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I N S E N A T E

June 18, 2012

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the emergency housing rent control law, in relation to requiring the state division of housing and community renewal to verify there are no housing code violations prior to authorizing a rent increase for major capital improvements

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

1 Section 1. Paragraph 1 of subdivision g of section 26-405 of the
2 administrative code of the city of New York is amended by adding a new
3 subparagraph (p) to read as follows:
4 (P) ADJUSTMENTS MADE PURSUANT TO SUBPARAGRAPH (G) OF THIS PARAGRAPH
5 SHALL BE COLLECTIBLE UPON THE LANDLORD'S FILING OF A REPORT WITH THE
6 CITY RENT AGENCY, SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (E) OF PARA-
7 GRAPH TWO OF SUBDIVISION A OF THIS SECTION AND VERIFICATION BY THE CITY
8 RENT AGENCY, IN COLLABORATION WITH LOCAL AUTHORITIES RESPONSIBLE FOR
9 INSPECTING BUILDINGS, THAT THE APPLICANT DOES NOT HAVE MORE THAN THIRTY
10 CLASS A HOUSING CODE VIOLATIONS OR A CLASS B OR C HOUSING CODE VIOLATION
11 ON THE PROPERTY. OUTSTANDING HOUSING CODE VIOLATIONS THAT ARE FOUND
12 SHALL BE CLEARED, CORRECTED OR ABATED BY THE LANDLORD AND VERIFIED BY
13 THE CITY RENT AGENCY PRIOR TO AUTHORIZATION OF A RENT INCREASE UNDER
14 SUBPARAGRAPH (G) OF THIS PARAGRAPH.
15 S 2. Paragraph 6 of subdivision c of section 26-511 of the administra-
16 tive code of the city of New York, as amended by chapter 116 of the laws
17 of 1997, is amended to read as follows:
18 (6) provides criteria whereby the commissioner may act upon applica-
19 tions by owners for increases in excess of the level of fair rent
20 increase established under this law provided, however, that such crite-
21 ria shall provide (a) as to hardship applications, for a finding that
22 the level of fair rent increase is not sufficient to enable the owner to
23 maintain approximately the same average annual net income (which shall
24 be computed without regard to debt service, financing costs or manage-

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

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1 ment fees) for the three year period ending on or within six months of
2 the date of an application pursuant to such criteria as compared with
3 annual net income, which prevailed on the average over the period nine-
4 teen hundred sixty-eight through nineteen hundred seventy, or for the
5 first three years of operation if the building was completed since nine-
6 teen hundred sixty-eight or for the first three fiscal years after a
7 transfer of title to a new owner provided the new owner can establish to
8 the satisfaction of the commissioner that he or she acquired title to
9 the building as a result of a bona fide sale of the entire building and
10 that the new owner is unable to obtain requisite records for the fiscal
11 years nineteen hundred sixty-eight through nineteen hundred seventy
12 despite diligent efforts to obtain same from predecessors in title and
13 further provided that the new owner can provide financial data covering
14 a minimum of six years under his or her continuous and uninterrupted
15 operation of the building to meet the three year to three year compar-
16 ative test periods herein provided; and (b) as to completed building-
17 wide major capital improvements, for a finding that such improvements
18 are deemed depreciable under the Internal Revenue Code and that the cost
19 is to be amortized over a seven-year period, based upon cash purchase
20 price exclusive of interest or service charges. THE DIVISION OF HOUSING
21 AND COMMUNITY RENEWAL SHALL REQUIRE THE SUBMISSION OF A REPORT BY LAND-
22 LORDS APPLYING FOR A RENT INCREASE FOR MAJOR CAPITAL IMPROVEMENTS PURSU-
23 ANT TO THIS PARAGRAPH AND SUBJECT TO VERIFICATION BY THE DIVISION OF
24 HOUSING AND COMMUNITY RENEWAL, IN COLLABORATION WITH LOCAL AUTHORITIES
25 RESPONSIBLE FOR INSPECTING BUILDINGS, CERTIFYING THAT THERE ARE NOT MORE
26 THAN THIRTY CLASS A HOUSING CODE VIOLATIONS NOR A CLASS B OR C HOUSING
27 CODE VIOLATION ON THE PROPERTY, PRIOR TO RECEIVING APPROVAL FOR SUCH
28 RENT INCREASE. Notwithstanding anything to the contrary contained here-
29 in, no hardship increase granted pursuant to this paragraph shall, when
30 added to the annual gross rents, as determined by the commissioner,
31 exceed the sum of, (i) the annual operating expenses, (ii) an allowance
32 for management services as determined by the commissioner, (iii) actual
33 annual mortgage debt service (interest and amortization) on its indebt-
34 edness to a lending institution, an insurance company, a retirement fund
35 or welfare fund which is operated under the supervision of the banking
36 or insurance laws of the state of New York or the United States, and
37 (iv) eight and one-half percent of that portion of the fair market value
38 of the property which exceeds the unpaid principal amount of the mort-
39 gage indebtedness referred to in subparagraph (iii) of this paragraph.
40 Fair market value for the purposes of this paragraph shall be six times
41 the annual gross rent. The collection of any increase in the stabilized
42 rent for any apartment pursuant to this paragraph shall not exceed six
43 percent in any year from the effective date of the order granting the
44 increase over the rent set forth in the schedule of gross rents, with
45 collectability of any dollar excess above said sum to be spread forward
46 in similar increments and added to the stabilized rent as established or
47 set in future years;

48 S 3. Subdivision d of section 6 of section 4 of chapter 576 of the
49 laws of 1974, constituting the emergency tenant protection act of nine-
50 teen seventy-four, is amended by adding a new paragraph 6 to read as
51 follows:

52 (6) ADJUSTMENTS MADE PURSUANT TO PARAGRAPH (3) OF THIS SUBDIVISION
53 SHALL BE COLLECTABLE UPON THE LANDLORD'S FILING OF A REPORT WITH THE
54 STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL AND SUBJECT TO VERIFICA-
55 TION BY THE STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, IN COLLAB-
56 ORATION WITH LOCAL AUTHORITIES RESPONSIBLE FOR INSPECTING BUILDINGS,

1 THAT THE APPLICANT DOES NOT HAVE MORE THAN THIRTY CLASS A HOUSING CODE
2 VIOLATIONS OR A CLASS B OR C HOUSING CODE VIOLATION ON THE PROPERTY.
3 OUTSTANDING HOUSING CODE VIOLATIONS THAT ARE FOUND SHALL BE CLEARED,
4 CORRECTED OR ABATED BY THE LANDLORD AND VERIFIED BY THE STATE DIVISION
5 OF HOUSING AND COMMUNITY RENEWAL PRIOR TO AUTHORIZATION OF A RENT
6 INCREASE UNDER PARAGRAPH (3) OF THIS SUBDIVISION.

7 S 4. The second undesignated paragraph of paragraph (a) of subdivision
8 4 of section 4 of chapter 274 of the laws of 1946, constituting the
9 emergency housing rent control law, as amended by section 25 of part B
10 of chapter 97 of the laws of 2011, is amended to read as follows:

11 No application for adjustment of maximum rent based upon a sales price
12 valuation shall be filed by the landlord under this subparagraph prior
13 to six months from the date of such sale of the property. In addition,
14 no adjustment ordered by the commission based upon such sales price
15 valuation shall be effective prior to one year from the date of such
16 sale. Where, however, the assessed valuation of the land exceeds four
17 times the assessed valuation of the buildings thereon, the commission
18 may determine a valuation of the property equal to five times the equal-
19 ized assessed valuation of the buildings, for the purposes of this
20 subparagraph. The commission may make a determination that the valuation
21 of the property is an amount different from such equalized assessed
22 valuation where there is a request for a reduction in such assessed
23 valuation currently pending; or where there has been a reduction in the
24 assessed valuation for the year next preceding the effective date of the
25 current assessed valuation in effect at the time of the filing of the
26 application. Net annual return shall be the amount by which the earned
27 income exceeds the operating expenses of the property, excluding mort-
28 gage interest and amortization, and excluding allowances for obsoles-
29 cence and reserves, but including an allowance for depreciation of two
30 per centum of the value of the buildings exclusive of the land, or the
31 amount shown for depreciation of the buildings in the latest required
32 federal income tax return, whichever is lower; provided, however, that
33 (1) no allowance for depreciation of the buildings shall be included
34 where the buildings have been fully depreciated for federal income tax
35 purposes or on the books of the owner; or (2) the landlord who owns no
36 more than four rental units within the state has not been fully compen-
37 sated by increases in rental income sufficient to offset unavoidable
38 increases in property taxes, fuel, utilities, insurance and repairs and
39 maintenance, excluding mortgage interest and amortization, and excluding
40 allowances for depreciation, obsolescence and reserves, which have
41 occurred since the federal date determining the maximum rent or the date
42 the property was acquired by the present owner, whichever is later; or
43 (3) the landlord operates a hotel or rooming house or owns a cooperative
44 apartment and has not been fully compensated by increases in rental
45 income from the controlled housing accommodations sufficient to offset
46 unavoidable increases in property taxes and other costs as are allocable
47 to such controlled housing accommodations, including costs of operation
48 of such hotel or rooming house, but excluding mortgage interest and
49 amortization, and excluding allowances for depreciation, obsolescence
50 and reserves, which have occurred since the federal date determining the
51 maximum rent or the date the landlord commenced the operation of the
52 property, whichever is later; or (4) the landlord and tenant voluntarily
53 enter into a valid written lease in good faith with respect to any hous-
54 ing accommodation, which lease provides for an increase in the maximum
55 rent not in excess of fifteen per centum and for a term of not less than
56 two years, except that where such lease provides for an increase in

1 excess of fifteen per centum, the increase shall be automatically
2 reduced to fifteen per centum; or (5) the landlord and tenant by mutual
3 voluntary written agreement agree to a substantial increase or decrease
4 in dwelling space or a change in the services, furniture, furnishings or
5 equipment provided in the housing accommodations; provided that an owner
6 shall be entitled to a rent increase where there has been a substantial
7 modification or increase of dwelling space or an increase in the
8 services, or installation of new equipment or improvements or new furni-
9 ture or furnishings provided in or to a tenant's housing accommodation.
10 The permanent increase in the maximum rent for the affected housing
11 accommodation shall be one-fortieth, in the case of a building with
12 thirty-five or fewer housing accommodations, or one-sixtieth, in the
13 case of a building with more than thirty-five housing accommodations
14 where such permanent increase takes effect on or after September twen-
15 ty-fourth, two thousand eleven, of the total cost incurred by the land-
16 lord in providing such modification or increase in dwelling space,
17 services, furniture, furnishings or equipment, including the cost of
18 installation, but excluding finance charges provided further that an
19 owner who is entitled to a rent increase pursuant to this clause shall
20 not be entitled to a further rent increase based upon the installation
21 of similar equipment, or new furniture or furnishings within the useful
22 life of such new equipment, or new furniture or furnishings. The owner
23 shall give written notice to the commission of any such adjustment
24 pursuant to this clause; or (6) there has been, since March first, nine-
25 teen hundred fifty, an increase in the rental value of the housing
26 accommodations as a result of a substantial rehabilitation of the build-
27 ing or housing accommodation therein which materially adds to the value
28 of the property or appreciably prolongs its life, excluding ordinary
29 repairs, maintenance and replacements; or (7) there has been since March
30 first, nineteen hundred fifty, a major capital improvement required for
31 the operation, preservation or maintenance of the structure; or (8)
32 there has been since March first, nineteen hundred fifty, in structures
33 containing more than four housing accommodations, other improvements
34 made with the express consent of the tenants in occupancy of at least
35 seventy-five per centum of the housing accommodations, provided, howev-
36 er, that no adjustment granted hereunder shall exceed fifteen per centum
37 unless the tenants have agreed to a higher percentage of increase, as
38 herein provided; or (9) there has been, since March first, nineteen
39 hundred fifty, a subletting without written consent from the landlord or
40 an increase in the number of adult occupants who are not members of the
41 immediate family of the tenant, and the landlord has not been compen-
42 sated therefor by adjustment of the maximum rent by lease or order of
43 the commission or pursuant to the federal act; or (10) the presence of
44 unique or peculiar circumstances materially affecting the maximum rent
45 has resulted in a maximum rent which is substantially lower than the
46 rents generally prevailing in the same area for substantially similar
47 housing accommodations. ADJUSTMENTS MADE PURSUANT TO SUBPARAGRAPH (7)
48 OF THIS PARAGRAPH SHALL BE COLLECTIBLE UPON THE LANDLORD'S FILING OF A
49 REPORT WITH THE COMMISSION AND SUBJECT TO VERIFICATION BY THE COMMIS-
50 SION, IN COLLABORATION WITH LOCAL AUTHORITIES RESPONSIBLE FOR INSPECTING
51 BUILDINGS, THAT THE APPLICANT DOES NOT HAVE MORE THAN THIRTY CLASS A
52 HOUSING CODE VIOLATIONS OR A CLASS B OR C HOUSING CODE VIOLATION ON THE
53 PROPERTY. OUTSTANDING HOUSING CODE VIOLATIONS THAT ARE FOUND SHALL BE
54 CLEARED, CORRECTED OR ABATED BY THE LANDLORD AND VERIFIED BY THE COMMIS-
55 SION PRIOR TO AUTHORIZATION OF A RENT INCREASE UNDER SUBPARAGRAPH (7) OF
56 THIS PARAGRAPH.

1 S 5. This act shall take effect on the sixtieth day after it shall
2 have become a law; provided that:

3 (a) the amendments to section 26-405 of the city rent and rehabili-
4 tation law made by section one of this act shall remain in full force
5 and effect only as long as the public emergency requiring the regulation
6 and control of residential rents and evictions continues, as provided in
7 subdivision 3 of section 1 of the local emergency housing rent control
8 act;

9 (b) the amendments to section 26-511 of the rent stabilization law of
10 nineteen hundred sixty-nine made by section two of this act shall expire
11 on the same date as such law expires and shall not affect the expiration
12 of such law as provided under section 26-520 of such law, as from time
13 to time amended;

14 (c) the amendment to section 6 of the emergency tenant protection act
15 of nineteen seventy-four made by section three of this act shall expire
16 on the same date as such act expires and shall not affect the expiration
17 of such act as provided in section 17 of chapter 576 of the laws of
18 1974, as from time to time amended; and

19 (d) the amendment to section 4 of the emergency housing rent control
20 law made by section four of this act shall expire on the same date as
21 such law expires and shall not affect the expiration of such law as
22 provided in subdivision 2 of section 1 of chapter 274 of the laws of
23 1946.