

622

2009-2010 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2009

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Introduced by M. of A. KAVANAGH -- read once and referred to the Committee on Housing

AN ACT to amend the emergency housing rent control law, the administrative code of the city of New York, and the emergency tenant protection act of nineteen seventy-four, in relation to providing for a hearing before the division of housing and community renewal prior to issuance of an order of decontrol for failure to respond to income certification material; and in relation to excluding certain tenants from inclusion for annual income determination

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

1     Section 1. Subdivision (a) of section 2-a of chapter 274 of the laws  
2     of 1946, constituting the emergency housing rent control law, as added  
3     by chapter 253 of the laws of 1993, is amended to read as follows:  
4     (a) For purposes of this section, annual income shall mean the federal  
5     adjusted gross income as reported on the New York state income tax  
6     return. Total annual income means the sum of the annual incomes of all  
7     persons who occupy the housing accommodation as their primary residence  
8     on other than a temporary basis, excluding bona fide employees of such  
9     occupants residing therein in connection with such employment, EXCLUDING  
10    SENIOR CITIZENS AND DISABLED PERSONS, and excluding bona fide subtenants  
11    in occupancy pursuant to the provisions of section [two hundred twenty-  
12    six-b] 226-B of the real property law. [In the case where a housing  
13    accommodation is sublet, the annual income of the sublessor shall be  
14    considered.] FOR THE PURPOSES OF THIS SUBDIVISION, DISABLED PERSON SHALL  
15    MEAN AN INDIVIDUAL (I) WITH A PHYSICAL OR MENTAL IMPAIRMENT, INCLUDING,  
16    BUT NOT LIMITED TO, THOSE OF NEUROLOGICAL, EMOTIONAL OR SENSORY ORGANS,  
17    WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF THE INDIVIDUAL'S MAJOR LIFE  
18    ACTIVITIES, AND (II) WHO IS REGARDED AS HAVING SUCH AN IMPAIRMENT AS  
19    CERTIFIED BY A LICENSED PHYSICIAN OF THIS STATE. FOR THE PURPOSES OF

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

LBD00821-01-9

1 THIS SUBDIVISION, SENIOR CITIZEN SHALL MEAN ANY PERSON WHO IS SIXTY-TWO  
2 YEARS OF AGE OR OLDER.

3 S 2. Subdivision (c) of section 2-a of chapter 274 of the laws of  
4 1946, constituting the emergency housing rent control law, as added by  
5 chapter 253 of the laws of 1993, paragraphs 1 and 2 as amended by chap-  
6 ter 116 of the laws of 1997, is amended to read as follows:

7 (c) 1. In the event that the tenant or tenants either fail to return  
8 the completed certification to the owner on or before the date required  
9 by subdivision (b) of this section or the owner disputes the certif-  
10 ication returned by the tenant or tenants, the owner may, on or before  
11 June thirtieth of such year, petition the state division of housing and  
12 community renewal to verify, pursuant to section [one hundred seventy-  
13 one-b] 171-B of the tax law, whether the total annual income exceeds one  
14 hundred seventy-five thousand dollars in each of the two preceding  
15 calendar years. Within twenty days after the filing of such request with  
16 the division, the division shall notify the tenant or tenants that such  
17 tenant or tenants must provide the division with such information as the  
18 division and the department of taxation and finance shall require to  
19 verify whether the total annual income exceeds one hundred seventy-five  
20 thousand dollars in each such year. The division's notification shall  
21 require the tenant or tenants to provide the information to the division  
22 within [sixty] NINETY days of service upon such tenant or tenants and  
23 shall include a warning in bold faced type AT THE TOP OF THE PAGE that  
24 failure to respond [will] MAY RESULT IN AN ORDER OF DECONTROL BEING  
25 ISSUED BY THE DIVISION FOR SUCH HOUSING ACCOMMODATION FOLLOWING A HEAR-  
26 ING TO BE SCHEDULED NOT MORE THAN NINETY DAYS FROM THE DATE THE DIVISION  
27 SENT SUCH TENANT OR TENANTS THE NOTICE PROVIDED IN THIS PARAGRAPH, THE  
28 NOTIFICATION SHALL ADVISE SUCH TENANT OR TENANTS THAT FAILURE TO APPEAR  
29 AT SUCH HEARING WITHOUT GOOD OR JUST CAUSE MAY result in an order of  
30 decontrol being issued by the division for such housing accommodation.  
31 SUCH TENANT OR TENANTS MAY AUTHORIZE A PERSON OR PERSONS TO REPRESENT  
32 SUCH TENANT'S OR TENANTS' INTEREST AT THE HEARING.

33 2. If the department of taxation and finance determines that the total  
34 annual income is in excess of one hundred seventy-five thousand dollars  
35 in each of the two preceding calendar years, the division shall, on or  
36 before November fifteenth of such year, notify the owner and tenants of  
37 the results of such verification. Both the owner and the tenants shall  
38 have [thirty] SIXTY days within which to comment on such verification  
39 results. Within forty-five days after the expiration of the comment  
40 period, the division shall, where appropriate, issue an order of decon-  
41 trol providing that such housing accommodation shall not be subject to  
42 the provisions of this law as of the first day of March in the year next  
43 succeeding the filing of the owner's petition with the division. A copy  
44 of such order shall be mailed by regular and certified mail, return  
45 receipt requested, to the tenant or tenants and a copy thereof shall be  
46 sent to the owner.

47 3. In the event the tenant or tenants fail to [provide the informa-  
48 tion] APPEAR WITHOUT GOOD OR JUST CAUSE AT THE HEARING required pursuant  
49 to paragraph one of this subdivision, the division [shall] MAY issue, on  
50 or before December first of such year, an order of decontrol providing  
51 that such housing accommodation shall not be subject to the provisions  
52 of this law as of the first day of March in the year next succeeding the  
53 last day on which the tenant or tenants were required to [provide the  
54 information] APPEAR AT THE HEARING required by such paragraph. A copy of  
55 such order shall be mailed by regular and certified mail, return receipt

1 requested, to the tenant or tenants and a copy thereof shall be sent to  
2 the owner.

3 4. The provisions of the state freedom of information act shall not  
4 apply to any income information obtained by the division pursuant to  
5 this section.

6 S 3. Subdivision (a) of section 26-403.1 of the administrative code of  
7 the city of New York, as added by chapter 253 of the laws of 1993, is  
8 amended to read as follows:

9 (a) For purposes of this section, annual income shall mean the federal  
10 adjusted gross income as reported on the New York state income tax  
11 return. Total annual income means the sum of the annual incomes of all  
12 persons who occupy the housing accommodation as their primary residence  
13 other than on a temporary basis, excluding bona fide employees of such  
14 occupants residing therein in connection with such employment, EXCLUDING  
15 SENIOR CITIZENS AND DISABLED PERSONS, and excluding bona fide subtenants  
16 in occupancy pursuant to the provisions of section two hundred twenty-  
17 six-b of the real property law. [In the case where a housing accommo-  
18 dation is sublet, the annual income of the sublessor shall be consid-  
19 ered.] FOR THE PURPOSES OF THIS SUBDIVISION, DISABLED PERSON SHALL MEAN  
20 AN INDIVIDUAL (I) WITH A PHYSICAL OR MENTAL IMPAIRMENT, INCLUDING, BUT  
21 NOT LIMITED TO, THOSE OF NEUROLOGICAL, EMOTIONAL OR SENSORY ORGANS,  
22 WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF THE INDIVIDUAL'S MAJOR LIFE  
23 ACTIVITIES, AND (II) WHO IS REGARDED AS HAVING SUCH AN IMPAIRMENT AS  
24 CERTIFIED BY A LICENSED PHYSICIAN OF THIS STATE. FOR THE PURPOSES OF  
25 THIS SUBDIVISION, SENIOR CITIZEN SHALL MEAN ANY PERSON WHO IS SIXTY-TWO  
26 YEARS OF AGE OR OLDER.

27 S 4. Subdivision (c) of section 26-403.1 of the administrative code of  
28 the city of New York, as added by chapter 253 of the laws of 1993, para-  
29 graphs 1 and 2 as amended by chapter 116 of the laws of 1997, is amended  
30 to read as follows:

31 (c) 1. In the event that the tenant or tenants either fail to return  
32 the completed certification to the owner on or before the date required  
33 by subdivision (b) of this section or the owner disputes the certif-  
34 ication returned by the tenant or tenants, the owner may, on or before  
35 June thirtieth of such year, petition the state division of housing and  
36 community renewal to verify, pursuant to section one hundred seventy-  
37 one-b of the tax law, whether the total annual income exceeds one  
38 hundred seventy-five thousand dollars in each of the two preceding  
39 calendar years. Within twenty days after the filing of such request with  
40 the division, the division shall notify the tenant or tenants that such  
41 tenant or tenants must provide the division with such information as the  
42 division and the department of taxation and finance shall require to  
43 verify whether the total annual income exceeds one hundred seventy-five  
44 thousand dollars in each such year. The division's notification shall  
45 require the tenant or tenants to provide the information to the division  
46 within [sixty] NINETY days of service upon such tenant or tenants and  
47 shall include a warning in bold faced type AT THE TOP OF THE PAGE that  
48 failure to respond [will] MAY RESULT IN AN ORDER OF DECONTROL BEING  
49 ISSUED BY THE DIVISION FOR SUCH HOUSING ACCOMMODATION FOLLOWING A HEAR-  
50 ING TO BE SCHEDULED NOT MORE THAN NINETY DAYS FROM THE DATE THE DIVISION  
51 SENT SUCH TENANT OR TENANTS THE NOTICE PROVIDED IN THIS PARAGRAPH, THE  
52 NOTIFICATION SHALL ADVISE SUCH TENANT OR TENANTS THAT FAILURE TO APPEAR  
53 AT SUCH HEARING WITHOUT GOOD OR JUST CAUSE MAY result in an order of  
54 decontrol being issued by the division for such housing accommodation.  
55 SUCH TENANT OR TENANTS MAY AUTHORIZE A PERSON OR PERSONS TO REPRESENT  
56 SUCH TENANT'S OR TENANTS' INTEREST AT THE HEARING.

1     2. If the department of taxation and finance determines that the total  
2 annual income is in excess of one hundred seventy-five thousand dollars  
3 in each of the two preceding calendar years, the division shall, on or  
4 before November fifteenth of such year, notify the owner and tenants of  
5 the results of such verification. Both the owner and the tenants shall  
6 have [thirty] SIXTY days within which to comment on such verification  
7 results. Within forty-five days after the expiration of the comment  
8 period, the division shall, where appropriate, issue an order of decon-  
9 trol providing that such housing accommodation shall not be subject to  
10 the provisions of this law as of the first day of March in the year next  
11 succeeding the filing of the owner's petition with the division. A copy  
12 of such order shall be mailed by regular and certified mail, return  
13 receipt requested, to the tenant or tenants and a copy thereof shall be  
14 sent to the owner.

15     3. In the event the tenant or tenants fail to [provide the informa-  
16 tion] APPEAR WITHOUT GOOD OR JUST CAUSE AT THE HEARING required pursuant  
17 to paragraph one of this subdivision, the division [shall] MAY issue, on  
18 or before December first of such year, an order of decontrol providing  
19 that such housing accommodation shall not be subject to the provisions  
20 of this law as of the first day of March in the year next succeeding the  
21 last day on which the tenant or tenants were required to [provide the  
22 information] APPEAR AT THE HEARING required by such paragraph. A copy of  
23 such order shall be mailed by regular and certified mail, return receipt  
24 requested, to the tenant or tenants and a copy thereof shall be sent to  
25 the owner.

26     4. The provisions of the state freedom of information act shall not  
27 apply to any income information obtained by the division pursuant to  
28 this section.

29     S 5. Subdivision (a) of section 26-504.3 of the administrative code of  
30 the city of New York, as added by chapter 253 of the laws of 1993, is  
31 amended to read as follows:

32     (a) For purposes of this section, annual income shall mean the federal  
33 adjusted gross income as reported on the New York state income tax  
34 return. Total annual income means the sum of the annual incomes of all  
35 persons whose names are recited as the tenant or co-tenant on a lease  
36 who occupy the housing accommodation and all other persons that occupy  
37 the housing accommodation as their primary residence on other than a  
38 temporary basis, excluding bona fide employees of such occupants resid-  
39 ing therein in connection with such employment, EXCLUDING SENIOR CITI-  
40 ZENS AND DISABLED PERSONS, and excluding bona fide subtenants in occu-  
41 pancy pursuant to the provisions of section two hundred twenty-six-b of  
42 the real property law. [In the case where a housing accommodation is  
43 sublet, the annual income of the tenant or co-tenant recited on the  
44 lease who will reoccupy the housing accommodation upon the expiration of  
45 the sublease shall be considered.] FOR THE PURPOSES OF THIS SUBDIVISION,  
46 DISABLED PERSON SHALL MEAN AN INDIVIDUAL (I) WITH A PHYSICAL OR MENTAL  
47 IMPAIRMENT, INCLUDING, BUT NOT LIMITED TO, THOSE OF NEUROLOGICAL,  
48 EMOTIONAL OR SENSORY ORGANS, WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF  
49 THE INDIVIDUAL'S MAJOR LIFE ACTIVITIES, AND (II) WHO IS REGARDED AS  
50 HAVING SUCH AN IMPAIRMENT AS CERTIFIED BY A LICENSED PHYSICIAN OF THIS  
51 STATE. FOR THE PURPOSES OF THIS SUBDIVISION, SENIOR CITIZEN SHALL MEAN  
52 ANY PERSON WHO IS SIXTY-TWO YEARS OF AGE OR OLDER.

53     S 6. Subdivision (c) of section 26-504.3 of the administrative code of  
54 the city of New York, as added by chapter 253 of the laws of 1993, para-  
55 graphs 1 and 2 as amended by chapter 116 of the laws of 1997, is amended  
56 to read as follows:

1 (c) 1. In the event that the tenant or tenants either fail to return  
2 the completed certification to the owner on or before the date required  
3 by subdivision (b) of this section or the owner disputes the certifi-  
4 cation returned by the tenant or tenants, the owner may, on or before  
5 June thirtieth of such year, petition the state division of housing and  
6 community renewal to verify, pursuant to section one hundred seventy-  
7 one-b of the tax law, whether the total annual income exceeds one  
8 hundred seventy-five thousand dollars in each of the two preceding  
9 calendar years. Within twenty days after the filing of such request with  
10 the division, the division shall notify the tenant or tenants named on  
11 the lease that such tenant or tenants must provide the division with  
12 such information as the division and the department of taxation and  
13 finance shall require to verify whether the total annual income exceeds  
14 one hundred seventy-five thousand dollars in each such year. The divi-  
15 sion's notification shall require the tenant or tenants to provide the  
16 information to the division within [sixty] NINETY days of service upon  
17 such tenant or tenants and shall include a warning in bold faced type AT  
18 THE TOP OF THE PAGE that failure to respond [will] MAY RESULT IN AN  
19 ORDER OF DECONTROL BEING ISSUED BY THE DIVISION FOR SUCH HOUSING ACCOM-  
20 MODATION FOLLOWING A HEARING TO BE SCHEDULED NOT MORE THAN NINETY DAYS  
21 FROM THE DATE THE DIVISION SENT SUCH TENANT OR TENANTS THE NOTICE  
22 PROVIDED IN THIS PARAGRAPH, THE NOTIFICATION SHALL ADVISE SUCH TENANT OR  
23 TENANTS THAT FAILURE TO APPEAR AT SUCH HEARING WITHOUT GOOD OR JUST  
24 CAUSE MAY result in an order being issued by the division providing that  
25 such housing accommodation shall not be subject to the provisions of  
26 this law. SUCH TENANT OR TENANTS MAY AUTHORIZE A PERSON OR PERSONS TO  
27 REPRESENT SUCH TENANT'S OR TENANTS' INTEREST AT THE HEARING.

28 2. If the department of taxation and finance determines that the total  
29 annual income is in excess of one hundred seventy-five thousand dollars  
30 in each of the two preceding calendar years, the division shall, on or  
31 before November fifteenth of such year, notify the owner and tenants of  
32 the results of such verification. Both the owner and the tenants shall  
33 have [thirty] SIXTY days within which to comment on such verification  
34 results. Within forty-five days after the expiration of the comment  
35 period, the division shall, where appropriate, issue an order providing  
36 that such housing accommodation shall not be subject to the provisions  
37 of this law upon the expiration of the existing lease. A copy of such  
38 order shall be mailed by regular and certified mail, return receipt  
39 requested, to the tenant or tenants and a copy thereof shall be sent to  
40 the owner.

41 3. In the event the tenant or tenants fail to [provide the informa-  
42 tion] APPEAR WITHOUT GOOD OR JUST CAUSE AT THE HEARING required pursuant  
43 to paragraph one of this subdivision, the division [shall] MAY issue, on  
44 or before December first of such year, an order providing that such  
45 housing accommodation shall not be subject to the provisions of this law  
46 upon the expiration of the current lease. A copy of such order shall be  
47 mailed by regular and certified mail, return receipt requested, to the  
48 tenant or tenants and a copy thereof shall be sent to the owner.

49 4. The provisions of the state freedom of information act shall not  
50 apply to any income information obtained by the division pursuant to  
51 this section.

52 S 7. Subdivision (a) of section 5-a of section 4 of chapter 576 of the  
53 laws of 1974, constituting the emergency tenant protection act of nine-  
54 teen seventy-four, as added by chapter 253 of the laws of 1993, is  
55 amended to read as follows:

1 (a) For purposes of this section, annual income shall mean the federal  
2 adjusted gross income as reported on the New York state income tax  
3 return. Total annual income means the sum of the annual incomes of all  
4 persons whose names are recited as the tenant or co-tenant on a lease  
5 who occupy the housing accommodation and all other persons that occupy  
6 the housing accommodation as their primary residence on other than a  
7 temporary basis, excluding bona fide employees of such occupants resid-  
8 ing therein in connection with such employment, EXCLUDING SENIOR CITI-  
9 ZENS AND DISABLED PERSONS, and excluding bona fide subtenants in occu-  
10 pancy pursuant to the provisions of section [two hundred twenty-six-b]  
11 226-B of the real property law. [In the case where a housing accommo-  
12 dation is sublet, the annual income of the tenant or co-tenant recited  
13 on the lease who will reoccupy the housing accommodation upon the expi-  
14 ration of the sublease shall be considered.] FOR THE PURPOSES OF THIS  
15 SUBDIVISION, DISABLED PERSON SHALL MEAN AN INDIVIDUAL (I) WITH A PHYS-  
16 ICAL OR MENTAL IMPAIRMENT, INCLUDING, BUT NOT LIMITED TO, THOSE OF  
17 NEUROLOGICAL, EMOTIONAL OR SENSORY ORGANS, WHICH SUBSTANTIALLY LIMITS  
18 ONE OR MORE OF THE INDIVIDUAL'S MAJOR LIFE ACTIVITIES, AND (II) WHO IS  
19 REGARDED AS HAVING SUCH AN IMPAIRMENT AS CERTIFIED BY A LICENSED PHYSI-  
20 CIAN OF THIS STATE. FOR THE PURPOSES OF THIS SUBDIVISION, SENIOR CITIZEN  
21 SHALL MEAN ANY PERSON WHO IS SIXTY-TWO YEARS OF AGE OR OLDER.

22 S 8. Subdivision (c) of section 5-a of section 4 of chapter 576 of the  
23 laws of 1974, constituting the emergency tenant protection act of nine-  
24 teen seventy-four, as added by chapter 253 of the laws of 1993, para-  
25 graphs 1 and 2 as amended by chapter 116 of the laws of 1997, is amended  
26 to read as follows:

27 (c) 1. In the event that the tenant or tenants either fail to return  
28 the completed certification to the owner on or before the date required  
29 by subdivision (b) of this section or the owner disputes the certifi-  
30 cation returned by the tenant or tenants, the owner may, on or before  
31 June thirtieth of such year, petition the state division of housing and  
32 community renewal to verify, pursuant to section [one hundred seventy-  
33 one-b] 171-B of the tax law, whether the total annual income exceeds one  
34 hundred seventy-five thousand dollars in each of the two preceding  
35 calendar years. Within twenty days after the filing of such request with  
36 the division, the division shall notify the tenant or tenants that such  
37 tenant or tenants named on the lease must provide the division with such  
38 information as the division and the department of taxation and finance  
39 shall require to verify whether the total annual income exceeds one  
40 hundred seventy-five thousand dollars in each such year. The division's  
41 notification shall require the tenant or tenants to provide the informa-  
42 tion to the division within [sixty] NINETY days of service upon such  
43 tenant or tenants and shall include a warning in bold faced type AT THE  
44 TOP OF THE PAGE that failure to respond [will] MAY RESULT IN AN ORDER OF  
45 DECONTROL BEING ISSUED BY THE DIVISION FOR SUCH HOUSING ACCOMMODATION  
46 FOLLOWING A HEARING TO BE SCHEDULED NOT MORE THAN NINETY DAYS FROM THE  
47 DATE THE DIVISION SENT SUCH TENANT OR TENANTS THE NOTICE PROVIDED IN  
48 THIS PARAGRAPH, THE NOTIFICATION SHALL ADVISE SUCH TENANT OR TENANTS  
49 THAT FAILURE TO APPEAR AT SUCH HEARING WITHOUT GOOD OR JUST CAUSE MAY  
50 result in an order being issued by the division providing that such  
51 housing accommodations shall not be subject to the provisions of this  
52 act. SUCH TENANT OR TENANTS MAY AUTHORIZE A PERSON OR PERSONS TO REPRE-  
53 SENT SUCH TENANT'S OR TENANTS' INTEREST AT THE HEARING.

54 2. If the department of taxation and finance determines that the total  
55 annual income is in excess of one hundred seventy-five thousand dollars  
56 in each of the two preceding calendar years, the division shall, on or

1 before November fifteenth of such year, notify the owner and tenants of  
2 the results of such verification. Both the owner and the tenants shall  
3 have [thirty] SIXTY days within which to comment on such verification  
4 results. Within forty-five days after the expiration of the comment  
5 period, the division shall, where appropriate, issue an order providing  
6 that such housing accommodation shall not be subject to the provisions  
7 of this act upon expiration of the existing lease. A copy of such order  
8 shall be mailed by regular and certified mail, return receipt requested,  
9 to the tenant or tenants and a copy thereof shall be sent to the owner.

10 3. In the event the tenant or tenants fail to [provide the informa-  
11 tion] APPEAR WITHOUT GOOD OR JUST CAUSE AT THE HEARING required pursuant  
12 to paragraph one of this subdivision, the division [shall] MAY issue, on  
13 or before December first of such year, an order providing that such  
14 housing accommodation shall not be subject to the provisions of this act  
15 upon the expiration [or] OF the current lease. A copy of such order  
16 shall be mailed by regular and certified mail, return receipt requested,  
17 to the tenant or tenants and a copy thereof shall be sent to the owner.

18 4. The provisions of the state freedom of information act shall not  
19 apply to any income information obtained by the division pursuant to  
20 this section.

21 S 9. This act shall take effect immediately; provided that the amend-  
22 ments to section 2-a of the emergency housing rent control law made by  
23 sections one and two of this act shall expire on the same date as such  
24 law expires and shall not affect the expiration of such law as provided  
25 in subdivision 2 of section 1 of chapter 274 of the laws of 1946;  
26 provided that the amendments to section 26-403.1 of the city rent and  
27 rehabilitation law made by sections three and four of this act shall  
28 remain in full force and effect only so long as the public emergency  
29 requiring the regulation and control of residential rents and evictions  
30 continues, as provided in subdivision 3 of section 1 of the local emer-  
31 gency housing rent control act; provided that the amendments to section  
32 26-504.3 of the rent stabilization law of nineteen hundred sixty-nine  
33 made by sections five and six of this act shall expire on the same date  
34 as such law expires and shall not affect the expiration of such law as  
35 provided under section 26-520 of such law; and provided that the amend-  
36 ments to section 5-a of the emergency tenant protection act of nineteen  
37 seventy-four made by sections seven and eight of this act shall expire  
38 on the same date as such act expires and shall not affect the expiration  
39 of such act as provided in section 17 of chapter 576 of the laws of  
40 1974.