

10170

I N A S S E M B L Y

May 10, 2012

Introduced by M. of A. CASTRO, BARRON, STEVENSON, CRESPO, ROBINSON,  
TITUS -- Multi-Sponsored by -- M. of A. CLARK, COOK, GOTTFRIED, JACOBS  
-- read once and referred to the Committee on Housing

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 PARAGRAPH TWO OF SUBDIVISION A OF THIS SECTION AND VERIFICATION BY THE CITY RENT AGENCY, IN COLLABORATION WITH LOCAL AUTHORITIES RESPONSIBLE FOR INSPECTING BUILDINGS, THAT THE APPLICANT DOES NOT HAVE MORE THAN THIRTY CLASS A HOUSING CODE VIOLATIONS OR A CLASS B OR C HOUSING CODE VIOLATION ON THE PROPERTY. OUTSTANDING HOUSING CODE VIOLATIONS THAT ARE FOUND SHALL BE CLEARED, CORRECTED OR ABATED BY THE LANDLORD AND VERIFIED BY THE CITY RENT AGENCY PRIOR TO AUTHORIZATION OF A RENT INCREASE UNDER SUBPARAGRAPH (G) OF THIS PARAGRAPH.

15 S 2. Paragraph 6 of subdivision c of section 26-511 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:

18 (6) provides criteria whereby the commissioner may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide (a) as to hardship applications, for a finding that the level of fair rent increase is not sufficient to enable the owner to maintain approximately the same average annual net income (which shall

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

LBD13794-04-2

1 be computed without regard to debt service, financing costs or manage-  
2 ment fees) for the three year period ending on or within six months of  
3 the date of an application pursuant to such criteria as compared with  
4 annual net income, which prevailed on the average over the period nine-  
5 teen hundred sixty-eight through nineteen hundred seventy, or for the  
6 first three years of operation if the building was completed since nine-  
7 teen hundred sixty-eight or for the first three fiscal years after a  
8 transfer of title to a new owner provided the new owner can establish to  
9 the satisfaction of the commissioner that he or she acquired title to  
10 the building as a result of a bona fide sale of the entire building and  
11 that the new owner is unable to obtain requisite records for the fiscal  
12 years nineteen hundred sixty-eight through nineteen hundred seventy  
13 despite diligent efforts to obtain same from predecessors in title and  
14 further provided that the new owner can provide financial data covering  
15 a minimum of six years under his or her continuous and uninterrupted  
16 operation of the building to meet the three year to three year compar-  
17 ative test periods herein provided; and (b) as to completed building-  
18 wide major capital improvements, for a finding that such improvements  
19 are deemed depreciable under the Internal Revenue Code and that the cost  
20 is to be amortized over a seven-year period, based upon cash purchase  
21 price exclusive of interest or service charges. THE DIVISION OF HOUSING  
22 AND COMMUNITY RENEWAL SHALL REQUIRE THE SUBMISSION OF A REPORT BY LAND-  
23 LORDS APPLYING FOR A RENT INCREASE FOR MAJOR CAPITAL IMPROVEMENTS PURSU-  
24 ANT TO THIS PARAGRAPH AND SUBJECT TO VERIFICATION BY THE DIVISION OF  
25 HOUSING AND COMMUNITY RENEWAL, IN COLLABORATION WITH LOCAL AUTHORITIES  
26 RESPONSIBLE FOR INSPECTING BUILDINGS, CERTIFYING THAT THERE ARE NOT MORE  
27 THAN THIRTY CLASS A HOUSING CODE VIOLATIONS NOR A CLASS B OR C HOUSING  
28 CODE VIOLATION ON THE PROPERTY, PRIOR TO RECEIVING APPROVAL FOR SUCH  
29 RENT INCREASE. Notwithstanding anything to the contrary contained here-  
30 in, no hardship increase granted pursuant to this paragraph shall, when  
31 added to the annual gross rents, as determined by the commissioner,  
32 exceed the sum of, (i) the annual operating expenses, (ii) an allowance  
33 for management services as determined by the commissioner, (iii) actual  
34 annual mortgage debt service (interest and amortization) on its indebt-  
35 edness to a lending institution, an insurance company, a retirement fund  
36 or welfare fund which is operated under the supervision of the banking  
37 or insurance laws of the state of New York or the United States, and  
38 (iv) eight and one-half percent of that portion of the fair market value  
39 of the property which exceeds the unpaid principal amount of the mort-  
40 gage indebtedness referred to in subparagraph (iii) of this paragraph.  
41 Fair market value for the purposes of this paragraph shall be six times  
42 the annual gross rent. The collection of any increase in the stabilized  
43 rent for any apartment pursuant to this paragraph shall not exceed six  
44 percent in any year from the effective date of the order granting the  
45 increase over the rent set forth in the schedule of gross rents, with  
46 collectability of any dollar excess above said sum to be spread forward  
47 in similar increments and added to the stabilized rent as established or  
48 set in future years;

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

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

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

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

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

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

1 SION PRIOR TO AUTHORIZATION OF A RENT INCREASE UNDER SUBPARAGRAPH (7) OF  
2 THIS PARAGRAPH.

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

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

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

16 (c) the amendment to section 6 of the emergency tenant protection act  
17 of nineteen seventy-four made by section three of this act shall expire  
18 on the same date as such act expires and shall not affect the expiration  
19 of such act as provided in section 17 of chapter 576 of the laws of  
20 1974, as from time to time amended; and

21 (d) the amendment to section 4 of the emergency housing rent control  
22 law made by section four of this act shall expire on the same date as  
23 such law expires and shall not affect the expiration of such law as  
24 provided in subdivision 2 of section 1 of chapter 274 of the laws of  
25 1946.