHALL NOT BE REBUTTABLE BY
4 SUCH TENANT, OR

5 (II) ONE OR MORE VOTES ARE CAST BY SUCH TENANT DURING THEIR TENANCY IN
6 ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW
7 CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE
8 HOUSING ACCOMMODATION SUBJECT TO THIS CHAPTER LOCATED IN THE CITY. No
9 action or proceeding shall be commenced seeking to recover possession on
10 the ground that a housing accommodation is not occupied by the tenant as
11 his or her primary residence unless the owner or lessor shall have given
12 thirty days notice to the tenant of his or her intention to commence
13 such action or proceeding on such grounds.

14 S 2. Subparagraph (f) of paragraph 1 of subdivision a of section
15 26-504 of the administrative code of the city of New York, as amended by
16 chapter 422 of the laws of 2010, is amended to read as follows:

17 (f) not occupied by the tenant, not including subtenants or occupants,
18 as his or her primary residence, as determined by a court of competent
19 jurisdiction[, provided, however that no]. FOR PURPOSES OF DETERMINING
20 PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS CHAPTER, THERE SHALL BE
21 A PRESUMPTION, REBUTTABLE BY THE TENANT, THAT THE TENANT DOES NOT OCCUPY
22 SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE, WHERE:

23 (I) SUCH TENANT IS REQUIRED BY LAW TO FILE AN INCOME TAX RETURN AND
24 SUCH TENANT EITHER (A) FAILS TO FILE ONE OR MORE CITY RESIDENT INCOME
25 TAX RETURNS OR (B) SUCH TENANT FILES ONE OR MORE FEDERAL, STATE OR LOCAL
26 INCOME TAX RETURNS BASED UPON A RESIDENCE OTHER THAN THE HOUSING ACCOM-
27 MODATION WHICH IS SUBJECT TO THIS CHAPTER, PROVIDED, HOWEVER, THAT WHERE
28 A TENANT IS THE RECIPIENT OF A PROPERTY TAX EXEMPTION OR ANY OTHER TAX
29 BENEFIT ARISING FROM OR ATTRIBUTABLE TO THE OWNERSHIP OF SUCH OTHER
30 RESIDENCE, THE PRESUMPTION THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING
31 ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE SHALL NOT BE REBUTTABLE BY
32 SUCH TENANT, OR

33 (II) ONE OR MORE VOTES ARE CAST BY SUCH TENANT DURING THEIR TENANCY IN
34 ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW
35 CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE
36 HOUSING ACCOMMODATION SUBJECT TO THIS CHAPTER LOCATED IN THE CITY. NO
37 action or proceeding shall be commenced seeking to recover possession on
38 the ground that a housing accommodation is not occupied by the tenant as
39 his or her primary residence unless the owner or lessor shall have given
40 thirty days notice to the tenant of his or her intention to commence
41 such action or proceeding on such grounds. SUCH ACTION OR PROCEEDING
42 MAY BE BROUGHT AT ANY TIME DURING THE COURSE OF A TENANT'S LEASE OR ANY
43 RENEWAL LEASE. IN THE EVENT AN ACTION OR PROCEEDING IS COMMENCED PURSU-
44 ANT TO THIS SUBPARAGRAPH PRIOR TO THE DATE THAT AN OFFER OF A RENEWAL
45 LEASE IS OTHERWISE REQUIRED TO BE MADE BY THE OWNER TO THE TENANT, THE
46 COMMENCEMENT OF SUCH ACTION OR PROCEEDING SHALL SUBSTITUTE FOR THE
47 SERVICE OF ANY OTHER NOTICE PERTAINING TO SUCH RENEWAL, INCLUDING BUT
48 NOT LIMITED TO, A NOTICE OF NON-RENEWAL OF SUCH LEASE. For the purposes
49 of determining primary residency, a tenant who is a victim of domestic
50 violence, as defined in section four hundred fifty-nine-a of the social
51 services law, who has left the unit because of such violence, and who
52 asserts an intent to return to the housing accommodation shall be deemed
53 to be occupying the unit as his or her primary residence. For the
54 purposes of this subparagraph where a housing accommodation is rented to
55 a not-for-profit hospital for residential use, affiliated subtenants

1 authorized to use such accommodations by such hospital shall be deemed
2 to be tenants, or

3 S 3. Paragraph 11 of subdivision a of section 5 of section 4 of chap-
4 ter 576 of the laws of 1974, constituting the emergency tenant
5 protection act of nineteen seventy-four, as amended by chapter 422 of
6 the laws of 2010, is amended to read as follows:

7 (11) housing accommodations which are not occupied by the tenant, not
8 including subtenants or occupants, as his or her primary residence, as
9 determined by a court of competent jurisdiction. FOR PURPOSES OF DETER-
10 MINING PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS ACT, THERE SHALL
11 BE A PRESUMPTION, REBUTTABLE BY THE TENANT, THAT THE TENANT DOES NOT
12 OCCUPY SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE,
13 WHERE:

14 (I) SUCH TENANT IS REQUIRED BY LAW TO FILE AN INCOME TAX RETURN AND
15 SUCH TENANT EITHER (A) FAILS TO FILE ONE OR MORE CITY RESIDENT INCOME
16 TAX RETURNS OR (B) SUCH TENANT FILES ONE OR MORE FEDERAL, STATE OR LOCAL
17 INCOME TAX RETURNS BASED UPON A RESIDENCE OTHER THAN THE HOUSING ACCOM-
18 MODATION WHICH IS SUBJECT TO THIS ACT, PROVIDED, HOWEVER, THAT WHERE A
19 TENANT IS THE RECIPIENT OF A PROPERTY TAX EXEMPTION OR ANY OTHER TAX
20 BENEFIT ARISING FROM OR ATTRIBUTABLE TO THE OWNERSHIP OF SUCH RESIDENCE,
21 THE PRESUMPTION THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING ACCOMMO-
22 DATION AS HIS OR HER PRIMARY RESIDENCE SHALL NOT BE REBUTTABLE BY SUCH
23 TENANT, OR

24 (II) ONE OR MORE VOTES ARE CAST BY SUCH TENANT DURING THEIR TENANCY IN
25 ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW
26 CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE
27 HOUSING ACCOMMODATION SUBJECT TO THIS ACT LOCATED IN THE CITY, TOWN OR
28 VILLAGE. SUCH ACTION OR PROCEEDING MAY BE BROUGHT AT ANY TIME DURING
29 THE COURSE OF A TENANT'S LEASE OR ANY RENEWAL LEASE. IN THE EVENT AN
30 ACTION OR PROCEEDING IS COMMENCED PURSUANT TO THIS PARAGRAPH PRIOR TO
31 THE DATE THAT AN OFFER OF A RENEWAL LEASE IS OTHERWISE REQUIRED TO BE
32 MADE BY THE OWNER TO THE TENANT, THE COMMENCEMENT OF SUCH ACTION OR
33 PROCEEDING SHALL SUBSTITUTE FOR THE SERVICE OF ANY OTHER NOTICE PERTAIN-
34 ING TO SUCH RENEWAL, INCLUDING BUT NOT LIMITED TO, A NOTICE OF NON-RENE-
35 WAL OF SUCH LEASE. For the purposes of determining primary residency, a
36 tenant who is a victim of domestic violence, as defined in section four
37 hundred fifty-nine-a of the social services law, who has left the unit
38 because of such violence, and who asserts an intent to return to the
39 housing accommodation shall be deemed to be occupying the unit as his or
40 her primary residence. For the purposes of this paragraph, where a hous-
41 ing accommodation is rented to a not-for-profit hospital for residential
42 use, affiliated subtenants authorized to use such accommodations by such
43 hospital shall be deemed to be tenants. No action or proceeding shall be
44 commenced seeking to recover possession on the ground that a housing
45 accommodation is not occupied by the tenant as his or her primary resi-
46 dence unless the owner or lessor shall have given thirty days notice to
47 the tenant of his or her intention to commence such action or proceeding
48 on such grounds.

49 S 4. This act shall take effect immediately; provided that the amend-
50 ment to section 26-403 of the city rent and rehabilitation law made by
51 section one of this act shall remain in full force and effect only so
52 long as the public emergency requiring the regulation and control of
53 residential rents and evictions continues, as provided in subdivision 3
54 of section 1 of the local emergency housing rent control act; and
55 provided further that the amendment to section 26-504 of the rent
56 stabilization law of nineteen hundred sixty-nine made by section two of

1 this act shall expire on the same date as such law expires and shall not
2 affect the expiration of such law as provided under section 26-520 of
3 such law; and provided further that the amendment to section 5 of the
4 emergency tenant protection act of nineteen seventy-four made by section
5 three of this act shall expire on the same date as such act expires and
6 shall not affect the expiration of such act as provided in section 17 of
7 chapter 576 of the laws of 1974, as amended.