

6054--A

2015-2016 Regular Sessions

I N A S S E M B L Y

March 11, 2015

Introduced by M. of A. KAVANAGH, O'DONNELL, GLICK, PERRY, WEPRIN, WRIGHT, ORTIZ, TITUS, MOSLEY, GOTTFRIED, MAYER, FARRELL, AUBRY, LINARES -- Multi-Sponsored by -- M. of A. BRENNAN, COOK, CYMBROWITZ, DINOWITZ, HOOPER, LENTOL -- read once and referred to the Committee on Housing -- recommitted to the Committee on Housing in accordance with Assembly Rule 3, sec. 2 -- 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, the emergency tenant protection act of nineteen seventy-four and the emergency housing rent control law in relation to approval of major capital improvement rent increases and in relation to extending the length of time over which major capital improvement expenses may be recovered

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

1 Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section
2 26-405 of the administrative code of the city of New York, as amended by
3 section 31 of part A of chapter 20 of the laws of 2015, is amended to
4 read as follows:
5 (g) (I) COLLECTION OF SURCHARGES TO THE MAXIMUM RENT AUTHORIZED PURSU-
6 ANT TO ITEM (II) OF THIS SUBPARAGRAPH SHALL CEASE WHEN THE OWNER HAS
7 RECOVERED THE COST OF THE MAJOR CAPITAL IMPROVEMENT;
8 (II) There has been since July first, nineteen hundred seventy, a
9 major capital improvement [required for the operation, preservation or
10 maintenance of the structure. An adjustment under this subparagraph (g)
11 for any order of the commissioner issued after the effective date of the
12 rent act of 2015 shall be in an amount sufficient to amortize the cost
13 of the improvements pursuant to this subparagraph (g) over an eight-year
14 period for buildings with thirty-five or fewer units or a nine year
15 period for buildings with more than thirty-five units,]; PROVIDED THAT
16 THE COMMISSIONER FIRST FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIA-
17 BLE UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED

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

LBD09355-03-6

1 FOR THE OPERATION OR PRESERVATION OF THE STRUCTURE. HOWEVER, NO MAJOR
2 CAPITAL IMPROVEMENT RENT INCREASE WILL BE APPROVED BY THE DIVISION OF
3 HOUSING AND COMMUNITY RENEWAL UNLESS THE WORK PERFORMED IS AN ENHANCE-
4 MENT OR UPGRADE TO A HOUSING ACCOMMODATION OR SERVICE THEREIN; OR IS AN
5 ADDITION TO SUCH HOUSING ACCOMMODATION AND OTHERWISE ELIGIBLE ACCORDING
6 TO THE PREREQUISITES FOR MAJOR CAPITAL IMPROVEMENT RENT INCREASES. ANY
7 REPAIR OR REPLACEMENT INTENDED TO MAINTAIN AN EXISTING SERVICE SHALL NOT
8 BE ELIGIBLE FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE. NO APPLICA-
9 TION FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE MAY BE APPROVED IF
10 THERE EXIST ANY OUTSTANDING HAZARDOUS VIOLATIONS AT THE TIME OF THE
11 CONSIDERATION OF SUCH APPLICATION, AS DETERMINED PURSUANT TO REGULATIONS
12 OF THE DIVISION OF HOUSING AND COMMUNITY RENEWAL OR ANY AGENCY ADMINIS-
13 TERING AND ENFORCING A BUILDING CODE IN THE JURISDICTION IN WHICH THE
14 PROPERTY IS LOCATED, UNLESS IT IS DETERMINED BY THE DIVISION OF HOUSING
15 AND COMMUNITY RENEWAL THAT SUCH WORK IS ESSENTIAL TO THE ALLEVIATION OF
16 THE VIOLATIONS AND SUCH APPROVAL IS CONSISTENT WITH THE PROVISIONS OF
17 THIS SECTION. EXCEPT IN THE CASE OF EMERGENCY OR GOOD CAUSE, THE OWNER
18 OF THE PROPERTY SHALL FILE, NOT LESS THAN THIRTY DAYS BEFORE THE
19 COMMENCEMENT OF THE IMPROVEMENT, WITH THE DIVISION OF HOUSING AND COMMU-
20 NITY RENEWAL A STATEMENT CONTAINING INFORMATION OUTLINING THE SCOPE OF
21 WORK, EXPECTED DATE OF COMPLETION FOR SUCH WORK AND AN AFFIDAVIT SETTING
22 FORTH THE FOLLOWING INFORMATION: (A) EVERY OWNER OF RECORD AND OWNER OF
23 A SUBSTANTIAL INTEREST IN THE PROPERTY OR ENTITY OWNING THE PROPERTY OR
24 SPONSORING THE IMPROVEMENT; AND (B) A STATEMENT THAT NONE OF SUCH
25 PERSONS HAD, WITHIN THE FIVE YEARS PRIOR TO THE IMPROVEMENT, BEEN FOUND
26 TO HAVE HARASSED OR UNLAWFULLY EVICTED TENANTS BY JUDGMENT OR DETERMI-
27 NATION OF A COURT OR AGENCY UNDER THE PENAL LAW, ANY STATE OR LOCAL LAW
28 REGULATING RENTS OR ANY STATE OR LOCAL LAW RELATING TO HARASSMENT OF
29 TENANTS OR UNLAWFUL EVICTION. UPON RECEIPT OF THE SCOPE OF WORK AND
30 AFFIDAVIT PROVIDED FOR HEREIN, THE DIVISION OF HOUSING AND COMMUNITY
31 RENEWAL SHALL PROVIDE THE TENANTS IN OCCUPANCY IN SUCH BUILDINGS WITH
32 SUCH INFORMATION. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL,
33 IN ADDITION, IMPLEMENT PROCEDURES INCLUDING, BUT NOT LIMITED TO, ELICIT-
34 ING TENANT COMMENTS TO DETERMINE WHETHER MAJOR CAPITAL IMPROVEMENT REHA-
35 BILITATION WORK HAS BEEN SATISFACTORILY COMPLETED. NO MAJOR CAPITAL
36 IMPROVEMENT RENT INCREASE SHALL BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR
37 DEFICIENT REHABILITATION WORK HAS BEEN CURED. THE INCREASE PERMITTED FOR
38 SUCH CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY SURCHARGE TO
39 THE MAXIMUM RENT. IT SHALL BE SEPARATELY DESIGNATED AND BILLED AS SUCH
40 AND SHALL NOT BE COMPOUNDED BY ANY OTHER ADJUSTMENT TO THE MAXIMUM RENT.
41 THE SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO
42 THE COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE
43 NUMBER OF ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF
44 ROOMS IN SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY
45 APARTMENT IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT
46 OF THE MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET
47 FORTH IN THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT
48 SHALL BE CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER
49 SURCHARGE NOT TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD
50 UNTIL THE TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE
51 AFOREMENTIONED SIX PERCENT LIMITATION DID NOT APPLY; or

52 S 2. Subparagraph (k) of paragraph 1 of subdivision g of section
53 26-405 of the administrative code of the city of New York, as amended by
54 chapter 749 of the laws of 1990, is amended to read as follows:

55 (k) The landlord has incurred, since January first, nineteen hundred
56 seventy, in connection with and in addition to a concurrent major capi-

1 tal improvement pursuant to subparagraph (g) of this paragraph, other
2 expenditures to improve, restore or preserve the quality of the struc-
3 ture. An adjustment under this subparagraph shall be granted only if
4 such improvements represent an expenditure equal to at least ten per
5 centum of the total operating and maintenance expenses for the preceding
6 year. An adjustment under this subparagraph shall be in addition to any
7 adjustment granted for the concurrent major capital improvement and
8 shall be [in an amount sufficient to amortize the cost of the improve-
9 ments pursuant to this subparagraph over a seven-year period] IMPLE-
10 MENTED IN THE SAME MANNER AS SUCH MAJOR CAPITAL IMPROVEMENT AS A FURTHER
11 SURCHARGE TO THE MAXIMUM RENT.

12 S 3. Paragraph 6 of subdivision c of section 26-511 of the administra-
13 tive code of the city of New York, as amended by section 29 of part A of
14 chapter 20 of the laws of 2015, is amended to read as follows:

15 (6) provides criteria whereby the commissioner may act upon applica-
16 tions by owners for increases in excess of the level of fair rent
17 increase established under this law provided, however, that such crite-
18 ria shall provide [(a) as] IN REGARD to hardship applications, for a
19 finding that the level of fair rent increase is not sufficient to enable
20 the owner to maintain approximately the same average annual net income
21 (which shall be computed without regard to debt service, financing costs
22 or management fees) for the three year period ending on or within six
23 months of the date of an application pursuant to such criteria as
24 compared with annual net income, which prevailed on the average over the
25 period nineteen hundred sixty-eight through nineteen hundred seventy, or
26 for the first three years of operation if the building was completed
27 since nineteen hundred sixty-eight or for the first three fiscal years
28 after a transfer of title to a new owner provided the new owner can
29 establish to the satisfaction of the commissioner that he or she
30 acquired title to the building as a result of a bona fide sale of the
31 entire building and that the new owner is unable to obtain requisite
32 records for the fiscal years nineteen hundred sixty-eight through nine-
33 teen hundred seventy despite diligent efforts to obtain same from prede-
34 cessors in title and further provided that the new owner can provide
35 financial data covering a minimum of six years under his or her contin-
36 uous and uninterrupted operation of the building to meet the three year
37 to three year comparative test periods herein provided[; and (b) as to
38 completed building-wide major capital improvements, for a finding that
39 such improvements are deemed depreciable under the Internal Revenue Code
40 and that the cost is to be amortized over an eight-year period for a
41 building with thirty-five or fewer housing accommodations, or a nine-
42 year period for a building with more than thirty-five housing accommo-
43 dations, for any determination issued by the division of housing and
44 community renewal after the effective date of the rent act of 2015,
45 based upon cash purchase price exclusive of interest or service charg-
46 es]. Notwithstanding anything to the contrary contained herein, no
47 hardship increase granted pursuant to this paragraph shall, when added
48 to the annual gross rents, as determined by the commissioner, exceed the
49 sum of, (i) the annual operating expenses, (ii) an allowance for manage-
50 ment services as determined by the commissioner, (iii) actual annual
51 mortgage debt service (interest and amortization) on its indebtedness to
52 a lending institution, an insurance company, a retirement fund or
53 welfare fund which is operated under the supervision of the banking or
54 insurance laws of the state of New York or the United States, and (iv)
55 eight and one-half percent of that portion of the fair market value of
56 the property which exceeds the unpaid principal amount of the mortgage

1 indebtedness referred to in subparagraph (iii) of this paragraph. Fair
2 market value for the purposes of this paragraph shall be six times the
3 annual gross rent. The collection of any increase in the stabilized rent
4 for any apartment pursuant to this paragraph shall not exceed six
5 percent in any year from the effective date of the order granting the
6 increase over the rent set forth in the schedule of gross rents, with
7 collectability of any dollar excess above said sum to be spread forward
8 in similar increments and added to the stabilized rent as established or
9 set in future years;

10 S 4. Subdivision c of section 26-511 of the administrative code of the
11 city of New York is amended by adding three new paragraphs 6-b, 6-c and
12 6-d to read as follows:

13 (6-B) PROVIDES CRITERIA WHEREBY THE COMMISSIONER MAY ACT UPON APPLICA-
14 TION BY OWNERS FOR INCREASES IN EXCESS OF THE LEVEL OF FAIR RENT
15 INCREASE ESTABLISHED UNDER THIS LAW PROVIDED, HOWEVER, THAT SUCH CRITE-
16 RIA SHALL PROVIDE THAT:

17 (I) AS TO COMPLETED BUILDING-WIDE MAJOR CAPITAL IMPROVEMENTS, FIRST,
18 THAT A FINDING THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER THE
19 INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE OPERA-
20 TION OR PRESERVATION OF THE STRUCTURE;

21 (II) HOWEVER, NO MAJOR CAPITAL IMPROVEMENT RENT INCREASE WILL BE
22 APPROVED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL UNLESS THE
23 WORK PERFORMED IS AN ENHANCEMENT OR UPGRADE TO A HOUSING ACCOMMODATION
24 OR SERVICE THEREIN; OR IS AN ADDITION TO SUCH HOUSING ACCOMMODATION AND
25 OTHERWISE ELIGIBLE ACCORDING TO THE PREREQUISITES FOR MAJOR CAPITAL
26 IMPROVEMENT RENT INCREASES. ANY REPAIR OR REPLACEMENT INTENDED TO MAIN-
27 TAIN AN EXISTING SERVICE SHALL NOT BE ELIGIBLE FOR A MAJOR CAPITAL
28 IMPROVEMENT RENT INCREASE;

29 (III) NO APPLICATION FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE MAY
30 BE APPROVED IF THERE EXIST ANY OUTSTANDING HAZARDOUS VIOLATIONS AT THE
31 TIME OF THE CONSIDERATION OF SUCH APPLICATION, AS DETERMINED PURSUANT TO
32 REGULATIONS OF THE DIVISION OF HOUSING AND COMMUNITY RENEWAL OR ANY
33 AGENCY ADMINISTERING AND ENFORCING A BUILDING CODE IN THE JURISDICTION
34 IN WHICH THE PROPERTY IS LOCATED, UNLESS IT IS DETERMINED BY THE DIVI-
35 SION OF HOUSING AND COMMUNITY RENEWAL THAT SUCH WORK IS ESSENTIAL TO THE
36 ALLEVIATION OF THE VIOLATIONS AND SUCH APPROVAL IS CONSISTENT WITH THE
37 PROVISIONS OF THIS SECTION. EXCEPT IN THE CASE OF EMERGENCY OR GOOD
38 CAUSE, THE OWNER OF THE PROPERTY SHALL FILE, NOT LESS THAN THIRTY DAYS
39 BEFORE THE COMMENCEMENT OF THE IMPROVEMENT, WITH THE DIVISION OF HOUSING
40 AND COMMUNITY RENEWAL A STATEMENT CONTAINING INFORMATION OUTLINING THE
41 SCOPE OF WORK, EXPECTED DATE OF COMPLETION FOR SUCH WORK AND AN AFFIDA-
42 VIT SETTING FORTH THE FOLLOWING INFORMATION:

43 (A) EVERY OWNER OF RECORD AND OWNER OF A SUBSTANTIAL INTEREST IN THE
44 PROPERTY OR ENTITY OWNING THE PROPERTY OR SPONSORING THE IMPROVEMENT;
45 AND

46 (B) A STATEMENT THAT NONE OF SUCH PERSONS HAD, WITHIN THE FIVE YEARS
47 PRIOR TO THE IMPROVEMENT, BEEN FOUND TO HAVE HARASSED OR UNLAWFULLY
48 EVICTED TENANTS BY JUDGMENT OR DETERMINATION OF A COURT OR AGENCY UNDER
49 THE PENAL LAW, ANY STATE OR LOCAL LAW REGULATING RENTS OR ANY STATE OR
50 LOCAL LAW RELATING TO HARASSMENT OF TENANTS OR UNLAWFUL EVICTION.

51 UPON RECEIPT OF THE SCOPE OF WORK AND AFFIDAVIT PROVIDED FOR HEREIN,
52 THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL PROVIDE THE TENANTS
53 IN OCCUPANCY IN SUCH BUILDINGS WITH SUCH INFORMATION. THE DIVISION OF
54 HOUSING AND COMMUNITY RENEWAL SHALL, IN ADDITION, IMPLEMENT PROCEDURES
55 INCLUDING, BUT NOT LIMITED TO, ELICITING TENANT COMMENTS TO DETERMINE
56 WHETHER MAJOR CAPITAL IMPROVEMENT REHABILITATION WORK HAS BEEN SATISFAC-

TORILY COMPLETED. NO MAJOR CAPITAL IMPROVEMENT RENT INCREASE SHALL BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR DEFICIENT REHABILITATION WORK HAS BEEN CURED.

(6-C) THE INCREASE PERMITTED FOR SUCH CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY SURCHARGE TO THE LEGAL REGULATED RENT. IT SHALL BE SEPARATELY DESIGNATED AND BILLED AS SUCH AND SHALL NOT BE COMPOUNDED BY ANY ANNUAL ADJUSTMENT OF THE LEVEL OF FAIR RENT PROVIDED FOR UNDER SUBDIVISION B OF SECTION 26-510 OF THIS LAW. THE SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR DIVIDED BY THE NUMBER OF ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT, IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET FORTH IN THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMENTIONED SIX PERCENT LIMITATION DID NOT APPLY.

(6-D) COLLECTION OF SURCHARGES IN EXCESS OF THE LEVEL OF FAIR RENT AUTHORIZED PURSUANT TO PARAGRAPH SIX-B AND SIX-C OF THIS SUBDIVISION SHALL CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL IMPROVEMENT.

S 5. Paragraph 3 of subdivision d of section 6 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as amended by section 30 of part A of chapter 20 of the laws of 2015, is amended to read as follows:

(3) (I) COLLECTION OF SURCHARGES IN ADDITION TO THE LEGAL REGULATED RENT AUTHORIZED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL IMPROVEMENT;

(II) there has been since January first, nineteen hundred seventy-four a major capital improvement [required for the operation, preservation or maintenance of the structure. An adjustment under this paragraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this paragraph over an eight-year period for a building with thirty-five or fewer housing accommodations, or a nine-year period for a building with more than thirty-five housing accommodations, for any determination issued by the division of housing and community renewal after the effective date of the rent act of 2015,]; PROVIDED THAT THE COMMISSIONER FIRST FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE OPERATION OR PRESERVATION OF THE STRUCTURE. HOWEVER, NO MAJOR CAPITAL IMPROVEMENT RENT INCREASE WILL BE APPROVED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL UNLESS THE WORK PERFORMED IS AN ENHANCEMENT OR UPGRADE TO A HOUSING ACCOMMODATION OR SERVICE THEREIN; OR IS AN ADDITION TO SUCH HOUSING ACCOMMODATION AND OTHERWISE ELIGIBLE ACCORDING TO THE PREREQUISITES FOR MAJOR CAPITAL IMPROVEMENT RENT INCREASES. ANY REPAIR OR REPLACEMENT INTENDED TO MAINTAIN AN EXISTING SERVICE SHALL NOT BE ELIGIBLE FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE. NO APPLICATION FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE MAY BE APPROVED IF THERE EXIST ANY OUTSTANDING HAZARDOUS VIOLATIONS AT THE TIME OF THE CONSIDERATION OF SUCH APPLICATION, AS DETERMINED PURSUANT TO REGULATIONS OF THE DIVISION OF HOUSING AND COMMUNITY RENEWAL OR ANY AGENCY ADMINISTERING AND ENFORCING A BUILDING CODE IN THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED, UNLESS IT IS DETERMINED BY THE DIVISION OF HOUSING AND

1 COMMUNITY RENEWAL THAT SUCH WORK IS ESSENTIAL TO THE ALLEVIATION OF THE
2 VIOLATIONS AND SUCH APPROVAL IS CONSISTENT WITH THE PROVISIONS OF THIS
3 SECTION. EXCEPT IN THE CASE OF EMERGENCY OR GOOD CAUSE, THE OWNER OF THE
4 PROPERTY SHALL FILE, NOT LESS THAN THIRTY DAYS BEFORE THE COMMENCEMENT
5 OF THE IMPROVEMENT, WITH THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A
6 STATEMENT CONTAINING INFORMATION OUTLINING THE SCOPE OF WORK, EXPECTED
7 DATE OF COMPLETION FOR SUCH WORK AND AN AFFIDAVIT SETTING FORTH THE
8 FOLLOWING INFORMATION: (A) EVERY OWNER OF RECORD AND OWNER OF A SUBSTAN-
9 TIAL INTEREST IN THE PROPERTY OR ENTITY OWNING THE PROPERTY OR SPONSOR-
10 ING THE IMPROVEMENT; AND (B) A STATEMENT THAT NONE OF SUCH PERSONS HAD,
11 WITHIN THE FIVE YEARS PRIOR TO THE IMPROVEMENT, BEEN FOUND TO HAVE
12 HARASSED OR UNLAWFULLY EVICTED TENANTS BY JUDGMENT OR DETERMINATION OF A
13 COURT OR AGENCY UNDER THE PENAL LAW, ANY STATE OR LOCAL LAW REGULATING
14 RENTS OR ANY STATE OR LOCAL LAW RELATING TO HARASSMENT OF TENANTS OR
15 UNLAWFUL EVICTION. UPON RECEIPT OF THE SCOPE OF WORK AND AFFIDAVIT
16 PROVIDED FOR HEREIN, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL
17 PROVIDE THE TENANTS IN OCCUPANCY IN SUCH BUILDINGS WITH SUCH INFORMA-
18 TION. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL, IN ADDITION,
19 IMPLEMENT PROCEDURES INCLUDING, BUT NOT LIMITED TO, ELICITING TENANT
20 COMMENTS TO DETERMINE WHETHER MAJOR CAPITAL IMPROVEMENT REHABILITATION
21 WORK HAS BEEN SATISFACTORILY COMPLETED. NO MAJOR CAPITAL IMPROVEMENT
22 RENT INCREASE SHALL BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR DEFICIENT
23 REHABILITATION WORK HAS BEEN CURED. THE INCREASE PERMITTED FOR SUCH
24 CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY SURCHARGE TO THE
25 LEGAL REGULATED RENT. IT SHALL BE SEPARATELY DESIGNATED AND BILLED AS
26 SUCH AND SHALL NOT BE COMPOUNDED BY ANY ANNUAL RENT ADJUSTMENT AUTHOR-
27 IZED BY THE RENT GUIDELINES BOARD UNDER THIS ACT. THE SURCHARGE ALLOCA-
28 BLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE COST OF THE
29 IMPROVEMENT DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE NUMBER OF ROOMS IN
30 THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN SUCH APART-
31 MENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT IN ANY ONE
32 YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE MONTHLY RENT
33 COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET FORTH IN THE SCHEDULE
34 OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE CARRIED
35 FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT TO
36 EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE TOTAL
37 SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMENTIONED SIX
38 PERCENT LIMITATION DID NOT APPLY, or

39 S 6. The second undesignated paragraph of paragraph (a) of subdivision
40 4 of section 4 of chapter 274 of the laws of 1946, constituting the
41 emergency housing rent control law, as amended by section 25 of part B
42 of chapter 97 of the laws of 2011, subparagraph 7 as amended by section
43 32 of part A of chapter 20 of the laws of 2015, is amended to read as
44 follows:

45 No application for adjustment of maximum rent based upon a sales price
46 valuation shall be filed by the landlord under this subparagraph prior
47 to six months from the date of such sale of the property. In addition,
48 no adjustment ordered by the commission based upon such sales price
49 valuation shall be effective prior to one year from the date of such
50 sale. Where, however, the assessed valuation of the land exceeds four
51 times the assessed valuation of the buildings thereon, the commission
52 may determine a valuation of the property equal to five times the equal-
53 ized assessed valuation of the buildings, for the purposes of this
54 subparagraph. The commission may make a determination that the valuation
55 of the property is an amount different from such equalized assessed
56 valuation where there is a request for a reduction in such assessed

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

1 shall give written notice to the commission of any such adjustment
2 pursuant to this clause; or (6) there has been, since March first, nine-
3 teen hundred fifty, an increase in the rental value of the housing
4 accommodations as a result of a substantial rehabilitation of the build-
5 ing or housing accommodation therein which materially adds to the value
6 of the property or appreciably prolongs its life, excluding ordinary
7 repairs, maintenance and replacements; or (7)(I) COLLECTION OF
8 SURCHARGES TO THE MAXIMUM RENT AUTHORIZED PURSUANT TO ITEM (II) OF THIS
9 CLAUSE SHALL CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR
10 CAPITAL IMPROVEMENT; (II) there has been since March first, nineteen
11 hundred fifty, a major capital improvement [required for the operation,
12 preservation or maintenance of the structure; which for any order of the
13 commissioner issued after the effective date of the rent act of 2015 the
14 cost of such improvement shall be amortized over an eight-year period
15 for buildings with thirty-five or fewer units or a nine year period for
16 buildings with more than thirty-five units, or]; PROVIDED THAT THE
17 COMMISSIONER FIRST FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE
18 UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR
19 THE OPERATION OR PRESERVATION OF THE STRUCTURE. HOWEVER, NO MAJOR CAPI-
20 TAL IMPROVEMENT RENT INCREASE WILL BE APPROVED BY THE DIVISION OF HOUS-
21 ING AND COMMUNITY RENEWAL UNLESS THE WORK PERFORMED IS AN ENHANCEMENT OR
22 UPGRADE TO A HOUSING ACCOMMODATION OR SERVICE THEREIN; OR IS AN ADDITION
23 TO SUCH HOUSING ACCOMMODATION AND OTHERWISE ELIGIBLE ACCORDING TO THE
24 PREREQUISITES FOR MAJOR CAPITAL IMPROVEMENT RENT INCREASES. ANY REPAIR
25 OR REPLACEMENT INTENDED TO MAINTAIN AN EXISTING SERVICE SHALL NOT BE
26 ELIGIBLE FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE. NO APPLICATION
27 FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE MAY BE APPROVED IF THERE
28 EXIST ANY OUTSTANDING HAZARDOUS VIOLATIONS AT THE TIME OF THE CONSIDER-
29 ATION OF SUCH APPLICATION, AS DETERMINED PURSUANT TO REGULATIONS OF THE
30 DIVISION OF HOUSING AND COMMUNITY RENEWAL OR ANY AGENCY ADMINISTERING
31 AND ENFORCING A BUILDING CODE IN THE JURISDICTION IN WHICH THE PROPERTY
32 IS LOCATED, UNLESS IT IS DETERMINED BY THE DIVISION OF HOUSING AND
33 COMMUNITY RENEWAL THAT SUCH WORK IS ESSENTIAL TO THE ALLEVIATION OF THE
34 VIOLATIONS AND SUCH APPROVAL IS CONSISTENT WITH THE PROVISIONS OF THIS
35 SECTION. EXCEPT IN THE CASE OF EMERGENCY OR GOOD CAUSE, THE OWNER OF THE
36 PROPERTY SHALL FILE, NOT LESS THAN THIRTY DAYS BEFORE THE COMMENCEMENT
37 OF THE IMPROVEMENT, WITH THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A
38 STATEMENT CONTAINING INFORMATION OUTLINING THE SCOPE OF WORK, EXPECTED
39 DATE OF COMPLETION FOR SUCH WORK AND AN AFFIDAVIT SETTING FORTH THE
40 FOLLOWING INFORMATION: (A) EVERY OWNER OF RECORD AND OWNER OF A SUBSTAN-
41 TIAL INTEREST IN THE PROPERTY OR ENTITY OWNING THE PROPERTY OR SPONSOR-
42 ING THE IMPROVEMENT; AND (B) A STATEMENT THAT NONE OF SUCH PERSONS HAD,
43 WITHIN THE FIVE YEARS PRIOR TO THE IMPROVEMENT, BEEN FOUND TO HAVE
44 HARASSED OR UNLAWFULLY EVICTED TENANTS BY JUDGMENT OR DETERMINATION OF A
45 COURT OR AGENCY UNDER THE PENAL LAW, ANY STATE OR LOCAL LAW REGULATING
46 RENTS OR ANY STATE OR LOCAL LAW RELATING TO HARASSMENT OF TENANTS OR
47 UNLAWFUL EVICTION. UPON RECEIPT OF THE SCOPE OF WORK AND AFFIDAVIT
48 PROVIDED FOR HEREIN, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL
49 PROVIDE THE TENANTS IN OCCUPANCY IN SUCH BUILDINGS WITH SUCH INFORMA-
50 TION. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL, IN ADDITION,
51 IMPLEMENT PROCEDURES INCLUDING, BUT NOT LIMITED TO, ELICITING TENANT
52 COMMENTS TO DETERMINE WHETHER MAJOR CAPITAL IMPROVEMENT REHABILITATION
53 WORK HAS BEEN SATISFACTORILY COMPLETED. NO MAJOR CAPITAL IMPROVEMENT
54 RENT INCREASE SHALL BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR DEFICIENT
55 REHABILITATION WORK HAS BEEN CURED. THE INCREASE PERMITTED FOR SUCH
56 CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY SURCHARGE TO THE

1 MAXIMUM RENT. IT SHALL BE SEPARATELY DESIGNATED AND BILLED AS SUCH AND
2 SHALL NOT BE COMPOUNDED BY ANY OTHER ADJUSTMENT TO THE MAXIMUM RENT. THE
3 SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE
4 COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE NUMBER OF
5 ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN
6 SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT
7 IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE
8 MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET FORTH IN
9 THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE
10 CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT
11 TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE
12 TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMEN-
13 TIONED SIX PERCENT LIMITATION DID NOT APPLY; or (8) there has been since
14 March first, nineteen hundred fifty, in structures containing more than
15 four housing accommodations, other improvements made with the express
16 consent of the tenants in occupancy of at least seventy-five per centum
17 of the housing accommodations, provided, however, that no adjustment
18 granted hereunder shall exceed fifteen per centum unless the tenants
19 have agreed to a higher percentage of increase, as herein provided; or
20 (9) there has been, since March first, nineteen hundred fifty, a sublet-
21 ting without written consent from the landlord or an increase in the
22 number of adult occupants who are not members of the immediate family of
23 the tenant, and the landlord has not been compensated therefor by
24 adjustment of the maximum rent by lease or order of the commission or
25 pursuant to the federal act; or (10) the presence of unique or peculiar
26 circumstances materially affecting the maximum rent has resulted in a
27 maximum rent which is substantially lower than the rents generally
28 prevailing in the same area for substantially similar housing accommo-
29 dations.

30 S 7. Paragraph 5 of subdivision d of section 6 of section 4 of chapter
31 576 of the laws of 1974, constituting the emergency tenant protection
32 act of nineteen seventy-four, as amended by chapter 102 of the laws of
33 1984, is amended and a new paragraph 6 is added to read as follows:

34 (5) as an alternative to the hardship application provided under para-
35 graph four of this subdivision, owners of buildings acquired by the same
36 owner or a related entity owned by the same principals three years prior
37 to the date of application may apply to the division for increases in
38 excess of the level of applicable guideline increases established under
39 this law based on a finding by the commissioner that such guideline
40 increases are not sufficient to enable the owner to maintain an annual
41 gross rent income for such building which exceeds the annual operating
42 expenses of such building by a sum equal to at least five percent of
43 such gross rent. For the purposes of this paragraph, operating expenses
44 shall consist of the actual, reasonable, costs of fuel, labor, utili-
45 ties, taxes, other than income or corporate franchise taxes, fees,
46 permits, necessary contracted services and non-capital repairs, insur-
47 ance, parts and supplies, management fees and other administrative costs
48 and mortgage interest. For the purposes of this paragraph, mortgage
49 interest shall be deemed to mean interest on a bona fide mortgage
50 including an allocable portion of charges related thereto. Criteria to
51 be considered in determining a bona fide mortgage other than an institu-
52 tional mortgage shall include[:]; condition of the property, location of
53 the property, the existing mortgage market at the time the mortgage is
54 placed, the term of the mortgage, the amortization rate, the principal
55 amount of the mortgage, security and other terms and conditions of the
56 mortgage. The commissioner shall set a rental value for any unit occu-

1 pied by the owner or a person related to the owner or unoccupied at the
2 owner's choice for more than one month at the last regulated rent plus
3 the minimum number of guidelines increases or, if no such regulated rent
4 existed or is known, the commissioner shall impute a rent consistent
5 with other rents in the building. The amount of hardship increase shall
6 be such as may be required to maintain the annual gross rent income as
7 provided by this paragraph. The division shall not grant a hardship
8 application under this paragraph or paragraph four of this subdivision
9 for a period of three years subsequent to granting a hardship applica-
10 tion under the provisions of this paragraph. The collection of any
11 increase in the rent for any housing accommodation pursuant to this
12 paragraph shall not exceed six percent in any year from the effective
13 date of the order granting the increase over the rent set forth in the
14 schedule of gross rents, with collectability of any dollar excess above
15 said sum to be spread forward in similar increments and added to the
16 rent as established or set in future years. No application shall be
17 approved unless the owner's equity in such building exceeds five percent
18 of: (i) the arms length purchase price of the property; (ii) the cost of
19 any capital improvements for which the owner has not collected a
20 surcharge; (iii) any repayment of principal of any mortgage or loan used
21 to finance the purchase of the property or any capital improvements for
22 which the owner has not collected a surcharge; and (iv) any increase in
23 the equalized assessed value of the property which occurred subsequent
24 to the first valuation of the property after purchase by the owner. For
25 the purposes of this paragraph, owner's equity shall mean the sum of (i)
26 the purchase price of the property less the principal of any mortgage or
27 loan used to finance the purchase of the property, (ii) the cost of any
28 capital improvement for which the owner has not collected a surcharge
29 less the principal of any mortgage or loan used to finance said improve-
30 ment, (iii) any repayment of the principal of any mortgage or loan used
31 to finance the purchase of the property or any capital improvement for
32 which the owner has not collected a surcharge, and (iv) any increase in
33 the equalized assessed value of the property which occurred subsequent
34 to the first valuation of the property after purchase by the owner[.];
35 OR

36 (6) NOTWITHSTANDING PARAGRAPH THREE OF THIS SUBDIVISION THERE SHALL BE
37 NO ADJUSTMENT FOR ANY MAJOR CAPITAL IMPROVEMENT FUNDED IN ANY PART FROM
38 MONEYS PROVIDED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT
39 AUTHORITY.

40 S 8. Paragraph 1 of subdivision g of section 26-405 of the administra-
41 tive code of the city of New York is amended by adding a new subpara-
42 graph (p) to read as follows:

43 (P) NOTWITHSTANDING SUBPARAGRAPH (G) OR (K) OF THIS PARAGRAPH, THERE
44 SHALL BE NO ADJUSTMENT FOR ANY MAJOR CAPITAL IMPROVEMENT OR FOR ANY
45 OTHER EXPENDITURES TO IMPROVE, RESTORE OR PRESERVE THE QUALITY OF A
46 STRUCTURE IF SUCH MAJOR CAPITAL IMPROVEMENT OR SUCH OTHER EXPENDITURE IS
47 FUNDED IN ANY PART FROM MONEYS PROVIDED BY THE NEW YORK STATE ENERGY
48 RESEARCH AND DEVELOPMENT AUTHORITY.

49 S 9. This act shall take effect immediately; provided that the amend-
50 ments to section 26-405 of the city rent and rehabilitation law made by
51 sections one, two and eight of this act shall remain in full force and
52 effect only so long as the public emergency requiring the regulation and
53 control of residential rents and evictions continues, as provided in
54 subdivision 3 of section 1 of the local emergency housing rent control
55 act; provided that the amendments to section 26-511 of the rent stabili-
56 zation law of nineteen hundred sixty-nine made by sections three and

1 four of this act shall expire on the same date as such law expires and
2 shall not affect the expiration of such law as provided under section
3 26-520 of such law, as from time to time amended; provided that the
4 amendments to section 6 of the emergency tenant protection act of nine-
5 teen seventy-four made by sections five and seven of this act shall
6 expire on the same date as such act expires and shall not affect the
7 expiration of such act as provided in section 17 of chapter 576 of the
8 laws of 1974, as from time to time amended; and provided that the amend-
9 ments to section 4 of the emergency housing rent control law made by
10 section six of this act shall expire on the same date as such law
11 expires and shall not affect the expiration of such law as provided in
12 subdivision 2 of section 1 of chapter 274 of the laws of 1946.