

# STATE OF NEW YORK

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7125

## IN SENATE

(Prefiled)

January 3, 2018

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Introduced by Sen. KAVANAGH -- 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 hardship applications

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph 6-a of subdivision c of section 26-511 of the  
2 administrative code of the city of New York is amended to read as  
3 follows:  
4 (6-a) provides criteria whereby as an alternative to the hardship  
5 application provided under paragraph six of this subdivision owners of  
6 buildings acquired by the same owner or a related entity owned by the  
7 same principals [~~three~~ **six** years prior to the date of application may  
8 apply to the division for increases in excess of the level of applicable  
9 guideline increases established under this law based on a finding by the  
10 commissioner that such guideline increases are not sufficient to enable  
11 the owner to maintain an annual gross rent income for such building  
12 which exceeds the annual operating expenses of such building by a sum  
13 equal to at least five percent of such gross rent. For the purposes of  
14 this paragraph, operating expenses shall consist of the actual, reason-  
15 able, costs of fuel, labor, utilities, taxes, other than income or  
16 corporate franchise taxes, fees, permits, necessary contracted services  
17 and non-capital repairs, insurance, parts and supplies, management fees  
18 and other administrative costs and mortgage interest. For the purposes  
19 of this paragraph, mortgage interest shall be deemed to mean interest on  
20 a bona fide mortgage including an allocable portion of charges related  
21 thereto. Criteria to be considered in determining a bona fide mortgage  
22 other than an institutional mortgage shall include; condition of the  
23 property, location of the property, the existing mortgage market at the  
24 time the mortgage is placed, the term of the mortgage, the amortization  
25 rate, the principal amount of the mortgage, security and other terms and

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

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

36 § 2. Paragraph 5 of subdivision d of section 6 of section 4 of chapter  
37 576 of the laws of 1974 enacting the emergency tenant protection act of  
38 nineteen seventy-four, as amended by chapter 102 of the laws of 1984, is  
39 amended to read as follows:

40 (5) as an alternative to the hardship application provided under para-  
41 graph four of this subdivision, owners of buildings acquired by the same  
42 owner or a related entity owned by the same principals [~~three~~ **six** years  
43 prior to the date of application may apply to the division for increases  
44 in excess of the level of applicable guideline increases established  
45 under this law based on a finding by the commissioner that such guide-  
46 line increases are not sufficient to enable the owner to maintain an  
47 annual gross rent income for such building which exceeds the annual  
48 operating expenses of such building by a sum equal to at least five  
49 percent of such gross rent. For the purposes of this paragraph, operat-  
50 ing expenses shall consist of the actual, reasonable, costs of fuel,  
51 labor, utilities, taxes, other than income or corporate franchise taxes,  
52 fees, permits, necessary contracted services and non-capital repairs,  
53 insurance, parts and supplies, management fees and other administrative  
54 costs and mortgage interest. For the purposes of this paragraph, mort-  
55 gage interest shall be deemed to mean interest on a bona fide mortgage  
56 including an allocable portion of charges related thereto. Criteria to

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

41 § 3. This act shall take effect immediately; provided that the amend-  
42 ments to section 26-511 of chapter 4 of title 26 of the administrative  
43 code of the city of New York made by section one of this act shall  
44 expire on the same date as such law expires and shall not affect the  
45 expiration of such law as provided under section 26-520 of such law; and  
46 provided that the amendments to section 6 of the emergency tenant  
47 protection act of nineteen seventy-four made by section two of this act  
48 shall expire on the same date as such act expires and shall not affect  
49 the expiration of such act as provided in section 17 of chapter 576 of  
50 the laws of 1974.