

STATE OF NEW YORK

5483

2021-2022 Regular Sessions

IN ASSEMBLY

February 19, 2021

Introduced by M. of A. FITZPATRICK, SALKA, TAGUE -- Multi-Sponsored by
-- M. of A. MANKTELOW -- read once and referred to the Committee on
Housing

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; and to amend the tax law, in
relation to verification of residence

The People of the State of New York, represented in Senate and Assem-
bly, 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 purposes of determining
8 primary residency, as used in this chapter, the failure to file a New
9 York city resident income tax return for the two preceding calendar
10 years (setting forth the housing accommodation as his or her residence)
11 by an individual required by law to file such a return, shall result in
12 a finding that the tenant does not occupy the unit as his or her primary
13 residence; provided, however, that this provision shall not apply to an
14 individual who has requested an extension of time for payment of tax, or
15 who is not required to file a resident income tax return, or where any
16 other factor exists which would excuse the timely filing of the return;
17 provided further, that the timely filing of the return, alone, shall not
18 result in a presumption that the individual does occupy the unit as his
19 or her primary residence or that the filing of an action to determine a
20 tenant's primary residence shall not preclude such tenant from filing an
21 amended tax return provided that such amended return is filed within
22 sixty days of the commencement of the action. Further, for the purposes

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

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1 of determining primary residency, a tenant who is a victim of domestic
2 violence, as defined in section four hundred fifty-nine-a of the social
3 services law, who has left the unit because of such violence, and who
4 asserts an intent to return to the housing accommodation shall be deemed
5 to be occupying the unit as his or her primary residence. No action or
6 proceeding shall be commenced seeking to recover possession on the
7 ground that a housing accommodation is not occupied by the tenant as his
8 or her primary residence unless the owner or lessor shall have given
9 thirty days notice to the tenant of his or her intention to commence
10 such action or proceeding on such grounds.

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

14 (f) not occupied by the tenant, not including subtenants or occupants,
15 as his or her primary residence, as determined by a court of competent
16 jurisdiction[~~, provided, however that no~~]. For purposes of determining
17 primary residency, as used in this chapter, the failure to file a New
18 York city resident income tax return for the two preceding calendar
19 years (setting forth the housing accommodation as his or her residence)
20 by an individual required by law to file such a return, shall result in
21 a finding that the tenant does not occupy the unit as his or her primary
22 residence; provided, however, that this provision shall not apply to an
23 individual who has requested an extension of time for payment of tax, or
24 who is not required to file a resident income tax return, or where any
25 other factor exists which would excuse the timely filing of a return;
26 provided further, that the timely filing of the return, alone, shall not
27 result in a presumption that the individual does occupy the unit as his
28 or her primary residence or that the filing of an action to determine a
29 tenant's primary residence shall not preclude such tenant from filing an
30 amended tax return provided that such amended return is filed within
31 sixty days of the commencement of the action. further, no action or
32 proceeding shall be commenced seeking to recover possession on the
33 ground that a housing accommodation is not occupied by the tenant as his
34 or her primary residence unless the owner or lessor shall have given
35 thirty days notice to the tenant of his or her intention to commence
36 such action or proceeding on such grounds. For the purposes of determin-
37 ing primary residency, a tenant who is a victim of domestic violence, as
38 defined in section four hundred fifty-nine-a of the social services law,
39 who has left the unit because of such violence, and who asserts an
40 intent to return to the housing accommodation shall be deemed to be
41 occupying the unit as his or her primary residence. For the purposes of
42 this subparagraph where a housing accommodation is rented to a not-for-
43 profit hospital for residential use, affiliated subtenants authorized to
44 use such accommodations by such hospital shall be deemed to be tenants,
45 or

46 § 3. Paragraph 11 of subdivision a of section 5 of section 4 of chap-
47 ter 576 of the laws of 1974, constituting the emergency tenant
48 protection act of nineteen seventy-four, as amended by section 1 of part
49 J of chapter 36 of the laws of 2019, is amended to read as follows:

50 (11) housing accommodations which are not occupied by the tenant, not
51 including subtenants or occupants, as his or her primary residence, as
52 determined by a court of competent jurisdiction. For the purposes of
53 determining primary residency, a tenant who is a victim of domestic
54 violence, as defined in section four hundred fifty-nine-a of the social
55 services law, who has left the unit because of such violence, and who
56 asserts an intent to return to the housing accommodation shall be deemed

1 to be occupying the unit as his or her primary residence. Further, for
2 purposes of determining primary residency, as used in this chapter, the
3 failure to file a New York state resident income tax return for the two
4 preceding calendar years (setting forth the housing accommodation as his
5 or her residence) by an individual required by law to file such a
6 return, shall result in a finding that the tenant does not occupy the
7 unit as his or her primary residence; provided, however, that this
8 provision shall not apply to an individual who has requested an exten-
9 sion of time for payment of tax, or who is not required to file a resi-
10 dent income tax return, or where any other factor exists which would
11 excuse the timely filing of the return; provided further, that the time-
12 ly filing of the return, alone, shall not result in a presumption that
13 the individual does occupy the unit as his or her primary residence or
14 that the filing of an action to determine a tenant's primary residence
15 shall not preclude such tenant from filing an amended tax return
16 provided that such amended return is filed within sixty days of the
17 commencement of the action. For the purposes of this paragraph, where a
18 housing accommodation is rented to a not-for-profit hospital for resi-
19 dential use, affiliated subtenants authorized to use such accommodations
20 by such hospital shall be deemed to be tenants. For the purposes of
21 this paragraph, where a housing accommodation is rented to a not-for-
22 profit for providing, as of and after [~~the effective date of the chapter~~
23 ~~of the laws of two thousand nineteen that amended this paragraph~~] June
24 fourteenth, two thousand nineteen, permanent housing to individuals who
25 are or were homeless or at risk of homelessness, affiliated subtenants
26 authorized to use such accommodations by such not-for-profit shall be
27 deemed to be tenants. No action or proceeding shall be commenced seeking
28 to recover possession on the ground that a housing accommodation is not
29 occupied by the tenant as his or her primary residence unless the owner
30 or lessor shall have given thirty days notice to the tenant of his or
31 her intention to commence such action or proceeding on such grounds.

32 § 4. The tax law is amended by adding a new section 171-bb to read as
33 follows:

34 § 171-bb. Verification of residence filing address. (1) The commis-
35 sioner is authorized to verify to owners of multiple dwellings covered
36 by the city rent and rehabilitation law, the rent stabilization law of
37 nineteen hundred sixty-nine and/or the emergency tenant protection act
38 of nineteen seventy-four whether or not, in a given calendar year, a New
39 York city or New York state resident income tax return was filed by an
40 individual who is a tenant in the owner's multiple dwelling and, if so,
41 the residence address which is set forth on the tax return. Such
42 verification shall be in writing and shall be considered a certificate
43 or affidavit for the purposes of rule forty-five hundred twenty of the
44 civil practice law and rules.

45 (2) The department may charge a reasonable fee, to be determined by
46 the commissioner, in payment to the department for the expense incurred
47 in verifying the filing and residence address.

48 (3) The commissioner shall promulgate such rules and regulations as it
49 deems necessary to carry out the provisions of this section.

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

1 title 26 of the administrative code of the city of New York made by
2 section two of this act shall expire on the same date as such law
3 expires and shall not affect the expiration of such law as provided
4 under section 26-520 of such law.