

1901

2011-2012 Regular Sessions

I N S E N A T E

January 14, 2011

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 as amended by chapter 422 of the laws of 2010, is amended to read as
4 follows:

5 (10) Housing accommodations not occupied by the tenant, not including
6 subtenants or occupants, as his or her primary residence, as determined
7 by a court of competent jurisdiction. For the purposes of determining
8 primary residency, a tenant who is a victim of domestic violence, as
9 defined in section four hundred fifty-nine-a of the social services law,
10 who has left the unit because of such violence, and who asserts an
11 intent to return to the housing accommodation shall be deemed to be
12 occupying the unit as his or her primary residence. FOR PURPOSES OF
13 DETERMINING PRIMARY RESIDENCY, AS USED IN THIS CHAPTER, THE FAILURE TO
14 FILE A NEW YORK CITY RESIDENT INCOME TAX RETURN BY AN INDIVIDUAL
15 REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL RESULT IN A FINDING THAT
16 THE TENANT DOES NOT OCCUPY THE UNIT AS HIS OR HER PRIMARY RESIDENCE;
17 PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT APPLY TO AN INDIVIDUAL
18 WHO HAS REQUESTED AN EXTENSION OF TIME FOR PAYMENT OF TAX OR WHERE ANY
19 OTHER FACTOR EXISTS WHICH WOULD EXCUSE THE TIMELY FILING OF THE RETURN;
20 PROVIDED FURTHER, THAT THE TIMELY FILING OF THE RETURN, ALONE, SHALL NOT
21 RESULT IN A PRESUMPTION THAT THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS
22 OR HER PRIMARY RESIDENCE. No action or proceeding shall be commenced
23 seeking to recover possession on the ground that a housing accommodation

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

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1 is not occupied by the tenant as his or her primary residence unless the
2 owner or lessor shall have given thirty days notice to the tenant of his
3 or her intention to commence such action or proceeding on such grounds.

4 S 2. Subparagraph (f) of paragraph 1 of subdivision a of section
5 26-504 of the administrative code of the city of New York, as amended by
6 chapter 422 of the laws of 2010, is amended to read as follows:

7 (f) not occupied by the tenant, not including subtenants or occupants,
8 as his or her primary residence, as determined by a court of competent
9 jurisdiction[, provided, however that no]. FOR PURPOSES OF DETERMINING
10 PRIMARY RESIDENCY, AS USED IN THIS CHAPTER, THE FAILURE TO FILE A NEW
11 YORK CITY RESIDENT INCOME TAX RETURN BY AN INDIVIDUAL REQUIRED BY LAW TO
12 FILE SUCH A RETURN, SHALL RESULT IN A FINDING THAT THE TENANT DOES NOT
13 OCCUPY THE UNIT AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER, THAT
14 THIS PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED AN
15 EXTENSION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER FACTOR EXISTS
16 WHICH WOULD EXCUSE THE TIMELY FILING OF A RETURN; PROVIDED FURTHER, THAT
17 THE TIMELY FILING OF THE RETURN, ALONE, SHALL NOT RESULT IN A PRESUMP-
18 TION THAT THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS OR HER PRIMARY
19 RESIDENCE. NO action or proceeding shall be commenced seeking to recover
20 possession on the ground that a housing accommodation is not occupied by
21 the tenant as his or her primary residence unless the owner or lessor
22 shall have given thirty days notice to the tenant of his or her inten-
23 tion to commence such action or proceeding on such grounds. For the
24 purposes of determining primary residency, a tenant who is a victim of
25 domestic violence, as defined in section four hundred fifty-nine-a of
26 the social services law, who has left the unit because of such violence,
27 and who asserts an intent to return to the housing accommodation shall
28 be deemed to be occupying the unit as his or her primary residence. For
29 the purposes of this subparagraph where a housing accommodation is rent-
30 ed to a not-for-profit hospital for residential use, affiliated subten-
31 ants authorized to use such accommodations by such hospital shall be
32 deemed to be tenants, or

33 S 3. Paragraph 11 of subdivision a of section 5 of section 4 of chap-
34 ter 576 of the laws of 1974, constituting the emergency tenant
35 protection act of nineteen seventy-four, as amended by chapter 422 of
36 the laws of 2010, is amended to read as follows:

37 (11) housing accommodations which are not occupied by the tenant, not
38 including subtenants or occupants, as his or her primary residence, as
39 determined by a court of competent jurisdiction. FOR PURPOSES OF DETER-
40 MINING PRIMARY RESIDENCY, AS USED IN THIS CHAPTER, THE FAILURE TO FILE A
41 NEW YORK STATE RESIDENT INCOME TAX RETURN BY AN INDIVIDUAL REQUIRED BY
42 LAW TO FILE SUCH A RETURN, SHALL RESULT IN A FINDING THAT THE TENANT
43 DOES NOT OCCUPY THE UNIT AS HIS OR HER PRIMARY RESIDENCE; PROVIDED,
44 HOWEVER, THAT THIS PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS
45 REQUESTED AN EXTENSION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER
46 FACTOR EXISTS WHICH WOULD EXCUSE THE TIMELY FILING OF THE RETURN;
47 PROVIDED FURTHER, THAT THE TIMELY FILING OF THE RETURN, ALONE, SHALL NOT
48 RESULT IN A PRESUMPTION THAT THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS
49 OR HER PRIMARY RESIDENCE. For the purposes of determining primary resi-
50 dency, a tenant who is a victim of domestic violence, as defined in
51 section four hundred fifty-nine-a of the social services law, who has
52 left the unit because of such violence, and who asserts an intent to
53 return to the housing accommodation shall be deemed to be occupying the
54 unit as his or her primary residence. For the purposes of this para-
55 graph, where a housing accommodation is rented to a not-for-profit
56 hospital for residential use, affiliated subtenants authorized to use

1 such accommodations by such hospital shall be deemed to be tenants. No
2 action or proceeding shall be commenced seeking to recover possession on
3 the ground that a housing accommodation is not occupied by the tenant as
4 his or her primary residence unless the owner or lessor shall have
5 given thirty days notice to the tenant of his or her intention to
6 commence such action or proceeding on such grounds.

7 S 4. This act shall take effect immediately; provided that the amend-
8 ment to section 26-403 of the city rent and rehabilitation law made by
9 section one of this act shall remain in full force and effect only so
10 long as the public emergency requiring the regulation and control of
11 residential rents and evictions continues, as provided in subdivision 3
12 of section 1 of the local emergency housing rent control act; and
13 provided further that the amendment to section 26-504 of the rent
14 stabilization law of nineteen hundred sixty-nine made by section two of
15 this act shall expire on the same date as such law expires and shall not
16 affect the expiration of such law as provided under section 26-520 of
17 such law; and provided further that the amendment to section 5 of the
18 emergency tenant protection act of nineteen seventy-four made by section
19 three of this act shall expire on the same date as such act expires and
20 shall not affect the expiration of such act as provided in section 17 of
21 chapter 576 of the laws of 1974, as amended.