

3671

2013-2014 Regular Sessions

I N   S E N A T E

February 11, 2013

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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 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  
20    INCOME TAX RETURNS BASED UPON A RESIDENCE OTHER THAN THE HOUSING ACCOM-  
21    MODATION WHICH IS SUBJECT TO THIS CHAPTER, PROVIDED, HOWEVER, THAT WHERE  
22    A TENANT IS THE RECIPIENT OF A PROPERTY TAX EXEMPTION OR ANY OTHER TAX

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

LBD08174-01-3

1 BENEFIT ARISING FROM OR ATTRIBUTABLE TO THE OWNERSHIP OF SUCH OTHER  
2 RESIDENCE, THE PRESUMPTION THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING  
3 ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE SHALL NOT BE REBUTTABLE BY  
4 SUCH TENANT, OR

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

14 S 2. Subparagraph (f) of paragraph 1 of subdivision a of section  
15 26-504 of the administrative code of the city of New York, as amended by  
16 chapter 422 of the laws of 2010, is amended to read as follows:

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

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

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

1 authorized to use such accommodations by such hospital shall be deemed  
2 to be tenants, or

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

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

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

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

49 S 4. This act shall take effect immediately; provided that the amend-  
50 ment to section 26-403 of the city rent and rehabilitation law made by  
51 section one of this act shall remain in full force and effect only so  
52 long as the public emergency requiring the regulation and control of  
53 residential rents and evictions continues, as provided in subdivision 3  
54 of section 1 of the local emergency housing rent control act; and  
55 provided further that the amendment to section 26-504 of the rent  
56 stabilization law of nineteen hundred sixty-nine made by section two of

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