

2830

2013-2014 Regular Sessions

I N S E N A T E

January 24, 2013

Introduced by Sen. PARKER -- 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, 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-

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

LBD02216-01-3

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

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

1 (6) ADJUSTMENTS MADE PURSUANT TO PARAGRAPH (3) OF THIS SUBDIVISION
2 SHALL BE COLLECTABLE UPON THE LANDLORD'S FILING OF A REPORT WITH THE
3 STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL AND SUBJECT TO VERIFICA-
4 TION BY THE STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, IN COLLAB-
5 ORATION WITH LOCAL AUTHORITIES RESPONSIBLE FOR INSPECTING BUILDINGS,
6 THAT THE APPLICANT DOES NOT HAVE MORE THAN THIRTY CLASS A HOUSING CODE
7 VIOLATIONS OR A CLASS B OR C HOUSING CODE VIOLATION ON THE PROPERTY.
8 OUTSTANDING HOUSING CODE VIOLATIONS THAT ARE FOUND SHALL BE CLEARED,
9 CORRECTED OR ABATED BY THE LANDLORD AND VERIFIED BY THE STATE DIVISION
10 OF HOUSING AND COMMUNITY RENEWAL PRIOR TO AUTHORIZATION OF A RENT
11 INCREASE UNDER PARAGRAPH (3) OF THIS SUBDIVISION.

12 S 4. The second undesignated paragraph of paragraph (a) of subdivision
13 4 of section 4 of chapter 274 of the laws of 1946, constituting the
14 emergency housing rent control law, as amended by section 25 of part B
15 of chapter 97 of the laws of 2011, is amended to read as follows:

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

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

1 HOUSING CODE VIOLATIONS OR A CLASS B OR C HOUSING CODE VIOLATION ON THE
2 PROPERTY. OUTSTANDING HOUSING CODE VIOLATIONS THAT ARE FOUND SHALL BE
3 CLEARED, CORRECTED OR ABATED BY THE LANDLORD AND VERIFIED BY THE COMMIS-
4 SION PRIOR TO AUTHORIZATION OF A RENT INCREASE UNDER SUBPARAGRAPH (7) OF
5 THIS PARAGRAPH.

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

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

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

19 (c) the amendment to section 6 of the emergency tenant protection act
20 of nineteen seventy-four made by section three of this act shall expire
21 on the same date as such act expires and shall not affect the expiration
22 of such act as provided in section 17 of chapter 576 of the laws of
23 1974, as from time to time amended; and

24 (d) the amendment to section 4 of the emergency housing rent control
25 law made by section four of this act shall expire on the same date as
26 such law expires and shall not affect the expiration of such law as
27 provided in subdivision 2 of section 1 of chapter 274 of the laws of
28 1946.