

5041--A

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 -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 of rent regulated housing accommodations

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 SUCH TERM IS USED IN THIS CHAPTER,  
14 THERE SHALL BE A PRESUMPTION, REBUTTABLE BY THE TENANT, THAT THE TENANT  
15 DOES NOT OCCUPY SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESI-  
16 DENCE, WHERE:

17 (I) SUCH TENANT IS REQUIRED BY LAW TO FILE AN INCOME TAX RETURN AND  
18 SUCH TENANT EITHER (A) FAILS TO FILE ONE OR MORE CITY RESIDENT INCOME  
19 TAX RETURNS OR (B) SUCH TENANT FILES ONE OR MORE FEDERAL, STATE OR LOCAL

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

LBD11262-03-2

1 INCOME TAX RETURNS BASED UPON A RESIDENCE OTHER THAN THE HOUSING ACCOM-  
2 MODATION WHICH IS SUBJECT TO THIS CHAPTER, PROVIDED, HOWEVER, THAT WHERE  
3 A TENANT IS THE RECIPIENT OF A PROPERTY TAX EXEMPTION OR ANY OTHER TAX  
4 BENEFIT ARISING FROM OR ATTRIBUTABLE TO THE OWNERSHIP OF SUCH OTHER  
5 RESIDENCE, THE PRESUMPTION THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING  
6 ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE SHALL NOT BE REBUTTABLE BY  
7 SUCH TENANT, OR

8 (II) ONE OR MORE VOTES ARE CAST BY SUCH TENANT DURING THEIR TENANCY IN  
9 ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW  
10 CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE  
11 HOUSING ACCOMMODATION SUBJECT TO THIS CHAPTER LOCATED IN THE CITY. No  
12 action or proceeding shall be commenced seeking to recover possession on  
13 the ground that a housing accommodation is not occupied by the tenant as  
14 his or her primary residence unless the owner or lessor shall have given  
15 thirty days notice to the tenant of his or her intention to commence  
16 such action or proceeding on such grounds.

17 S 2. Subparagraph (f) of paragraph 1 of subdivision a of section  
18 26-504 of the administrative code of the city of New York, as amended by  
19 chapter 422 of the laws of 2010, is amended to read as follows:

20 (f) not occupied by the tenant, not including subtenants or occupants,  
21 as his or her primary residence, as determined by a court of competent  
22 jurisdiction[, provided, however that no]. FOR PURPOSES OF DETERMINING  
23 PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS CHAPTER, THERE SHALL BE  
24 A PRESUMPTION, REBUTTABLE BY THE TENANT, THAT THE TENANT DOES NOT OCCUPY  
25 SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE, WHERE:

26 (I) SUCH TENANT IS REQUIRED BY LAW TO FILE AN INCOME TAX RETURN AND  
27 SUCH TENANT EITHER (A) FAILS TO FILE ONE OR MORE CITY RESIDENT INCOME  
28 TAX RETURNS OR (B) SUCH TENANT FILES ONE OR MORE FEDERAL, STATE OR LOCAL  
29 INCOME TAX RETURNS BASED UPON A RESIDENCE OTHER THAN THE HOUSING ACCOM-  
30 MODATION WHICH IS SUBJECT TO THIS CHAPTER, PROVIDED, HOWEVER, THAT WHERE  
31 A TENANT IS THE RECIPIENT OF A PROPERTY TAX EXEMPTION OR ANY OTHER TAX  
32 BENEFIT ARISING FROM OR ATTRIBUTABLE TO THE OWNERSHIP OF SUCH OTHER  
33 RESIDENCE, THE PRESUMPTION THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING  
34 ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE SHALL NOT BE REBUTTABLE BY  
35 SUCH TENANT, OR

36 (II) ONE OR MORE VOTES ARE CAST BY SUCH TENANT DURING THEIR TENANCY IN  
37 ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW  
38 CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE  
39 HOUSING ACCOMMODATION SUBJECT TO THIS CHAPTER LOCATED IN THE CITY. NO  
40 action or proceeding shall be commenced seeking to recover possession on  
41 the ground that a housing accommodation is not occupied by the tenant as  
42 his or her primary residence unless the owner or lessor shall have given  
43 thirty days notice to the tenant of his or her intention to commence  
44 such action or proceeding on such grounds. SUCH ACTION OR PROCEEDING  
45 MAY BE BROUGHT AT ANY TIME DURING THE COURSE OF A TENANT'S LEASE OR ANY  
46 RENEWAL LEASE. IN THE EVENT AN ACTION OR PROCEEDING IS COMMENCED PURSU-  
47 ANT TO THIS SUBPARAGRAPH PRIOR TO THE DATE THAT AN OFFER OF A RENEWAL  
48 LEASE IS OTHERWISE REQUIRED TO BE MADE BY THE OWNER TO THE TENANT, THE  
49 COMMENCEMENT OF SUCH ACTION OR PROCEEDING SHALL SUBSTITUTE FOR THE  
50 SERVICE OF ANY OTHER NOTICE PERTAINING TO SUCH RENEWAL, INCLUDING BUT  
51 NOT LIMITED TO, A NOTICE OF NON-RENEWAL OF SUCH LEASE. For the purposes  
52 of determining primary residency, a tenant who is a victim of domestic  
53 violence, as defined in section four hundred fifty-nine-a of the social  
54 services law, who has left the unit because of such violence, and who  
55 asserts an intent to return to the housing accommodation shall be deemed  
56 to be occupying the unit as his or her primary residence. For the

1 purposes of this subparagraph where a housing accommodation is rented to  
2 a not-for-profit hospital for residential use, affiliated subtenants  
3 authorized to use such accommodations by such hospital shall be deemed  
4 to be tenants, or

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

9 (11) housing accommodations which are not occupied by the tenant, not  
10 including subtenants or occupants, as his or her primary residence, as  
11 determined by a court of competent jurisdiction. FOR PURPOSES OF DETER-  
12 MINING PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS ACT, THERE SHALL  
13 BE A PRESUMPTION, REBUTTABLE BY THE TENANT, THAT THE TENANT DOES NOT  
14 OCCUPY SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE,  
15 WHERE:

16 (I) SUCH TENANT IS REQUIRED BY LAW TO FILE AN INCOME TAX RETURN AND  
17 SUCH TENANT EITHER (A) FAILS TO FILE ONE OR MORE CITY RESIDENT INCOME  
18 TAX RETURNS OR (B) SUCH TENANT FILES ONE OR MORE FEDERAL, STATE OR LOCAL  
19 INCOME TAX RETURNS BASED UPON A RESIDENCE OTHER THAN THE HOUSING ACCOM-  
20 MODATION WHICH IS SUBJECT TO THIS ACT, PROVIDED, HOWEVER, THAT WHERE A  
21 TENANT IS THE RECIPIENT OF A PROPERTY TAX EXEMPTION OR ANY OTHER TAX  
22 BENEFIT ARISING FROM OR ATTRIBUTABLE TO THE OWNERSHIP OF SUCH RESIDENCE,  
23 THE PRESUMPTION THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING ACCOMMO-  
24 DATION AS HIS OR HER PRIMARY RESIDENCE SHALL NOT BE REBUTTABLE BY SUCH  
25 TENANT, OR

26 (II) ONE OR MORE VOTES ARE CAST BY SUCH TENANT DURING THEIR TENANCY IN  
27 ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW  
28 CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE  
29 HOUSING ACCOMMODATION SUBJECT TO THIS ACT LOCATED IN THE CITY, TOWN OR  
30 VILLAGE. SUCH ACTION OR PROCEEDING MAY BE BROUGHT AT ANY TIME DURING  
31 THE COURSE OF A TENANT'S LEASE OR ANY RENEWAL LEASE. IN THE EVENT AN  
32 ACTION OR PROCEEDING IS COMMENCED PURSUANT TO THIS PARAGRAPH PRIOR TO  
33 THE DATE THAT AN OFFER OF A RENEWAL LEASE IS OTHERWISE REQUIRED TO BE  
34 MADE BY THE OWNER TO THE TENANT, THE COMMENCEMENT OF SUCH ACTION OR  
35 PROCEEDING SHALL SUBSTITUTE FOR THE SERVICE OF ANY OTHER NOTICE PERTAIN-  
36 ING TO SUCH RENEWAL, INCLUDING BUT NOT LIMITED TO, A NOTICE OF NON-RENE-  
37 WAL OF SUCH LEASE. For the purposes of determining primary residency, a  
38 tenant who is a victim of domestic violence, as defined in section four  
39 hundred fifty-nine-a of the social services law, who has left the unit  
40 because of such violence, and who asserts an intent to return to the  
41 housing accommodation shall be deemed to be occupying the unit as his or  
42 her primary residence. For the purposes of this paragraph, where a hous-  
43 ing accommodation is rented to a not-for-profit hospital for residential  
44 use, affiliated subtenants authorized to use such accommodations by such  
45 hospital shall be deemed to be tenants. No action or proceeding shall be  
46 commenced seeking to recover possession on the ground that a housing  
47 accommodation is not occupied by the tenant as his or her primary resi-  
48 dence unless the owner or lessor shall have given thirty days notice to  
49 the tenant of his or her intention to commence such action or proceeding  
50 on such grounds.

51 S 4. This act shall take effect immediately; provided that the amend-  
52 ment to section 26-403 of the city rent and rehabilitation law made by  
53 section one of this act shall remain in full force and effect only so  
54 long as the public emergency requiring the regulation and control of  
55 residential rents and evictions continues, as provided in subdivision 3  
56 of section 1 of the local emergency housing rent control act; and

1 provided further that the amendment to section 26-504 of the rent  
2 stabilization law of nineteen hundred sixty-nine made by section two of  
3 this act shall expire on the same date as such law expires and shall not  
4 affect the expiration of such law as provided under section 26-520 of  
5 such law; and provided further that the amendment to section 5 of the  
6 emergency tenant protection act of nineteen seventy-four made by section  
7 three of this act shall expire on the same date as such act expires and  
8 shall not affect the expiration of such act as provided in section 17 of  
9 chapter 576 of the laws of 1974, as amended.