

5865

2013-2014 Regular Sessions

I N   A S S E M B L Y

March 7, 2013

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Introduced by M. of A. ROSENTHAL -- 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 emer-  
gency housing rent control law, in relation to limiting adjustments  
for major capital improvements where the improvement generates revenue  
for the landlord

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

1     Section 1. Section 26-405 of the administrative code of the city of  
2     New York is amended by adding a new subdivision n to read as follows:  
3     N. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, A RENT  
4     INCREASE SHALL BE PROHIBITED FOR A LANDLORD APPLYING FOR A RENT INCREASE  
5     FOR MAJOR CAPITAL IMPROVEMENTS WHERE THE IMPROVEMENT GENERATES REVENUE  
6     FOR THE LANDLORD.  
7     S 2. Paragraph 6 of subdivision c of section 26-511 of the administra-  
8     tive code of the city of New York, as amended by chapter 116 of the laws  
9     of 1997, is amended to read as follows:  
10    (6) provides criteria whereby the commissioner may act upon applica-  
11    tions by owners for increases in excess of the level of fair rent  
12    increase established under this law provided, however, that such crite-  
13    ria shall provide (a) as to hardship applications, for a finding that  
14    the level of fair rent increase is not sufficient to enable the owner to  
15    maintain approximately the same average annual net income (which shall  
16    be computed without regard to debt service, financing costs or manage-  
17    ment fees) for the three year period ending on or within six months of  
18    the date of an application pursuant to such criteria as compared with  
19    annual net income, which prevailed on the average over the period nine-  
20    teen hundred sixty-eight through nineteen hundred seventy, or for the  
21    first three years of operation if the building was completed since nine-  
22    teen hundred sixty-eight or for the first three fiscal years after a

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

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1 transfer of title to a new owner provided the new owner can establish to  
2 the satisfaction of the commissioner that he or she acquired title to  
3 the building as a result of a bona fide sale of the entire building and  
4 that the new owner is unable to obtain requisite records for the fiscal  
5 years nineteen hundred sixty-eight through nineteen hundred seventy  
6 despite diligent efforts to obtain same from predecessors in title and  
7 further provided that the new owner can provide financial data covering  
8 a minimum of six years under his or her continuous and uninterrupted  
9 operation of the building to meet the three year to three year compar-  
10 ative test periods herein provided; and (b) as to completed building-  
11 wide major capital improvements, for a finding that such improvements  
12 are deemed depreciable under the Internal Revenue Code and that the cost  
13 is to be amortized over a seven-year period, based upon cash purchase  
14 price exclusive of interest or service charges. NOTWITHSTANDING  
15 ANYTHING TO THE CONTRARY CONTAINED HEREIN, A RENT INCREASE SHALL BE  
16 PROHIBITED FOR A LANDLORD APPLYING FOR A RENT INCREASE FOR MAJOR CAPITAL  
17 IMPROVEMENTS WHERE THE IMPROVEMENT GENERATES REVENUE FOR THE LANDLORD.  
18 Notwithstanding anything to the contrary contained herein, no hardship  
19 increase granted pursuant to this paragraph shall, when added to the  
20 annual gross rents, as determined by the commissioner, exceed the sum  
21 of, (i) the annual operating expenses, (ii) an allowance for management  
22 services as determined by the commissioner, (iii) actual annual mortgage  
23 debt service (interest and amortization) on its indebtedness to a lend-  
24 ing institution, an insurance company, a retirement fund or welfare fund  
25 which is operated under the supervision of the banking or insurance laws  
26 of the state of New York or the United States, and (iv) eight and one-  
27 half percent of that portion of the fair market value of the property  
28 which exceeds the unpaid principal amount of the mortgage indebtedness  
29 referred to in subparagraph (iii) of this paragraph. Fair market value  
30 for the purposes of this paragraph shall be six times the annual gross  
31 rent. The collection of any increase in the stabilized rent for any  
32 apartment pursuant to this paragraph shall not exceed six percent in any  
33 year from the effective date of the order granting the increase over the  
34 rent set forth in the schedule of gross rents, with collectability of  
35 any dollar excess above said sum to be spread forward in similar incre-  
36 ments and added to the stabilized rent as established or set in future  
37 years;

38 S 3. Section 6 of section 4 of chapter 576 of the laws of 1974,  
39 constituting the emergency tenant protection act of nineteen seventy-  
40 four, is amended by adding a new subdivision h to read as follows:

41 H. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, A RENT  
42 INCREASE SHALL BE PROHIBITED FOR A LANDLORD APPLYING FOR A RENT INCREASE  
43 FOR MAJOR CAPITAL IMPROVEMENTS WHERE THE IMPROVEMENT GENERATES REVENUE  
44 FOR THE LANDLORD.

45 S 4. The second undesignated paragraph of paragraph (a) of subdivision  
46 4 of section 4 of chapter 274 of the laws of 1946, constituting the  
47 emergency housing rent control law, as amended by section 25 of part B  
48 of chapter 97 of the laws of 2011, is amended to read as follows:

49 No application for adjustment of maximum rent based upon a sales price  
50 valuation shall be filed by the landlord under this subparagraph prior  
51 to six months from the date of such sale of the property. In addition,  
52 no adjustment ordered by the commission based upon such sales price  
53 valuation shall be effective prior to one year from the date of such  
54 sale. Where, however, the assessed valuation of the land exceeds four  
55 times the assessed valuation of the buildings thereon, the commission  
56 may determine a valuation of the property equal to five times the equal-

1 ized assessed valuation of the buildings, for the purposes of this  
2 subparagraph. The commission may make a determination that the valu-  
3 ation of the property is an amount different from such equalized  
4 assessed valuation where there is a request for a reduction in such  
5 assessed valuation currently pending; or where there has been a  
6 reduction in the assessed valuation for the year next preceding the  
7 effective date of the current assessed valuation in effect at the time  
8 of the filing of the application. Net annual return shall be the amount  
9 by which the earned income exceeds the operating expenses of the proper-  
10 ty, excluding mortgage interest and amortization, and excluding allow-  
11 ances for obsolescence and reserves, but including an allowance for  
12 depreciation of two per centum of the value of the buildings exclusive  
13 of the land, or the amount shown for depreciation of the buildings in  
14 the latest required federal income tax return, whichever is lower;  
15 provided, however, that (1) no allowance for depreciation of the build-  
16 ings shall be included where the buildings have been fully depreciated  
17 for federal income tax purposes or on the books of the owner; or (2) the  
18 landlord who owns no more than four rental units within the state has  
19 not been fully compensated by increases in rental income sufficient to  
20 offset unavoidable increases in property taxes, fuel, utilities, insur-  
21 ance and repairs and maintenance, excluding mortgage interest and amor-  
22 tization, and excluding allowances for depreciation, obsolescence and  
23 reserves, which have occurred since the federal date determining the  
24 maximum rent or the date the property was acquired by the present owner,  
25 whichever is later; or (3) the landlord operates a hotel or rooming  
26 house or owns a cooperative apartment and has not been fully compensated  
27 by increases in rental income from the controlled housing accommodations  
28 sufficient to offset unavoidable increases in property taxes and other  
29 costs as are allocable to such controlled housing accommodations,  
30 including costs of operation of such hotel or rooming house, but exclud-  
31 ing mortgage interest and amortization, and excluding allowances for  
32 depreciation, obsolescence and reserves, which have occurred since the  
33 federal date determining the maximum rent or the date the landlord  
34 commenced the operation of the property, whichever is later; or (4) the  
35 landlord and tenant voluntarily enter into a valid written lease in good  
36 faith with respect to any housing accommodation, which lease provides  
37 for an increase in the maximum rent not in excess of fifteen per centum  
38 and for a term of not less than two years, except that where such lease  
39 provides for an increase in excess of fifteen per centum, the increase  
40 shall be automatically reduced to fifteen per centum; or (5) the land-  
41 lord and tenant by mutual voluntary written agreement agree to a  
42 substantial increase or decrease in dwelling space or a change in the  
43 services, furniture, furnishings or equipment provided in the housing  
44 accommodations; provided that an owner shall be entitled to a rent  
45 increase where there has been a substantial modification or increase of  
46 dwelling space or an increase in the services, or installation of new  
47 equipment or improvements or new furniture or furnishings provided in or  
48 to a tenant's housing accommodation. The permanent increase in the maxi-  
49 mum rent for the affected housing accommodation shall be one-fortieth,  
50 in the case of a building with thirty-five or fewer housing accommo-  
51 dations, or one-sixtieth, in the case of a building with more than thir-  
52 ty-five housing accommodations where such permanent increase takes  
53 effect on or after September twenty-fourth, two thousand eleven, of the  
54 total cost incurred by the landlord in providing such modification or  
55 increase in dwelling space, services, furniture, furnishings or equip-  
56 ment, including the cost of installation, but excluding finance charges

1 provided further that an owner who is entitled to a rent increase pursu-  
2 ant to this clause shall not be entitled to a further rent increase  
3 based upon the installation of similar equipment, or new furniture or  
4 furnishings within the useful life of such new equipment, or new furni-  
5 ture or furnishings. The owner shall give written notice to the commis-  
6 sion of any such adjustment pursuant to this clause; or (6) there has  
7 been, since March first, nineteen hundred fifty, an increase in the  
8 rental value of the housing accommodations as a result of a substantial  
9 rehabilitation of the building or housing accommodation therein which  
10 materially adds to the value of the property or appreciably prolongs its  
11 life, excluding ordinary repairs, maintenance and replacements; or (7)  
12 there has been since March first, nineteen hundred fifty, a major capi-  
13 tal improvement required for the operation, preservation or maintenance  
14 of the structure; or (8) there has been since March first, nineteen  
15 hundred fifty, in structures containing more than four housing accommo-  
16 dations, other improvements made with the express consent of the tenants  
17 in occupancy of at least seventy-five per centum of the housing accom-  
18 modations, provided, however, that no adjustment granted hereunder shall  
19 exceed fifteen per centum unless the tenants have agreed to a higher  
20 percentage of increase, as herein provided; or (9) there has been,  
21 since March first, nineteen hundred fifty, a subletting without written  
22 consent from the landlord or an increase in the number of adult occu-  
23 pants who are not members of the immediate family of the tenant, and the  
24 landlord has not been compensated therefor by adjustment of the maximum  
25 rent by lease or order of the commission or pursuant to the federal act;  
26 or (10) the presence of unique or peculiar circumstances materially  
27 affecting the maximum rent has resulted in a maximum rent which is  
28 substantially lower than the rents generally prevailing in the same area  
29 for substantially similar housing accommodations. NOTWITHSTANDING  
30 ANYTHING TO THE CONTRARY CONTAINED HEREIN, ADJUSTMENTS SHALL BE PROHIB-  
31 ITED FOR A LANDLORD APPLYING FOR A RENT INCREASE FOR MAJOR CAPITAL  
32 IMPROVEMENTS WHERE THE IMPROVEMENT GENERATES REVENUE FOR THE LANDLORD.

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

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

41 (b) the amendments to section 26-511 of chapter 4 of title 26 of the  
42 administrative code of the city of New York made by section two of this  
43 act shall expire on the same date as such law expires and shall not  
44 affect the expiration of such law as provided under section 26-520 of  
45 such law;

46 (c) the amendment to section 6 of the emergency tenant protection act  
47 of nineteen seventy-four made by section three of this act shall expire  
48 on the same date as such act expires and shall not affect the expiration  
49 of such act as provided in section 17 of chapter 576 of the laws of  
50 1974, as from time to time amended; and

51 (d) the amendment to section 4 of the emergency housing rent control  
52 law made by section four of this act shall expire on the same date as  
53 such law expires and shall not affect the expiration of such law as  
54 provided in subdivision 2 of section 1 of chapter 274 of the laws of  
55 1946.