

# STATE OF NEW YORK

7926

## IN SENATE

March 9, 2018

Introduced by Sen. SERRANO -- 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, the emergency tenant protection act of 1974 and the emergency housing rent control law, in relation to building eligibility for major capital improvement rent surcharges

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section  
2 26-405 of the administrative code of the city of New York, as amended by  
3 section 31 of part A of chapter 20 of the laws of 2015, is amended to  
4 read as follows:

5 (g) There has been since July first, nineteen hundred seventy, a major  
6 capital improvement required for the operation, preservation or maintenance of the structure. An adjustment under this subparagraph (g) for  
7 any order of the commissioner issued after the effective date of the  
8 rent act of 2015 shall be in an amount sufficient to amortize the cost  
9 of the improvements pursuant to this subparagraph (g) over an eight-year  
10 period for buildings with thirty-five or fewer units or a nine year  
11 period for buildings with more than ~~[thirty-five]~~ thirty-five units~~[-]~~;  
12 provided, however, that no adjustment shall be allowed for any building  
13 in which more than fifty percent of the habitable units are not subject  
14 to rent stabilization or rent control, or  
15

16 § 2. Paragraph 6-a of subdivision c of section 26-511 of the administrative code of the city of New York, is amended to read as follows:

17 (6-a) provides criteria whereby as an alternative to the hardship  
18 application provided under paragraph six of this subdivision owners of  
19 buildings acquired by the same owner or a related entity owned by the  
20 same principals three years prior to the date of application may apply  
21 to the division for increases in excess of the level of applicable  
22 guideline increases established under this law based on a finding by the  
23 commissioner that such guideline increases are not sufficient to enable  
24 the owner to maintain an annual gross rent income for such building  
25

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

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1 which exceeds the annual operating expenses of such building by a sum  
2 equal to at least five percent of such gross rent. For the purposes of  
3 this paragraph, operating expenses shall consist of the actual, reason-  
4 able, costs of fuel, labor, utilities, taxes, other than income or  
5 corporate franchise taxes, fees, permits, necessary contracted services  
6 and non-capital repairs, insurance, parts and supplies, management fees  
7 and other administrative costs and mortgage interest. For the purposes  
8 of this paragraph, mortgage interest shall be deemed to mean interest on  
9 a bona fide mortgage including an allocable portion of charges related  
10 thereto. Criteria to be considered in determining a bona fide mortgage  
11 other than an institutional mortgage shall include; condition of the  
12 property, location of the property, the existing mortgage market at the  
13 time the mortgage is placed, the term of the mortgage, the amortization  
14 rate, the principal amount of the mortgage, security and other terms and  
15 conditions of the mortgage. The commissioner shall set a rental value  
16 for any unit occupied by the owner or a person related to the owner or  
17 unoccupied at the owner's choice for more than one month at the last  
18 regulated rent plus the minimum number of guidelines increases or, if no  
19 such regulated rent existed or is known, the commissioner shall impute a  
20 rent consistent with other rents in the building. The amount of hardship  
21 increase shall be such as may be required to maintain the annual gross  
22 rent income as provided by this paragraph. The division shall not grant  
23 a hardship application under this paragraph or paragraph six of this  
24 subdivision for (i) a period of three years subsequent to granting a  
25 hardship application under the provisions of this paragraph or (ii) to  
26 the owner of any building in which more than fifty percent of the habi-  
27 table units are not subject to rent stabilization or rent control. The  
28 collection of any increase in the rent for any housing accommodation  
29 pursuant to this paragraph shall not exceed six percent in any year from  
30 the effective date of the order granting the increase over the rent set  
31 forth in the schedule of gross rents, with collectability of any dollar  
32 excess above said sum to be spread forward in similar increments and  
33 added to the rent as established or set in future years. No application  
34 shall be approved unless the owner's equity in such building exceeds  
35 five percent of: (i) the arms length purchase price of the property;  
36 (ii) the cost of any capital improvements for which the owner has not  
37 collected a surcharge; (iii) any repayment of principal of any mortgage  
38 or loan used to finance the purchase of the property or any capital  
39 improvements for which the owner has not collected a surcharge and (iv)  
40 any increase in the equalized assessed value of the property which  
41 occurred subsequent to the first valuation of the property after  
42 purchase by the owner. For the purposes of this paragraph, owner's equi-  
43 ty shall mean the sum of (i) the purchase price of the property less the  
44 principal of any mortgage or loan used to finance the purchase of the  
45 property, (ii) the cost of any capital improvement for which the owner  
46 has not collected a surcharge less the principal of any mortgage or loan  
47 used to finance said improvement, (iii) any repayment of the principal  
48 of any mortgage or loan used to finance the purchase of the property or  
49 any capital improvement for which the owner has not collected a  
50 surcharge, and (iv) any increase in the equalized assessed value of the  
51 property which occurred subsequent to the first valuation of the proper-  
52 ty after purchase by the owner.

53 § 3. Paragraph 3 of subdivision d of section 6 of section 4 of chapter  
54 576 of the laws of 1974, constituting the emergency tenant protection  
55 act of nineteen seventy-four, as amended by section 30 of part A of  
56 chapter 20 of the laws of 2015, is amended to read as follows:

(3) there has been since January first, nineteen hundred seventy-four a major capital improvement required for the operation, preservation or maintenance of the structure and more than half of the habitable units in the building are subject to rent stabilization or rent control. An adjustment under this paragraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this paragraph over an eight-year period for a building with thirty-five or fewer housing accommodations, or a nine-year period for a building with more than thirty-five housing accommodations, for any determination issued by the division of housing and community renewal after the effective date of the rent act of 2015, or

§ 4. Subparagraph 7 of the second undesignated subparagraph of paragraph (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by section 32 of part A of chapter 20 of the laws of 2015, is amended to read as follows:

(7) there has been since March first, nineteen hundred fifty, a major capital improvement required for the operation, preservation or maintenance of the structure; which for any order of the commissioner issued after the effective date of the rent act of 2015 the cost of such improvement shall be amortized over an eight-year period for buildings with thirty-five or fewer units or a nine year period for buildings with more than ~~[thirty-five]~~ thirty-five units~~]~~; provided, however, that no adjustment shall be allowed for any building in which more than fifty percent of the habitable units are not subject to rent stabilization or rent control, or

§ 5. Paragraph 5 of subdivision d of section 6 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as amended by chapter 102 of the laws of 1984, is amended to read as follows:

(5) as an alternative to the hardship application provided under paragraph four of this subdivision, owners of buildings acquired by the same owner or a related entity owned by the same principals three years prior to the date of application may apply to the division for increases in excess of the level of applicable guideline increases established under this law based on a finding by the commissioner that such guideline increases are not sufficient to enable the owner to maintain an annual gross rent income for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such gross rent provided, that more than half of the habitable units in the building are subject to rent stabilization or rent control. For the purposes of this paragraph, operating expenses shall consist of the actual, reasonable, costs of fuel, labor, utilities, taxes, other than income or corporate franchise taxes, fees, permits, necessary contracted services and non-capital repairs, insurance, parts and supplies, management fees and other administrative costs and mortgage interest. For the purposes of this paragraph, mortgage interest shall be deemed to mean interest on a bona fide mortgage including an allocable portion of charges related thereto. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include; condition of the property, location of the property, the existing mortgage market at the time the mortgage is placed, the term of the mortgage, the amortization rate, the principal amount of the mortgage, security and other terms and conditions of the mortgage. The commissioner shall set a rental value for any unit occupied by the owner or a person related to the owner or unoccupied at the owner's choice for more than

1 one month at the last regulated rent plus the minimum number of guide-  
2 lines increases or, if no such regulated rent existed or is known, the  
3 commissioner shall impute a rent consistent with other rents in the  
4 building. The amount of hardship increase shall be such as may be  
5 required to maintain the annual gross rent income as provided by this  
6 paragraph. The division shall not grant a hardship application under  
7 this paragraph or paragraph four of this subdivision for a period of  
8 three years subsequent to granting a hardship application under the  
9 provisions of this paragraph. The collection of any increase in the rent  
10 for any housing accommodation pursuant to this paragraph shall not  
11 exceed six percent in any year from the effective date of the order  
12 granting the increase over the rent set forth in the schedule of gross  
13 rents, with collectability of any dollar excess above said sum to be  
14 spread forward in similar increments and added to the rent as estab-  
15 lished or set in future years. No application shall be approved unless  
16 the owner's equity in such building exceeds five percent of: (i) the  
17 arms length purchase price of the property; (ii) the cost of any capital  
18 improvements for which the owner has not collected a surcharge; (iii)  
19 any repayment of principal of any mortgage or loan used to finance the  
20 purchase of the property or any capital improvements for which the owner  
21 has not collected a surcharge; and (iv) any increase in the equalized  
22 assessed value of the property which occurred subsequent to the first  
23 valuation of the property after purchase by the owner. For the purposes  
24 of this paragraph, owner's equity shall mean the sum of (i) the purchase  
25 price of the property less the principal of any mortgage or loan used to  
26 finance the purchase of the property, (ii) the cost of any capital  
27 improvement for which the owner has not collected a surcharge less the  
28 principal of any mortgage or loan used to finance said improvement,  
29 (iii) any repayment of the principal of any mortgage or loan used to  
30 finance the purchase of the property or any capital improvement for  
31 which the owner has not collected a surcharge, and (iv) any increase in  
32 the equalized assessed value of the property which occurred subsequent  
33 to the first valuation of the property after purchase by the owner.

34 § 6. This act shall take effect immediately; provided, however, that  
35 the amendments to section 26-405 of the city rent and rehabilitation law  
36 made by section one of this act shall remain in full force and effect  
37 only as long as the public emergency requiring the regulation and  
38 control of residential rents and evictions continues, as provided in  
39 subdivision 3 of section 1 of the local emergency housing rent control  
40 act; and provided, further, that the amendments to section 26-511 of  
41 chapter 4 of title 26 of the administrative code of the city of New York  
42 made by section two of this act shall expire on the same date as such  
43 law expires and shall not affect the expiration of such law as provided  
44 under section 26-520 of such law; and provided, further, that the amend-  
45 ments to section 6 of the emergency tenant protection act of nineteen  
46 seventy-four made by sections three and five of this act shall expire on  
47 the same date as such act expires and shall not affect the expiration of  
48 such act as provided in section 17 of chapter 576 of the laws of 1974;  
49 and provided, further, that the amendments to section 4 of the emergency  
50 housing rent control law made by section four of this act shall expire  
51 on the same date as such law expires and shall not affect the expiration  
52 of such law as provided in subdivision 2 of section 1 of chapter 274 of  
53 the laws of 1946.