

1312

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sen. KRUGER -- 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 determining primary residency

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

1 Section 1. Clause 10 of subparagraph (i) of paragraph 2 of subdivision
2 e of section 26-403 of the administrative code of the city of New York
3 is amended to read as follows:

4 (10) Housing accommodations not occupied by the tenant, not including
5 subtenants or occupants, as his or her primary residence, as determined
6 by a court of competent jurisdiction. FOR PURPOSES OF DETERMINING PRIMA-
7 RY RESIDENCY, AS USED IN THIS CHAPTER, THE FAILURE TO FILE A NEW YORK
8 CITY RESIDENT INCOME TAX RETURN BY AN INDIVIDUAL REQUIRED BY LAW TO FILE
9 SUCH A RETURN, SHALL RESULT IN A FINDING THAT THE TENANT DOES NOT OCCUPY
10 THE UNIT AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER, THAT THIS
11 PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED AN EXTEN-
12 SION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER FACTOR EXISTS WHICH
13 WOULD EXCUSE THE TIMELY FILING OF THE RETURN; PROVIDED FURTHER, THAT THE
14 TIMELY FILING OF THE RETURN, ALONE, SHALL NOT RESULT IN A PRESUMPTION
15 THAT THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS OR HER PRIMARY RESI-
16 DENCE. No action or proceeding shall be commenced seeking to recover
17 possession on the ground that a housing accommodation is not occupied by
18 the tenant as his or her primary residence unless the owner or lessor
19 shall have given thirty days notice to the tenant of his or her inten-
20 tion to commence such action or proceeding on such grounds.

21 S 2. Subparagraph (f) of paragraph 1 of subdivision a of section
22 26-504 of the administrative code of the city of New York is amended to
23 read as follows:

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

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1 (f) not occupied by the tenant, not including subtenants or occupants,
2 as his OR HER primary residence, as determined by a court of competent
3 jurisdiction[, provided, however that no]. FOR PURPOSES OF DETERMINING
4 PRIMARY RESIDENCY, AS USED IN THIS CHAPTER, THE FAILURE TO FILE A NEW
5 YORK CITY RESIDENT INCOME TAX RETURN BY AN INDIVIDUAL REQUIRED BY LAW TO
6 FILE SUCH A RETURN, SHALL RESULT IN A FINDING THAT THE TENANT DOES NOT
7 OCCUPY THE UNIT AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER, THAT
8 THIS PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED AN
9 EXTENSION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER FACTOR EXISTS
10 WHICH WOULD EXCUSE THE TIMELY FILING OF A RETURN; PROVIDED FURTHER, THAT
11 THE TIMELY FILING OF THE RETURN, ALONE, SHALL NOT RESULT IN A PRESUMP-
12 TION THAT THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS OR HER PRIMARY
13 RESIDENCE. NO action or proceeding shall be commenced seeking to recover
14 possession on the ground that a housing accommodation is not occupied by
15 the tenant as his or her primary residence unless the owner or lessor
16 shall have given thirty days notice to the tenant of his or her inten-
17 tion to commence such action or proceeding on such grounds. For the
18 purposes of this subparagraph where a housing accommodation is rented to
19 a not-for-profit hospital for residential use, affiliated subtenants
20 authorized to use such accommodations by such hospital shall be deemed
21 to be tenants, or

22 S 3. Paragraph 11 of subdivision a of section 5 of section 4 of chap-
23 ter 576 of the laws of 1974, constituting the emergency tenant
24 protection act of nineteen seventy-four, as amended by chapter 940 of
25 the laws of 1984, is amended to read as follows:

26 (11) housing accommodations which are not occupied by the tenant, not
27 including subtenants or occupants, as his OR HER primary residence, as
28 determined by a court of competent jurisdiction. FOR PURPOSES OF DETER-
29 MINING PRIMARY RESIDENCY, AS USED IN THIS ACT, THE FAILURE TO FILE A NEW
30 YORK STATE RESIDENT INCOME TAX RETURN BY AN INDIVIDUAL REQUIRED BY LAW
31 TO FILE SUCH A RETURN, SHALL RESULT IN A FINDING THAT THE TENANT DOES
32 NOT OCCUPY THE UNIT AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER,
33 THAT THIS PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED
34 AN EXTENSION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER FACTOR EXISTS
35 WHICH WOULD EXCUSE THE TIMELY FILING OF THE RETURN; PROVIDED FURTHER,
36 THAT THE TIMELY FILING OF THE RETURN, ALONE, SHALL NOT RESULT IN A
37 PRESUMPTION THAT THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS OR HER
38 PRIMARY RESIDENCE. For the purposes of this paragraph, where a housing
39 accommodation is rented to a not-for-profit hospital for residential
40 use, affiliated subtenants authorized to use such accommodations by such
41 hospital shall be deemed to be tenants. No action or proceeding shall be
42 commenced seeking to recover possession on the ground that a housing
43 accommodation is not occupied by the tenant as his OR HER primary resi-
44 dence unless the owner or lessor shall have given thirty days notice to
45 the tenant of his OR HER intention to commence such action or proceeding
46 on such grounds.

47 S 4. This act shall take effect immediately; provided that the amend-
48 ment to section 26-403 of the city rent and rehabilitation law made by
49 section one of this act shall remain in full force and effect only so
50 long as the public emergency requiring the regulation and control of
51 residential rents and evictions continues, as provided in subdivision 3
52 of section 1 of the local emergency housing rent control act; and
53 provided further that the amendment to section 26-504 of the rent
54 stabilization law of nineteen hundred sixty-nine made by section two of
55 this act shall expire on the same date as such law expires and shall not
56 affect the expiration of such law as provided under section 26-520 of

1 such law; and provided further that the amendment to section 5 of the
2 emergency tenant protection act of nineteen seventy-four made by section
3 three of this act shall expire on the same date as such act expires and
4 shall not affect the expiration of such act as provided in section 17 of
5 chapter 576 of the laws of 1974, as amended.