S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

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

AN ACT to amend the private housing finance law, in relation to establishing mechanism to transition housing companies conducting a buy-out to local rent regulations

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

Section 1. The private housing finance law is amended by adding a new section 609-a to read as follows:

S 609-A. BUY-OUT TRANSITION. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

(A) "DIVISION" SHALL MEAN THE DIVISION OF HOUSING AND COMMUNITY RENEWAL.

(B) "RENT LAWS" SHALL MEAN THE EMERGENCY HOUSING RENT CONTROL LAW, THE EMERGENCY TENANT PROTECTION ACT OF NINETEEN SEVENTY-FOUR, THE LOCAL EMERGENCY HOUSING RENT CONTROL ACT, AND THE RENT STABILIZATION LAW OF NINETEEN HUNDRED SIXTY-NINE.

(C) "BUY-OUT" SHALL MEAN AN EVENT WHICH CAUSES HOUSING COMPANIES WHICH ARE REGULATED ON THE EFFECTIVE DATE OF THIS SECTION PURSUANT TO FEDERAL, STATE OR MUNICIPAL LAWS OTHER THAN THE RENT LAWS, TO CEASE BEING COVERED BY SUCH REGULATION INCLUDING BUT NOT LIMITED TO VOLUNTARY DISSOLUTION OR RECONSTITUTION.

(D) "BASE DATE" SHALL MEAN FOR THE PURPOSE OF ESTABLISHING THE LEGAL REGISTERED RENT AND REQUIRED SERVICES UNDER THE RENT LAWS THE DATE IMMEDIATELY PRECEDING THE DATE OF THE BUY-OUT. WHERE THE CAUSE OF THE BUY-OUT IS DISSOLUTION OR RECONSTITUTION UNDER THIS CHAPTER OR THE BUSINESS CORPORATION LAW THE BUY-OUT OCCURS ON THE DATE THE SECRETARY OF STATE ACCEPTS THE CERTIFICATE OF DISSOLUTION OR THE AMENDED CERTIFICATE OF INCORPORATION FOR FILING.

2. REGISTRATION. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ANY HOUSING ACCOMMODATION WHICH BECOMES SUBJECT TO THE PROVISIONS OF ANY

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

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OF THE RENT LAWS BY REASON OF A BUY-OUT SHALL BE REGISTERED WITH THE DIVISION NINETY DAYS PRIOR TO THE ANTICIPATED BASE DATE. SUCH REGISTRATION SHALL BECOME EFFECTIVE ON THE BASE DATE, PROVIDED HOWEVER, A CHALLENGE TO SUCH REGISTRATION MAY BE FILED ANY TIME BETWEEN THE DATE SUCH REGISTRATION IS REQUIRED TO BE FILED AND NINETY DAYS AFTER THE ACTUAL BASE DATE. IN NO EVENT SHALL SUCH PERIOD DURING WHICH A CHALLENGE MAY BE FILED BE LESS THAN ONE HUNDRED EIGHTY DAYS FROM THE DATE THAT THE REGISTRATION IS SERVED UPON THE TENANT.

3. INITIAL REGISTERED RENT. THE INITIAL REGISTERED RENT SHALL BE AS FOLLOWS:

(A) FOR APARTMENTS OCCUPIED ON THE BASE DATE THE INITIAL LEGAL REGISTERED RENT SHALL BE THE RENT CHARGED TO AND PAID BY THE TENANT IN OCCUPANCY ON THE BASE DATE. INCOME-RELATED SURCHARGES WHICH WERE COLLECTIBLE FROM A TENANT ON THE BASE DATE WILL BE INCLUDED AS PART OF THE BASE RENT FOR THAT TENANT AND SUBSEQUENT TENANTS OF THE SAME APARTMENT.

(B) FOR APARTMENTS VACANT ON THE BASE DATE, THE INITIAL LEGAL REGISTERED RENT SHALL BE THE RENT CHARGED TO AND PAID BY THE MOST RECENT TENANT, IN ADDITION TO RENTAL SUBSIDIES, BUT EXCLUDING SURCHARGES, IF ANY. INCOME RELATED SURCHARGES WHICH MAY HAVE BEEN PAID BY THE MOST RECENT TENANT WILL NOT BE INCLUDED IN THE INITIAL LEGAL REGISTERED RENT. UPON RENTING, THE INITIAL LEGAL REGISTERED RENT SHALL BE SUBJECT TO VACANCY AND GUIDELINE INCREASES AS WELL AS ANY APPLICABLE ADJUSTMENT PURSUANT TO APPLICABLE RENT LAWS.

(C) UNITS SUBJECT TO OCCUPANCY OR RENT RESTRICTIONS. FOR UNITS SUBJECT TO OCCUPANCY OR RENT RESTRICTIONS (SUCH AS UNITS REQUIRED TO BE RENTED TO QUALIFIED LOW, MODERATE OR MIDDLE INCOME TENANTS) ON THE BASE DATE:

(1) WHERE THE TENANT IS PARTICIPATING IN THE SENIOR CITIZEN RENT INCREASE EXEMPTION PROGRAM PURSUANT TO SECTION FOUR HUNDRED SIXTY-SEVEN-B OF THE REAL PROPERTY TAX LAW THE OWNER MAY REGISTER THE FULL LEGAL REGULATED RENT CHARGED; AND

(2) WHERE THE OWNER RECEIVES CAPITAL GRANT OR SECTION 8 RENTAL SUBSIDIES ON BEHALF OF THE TENANT, THE OWNER MAY BE PERMITTED TO REGISTER HIGHER AND LOWER INITIAL LEGAL REGISTERED RENTS (REPRESENTING THE FULL LEGAL REGULATED RENT AND THE FULL LEGAL REGULATED RENT MINUS THE CAPITAL GRANT OR OTHER RENTAL SUBSIDY, RESPECTIVELY) PURSUANT TO AN AGREEMENT ENTERED INTO BETWEEN THE PRIOR REGULATING AGENCY AND THE DIVISION, AS SET FORTH IN AN ORDER PERMITTING THE REGISTRATION OF MULTI-TIER INITIAL LEGAL RENTS. THE ORDER SHALL ALSO SET FORTH THE CONDITIONS UNDER WHICH THE OWNER MAY COLLECT THE HIGHER AND LOWER REGULATED RENTS AS DETERMINED BY THE PRIOR REGULATING AGENCY.

WHEN A RENTAL SUBSIDY IS TERMINATED EITHER UPON OR AFTER THE BUY-OUT, THE OWNER SHALL BE ENTITLED TO COLLECT AS RENT FROM THE TENANT IN OCCUPANCY ON THE BASE DATE AN AMOUNT EQUIVALENT TO THAT PORTION OF THE RENT PAID BY SUCH TENANT, NOT INCLUDING THE SUBSIDY.

(D) ADDITIONAL CHARGES FOR ELECTRICITY FOR APPLIANCES SUCH AS AIR CONDITIONING, WASHER/DRYERS AND DISHWASHERS WILL BE INCLUDED IN THE REGISTERED BASE RENT AT THE RATE CHARGED AND PAID ON THE BASE DATE. FOR SUCH APPLIANCES BROUGHT INTO AN APARTMENT SUBSEQUENT TO THE BASE DATE, THE OWNER MAY BE PERMITTED AN ADDITIONAL CHARGE PURSUANT TO REGULATIONS PROMULGATED BY THE DIVISION WHICH WILL NOT BECOME PART OF THE BASE RENT.

(E) GARAGE AND OTHER ANCILLARY SERVICES FOR WHICH THERE IS A LEGAL REGULATED SEPARATE PERMANENT CHARGE MUST BE REGISTERED AT THE AMOUNT PAID ON THE BASE DATE. ANY INCREASE, OTHER THAN THE CHARGE PROVIDED IN THE INITIAL AGREEMENT WITH A TENANT TO LEASE SUCH SERVICE SUBSEQUENT TO THE BASE DATE, SHALL CONFORM TO THE APPLICABLE RENT GUIDELINES RATE.

4. LEASES. (A) (1) THE LEASES IN EFFECT UNDER THE VARIOUS FEDERAL, STATE AND MUNICIPAL PROGRAMS ON THE BASE DATE SHALL REMAIN IN FORCE PURSUANT TO THE PROVISIONS THEREOF, EXCEPT THAT THOSE PROVISIONS WHICH ARE INCONSISTENT WITH THE RENT LAWS SHALL BE VOID AND UNENFORCEABLE.

(2) WHERE SUCH LEASES ARE SO INCONSISTENT AS TO RENDER THEM INEFFECTIVE IN DEFINING THE RIGHTS AND DUTIES OF TENANTS AND OWNERS, THEN EITHER THE FEDERAL, STATE OR MUNICIPAL SUPERVISING AGENCY AS A CONDITION OF THE BUY-OUT, OR DIVISION AFTER THE BUY-OUT, MAY ORDER THE PROVISION OF NEW LEASES, FOR THE UNEXPIRED TERM AND AT THE SAME RENT AS THE LEASE TO BE REPLACED. THE PROFFERED LEASE SHALL BE ON THE SAME TERMS AND CONDITIONS AS THE REPLACED LEASE BUT SHALL ELIMINATE THOSE TERMS AND CONDITIONS WHICH ARE INCONSISTENT WITH THE RENT LAWS AND THOSE WHICH REQUIRE ADJUDICATIONS BY THE PRIOR FEDERAL, STATE OR MUNICIPAL SUPERVISING AGENCY.

(B) (1) WHERE THE LEASE IN EFFECT PRIOR TO THE BUY-OUT DID NOT COMMENCE UPON THE ANNIVERSARY DATE OF THE TENANCY, THE TENANT SHALL HAVE THE OPTION OF SUBSTITUTING THE ANNIVERSARY DATE OF THE TENANCY AS THE COMMENCEMENT DATE OF SUCH LEASE. WHERE THERE WAS NO LEASE IN EFFECT UPON BUY-OUT, THE OWNER SHALL OFFER AND THE TENANT SHALL HAVE THE OPTION OF ACCEPTING A LEASE COMMENCING EITHER ON THE DATE FOLLOWING THE EXPIRATION DATE OF THE LAST LEASE OR ON THE ANNIVERSARY DATE OF THE TENANCY.

(2) THE TERM OF A LEASE OFFERED PURSUANT TO THIS SECTION SHALL BE: FOR A THREE YEAR TERM OR SUCH OTHER TERM AS WAS REQUIRED PRIOR TO THE BUY-OUT, COMMENCING, AT THE TENANT'S OPTION, EITHER UPON THE ANNIVERSARY DATE OF THE INITIAL LEASE, OR THE RENEWAL DATE OF THE MOST RECENT LEASE.

(3) THE TENANT, WITHIN SIXTY DAYS AFTER THE OWNER'S OFFER, MUST CHOOSE THE TERM OF THE LEASE, SIGN THE LEASE OFFER AND RETURN IT TO THE OWNER, WHO MUST RETURN A FULLY EXECUTED COPY TO THE TENANT WITHIN THIRTY DAYS. THE NEW LEASE SHALL BE AT THE SAME RENTAL AMOUNT AS THE RENT PAID BY THE TENANT ON THE BASE DATE.

(C) FOR BUILDINGS LOCATED IN THE CITY OF NEW YORK, A COPY OF THE RIDER REQUIRED PURSUANT TO THE RENT STABILIZATION LAW SHALL BE SERVED UPON EACH TENANT IN OCCUPANCY OF A HOUSING ACCOMMODATION PRIOR TO ANY PUBLIC INFORMATION MEETING REQUIRED BY THE PRIOR SUPERVISORY AGENCY AND WHERE NO SUCH MEETING IS REQUIRED, NO LATER THAN THE BASE DATE, THEREAFTER SUCH RIDER SHALL BE SERVED UPON EACH TENANT OR SUBSEQUENT TENANT SIGNING A VACANCY OR RENEWAL LEASE.

(D) (1) RENEWAL OF A LEASE WHICH EXPIRES AFTER THE BASE DATE SHALL BE PURSUANT TO PROVISIONS OF THE APPLICABLE RENT LAWS.

(2) ANY RENEWAL OF A LEASE EXPIRING AFTER THE BASE DATE BUT SOONER THAN THE TIME PERIOD PROVIDED FOR IN APPLICABLE RENT LAWS FOR A TENANT TO RESPOND TO A LEASE RENEWAL OFFER (WINDOW PERIOD) SHALL NOT COMMENCE UNTIL THE TENANT HAS RECEIVED THE REQUIRED WINDOW PERIOD NOTICE.

(3) IN THE CASE WHEN THE EXPIRATION DATE OF THE LEASE WILL NOT ALLOW FOR COMPLIANCE WITH SUBPARAGRAPH TWO OF THIS PARAGRAPH, OWNERS SHALL BE ENTITLED TO SATISFY THE TIME REQUIREMENTS OF SUBPARAGRAPH TWO OF THIS PARAGRAPH BY OFFERING RENEWAL LEASES WITHIN SUCH WINDOW PERIODS, EVEN THOUGH THE BASE DATE MAY OCCUR DURING OR AFTER SUCH WINDOW PERIODS.

(4) WHERE IT CANNOT BE DETERMINED WHETHER THE BASE DATE WILL OCCUR BEFORE OR AFTER THE EXPIRATION DATE OF THE LEASE, OWNERS SHALL BE PERMITTED TO OFFER RENEWAL LEASE PURSUANT TO THE APPLICABLE RENT LAWS WITHIN THE APPROPRIATE WINDOW PERIOD, AS WELL AS A RENEWAL OF THE CURRENT LEASE PURSUANT TO THE REGULATIONS OF THE PRIOR SUPERVISING AGENCY. OWNERS WHO OFFER BOTH LEASES PURSUANT TO THIS PARAGRAPH SHOULD INCLUDE WITH SUCH OFFER A NOTICE TO THE TENANT EXPLAINING THE FOLLOWING:

(I) IF THE BASE DATE OCCURS PRIOR TO THE LEASE EXPIRATION DATE, THE RENT LAW RENEWAL LEASE WILL TAKE EFFECT; AND

(II) IF THE BASE DATE OCCURS AFTER THE LEASE EXPIRATION DATE, THE RENEWAL OF THE CURRENT LEASE WILL TAKE EFFECT.

5. SERVICES. ALL BUILDING-WIDE AND APARTMENT SERVICES PROVIDED OR REQUIRED TO HAVE BEEN PROVIDED TO TENANTS ON THE BASE DATE MUST CONTINUE TO BE PROVIDED. REQUIRED BUILDING-WIDE SERVICES MUST BE REGISTERED PURSUANT TO APPLICABLE RENT LAWS.

6. NUMBER OF ROOMS. ALTHOUGH THE PRIOR REGULATORY AGENCY MAY HAVE UTILIZED A DIFFERENT DEFINITION FOR ROOM, FOR RENT LAW PURPOSES, GOING FORWARD, AND NOT FOR THE PURPOSE OF ADJUSTING THE BASE RENT AS ESTABLISHED BY THE PRIOR REGULATORY AGENCY, THE FOLLOWING ARE COUNTED AS ROOMS:

(A) ALL ROOMS THAT HAVE NO WINDOWS AND CONTAIN AT LEAST EIGHTY (80) SQUARE FEET;

(B) WINDOWLESS KITCHENS MEASURING AT LEAST FIFTY-NINE (59) SQUARE FEET;

(C) ALL ROOMS WHICH HAVE WINDOWS AND CONTAIN AT LEAST SIXTY (60) SQUARE FEET; AND

(D) BATHROOMS, HALF-ROOMS, WALK-IN CLOSETS AND BALCONIES (WHETHER OR NOT ENCLOSED) ARE NOT TO BE COUNTED AS ROOMS.

S 2. This act shall take effect immediately.