

5047

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. YOUNG -- 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 emergency tenant protection act of nineteen seventy-four, the emergency housing rent control law and the administrative code of the city of New York, in relation to the deregulation of rents for high-income rent regulated tenants

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

1 Section 1. Paragraph 12 of subdivision a of section 5 of section 4 of
2 chapter 576 of the laws of 1974, constituting the emergency tenant
3 protection act of nineteen seventy-four, as amended by chapter 116 of
4 the laws of 1997, is amended to read as follows:
5 (12) upon issuance of an order by the division, housing accommo-
6 dations which are[: (1)] occupied by persons who have a total AVERAGE
7 annual income in excess of one hundred seventy-five thousand dollars per
8 annum [in each of] FOR the two preceding calendar years, as defined in
9 and subject to the limitations and process set forth in section five-a
10 of this act[; and (2) have a legal regulated rent of two thousand
11 dollars or more per month.] Provided however, that this exclusion shall
12 not apply to housing accommodations which became or become subject to
13 this act (a) by virtue of receiving tax benefits pursuant to section
14 four hundred twenty-one-a or four hundred eighty-nine of the real prop-
15 erty tax law, except as otherwise provided in subparagraph (i) of para-
16 graph (f) of subdivision two of section four hundred twenty-one-a of the
17 real property tax law, or (b) by virtue of article seven-C of the multi-
18 ple dwelling law.
19 S 2. Section 5-a of section 4 of chapter 576 of the laws of 1974,
20 constituting the emergency tenant protection act of nineteen seventy-
21 four, as added by chapter 253 of the laws of 1993, subdivision (b) and

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

LBD10119-02-1

paragraphs 1 and 2 of subdivision (c) as amended and subdivision (e) as added by chapter 116 of the laws of 1997, is amended to read as follows:

S 5-a. High income rent decontrol. (a) For purposes of this section, annual income shall mean the federal [adjusted] gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons whose names are recited as the tenant or co-tenant on a lease who occupy the housing accommodation and all other persons that occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. In the case where a housing accommodation is sublet, the annual income of the tenant or co-tenant recited on the lease who will reoccupy the housing accommodation upon the expiration of the sublease shall be considered.

(b) On or before the first day of May in each calendar year, the owner of each housing accommodation for which the legal regulated rent is two thousand dollars or more per month may provide the tenant or tenants residing therein with an income certification form prepared by the division of housing and community renewal on which such tenant or tenants shall identify all persons referred to in subdivision (a) of this section and shall certify whether the total AVERAGE annual income is in excess of one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years. Such income certification form shall state that the income level certified to by the tenant may be subject to verification by the department of taxation and finance pursuant to section one hundred seventy-one-b of the tax law, and shall not require disclosure of any information other than whether the aforementioned threshold has been exceeded. Such income certification form shall clearly state that: (i) [only tenants residing in housing accommodations which had a legal regulated rent of two thousand dollars or more per month are required to complete the certification form; (ii) that] tenants have protections available to them which are designed to prevent harassment; [(iii) that] AND (II) tenants are not required to provide any information regarding their income except that which is requested on the form and may contain such other information the division deems appropriate. The tenant or tenants shall return the completed certification to the owner within thirty days after service upon the tenant or tenants. In the event that the total AVERAGE annual income as certified is in excess of one hundred seventy-five thousand dollars in each such year, the owner may file the certification with the state division of housing and community renewal on or before June thirtieth of such year. Upon filing such certification with the division, the division shall, within thirty days after the filing, issue an order providing that such housing accommodation shall not be subject to the provisions of this act upon the expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be mailed to the owner. NOTWITHSTANDING THE FOREGOING, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY TENANT WHOSE RENT IS PAYABLE BY DIRECT GOVERNMENT HOUSING SUBSIDY, ANY CURRENTLY EFFECTIVE RENT INCREASE EXEMPTION FOR SENIOR CITIZENS OR PERSONS WITH DISABILITIES AUTHORIZED PURSUANT TO SECTION FOUR HUNDRED SIXTY-SEVEN-B OR FOUR HUNDRED SIXTY-SEVEN-C OF THE REAL PROPERTY TAX LAW, DIRECT PAYMENT OF RENT OR A TWO-PARTY CHECK ISSUED BY A SOCIAL SERVICES DISTRICT OR THE DEPARTMENT OF FAMILY ASSISTANCE, OR

1 RENTAL ASSISTANCE THAT IS PAYABLE PURSUANT TO COURT ORDERS ISSUED IN
2 LITIGATION COMMENCED IN NINETEEN HUNDRED EIGHTY-SEVEN IN A PROCEEDING IN
3 WHICH THE AMOUNT OF SHELTER ALLOWANCE IS AT ISSUE ON BEHALF OF RECIPI-
4 ENTS OF AID TO DEPENDENT CHILDREN.

5 (c) 1. In the event that the tenant or tenants either fail to return
6 the completed certification to the owner on or before the date required
7 by subdivision (b) of this section or the owner disputes the certif-
8 ication returned by the tenant or tenants, the owner may, on or before
9 June thirtieth of such year, petition the state division of housing and
10 community renewal to verify, pursuant to section one hundred seventy-
11 one-b of the tax law, whether the total AVERAGE annual income exceeds
12 one hundred seventy-five thousand dollars in each of the two preceding
13 calendar years. Within twenty days after the filing of such request with
14 the division, the division shall notify the tenant or tenants that such
15 tenant or tenants named on the lease must provide the division with such
16 information as the division and the department of taxation and finance
17 shall require to verify whether the total AVERAGE annual income exceeds
18 one hundred seventy-five thousand dollars [in each such year] FOR THE
19 TWO PRECEDING CALENDAR YEARS. The division's notification shall require
20 the tenant or tenants to provide the information to the division within
21 sixty days of service upon such tenant or tenants and shall include a
22 warning in bold faced type that failure to respond will result in an
23 order being issued by the division providing that such housing accommo-
24 dations shall not be subject to the provisions of this act.

25 2. If the department of taxation and finance determines that the total
26 annual income is in excess of one hundred seventy-five thousand dollars
27 [in each of] FOR the two preceding calendar years, the division shall,
28 on or before November fifteenth of such year, notify the owner and
29 tenants of the results of such verification. Both the owner and the
30 tenants shall have thirty days within which to comment on such verifica-
31 tion results. Within forty-five days after the expiration of the
32 comment period, the division shall, where appropriate, issue an order
33 providing that such housing accommodation shall not be subject to the
34 provisions of this act upon expiration of the existing lease. A copy of
35 such order shall be mailed by regular and certified mail, return receipt
36 requested, to the tenant or tenants and a copy thereof shall be sent to
37 the owner. WHERE THE DEPARTMENT OF TAXATION AND FINANCE IS UNABLE TO
38 DETERMINE WHETHER THE TOTAL AVERAGE ANNUAL INCOME IS IN EXCESS OF ONE
39 HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR
40 YEARS, IT SHALL BE PRESUMED THAT THE TOTAL AVERAGE ANNUAL INCOME OF SUCH
41 TENANT IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE
42 TWO PRECEDING CALENDAR YEARS AND THE PROCEDURES OF THIS PARAGRAPH SHALL
43 APPLY TO SUCH TENANT. THE DIVISION SHALL PROMULGATE REGULATIONS WHICH
44 SET FORTH THE MANNER IN WHICH SUCH A TENANT MAY REBUT SUCH PRESUMPTION.

45 3. In the event the tenant or tenants fail to provide the information
46 required pursuant to paragraph one of this subdivision, the division
47 shall issue, on or before December first of such year, an order provid-
48 ing that such housing accommodation shall not be subject to the
49 provisions of this act upon the expiration [or] OF the current lease. A
50 copy of such order shall be mailed by regular and certified mail, return
51 receipt requested, to the tenant or tenants and a copy thereof shall be
52 sent to the owner.

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

(d) This section shall apply only to paragraph twelve of subdivision a of section five of this act.

(e) Upon receipt of such order of decontrol pursuant to this section, an owner shall offer the housing accommodation subject to such order to the tenant at a rent not in excess of the market rent, which for the purposes of this section means a rent obtainable in an arm's length transaction. Such rental offer shall be made by the owner in writing to the tenant by certified and regular mail and shall inform the tenant that such offer must be accepted in writing within ten days of receipt. The tenant shall respond within ten days after receipt of such offer. If the tenant declines the offer or fails to respond within such period, the owner may commence an action or proceeding for the eviction of such tenant.

S 3. Paragraph (m) of subdivision 2 of section 2 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

(m) upon the issuance of an order of decontrol by the division, housing accommodations which[: (1)] are occupied by persons who have a total AVERAGE annual income in excess of one hundred seventy-five thousand dollars [in each of] PER ANNUM FOR the two preceding calendar years, as defined in and subject to the limitations and process set forth in section two-a of this law[; and (2) have a maximum rent of two thousand dollars or more per month].

S 4. Section 2-a of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as added by chapter 253 of the laws of 1993, subdivision (b) and paragraphs 1 and 2 of subdivision (c) as amended and subdivision (e) as added by chapter 116 of the laws of 1997, is amended to read as follows:

S 2-a. (a) For purposes of this section, annual income shall mean the federal [adjusted] gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. In the case where a housing accommodation is sublet, the annual income of the sublessor shall be considered.

(b) On or before the first day of May in each calendar year, the owner of each housing accommodation [for which the maximum rent is two thousand dollars or more per month] WHICH IS OCCUPIED BY A TENANT OR TENANTS WHOM THE OWNER IN GOOD FAITH BELIEVES HAS A TOTAL AVERAGE ANNUAL INCOME IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS may provide the tenant or tenants residing therein with an income certification form prepared by the division of housing and community renewal on which such tenant or tenants shall identify all persons referred to in subdivision (a) of this section and shall certify whether the total AVERAGE annual income is in excess of one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years. Such income certification form shall state that the income level certified to by the tenant may be subject to verification by the department of taxation and finance pursuant to section one hundred seventy-one-b of the tax law and shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded. Such income certification form shall

1 clearly state that: (i) [only tenants residing in housing accommodations
2 which had a maximum rent of two thousand dollars or more per month are
3 required to complete the certification form; (ii) that] tenants have
4 protections available to them which are designed to prevent harassment;
5 [(iii) that] AND (II) tenants are not required to provide any informa-
6 tion regarding their income except that which is requested on the form
7 and may contain such other information the division deems appropriate.
8 The tenant or tenants shall return the completed certification to the
9 owner within thirty days after service upon the tenant or tenants. In
10 the event that the total AVERAGE annual income as certified is in excess
11 of one hundred seventy-five thousand dollars in each such year, the
12 owner may file the certification with the state division of housing and
13 community renewal on or before June thirtieth of such year. Upon filing
14 such certification with the division, the division shall, within thirty
15 days after the filing, issue an order of decontrol providing that such
16 housing accommodations shall not be subject to the provisions of this
17 law as of the first day of June in the year next succeeding the filing
18 of the certification by the owner. A copy of such order shall be mailed
19 by regular and certified mail, return receipt requested, to the tenant
20 or tenants and a copy thereof shall be mailed to the owner. NOTWITH-
21 STANDING THE FOREGOING, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY
22 TO ANY TENANT WHOSE RENT IS PAYABLE BY DIRECT GOVERNMENT HOUSING SUBSI-
23 DY, ANY CURRENTLY EFFECTIVE RENT INCREASE EXEMPTION FOR SENIOR CITIZENS
24 OR PERSONS WITH DISABILITIES AUTHORIZED PURSUANT TO SECTION FOUR HUNDRED
25 SIXTY-SEVEN-B OR FOUR HUNDRED SIXTY-SEVEN-C OF THE REAL PROPERTY TAX
26 LAW, DIRECT PAYMENT OF RENT OR A TWO-PARTY CHECK ISSUED BY A SOCIAL
27 SERVICES DISTRICT OR THE DEPARTMENT OF FAMILY ASSISTANCE, OR RENTAL
28 ASSISTANCE THAT IS PAYABLE PURSUANT TO COURT ORDERS ISSUED IN LITIGATION
29 COMMENCED IN NINETEEN HUNDRED EIGHTY-SEVEN IN A PROCEEDING IN WHICH THE
30 AMOUNT OF SHELTER ALLOWANCE IS AT ISSUE ON BEHALF OF RECIPIENTS OF AID
31 TO DEPENDENT CHILDREN.

32 (c) 1. In the event that the tenant or tenants either fail to return
33 the completed certification to the owner on or before the date required
34 by subdivision (b) of this section or the owner disputes the certifi-
35 cation returned by the tenant or tenants, the owner may, on or before
36 June thirtieth of such year, petition the state division of housing and
37 community renewal to verify, pursuant to section one hundred seventy-
38 one-b of the tax law, whether the total AVERAGE annual income exceeds
39 one hundred seventy-five thousand dollars [in each of] FOR the two
40 preceding calendar years. Within twenty days after the filing of such
41 request with the division, the division shall notify the tenant or
42 tenants that such tenant or tenants must provide the division with such
43 information as the division and the department of taxation and finance
44 shall require to verify whether the total AVERAGE annual income exceeds
45 one hundred seventy-five thousand dollars in each such year. The divi-
46 sion's notification shall require the tenant or tenants to provide the
47 information to the division within sixty days of service upon such
48 tenant or tenants and shall include a warning in bold faced type that
49 failure to respond will result in an order of decontrol being issued by
50 the division for such housing accommodation.

51 2. If the department of taxation and finance determines that the total
52 AVERAGE annual income is in excess of one hundred seventy-five thousand
53 dollars [in each of] FOR the two preceding calendar years, the division
54 shall, on or before November fifteenth of such year, notify the owner
55 and tenants of the results of such verification. Both the owner and the
56 tenants shall have thirty days within which to comment on such verifica-

tion results. Within forty-five days after the expiration of the comment period, the division shall, where appropriate, issue an order of decontrol providing that such housing accommodation shall not be subject to the provisions of this law as of the first day of March in the year next succeeding the filing of the owner's petition with the division. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner. WHERE THE DEPARTMENT OF TAXATION AND FINANCE IS UNABLE TO DETERMINE WHETHER THE TOTAL AVERAGE ANNUAL INCOME IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS, IT SHALL BE PRESUMED THAT THE TOTAL AVERAGE ANNUAL INCOME OF SUCH TENANT IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS AND THE PROCEDURES OF THIS PARAGRAPH SHALL APPLY TO SUCH TENANT. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL PROMULGATE REGULATIONS WHICH SET FORTH THE MANNER IN WHICH SUCH A TENANT MAY REBUT SUCH PRESUMPTION.

3. In the event the tenant or tenants fail to provide the information required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year, an order of decontrol providing that such housing accommodation shall not be subject to the provisions of this law as of the first day of March in the year next succeeding the last day on which the tenant or tenants were required to provide the information required by such paragraph. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

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

(d) This section shall apply only to paragraph (m) of subdivision two of section two of this law.

(e) Upon receipt of such order of decontrol pursuant to this section, an owner shall offer the housing accommodation subject to such order to the tenant at a rent not in excess of the market rent, which for the purposes of this section means a rent obtainable in an arm's length transaction. Such rental offer shall be made by the owner in writing to the tenant by certified and regular mail and shall inform the tenant that such offer must be accepted in writing within ten days of receipt. The tenant shall respond within ten days after receipt of such offer. If the tenant declines the offer or fails to respond within such period, the owner may commence an action or proceeding for the eviction of such tenant.

S 5. Section 26-504.1 of the administrative code of the city of New York, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

S 26-504.1 Exclusion of accommodations of high income renters. Upon the issuance of an order by the division, "housing accommodations" shall not include housing accommodations which[: (1)] are occupied by persons who have a total AVERAGE annual income in excess of one hundred seventy-five thousand dollars per annum for each of the two preceding calendar years, as defined in and subject to the limitations and process set forth in section 26-504.3 of this chapter[; and (2) have a legal regulated rent of two thousand dollars or more per month]. Provided, however, that this exclusion shall not apply to housing accommodations which became or become subject to this law (a) by virtue of receiving tax benefits pursuant to section four hundred twenty-one-a or four hundred

1 eighty-nine of the real property tax law, except as otherwise provided
2 in subparagraph (i) of paragraph (f) of subdivision two of section four
3 hundred twenty-one-a of the real property tax law, or (b) by virtue of
4 article seven-C of the multiple dwelling law.

5 S 6. Section 26-504.3 of the administrative code of the city of New
6 York, as added by chapter 253 of the laws of 1993, subdivision (b) and
7 paragraphs 1 and 2 of subdivision (c) as amended and subdivision (e) as
8 added by chapter 116 of the laws of 1997, is amended to read as follows:

9 S 26-504.3 High income rent decontrol. (a) For purposes of this
10 section, annual income shall mean the federal [adjusted] gross income as
11 reported on the New York state income tax return. Total annual income
12 means the sum of the annual incomes of all persons whose names are
13 recited as the tenant or co-tenant on a lease who occupy the housing
14 accommodation and all other persons that occupy the housing accommo-
15 dation as their primary residence on other than a temporary basis,
16 excluding bona fide employees of such occupants residing therein in
17 connection with such employment and excluding bona fide subtenants in
18 occupancy pursuant to the provisions of section two hundred twenty-six-b
19 of the real property law. In the case where a housing accommodation is
20 sublet, the annual income of the tenant or co-tenant recited on the
21 lease who will reoccupy the housing accommodation upon the expiration of
22 the sublease shall be considered.

23 (b) On or before the first day of May in each calendar year, the owner
24 of each housing accommodation [for which the legal regulated rent is two
25 thousand dollars or more per month] WHICH IS OCCUPIED BY A TENANT OR
26 TENANTS WHOM THE OWNER IN GOOD FAITH BELIEVES HAS A TOTAL AVERAGE ANNUAL
27 INCOME IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE
28 TWO PRECEDING CALENDAR YEARS may provide the tenant or tenants residing
29 therein with an income certification form prepared by the division of
30 housing and community renewal on which such tenant or tenants shall
31 identify all persons referred to in subdivision (a) of this section and
32 shall certify whether the total AVERAGE annual income is in excess of
33 one hundred seventy-five thousand dollars [in each of] FOR the two
34 preceding calendar years. Such income certification form shall state
35 that the income level certified to by the tenant may be subject to
36 verification by the department of taxation and finance pursuant to
37 section one hundred seventy-one-b of the tax law and shall not require
38 disclosure of any income information other than whether the aforemen-
39 tioned threshold has been exceeded. Such income certification form shall
40 clearly state that: (i) [only tenants residing in housing accommodations
41 which have a legal regulated rent of two thousand dollars or more per
42 month are required to complete the certification form; (ii) that]
43 tenants have protections available to them which are designed to prevent
44 harassment; [(iii) that] AND (II) tenants are not required to provide
45 any information regarding their income except that which is requested on
46 the form and may contain such other information the division deems
47 appropriate. The tenant or tenants shall return the completed certif-
48 ication to the owner within thirty days after service upon the tenant or
49 tenants. In the event that the total AVERAGE annual income as certified
50 is in excess of one hundred seventy-five thousand dollars in each such
51 year, the owner may file the certification with the state division of
52 housing and community renewal on or before June thirtieth of such year.
53 Upon filing such certification with the division, the division shall,
54 within thirty days after the filing, issue an order providing that such
55 housing accommodation shall not be subject to the provisions of this
56 [act] LAW upon the expiration of the existing lease. A copy of such

1 order shall be mailed by regular and certified mail, return receipt
2 requested, to the tenant or tenants and a copy thereof shall be mailed
3 to the owner. NOTWITHSTANDING THE FOREGOING, THE PROVISIONS OF THIS
4 SECTION SHALL NOT APPLY TO ANY TENANT WHOSE RENT IS PAYABLE BY DIRECT
5 GOVERNMENT HOUSING SUBSIDY, ANY CURRENTLY EFFECTIVE RENT INCREASE
6 EXEMPTION FOR SENIOR CITIZENS OR PERSONS WITH DISABILITIES AUTHORIZED
7 PURSUANT TO SECTION FOUR HUNDRED SIXTY-SEVEN-B OR FOUR HUNDRED
8 SIXTY-SEVEN-C OF THE REAL PROPERTY TAX LAW, DIRECT PAYMENT OF RENT OR A
9 TWO-PARTY CHECK ISSUED BY A SOCIAL SERVICES DISTRICT OR THE DEPARTMENT
10 OF FAMILY ASSISTANCE, OR RENTAL ASSISTANCE THAT IS PAYABLE PURSUANT TO
11 COURT ORDERS ISSUED IN LITIGATION COMMENCED IN NINETEEN HUNDRED EIGHTY-
12 SEVEN IN A PROCEEDING IN WHICH THE AMOUNT OF SHELTER ALLOWANCE IS AT
13 ISSUE ON BEHALF OF RECIPIENTS OF AID TO DEPENDENT CHILDREN.

14 (c) 1. In the event that the tenant or tenants either fail to return
15 the completed certification to the owner on or before the date required
16 by subdivision (b) of this section or the owner disputes the certifi-
17 cation returned by the tenant or tenants, the owner may, on or before
18 June thirtieth of such year, petition the state division of housing and
19 community renewal to verify, pursuant to section one hundred seventy-
20 one-b of the tax law, whether the total AVERAGE annual income exceeds
21 one hundred seventy-five thousand dollars [in each of] FOR the two
22 preceding calendar years. Within twenty days after the filing of such
23 request with the division, the division shall notify the tenant or
24 tenants named on the lease that such tenant or tenants must provide the
25 division with such information as the division and the department of
26 taxation and finance shall require to verify whether the total AVERAGE
27 annual income exceeds one hundred seventy-five thousand dollars in each
28 such year. The division's notification shall require the tenant or
29 tenants to provide the information to the division within sixty days of
30 service upon such tenant or tenants and shall include a warning in bold
31 faced type that failure to respond will result in an order being issued
32 by the division providing that such housing accommodation shall not be
33 subject to the provisions of this law.

34 2. If the department of taxation and finance determines that the total
35 AVERAGE annual income is in excess of one hundred seventy-five thousand
36 dollars [in each of] FOR the two preceding calendar years, the division
37 shall, on or before November fifteenth of such year, notify the owner
38 and tenants of the results of such verification. Both the owner and the
39 tenants shall have thirty days within which to comment on such verifica-
40 tion results. Within forty-five days after the expiration of the
41 comment period, the division shall, where appropriate, issue an order
42 providing that such housing accommodation shall not be subject to the
43 provisions of this law upon the expiration of the existing lease. 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. WHERE THE DEPARTMENT OF TAXATION AND FINANCE IS
47 UNABLE TO DETERMINE WHETHER THE TOTAL AVERAGE ANNUAL INCOME IS IN EXCESS
48 OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING
49 CALENDAR YEARS, IT SHALL BE PRESUMED THAT THE TOTAL AVERAGE ANNUAL
50 INCOME OF SUCH TENANT IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND
51 DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS AND THE PROCEDURES OF THIS
52 PARAGRAPH SHALL APPLY TO SUCH TENANT. THE DIVISION OF HOUSING AND COMMU-
53 NITY RENEWAL SHALL PROMULGATE REGULATIONS WHICH SET FORTH THE MANNER IN
54 WHICH SUCH A TENANT MAY REBUT SUCH PRESUMPTION.

55 3. In the event the tenant or tenants fail to provide the information
56 required pursuant to paragraph one of this subdivision, the division

shall issue, on or before December first of such year, an order providing that such housing accommodation shall not be subject to the provisions of this law upon the expiration of the current lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

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

(d) This section shall apply only to section 26-504.1 of this code.

(e) Upon receipt of such order of decontrol pursuant to this section, an owner shall offer the housing accommodation subject to such order to the tenant at a rent not in excess of the market rent, which for the purposes of this section means a rent obtainable in an arm's length transaction. Such rental offer shall be made by the owner in writing to the tenant by certified and regular mail and shall inform the tenant that such offer must be accepted in writing within ten days of receipt. The tenant shall respond within ten days after receipt of such offer. If the tenant declines the offer or fails to respond within such period, the owner may commence an action or proceeding for the eviction of such tenant.

S 7. Subparagraph (j) of paragraph 2 of subdivision e of section 26-403 of the administrative code of the city of New York, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

(j) Upon the issuance of an order of decontrol by the division, housing accommodations which[: (1)] are occupied by persons who have a total AVERAGE annual income in excess of one hundred seventy-five thousand dollars per annum [in each of] FOR the two preceding calendar years, as defined in and subject to the limitations and process set forth in section 26-403.1 of this chapter[; and (2) have a maximum rent of two thousand dollars or more per month]. Provided however, that this exclusion shall not apply to housing accommodations which became or become subject to this law by virtue of receiving tax benefits pursuant to section four hundred eighty-nine of the real property tax law.

S 8. Section 26-403.1 of the administrative code of the city of New York, as added by chapter 253 of the laws of 1993, subdivision (b) and paragraphs 1 and 2 of subdivision (c) as amended and subdivision (e) as added by chapter 116 of the laws of 1997, is amended to read as follows:

S 26-403.1 High income rent decontrol. (a) For purposes of this section, annual income shall mean the federal [adjusted] gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence other than on a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. In the case where a housing accommodation is sublet, the annual income of the sublessor shall be considered.

(b) On or before the first day of May in each calendar year, the owner of each housing accommodation [for which the maximum rent is two thousand dollars or more per month] WHICH IS OCCUPIED BY A TENANT OR TENANTS WHOM THE OWNER IN GOOD FAITH BELIEVES HAS A TOTAL AVERAGE ANNUAL INCOME IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS may provide the tenant or tenants residing therein with an income certification form prepared by the division of housing and community renewal on which such tenant or tenants shall

1 identify all persons referred to in subdivision (a) of this section and
2 shall certify whether the total AVERAGE annual income is in excess of
3 one hundred seventy-five thousand dollars [in each] FOR of the two
4 preceding calendar years. Such income certification form shall state
5 that the income level certified to by the tenant may be subject to
6 verification by the department of taxation and finance pursuant to
7 section one hundred seventy-one-b of the tax law and shall not require
8 disclosure of any income information other than whether the aforemen-
9 tioned threshold has been exceeded. Such income certification form shall
10 clearly state that: (i) [only tenants residing in housing accommodations
11 which have a maximum rent of two thousand dollars or more per month are
12 required to complete the certification form; (ii) that] tenants have
13 protections available to them which are designed to prevent harassment;
14 [(iii) that] AND (II) tenants are not required to provide any informa-
15 tion regarding their income except that which is requested on the form
16 and may contain such other information the division deems appropriate.
17 The tenant or tenants shall return the completed certification to the
18 owner within thirty days after service upon the tenant or tenants. In
19 the event that the total AVERAGE annual income as certified is in excess
20 of one hundred seventy-five thousand dollars in each such year, the
21 owner may file the certification with the state division of housing and
22 community renewal on or before June thirtieth of such year. Upon filing
23 such certification with the division, the division shall, within thirty
24 days after the filing, issue an order of decontrol providing that such
25 housing accommodations shall not be subject to the provisions of this
26 law as of the first day of June in the year next succeeding the filing
27 of the certification by the owner. A copy of such order shall be mailed
28 by regular and certified mail, return receipt requested, to the tenant
29 or tenants and a copy thereof shall be mailed to the owner. NOTWITH-
30 STANDING THE FOREGOING, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY
31 TO ANY TENANT WHOSE RENT IS PAYABLE BY DIRECT GOVERNMENT HOUSING SUBSI-
32 DY, ANY CURRENTLY EFFECTIVE RENT INCREASE EXEMPTION FOR SENIOR CITIZENS
33 OR PERSONS WITH DISABILITIES AUTHORIZED PURSUANT TO SECTION FOUR HUNDRED
34 SIXTY-SEVEN-B OR FOUR HUNDRED SIXTY-SEVEN-C OF THE REAL PROPERTY TAX
35 LAW, DIRECT PAYMENT OF RENT OR A TWO-PARTY CHECK ISSUED BY A SOCIAL
36 SERVICES DISTRICT OR THE DEPARTMENT OF FAMILY ASSISTANCE, OR RENTAL
37 ASSISTANCE THAT IS PAYABLE PURSUANT TO COURT ORDERS ISSUED IN LITIGATION
38 COMMENCED IN NINETEEN HUNDRED EIGHTY-SEVEN IN A PROCEEDING IN WHICH THE
39 AMOUNT OF SHELTER ALLOWANCE IS AT ISSUE ON BEHALF OF RECIPIENTS OF AID
40 TO DEPENDENT CHILDREN.

41 (c) 1. In the event that the tenant or tenants either fail to return
42 the completed certification to the owner on or before the date required
43 by subdivision (b) of this section or the owner disputes the certif-
44 ication returned by the tenant or tenants, the owner may, on or before
45 June thirtieth of such year, petition the state division of housing and
46 community renewal to verify, pursuant to section one hundred seventy-
47 one-b of the tax law, whether the total AVERAGE annual income exceeds
48 one hundred seventy-five thousand dollars [in each of] FOR the two
49 preceding calendar years. Within twenty days after the filing of such
50 request with the division, the division shall notify the tenant or
51 tenants that such tenant or tenants must provide the division with such
52 information as the division and the department of taxation and finance
53 shall require to verify whether the total AVERAGE annual income exceeds
54 one hundred seventy-five thousand dollars in each such year. The divi-
55 sion's notification shall require the tenant or tenants to provide the
56 information to the division within sixty days of service upon such

1 tenant or tenants and shall include a warning in bold faced type that
2 failure to respond will result in an order of decontrol being issued by
3 the division for such housing accommodation.

4 2. If the department of taxation and finance determines that the total
5 AVERAGE annual income is in excess of one hundred seventy-five thousand
6 dollars [in each of] FOR the two preceding calendar years, the division
7 shall, on or before November fifteenth of such year, notify the owner
8 and tenants of the results of such verification. Both the owner and the
9 tenants shall have thirty days within which to comment on such verifica-
10 tion results. Within forty-five days after the expiration of the
11 comment period, the division shall, where appropriate, issue an order of
12 decontrol providing that such housing accommodation shall not be subject
13 to the provisions of this law as of the first day of March in the year
14 next succeeding the filing of the owner's petition with the division. A
15 copy of such order shall be mailed by regular and certified mail, return
16 receipt requested, to the tenant or tenants and a copy thereof shall be
17 sent to the owner. WHERE THE DEPARTMENT OF TAXATION AND FINANCE IS
18 UNABLE TO DETERMINE WHETHER THE TOTAL AVERAGE ANNUAL INCOME IS IN EXCESS
19 OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING
20 CALENDAR YEARS, IT SHALL BE PRESUMED THAT THE TOTAL AVERAGE ANNUAL
21 INCOME OF SUCH TENANT IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND
22 DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS AND THE PROCEDURES OF THIS
23 PARAGRAPH SHALL APPLY TO SUCH TENANT. THE DIVISION OF HOUSING AND COMMU-
24 NITY RENEWAL SHALL PROMULGATE REGULATIONS WHICH SET FORTH IN THE MANNER
25 IN WHICH SUCH A TENANT MAY REBUT SUCH PRESUMPTION.

26 3. In the event the tenant or tenants fail to provide the information
27 required pursuant to paragraph one of this subdivision, the division
28 shall issue, on or before December first of such year, an order of
29 decontrol providing that such housing accommodation shall not be subject
30 to the provisions of this law as of the first day of March in the year
31 next succeeding the last day on which the tenant or tenants were
32 required to provide the information required by such paragraph. A copy
33 of such order shall be mailed by regular and certified mail, return
34 receipt requested, to the tenant or tenants and a copy thereof shall be
35 sent to the owner.

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

39 (d) This section shall apply only to subparagraph (j) of paragraph two
40 of subdivision e of section 26-403 of this code.

41 (e) Upon receipt of such order of decontrol pursuant to this section,
42 an owner shall offer the housing accommodation subject to such order to
43 the tenant at a rent not in excess of the market rent, which for the
44 purposes of this section means a rent obtainable in an arm's length
45 transaction. Such rental offer shall be made by the owner in writing to
46 the tenant by certified and regular mail and shall inform the tenant
47 that such offer must be accepted in writing within ten days of receipt.
48 The tenant shall respond within ten days after receipt of such offer. If
49 the tenant declines the offer or fails to respond within such period,
50 the owner may commence an action or proceeding for the eviction of such
51 tenant.

52 S 9. This act shall take effect immediately and shall first apply to
53 income certification forms provided by owners to tenants on or after
54 January 1, 2012, provided that:

55 (a) the amendments to the emergency tenant protection act of nineteen
56 seventy-four made by sections one and two of this act shall expire on

1 the same date as such act expires and shall not affect the expiration of
2 such act as provided in section 17 of chapter 576 of the laws of 1974;

3 (b) the amendments to the emergency housing rent control law made by
4 sections three and four of this act shall expire on the same date as
5 such law expires and shall not affect the expiration of such law as
6 provided in subdivision 2 of section 1 of chapter 274 of the laws of
7 1946;

8 (c) the amendments to chapter 4 of title 26 of the administrative code
9 of the city of New York made by sections five and six of this act shall
10 expire on the same date as such law expires and shall not affect the
11 expiration of such law as provided under section 26-520 of such law; and

12 (d) the amendments to the city rent and rehabilitation law made by
13 sections seven and eight of this act shall remain in full force and
14 effect only as long as the public emergency requiring the regulation and
15 control of residential rents and evictions continues, as provided in
16 subdivision 3 of section 1 of the local emergency housing rent control
17 act.