STATE OF NEW YORK

2980--A

2023-2024 Regular Sessions

IN SENATE

January 26, 2023

Introduced by Sens. KAVANAGH, HOYLMAN-SIGAL, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 establishing the legal regulated rent for the combination of two or more vacant apartments; to amend the public housing law, in relation to defining permanently vacated; to amend the emergency tenant protection act of nineteen seventy-four, in relation to exemptions from rent stabilization on the basis of substantial rehabilitation; and to repeal paragraph 9 of subdivision a of section 26-405 of the administrative code of the city of New York, in relation to public hearings by the city rent agency (Part A); to amend the administrative code of the city of New York, chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, and chapter 274 of the laws of 1946, constituting the emergency housing rent control law, in relation to major capital improvements (Part B); to amend the multiple dwelling law, in relation to rent impairing violations; and to amend the real property actions and proceedings law, in relation to eviction proceedings (Part C); and to apply the Housing Stability and Tenant Protection Act of 2019 to rent calculations and rent records maintenance and destruction (Part D)

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

Section 1. This act enacts into law components of legislation relating to rent regulation and tenant protection. Each component is wholly contained within a Part identified as Parts A through D. The effective date for each particular provision contained within such Part is set

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

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forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Paragraph 9 of subdivision a of section 26-405 of the administrative code of the city of New York is REPEALED.

§ 2. Subdivision c of section 26-511 of the administrative code of the city of New York is amended by adding a new paragraph 15 to read as follows:

(15) (a) where an owner combines two or more vacant housing accommodations or combines a vacant housing accommodation with an occupied accommodation, such initial rent for such new housing accommodation shall be the combined legal rent for both previous housing accommodations, subject to any applicable guideline increases and any other increases authorized by this chapter including any individual apartment improvement increases applicable for both housing accommodations. If an owner combines a rent regulated accommodation with an apartment not subject to rent regulation, the resulting apartment shall be subject to the emergency tenant protection act of nineteen seventy-four. If an owner increases the area of an apartment not subject to rent regulation by adding space that was previously part of a rent regulated apartment, each apartment shall be subject to the emergency tenant protection act of nineteen seventy-four.

(b) where an owner substantially increases the outer dimension of a vacant housing accommodation, such initial rent shall be the prior rent of such housing accommodation, increased by a percentage that is equal to the percentage increase in the dwelling space and such other increases authorized by this chapter including any applicable guideline increase and individual apartment improvement increase that could be authorized for the unit prior to the alteration of the outer dimensions.

(c) notwithstanding subparagraphs (a) and (b) of this paragraph, such increases may be denied based on the occurrence of such vacancy due to harassment, fraud, or other acts of evasion which may require that such rent be set in accordance with this subdivision.

(d) where the vacant housing accommodations are combined, modified, divided or the dimension of such housing accommodation otherwise altered and these changes are being made pursuant to a preservation regulatory agreement with a federal, state or local governmental agency or instrumentality, the rent stabilized rents charged thereafter shall be based on an initial rent set by such agency or instrumentality.

(e) where an owner substantially decreases the outer dimensions of a vacant housing accommodation, such initial rent shall be the prior rent of such housing accommodation, decreased by the same percentage the square footage of the original apartment was decreased by and such other increases authorized by this chapter including any applicable guideline increase and individual apartment improvement increase that could be authorized for the apartment prior to the alteration of the outer dimensions.

(f)(i) when an owner combines two or more rent regulated apartments, the owner may use each of the previous apartments' remaining individual apartment improvement allowances for the purposes of a temporary individual apartment improvement rent increase. The owner shall subsequently designate a surviving apartment for the purposes of registration that has the same apartment number as one of the prior apartments. If that prior apartment has any reimbursable individual apartment improvement money remaining after the combination, that money may be reimbursed for future individual apartment improvements undertaken within the subsequent fifteen years following the combination.

(ii) in order for an owner to qualify for a temporary individual apartment improvement rent increase when apartments are combined, the requirements for an individual apartment improvement, including all notification requirements under this chapter shall be met.

(g) owners shall maintain the records and rent histories of all combined apartments, both prior to and post combination, for the purposes of rent setting, overcharge and all other proceedings to which the records are applicable.

§ 2-a. Subdivision (a) of section 10-b of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, is amended by adding a new paragraph 13 to read as follows:

13. (i) where an owner combines two or more vacant housing accommodations or combines a vacant housing accommodation with an occupied accommodation, such initial rent for such new housing accommodation shall be the combined legal rent for both previous housing accommodations, subject to any applicable guideline increases and any other increases authorized by this chapter including any individual apartment improvement increases applicable for both housing accommodations. If an owner combines a rent regulated accommodation with an apartment not subject to rent regulation, the resulting apartment shall be subject to this act. If an owner increases the area of an apartment not subject to rent regulation by adding space that was previously part of a rent regulated apartment, each apartment shall be subject to this act.

(ii) where an owner substantially increases the outer dimension of a vacant housing accommodation, such initial rent shall be the prior rent of such housing accommodation, increased by a percentage that is equal to the percentage increase in the dwelling space and such other increases authorized by this act including any applicable guideline increase and individual apartment improvement increase that could be authorized for the unit prior to the alteration of the outer dimensions.

(iii) notwithstanding subparagraphs (i) and (ii) of this paragraph, such increases may be denied based on the occurrence of such vacancy due to harassment, fraud, or other acts of evasion which may require that such rent be set in accordance with section twelve of this act.

(iv) where the vacant housing accommodations are combined, modified, divided or the dimension of such housing accommodation otherwise altered and these changes are being made pursuant to a preservation regulatory agreement with a federal, state or local governmental agency or instrumentality, the rent stabilized rents charged thereafter shall be based on an initial rent set by such agency or instrumentality.

(v) where an owner substantially decreases the outer dimensions of a vacant housing accommodation, such initial rent shall be the prior rent of such housing accommodation, decreased by the same percentage the square footage of the original apartment was decreased by and such other increases authorized by this act including any applicable guideline increase and individual apartment improvement increase that could be authorized for the apartment prior to the alteration of the outer dimensions.

(vi)(1) when an owner combines two or more rent regulated apartments, the owner may use each of the previous apartments' remaining individual apartment improvement allowances for the purposes of a temporary individual apartment improvement rent increase. The owner shall subsequently designate a surviving apartment for the purposes of registration that has the same apartment number as one of the prior apartments. If that prior apartment has any reimbursable individual apartment improvement money remaining after the combination, that money may be reimbursed for future individual apartment improvements undertaken within the subsequent fifteen years following the combination.

(2) in order for an owner to qualify for a temporary individual apartment improvement rent increase when apartments are combined, the requirements for an individual apartment improvement, including all notification requirements under this act shall be met.

(vii) owners shall maintain the records and rent histories of all combined apartments, both prior to and post combination, for the purposes of rent setting, overcharge and all other proceedings to which the records are applicable.

§ 3. The opening paragraph of paragraph (a) of subdivision 4 of section 14 of the public housing law, as added by chapter 116 of the laws of 1997, is amended to read as follows:

that unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, any member of the tenant's family, as defined in paragraph (c) of this subdivision, shall succeed to the rights of a tenant under such acts and laws where the tenant has permanently vacated the housing accommodation and such family member has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years, or where such person is a "senior citizen" or a "disabled person," as defined in paragraph (c) of this subdivision, for a period of no less than one year, immediately prior to the permanent vacating of the housing accommodation by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods. For the purposes of this paragraph, "permanently vacated" shall mean the date when the tenant of record physically moves out of the housing accommodation and permanently ceases to use it as their primary residence, regardless of subsequent contacts with the unit or the signing of lease renewals or continuation of rent payments. The minimum periods of required residency set forth in this subdivision shall not be deemed to be interrupted by any period during which the "family member" temporarily relocates because he or she:

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

(5) housing accommodations in buildings completed or buildings substantially rehabilitated as family units on or after January first, nineteen hundred seventy-four; provided that an owner claiming exemption from rent stabilization on the basis of substantial rehabilitation shall seek approval from state division of housing and community renewal within one year of the completion of the substantial rehabilitation, or for any building previously alleged to have been substantially rehabilitated before the effective date of the chapter of the laws of two thousand twenty-three that amended this paragraph, within six months of such effective date, and ultimately obtain such approval, which shall be denied on the following grounds:

<u>(a) the owner or its predecessors in interest have engaged in harassment of tenants in the five years preceding the completion of the substantial rehabilitation;</u>

<u>(b) the building was not in a seriously deteriorated condition requiring substantial rehabilitation;</u>

<u>(c) the owner's or its predecessors in interest's acts or omissions in failing to maintain the building materially contributed to the seriously deteriorated condition of the premises; or</u>

<u>(d) the substantial rehabilitation work was performed in a piecemeal fashion and was not completed in a reasonable amount of time, during which period the building was at least eighty percent vacant;</u>

§ 5. This act shall take effect immediately and shall apply to all pending proceedings on and after such date; provided that the amendments to section 26-511 of chapter 4 of title 26 of the administrative code of the city of New York made by section two of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided under section 26-520 of such law.

PART B

Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, as amended by section 27 of part Q of chapter 39 of the laws of 2019, is amended to read as follows:

(g) There has been since July first, nineteen hundred seventy, a major capital improvement essential for the preservation energy efficiency, functionality, or infrastructure of the entire building, improvement of the structure including heating, windows, plumbing and roofing but shall not be for operational costs or unnecessary cosmetic improvements. The temporary increase based upon a major capital improvement under this subparagraph for any order of the commissioner issued after the effective date of the chapter of the laws of two thousand nineteen that amended this subparagraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph (g) over a twelve-year period for buildings with thirty-five or fewer units or a twelve and one-half year period for buildings with more than thirty-five units, and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved[~~,~~]**; provided, however, no application for a major capital improvement rent increase shall be approved by the division of housing and community renewal unless the owner of the property has filed all copies of permits pertaining to the major capital improvement work with such application. Any application submitted with fraudulent permits or without required permits shall be denied;** or

§ 2. Paragraph 6 of subdivision c of section 26-511 of the administrative code of the city of New York, as separately amended by section 12 of part K of chapter 36 and section 28 of part Q of chapter 39 of the laws of 2019, is amended to read as follows:

(6) provides criteria whereby the commissioner may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide (a) as to hardship applications, for a finding that the level of fair rent increase is not sufficient to enable the owner to maintain approximately the same average annual net income (which shall be computed without regard to debt service, financing costs or management fees) for the three year period ending on or within six months of the date of an application pursuant to such criteria as compared with annual net income, which prevailed on the average over the period nineteen hundred sixty-eight through nineteen hundred seventy, or for the first three years of operation if the building was completed since nineteen hundred sixty-eight or for the first three fiscal years after a transfer of title to a new owner provided the new owner can establish to the satisfaction of the commissioner that he or she acquired title to the building as a result of a bona fide sale of the entire building and that the new owner is unable to obtain requisite records for the fiscal years nineteen hundred sixty-eight through nineteen hundred seventy despite diligent efforts to obtain same from predecessors in title and further provided that the new owner can provide financial data covering a minimum of six years under his or her continuous and uninterrupted operation of the building to meet the three year to three year comparative test periods herein provided; and (b) as to completed building-wide major capital improvements, for a finding that such improvements are deemed depreciable under the Internal Revenue Code and that the cost is to be amortized over a twelve-year period for a building with thirty-five or fewer housing accommodations, or a twelve and one-half-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 [~~the~~] chapter of the laws of two thousand nineteen that amended this paragraph and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any

remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved or based upon cash purchase price exclusive of interest or service charges. Where an application for a temporary major capital improvement increase has been filed, a tenant shall have sixty days from the date of mailing of a notice of a proceeding in which to answer or reply. The state division of housing and community renewal shall provide any responding tenant with the reasons for the division's approval or denial of such application. **The division of housing and community renewal shall require the submission of copies of all permits pertaining to major capital improvement work with any application for a major capital improvement rent increase. Any application submitted with fraudulent permits or without required permits shall be denied.** Notwithstanding anything to the contrary contained herein, no hardship increase granted pursuant to this paragraph shall, when added to the annual gross rents, as determined by the commissioner, exceed the sum of, (i) the annual operating expenses, (ii) an allowance for management services as determined by the commissioner, (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund which is operated under the supervision of the banking or insurance laws of the state of New York or the United States, and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for the purposes of this paragraph shall be six times the annual gross rent. The collection of any increase in the stabilized rent for any apartment pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the stabilized rent as established or set in future years;

§ 3. Paragraph 3 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 section 26 of part Q of chapter 39 of the laws of 2019, is amended to read as follows:

(3) there has been since January first, nineteen hundred seventy-four a major capital improvement essential for the preservation, energy efficiency, functionality, or infrastructure of the entire building, improvement of the structure including heating, windows, plumbing and roofing, but shall not be for operation costs or unnecessary cosmetic improvements. An adjustment under this paragraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this paragraph over a twelve-year period for a building with thirty-five or fewer housing accommodations, or a twelve and one-half period for a building with more than thirty-five housing accommodations and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board, for any determination issued by the division of housing and community renewal after the effective date of the chapter of the laws of two thousand nineteen that amended this para-

graph. Temporary major capital improvement increases shall be collectable prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, the collection of any rent increases for any renewal lease commencing on or after June 14, 2019, due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved[~~,~~]; provided, however, no application for a major capital improvement rent increase shall be approved by the division of housing and community renewal unless the owner of the property has filed all copies of permits pertaining to the major capital improvement work with such application. Any application submitted with fraudulent permits or without required permits shall be denied; or

§ 4. Subparagraph 7 of the second undesignated paragraph 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 separately amended by section 25 of part Q of chapter 39 and section 14 of part K of chapter 36 of the laws of 2019, is amended to read as follows:

(7) there has been since March first, nineteen hundred fifty, a major capital improvement essential for the preservation, energy efficiency, functionality, or infrastructure of the entire building, improvement of the structure including heating, windows, plumbing and roofing, but shall not be for operational costs or unnecessary cosmetic improvements; which for any order of the commissioner issued after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph the cost of such improvement shall be amortized over a twelve-year period for buildings with thirty-five or fewer units or a twelve and one-half year period for buildings with more than thirty-five units, and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent.

Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved; provided, however, where an application for a temporary major capital improvement increase has been filed, a tenant shall have sixty days from the date of mailing of a notice of a proceeding in which to answer or reply. The state division of housing and community renewal shall provide any responding tenant with the reasons for the division's approval or denial of such application; **provided, however, no application for a major capital improvement rent increase shall be approved by the division of housing and community renewal unless the owner of the property has filed all copies of permits pertaining to the major capital improvement work with such application. Any application submitted with fraudulent permits or without required permits shall be denied;** or

§ 5. This act shall take effect immediately; provided that the amendments to section 26-405 of the city rent and rehabilitation law made by section one of this act shall remain in full force and effect only as long as the public emergency requiring the regulation and control of residential rents and evictions continues, as provided in subdivision 3 of section 1 of the local emergency housing rent control act; provided, further, that the amendments to section 26-511 of the rent stabilization law of nineteen hundred sixty-nine made by section two of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided under section 26-520 of such law, as from time to time amended.

PART C

Section 1. Subdivision 3 of section 302-a of the multiple dwelling law, as added by chapter 911 of the laws of 1965, is amended to read as follows:

3. a. If (i) the official records of the department shall note that a rent impairing violation exists **or existed** in respect to a multiple dwelling and that notice of such violation has been given by the department, by mail, to the owner last registered with the department and (ii) such note of the violation [~~is~~] **was** not cancelled or removed of record within [~~six~~] **three** months after the date of such notice of such violation, then for the period that such violation remains uncorrected after the expiration of said [~~six~~] **three** months, no rent shall be recovered by any owner for any premises in such multiple dwelling used by a resident thereof for human habitation in which the condition constituting such rent impairing violation exists, provided, however, that if the violation is one that requires approval of plans by the department for the corrective work and if plans for such corrective work shall have been duly filed within [~~three months~~] **one month** from the date of notice of such violation by the department to the owner last registered with the department, the [~~six months~~] **three month** period aforementioned shall not begin to run until the date that plans for the corrective work are approved by the department; if plans are not filed within said [~~three months~~] **one month** period or if so filed, they are disapproved and amendments are not duly filed within thirty days after the date of notification of the disapproval by the department to the person having filed the plans, the [~~six months~~] **three month** period shall be computed as if no

plans whatever had been filed under this proviso. If a condition constituting a rent impairing violation exists in the part of a multiple dwelling used in common by the residents or in the part under the control of the owner thereof, the violation shall be deemed to exist in the respective premises of each resident of the multiple dwelling.

b. The provisions of subparagraph a shall not apply if (i) the condition referred to in the department's notice to the owner last registered with the department did not in fact exist, notwithstanding the notation thereof in the records of the department; (ii) the condition which is the subject of the violation has in fact been corrected **within the three month period required by subparagraph a of this subdivision**, though the note thereof in the department has not been removed or cancelled; (iii) the violation has been caused by the resident from whom rent is sought to be collected or by members of his family or by his guests or by another resident of the multiple dwelling or the members of the family of such other resident or by his guests, or (iv) the resident proceeded against for rent has refused entry to the owner for the purpose of correcting the condition giving rise to the violation.

c. To raise a defense under subparagraph a in any action to recover rent or in any special proceeding for the recovery of possession because of non-payment of rent, the resident must affirmatively plead and prove the material facts under subparagraph a[~~, and must also deposit with the clerk of the court in which the action or proceeding is pending at the time of filing of the resident's answer the amount of rent sought to be recovered in the action or upon which the proceeding to recover possession is based, to be held by the clerk of the court until final disposition of the action or proceeding at which time the rent deposited shall be paid to the owner, if the owner prevails, or be returned to the resident if the resident prevails. Such deposit of rent shall vitiate any right on the part of the owner to terminate the lease or rental agreement of the resident because of nonpayment of rent~~].

d. If a resident voluntarily pays rent or an installment of rent when he **or she** would be privileged to withhold the same under subparagraph a, he **or she** shall [~~not thereafter~~] have [~~any~~] **a** claim or cause of action to recover back the rent or installment of rent so paid. A voluntary payment within the meaning hereof shall mean payment other than one made pursuant to a judgment in an action or special proceeding.

e. [~~If upon the trial of any action to recover rent or any special proceeding for the recovery of possession because of non-payment of rent it shall appear that the resident has raised a defense under this section in bad faith, or has caused the violation or has refused entry to the owner for the purpose of correcting the condition giving rise to the violation, the court, in its discretion, may impose upon the resident the reasonable costs of the owner, including counsel fees, in maintaining the action or proceeding not to exceed one hundred dollars.~~] **The department shall notify the resident and owner when a rent impairing violation has been placed in their apartment. The notification shall include a list of the rent impairing violations placed and an explanation of the resident's right to raise the rent impairing violations as a defense in any action to recover rent or in any special proceeding for the recovery of possession because of non-payment of rent.**

§ 2. Subdivisions 10 and 11 of section 713 of the real property actions and proceedings law, subdivision 10 as amended by chapter 467 of the laws of 1981 and subdivision 11 as added by chapter 312 of the laws of 1962, are amended to read as follows:

10. The person in possession has entered the property or remains in possession by force or unlawful means and he or **she or** his **or her** predecessor in interest was not in quiet possession for three years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer**. Any lawful occupant, physically or constructively in possession, who has been evicted or dispossessed without the court process mandated by section seven hundred eleven of this article, may commence a proceeding under this subdivision to be restored to possession, and shall be so restored upon proof that their eviction was unlawful**; no notice to quit shall be required in order to maintain a proceeding under this subdivision.

11. The person in possession entered into possession as an incident to employment by petitioner, and the time agreed upon for such possession has expired or, if no such time was agreed upon, the employment has been terminated[~~; no notice to quit shall be required in order to maintain the proceeding under this subdivision~~].

§ 3. Subdivisions 2 and 3 of section 732 of the real property actions and proceedings law, as amended by section 14 of part M of chapter 36 of the laws of 2019, are amended to read as follows:

2. If the respondent answers, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination, except as provided in section seven hundred fifty-three of this article. **If the respondent fails to appear on such date, the court, after making an assessment, pursuant to section thirty-two hundred fifteen of the civil practice law and rules, may issue a judgment in favor of the petitioner and the issuance of the warrant shall be stayed for a period not to exceed ten days from the date of service, except as provided in section seven hundred fifty-three of this article.**

3. If the respondent fails to answer within ten days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, [~~the judge shall render judgment in favor of the petitioner and~~] **the petitioner may make an application for a default judgment. Upon this application, the clerk shall fix a date for inquest and immediately notify by mail the parties or their attorneys of such date. If the respondent fails to appear on such date, the court, after making an assessment, pursuant to section thirty-two hundred fifteen of the civil practice law and rules, may issue a judgment in favor of the petitioner and** may stay the issuance of the warrant for a period of not to exceed ten days from the date of service, except as provided in section seven hundred fifty-three of this article.

§ 4. This act shall take effect immediately and shall apply to all pending proceedings on and after such date.

PART D

Section 1. Legislative findings. The legislature hereby finds and declares that:

(a) the pool of rent regulated apartments in New York state contains an unacceptably high number of apartments in which the current rents are based on prior rents that exceeded the legal regulated rent at the time they were charged, but for which remedies were limited under the law in effect before the effective date of the Housing Stability and Tenant Protection Act of 2019 (HSTPA);

(b) it is public policy prospectively to reduce, insofar as possible, those rents to a level in line with what they would have been in the absence of the unlawful rent setting and deregulations that were permitted under prior law to go unremedied, and therefore to impose the rent calculation standards of the HSTPA prospectively from the date of its enactment, including in cases where the pre-HSTPA rent has already been established by a court or administrative agency;

(c) the purpose of the prospective application of the penalty and record review provisions of the HSTPA is to prevent the perpetual collection of unlawful and inflated rents, and to encourage the voluntary registration of any rent stabilized apartment for which any prior annual registration statement has not been filed, and to encourage the voluntary recalculation of unreliable pre-HSTPA rents;

(d) in light of court decisions arising under the HSTPA, including **Regina Metro v. DHCR**, it is public policy that the legislature define clearly the prospective reach of that law, and limit, to the extent required by the constitution, the retroactive reach of that law;

(e) despite **Regina**, the scope of the fraud exception to the pre-HSTPA four-year rule for calculating rents remains unsettled and the subject of litigation, and it is therefore public policy that the legislature codify, without expanding or reducing the liability of landlords under pre-HSTPA law, the standard for applying that exception;

(f) the New York state division of housing and community renewal (DHCR) misinterpreted the rent stabilization law for a significant period of time with respect to the regulatory obligations arising from the receipt of J-51 and 421-a tax benefits resulting in the unlawful deregulation of tens of thousands of rent-stabilized apartments, the setting of unlawful rents, and the collection of millions of dollars of rent overcharges, during a housing emergency. Both landlords and tenants relied upon the DHCR's misinterpretation of the law. In **Regina**, the Court of Appeals settled many of the issues arising from overcharge claims by tenants who were misled into refraining from filing overcharge cases during the period when DHCR's erroneous interpretation of the law was in effect, but left open the issue of whether a landlord's ongoing collection of overcharges and failure to return apartments to rent-stabilization, after the law was clarified, should be treated as fraud;

(g) the integrity of the registration system for rent regulated housing has been eroded by the use of base date rents, rather than the service and filing of reliable registration statements, to set rents under the law in effect between the enactment of the Rent Regulation Reform Act of 1997 and the HSTPA. It is therefore public policy to impose, prospectively from the date of the enactment of the HSTPA, a rent calculation formula that, insofar as possible, derives the legal regulated rents for apartments from reliable registration statements served upon tenants and made available to the public; and

(h) because pre-HSTPA law with respect to the maintenance by landlords of rent records was complex, and has an ongoing impact upon the calculation of post-HSTPA rents, it is necessary to codify the pre-HSTPA law that applied to the destruction of rent records prior to the enactment of the HSTPA, and to define clearly the impact of such law upon the prospective calculation of rents under the HSTPA.

§ 2. (a) The legal rent for all rent stabilized apartments for the period from July 1, 2019 and thereafter shall be determined in accordance with Part F of the HSTPA. Where the legal regulated rent for a rent stabilized apartment for the period prior to June 14, 2019 has been determined by any court or administrative agency, that determination shall not foreclose a recalculation of the post-HSTPA rent, except that any pre-HSTPA rent that, as of June 14, 2019, is lower than the rent that would be permitted to be charged under the HSTPA, shall be deemed to be the lawful rent under the HSTPA on June 15, 2019, and shall be used as the basis for calculating subsequent rents under the HSTPA;

(b) Subdivision (a) of this section shall apply to all cases, including those pending as of June 14, 2019 before any court, appellate tribunal, or administrative agency in which a claim for rent overcharges or rent arrears has been asserted with respect to rent stabilized housing, the legal regulated rent for the period from June 14, 2019 and thereafter shall be determined in accordance with Part F of the HSTPA. The legal regulated rent for the portion of any overcharge claim involving rents paid prior to June 14, 2019 shall be determined under pre-HSTPA law, including the default formula in cases of fraud, as codified herein.

(c) Nothing in this act, or the HSTPA, or prior law, shall be construed as restricting, impeding or diminishing the use of records of any age or type, going back to any date that may be relevant, for purposes of determining the status of any apartment under the rent stabilization law;

(d) The legal regulated rent payable for the period prior to June 14, 2019 shall be calculated in accordance with the law in effect prior to the HSTPA, including the prior four-year limitation on the consideration of rent records, and including the fraud exception to such limitation and such other exceptions as existed under prior law and under the regulations of the New York state division of housing and community renewal. Nothing in this act shall be construed as limiting such exceptions or as limiting the application of any equitable doctrine that extends statutes of limitations generally. With respect to the calculation of legal rents for the period prior to June 14, 2019, an owner shall be deemed to have committed fraud if the owner shall have committed a material breach of any duty, arising under statutory, administrative or common law, to disclose truthfully to any tenant, government agency or judicial or administrative tribunal, the rent, regulatory status, or lease information, for purposes of claiming an unlawful rent or claiming to have deregulated an apartment. The following conduct shall be presumed to have been the product of such fraud: (1) the unlawful deregulation of any apartment, including such deregulation as results from claiming an unlawful increase such as would have brought the rent over the deregulation threshold that existed under prior law, unless the landlord can prove good faith reliance on a directive or ruling by an administrative agency or court; or (2) beginning October 1, 2011, failing to register, as rent stabilized, any apartment in a building receiving J-51 or 421-a benefits;

(e) In accordance with the practice of the New York state division of housing and community renewal prior to June 14, 2019, where fraud is not established, base rents of apartments unlawfully deregulated shall be calculated as the average of rents for comparable rent stabilized apartments in the building, rather than the default formula applicable to cases involving fraud;

(f) For the period prior to June 14, 2019, neither the version of subdivision g of section 26-516 of the administrative code of the city of New York then in effect, nor the version of section 2523.7 of the rent stabilization code (9 NYCRR 2523.7) then in effect shall be construed as permitting the destruction of rent records for units that have not been properly and timely registered. Where records have been permitted to be destroyed by virtue of proper registration, and no other law required the maintenance of such records, and where the owner has proven that such records were actually destroyed in accordance with prior law and that such destruction took place prior to June 15, 2019, the registration served and filed prior to such lawful destruction of records shall be presumed to be reliable, for purposes of any post-HSTPA calculation of the rent, but that presumption shall be rebuttable. The parties shall be entitled to discovery of any evidence found to be reasonably necessary to demonstrate the legal rent. Nothing in this subdivision shall be interpreted as authorizing the destruction of any record, that under prior law was relevant to establishing (1) the status of an apartment as regulated or unregulated; (2) the presence or absence of fraud with respect to renting any housing accommodation; (3) the presence or absence of willfulness in the collection of overcharges; (4) the useful life of any item, the replacement of which is claimed by the owner to qualify an apartment for a rent increase; (5) the duration of any tenancy, such as would establish whether an owner was entitled under prior law to a longevity increase; or (6) compliance with any law that, independently of the rent stabilization law, required or requires the maintenance of such records. Where the calculation of the rent is dependent upon records that the owner has improperly destroyed, including where the records were destroyed without the apartment having been registered, the rent shall be calculated in accordance with the default formula.

§ 3. This act shall take effect immediately.

§ 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through D of this act shall be as specifically set forth in the last section of such Parts.