

7079

I N S E N A T E

March 10, 2010

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the administrative code of the city of New York and the emergency tenant protection act of nineteen seventy-four, in relation to hardship applications

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

1 Section 1. Paragraph 6-a of subdivision c of section 26-511 of the
2 administrative code of the city of New York is amended to read as
3 follows:
4 (6-a) provides criteria whereby as an alternative to the hardship
5 application provided under paragraph six of this subdivision owners of
6 buildings acquired by the same owner or a related entity owned by the
7 same principals [three] SIX years prior to the date of application may
8 apply to the division for increases in excess of the level of applicable
9 guideline increases established under this law based on a finding by the
10 commissioner that such guideline increases are not sufficient to enable
11 the owner to maintain an annual gross rent income for such building
12 which exceeds the annual operating expenses of such building by a sum
13 equal to at least five percent of such gross rent. For the purposes of
14 this paragraph, operating expenses shall consist of the actual, reason-
15 able, costs of fuel, labor, utilities, taxes, other than income or
16 corporate franchise taxes, fees, permits, necessary contracted services
17 and non-capital repairs, insurance, parts and supplies, management fees
18 and other administrative costs and mortgage interest. For the purposes
19 of this paragraph, mortgage interest shall be deemed to mean interest on
20 a bona fide mortgage including an allocable portion of charges related
21 thereto. Criteria to be considered in determining a bona fide mortgage
22 other than an institutional mortgage shall include; condition of the
23 property, location of the property, the existing mortgage market at the
24 time the mortgage is placed, the term of the mortgage, the amortization
25 rate, the principal amount of the mortgage, security and other terms and
26 conditions of the mortgage. The commissioner shall set a rental value

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

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

35 S 2. Paragraph 5 of subdivision d of section 6 of section 4 of chapter
36 576 of the laws of 1974 enacting the emergency tenant protection act of
37 nineteen seventy-four, as amended by chapter 102 of the laws of 1984, is
38 amended to read as follows:

39 (5) as an alternative to the hardship application provided under para-
40 graph four of this subdivision, owners of buildings acquired by the same
41 owner or a related entity owned by the same principals [three] SIX years
42 prior to the date of application may apply to the division for increases
43 in excess of the level of applicable guideline increases established
44 under this law based on a finding by the commissioner that such guide-
45 line increases are not sufficient to enable the owner to maintain an
46 annual gross rent income for such building which exceeds the annual
47 operating expenses of such building by a sum equal to at least five
48 percent of such gross rent. For the purposes of this paragraph, operat-
49 ing expenses shall consist of the actual, reasonable, costs of fuel,
50 labor, utilities, taxes, other than income or corporate franchise taxes,
51 fees, permits, necessary contracted services and non-capital repairs,
52 insurance, parts and supplies, management fees and other administrative
53 costs and mortgage interest. For the purposes of this paragraph, mort-
54 gage interest shall be deemed to mean interest on a bona fide mortgage
55 including an allocable portion of charges related thereto. Criteria to
56 be considered in determining a bona fide mortgage other than an institu-

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

40 S 3. This act shall take effect immediately; provided that the amend-
41 ments to section 26-511 of chapter 4 of title 26 of the administrative
42 code of the city of New York made by section one of this act shall
43 expire on the same date as such law expires and shall not affect the
44 expiration of such law as provided under section 26-520 of such law; and
45 provided that the amendments to section 6 of the emergency tenant
46 protection act of nineteen seventy-four made by section two of this act
47 shall expire on the same date as such act expires and shall not affect
48 the expiration of such act as provided in section 17 of chapter 576 of
49 the laws of 1974.