S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 18, 2016

Introduced by M. of A. RICHARDSON -- 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 emergency housing rent control law, in relation to the adjustment of maximum allowable rent and requiring the division of housing and community renewal to confirm improvements have been made prior to the approval of rent increases

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

Section 1. Subparagraphs (e) and (g) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, subparagraph (e) as amended by section 15 of part B of chapter 97 of the laws of 2011 and subparagraph (g) as amended by section 31 of part A of chapter 20 of the laws of 2015, are amended and a new paragraph 8 is added to read as follows:

(e) The landlord and tenant by mutual voluntary written agreement agree to a substantial increase or decrease in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodations. An adjustment under this subparagraph shall be equal to one-fortieth, in the case of a building with thirty-five or fewer housing accommodations, or one-sixtieth, in the case of a building with more than thirty-five housing accommodations where such adjustment takes effect on or after September twenty-fourth, two thousand eleven, of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges, provided further that an owner who is entitled to a rent increase pursuant to this subparagraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. AN OWNER ENTITLED TO A RENT INCREASE PURSUANT TO THIS SUBPARAGRAPH SHALL ONLY BE ENTITLED TO SUCH INCREASE FOR A PERIOD OF FIVE YEARS FROM THE DATE OF THE ADJUSTMENT. The

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

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owner shall give written notice to the city rent agency of any such adjustment pursuant to this subparagraph; or

(g) There has been since July first, nineteen hundred seventy, a major capital improvement required for the operation, preservation or maintenance of the structure. An adjustment under this subparagraph [(g) for any order of the commissioner issued after the effective date of the rent act of 2015 shall be in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph (g) over an eight-year period for buildings with thirty-five or fewer units or a nine year period for buildings with more than thiry-five units] SHALL ONLY BE IN EFFECT FOR A PERIOD OF FIVE YEARS FROM THE DATE OF SUCH ADJUSTMENT, or

(8) BEFORE ORDERING ANY ADJUSTMENT IN RENT PURSUANT TO SUBPARAGRAPHS (E) AND (G) OF PARAGRAPH ONE OF THIS SUBDIVISION, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL REQUIRE THE OWNER OF THE PROPERTY TO FILE A STATEMENT WITH THE DIVISION CONTAINING INFORMATION OUTLINING THE SCOPE OF THE WORK AND THE DATE OF COMPLETION OF SUCH WORK. UPON RECEIPT OF SUCH STATEMENT, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL INSPECT THE PROPERTY TO ENSURE THE SPECIFIED WORK HAS BEEN COMPLETED. NO INCREASE SHALL BE COLLECTIBLE UNDER SUBPARAGRAPHS (E) AND (G) OF PARAGRAPH ONE OF THIS SUBDIVISION WHERE THE DIVISION OF HOUSING AND COMMUNITY RENEWAL HAS DETERMINED THE SPECIFIED WORK HAS NOT BEEN COMPLETED.

S 2. Paragraphs 6 and 13 of subdivision c of section 26-511 of the administrative code of the city of New York, paragraph 6 as amended by section 29 of part A of chapter 20 of the laws of 2015 and paragraph 13 as amended by section 16 of part B of chapter 97 of the laws of 2011, are amended and two new paragraphs 6-b and 15 are added to read as follows:

(6) provides criteria whereby the commissioner may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide [(a)] as to hardship applications, for a finding that the level of fair rent increase is not sufficient to enable the owner to maintain approximately the same average annual net income (which shall be computed without regard to debt service, financing costs or management fees) for the three year period ending on or within six months of the date of an application pursuant to such criteria as compared with annual net income, which prevailed on the average over the period nineteen hundred sixty-eight through nineteen hundred seventy, or for the first three years of operation if the building was completed since nineteen hundred sixty-eight or for the first three fiscal years after a transfer of title to a new owner provided the new owner can establish to the satisfaction of the commissioner that he or she acquired title to the building as a result of a bona fide sale of the entire building and that the new owner is unable to obtain requisite records for the fiscal years nineteen hundred sixty-eight through nineteen hundred seventy despite diligent efforts to obtain same from predecessors in title and further provided that the new owner can provide financial data covering a minimum of six years under his or her continuous and uninterrupted operation of the building to meet the three year to three year comparative test periods herein provided[; and (b) as to completed building-wide major capital improvements, for a finding that such improvements are deemed depreciable under the Internal Revenue Code and that the cost is to be amortized 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, based upon cash purchase price exclusive of interest or service charges]. Notwithstanding anything to the contrary contained herein, no hardship increase granted pursuant to this paragraph shall, when added to the annual gross rents, as determined by the commissioner, exceed the sum of, (i) the annual operating expenses, (ii) an allowance for management services as determined by the commissioner, (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund which is operated under the supervision of the banking or insurance laws of the state of New York or the United States, and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for the purposes of this paragraph shall be six times the annual gross rent. The collection of any increase in the stabilized rent for any apartment pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the stabilized rent as established or set in future years;

(6-B) PROVIDES CRITERIA WHEREBY THE COMMISSIONER MAY ACT UPON APPLICATION BY OWNERS FOR INCREASES IN EXCESS OF THE LEVEL OF FAIR RENT INCREASE ESTABLISHED UNDER THIS LAW PROVIDED, HOWEVER, THAT AS TO COMPLETED BUILDING-WIDE MAJOR CAPITAL IMPROVEMENTS, AN OWNER SHALL ONLY BE ENTITLED TO A RENT INCREASE FOR A FIVE YEAR PERIOD FROM THE DATE OF THE APPROVED INCREASE.

(13) provides that an owner is entitled to a rent increase where there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings provided in or to a tenant's housing accommodation, on written tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required. The [permanent] increase in the legal regulated rent for the affected housing accommodation shall be one-fortieth, in the case of a building with thirty-five or fewer housing accommodations, or one-sixtieth, in the case of a building with more than thirty-five housing accommodations where such [permanent] increase takes effect on or after September twenty-fourth, two thousand eleven, of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges; PROVIDED, HOWEVER, THE INCREASE ALLOWABLE UNDER THIS PARAGRAPH SHALL ONLY BE IN EFFECT FOR A PERIOD OF FIVE YEARS FROM THE DATE OF SUCH INCREASE. Provided further that an owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings.

(15) PROVIDES THAT BEFORE ORDERING ANY ADJUSTMENT IN RENT PURSUANT TO PARAGRAPHS SIX-B AND THIRTEEN OF THIS SUBDIVISION, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL REQUIRE THE OWNER OF THE PROPERTY TO FILE A STATEMENT WITH THE DIVISION CONTAINING INFORMATION OUTLINING THE SCOPE OF THE WORK AND THE DATE OF COMPLETION OF SUCH WORK. UPON RECEIPT OF SUCH STATEMENT, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL

INSPECT THE PROPERTY TO ENSURE THE SPECIFIED WORK HAS BEEN COMPLETED. NO INCREASE SHALL BE COLLECTIBLE UNDER PARAGRAPHS SIX-B AND THIRTEEN OF THIS SUBDIVISION WHERE THE DIVISION OF HOUSING AND COMMUNITY RENEWAL HAS DETERMINED THE SPECIFIED WORK HAS NOT BEEN COMPLETED.

S 3. Paragraphs 1 and 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, paragraph 1 as amended by section 18 of part B of chapter 97 of the laws of 2011 and paragraph 3 as amended by section 30 of part A of chapter 20 of the laws of 2015, are amended and a new paragraph 6 is added to read as follows:

(1) there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings, provided in or to a tenant's housing accommodation, on written tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required. The [permanent] increase in the legal regulated rent for the affected housing accommodation shall be one-fortieth, in the case of a building with thirty-five or fewer housing accommodations, or one-sixtieth, in the case of a building with more than thirty-five housing accommodations where such [permanent] increase takes effect on or after September twenty-fourth, two thousand eleven, of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges; PROVIDED, HOWEVER, THE INCREASE ALLOWABLE UNDER THIS PARAGRAPH SHALL ONLY BE IN EFFECT FOR A PERIOD OF FIVE YEARS FROM THE DATE OF SUCH INCREASE. Provided further that an owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings.

(3) 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] ONLY BE IN EFFECT FOR A PERIOD OF FIVE YEARS FROM THE DATE OF SUCH ADJUSTMENT, or

(6) BEFORE ORDERING ANY ADJUSTMENT IN RENT PURSUANT TO PARAGRAPHS ONE AND THREE OF THIS SUBDIVISION, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL REQUIRE THE OWNER OF THE PROPERTY TO FILE A STATEMENT WITH THE DIVISION CONTAINING INFORMATION OUTLINING THE SCOPE OF THE WORK AND THE DATE OF COMPLETION OF SUCH WORK. UPON RECEIPT OF SUCH STATEMENT, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL INSPECT THE PROPERTY TO ENSURE THE SPECIFIED WORK HAS BEEN COMPLETED. NO INCREASE SHALL BE COLLECTIBLE UNDER PARAGRAPHS ONE AND THREE OF THIS SUBDIVISION WHERE THE DIVISION OF HOUSING AND COMMUNITY RENEWAL HAS DETERMINED THE SPECIFIED WORK HAS NOT BEEN COMPLETED.

S 4. Clauses 5 and 7 of the second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, clause 5 as amended by section 25 of part B of chapter 97 of the laws of 2011 and clause 7

as amended by section 32 of part A of chapter 20 of the laws of 2015, are amended to read as follows:

(5) the landlord and tenant by mutual voluntary written agreement agree to a substantial increase or decrease in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodations; provided that an owner shall be entitled to a rent increase where there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings provided in or to a tenant's housing accommodation. The [permanent] increase in the maximum rent for the affected housing accommodation shall be one-fortieth, in the case of a building with thirty-five or fewer housing accommodations, or one-sixtieth, in the case of a building with more than thirty-five housing accommodations where such [permanent] increase takes effect on or after September twenty-fourth, two thousand eleven, of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges provided further that an owner who is entitled to a rent increase pursuant to this clause shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings; PROVIDED, HOWEVER, THE INCREASE ALLOWABLE UNDER THIS CLAUSE SHALL ONLY BE IN EFFECT FOR A PERIOD OF FIVE YEARS FROM THE DATE OF SUCH INCREASE. The owner shall give written notice to the commission of any such adjustment pursuant to this clause; PROVIDED, HOWEVER, BEFORE ANY ADJUSTMENT IN RENT SHALL TAKE EFFECT PURSUANT TO THIS CLAUSE, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL REQUIRE THE OWNER OF THE PROPERTY TO FILE A STATEMENT WITH THE DIVISION CONTAINING INFORMATION OUTLINING THE SCOPE OF THE WORK AND THE DATE OF COMPLETION OF SUCH WORK. UPON RECEIPT OF SUCH STATEMENT, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL INSPECT THE PROPERTY TO ENSURE THE SPECIFIED WORK HAS BEEN COMPLETED. NO INCREASE SHALL BE COLLECTIBLE UNDER THIS CLAUSE WHERE THE DIVISION OF HOUSING AND COMMUNITY RENEWAL HAS DETERMINED THE SPECIFIED WORK HAS NOT BEEN COMPLETED; or

(7) there has been since March first, nineteen hundred fifty, a major capital improvement required for the operation, preservation or maintenance of the structure; which [for any order of the commissioner issued after the effective date of the rent act of 2015 the cost of such improvement shall be amortized over an eight-year period for buildings with thirty-five or fewer units or a nine year period for buildings with more than thiry-five units,] SHALL ONLY BE IN EFFECT FOR A PERIOD OF FIVE YEARS FROM THE DATE OF SUCH ADJUSTMENT. BEFORE ORDERING ANY ADJUSTMENT IN RENT PURSUANT TO THIS CLAUSE, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL REQUIRE THE OWNER OF THE PROPERTY TO FILE A STATEMENT WITH THE DIVISION CONTAINING INFORMATION OUTLINING THE SCOPE OF THE WORK AND THE DATE OF COMPLETION OF SUCH WORK. UPON RECEIPT OF SUCH STATEMENT, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL INSPECT THE PROPERTY TO ENSURE THE SPECIFIED WORK HAS BEEN COMPLETED. NO INCREASE SHALL BE COLLECTIBLE UNDER THIS CLAUSE WHERE THE DIVISION OF HOUSING AND COMMUNITY RENEWAL HAS DETERMINED THE SPECIFIED WORK HAS NOT BEEN COMPLETED; or

S 5. This act shall take effect immediately; provided that:

(a) the amendments to section 26-405 of the city rent and rehabilitation law made by section one of this act shall remain in full force and effect only as long as the public emergency requiring the regulation and control of residential rents and evictions continues, as provided in

subdivision 3 of section 1 of the local emergency housing rent control act;

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

(c) the amendments to section 6 of the emergency tenant protection act of nineteen seventy-four made by section three of this act shall expire on the same date as such act expires and shall not affect the expiration of such act as provided in section 17 of chapter 576 of the laws of 1974;

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