

# STATE OF NEW YORK

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4773

2017-2018 Regular Sessions

## IN SENATE

February 28, 2017

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Introduced by Sen. BOYLE -- 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 emergency tenant protection act of nineteen seventy-four and the administrative code of the city of New York, in relation to providing that vacancy leases and renewals thereof for rent regulated housing accommodations shall be for a term of one year

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

1 Section 1. Subdivisions a and (a-1) of section 10 of section 4 of  
2 chapter 576 of the laws of 1974, constituting the emergency tenant  
3 protection act of nineteen seventy-four, subdivision a as amended by  
4 chapter 234 of the laws of 1984 and subdivision (a-1) as amended by  
5 section 16-b of part A of chapter 20 of the laws of 2015, are amended to  
6 read as follows:

7 a. For cities having a population of less than one million and towns  
8 and villages, the state division of housing and community renewal shall  
9 be empowered to implement this act by appropriate regulations. Such  
10 regulations may encompass such speculative or manipulative practices or  
11 renting or leasing practices as the state division of housing and commu-  
12 nity renewal determines constitute or are likely to cause circumvention  
13 of this act. Such regulations shall prohibit practices which are likely  
14 to prevent any person from asserting any right or remedy granted by this  
15 act, including but not limited to retaliatory termination of periodic  
16 tenancies and shall require owners to grant a new one or two year vacan-  
17 cy or renewal lease at the option of the tenant; provided, however, that  
18 for vacancy and renewal leases which take effect on or after January  
19 first, two thousand eighteen, such regulations shall require owners to  
20 grant a new one year vacancy or renewal lease, except where a mortgage  
21 or mortgage commitment existing as of the local effective date of this  
22 act provides that the owner shall not grant a one-year lease; and shall

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

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1 prescribe standards with respect to the terms and conditions of new and  
2 renewal leases, additional rent and such related matters as security  
3 deposits, advance rental payments, the use of escalator clauses in leas-  
4 es and provision for increase in rentals for garages and other ancillary  
5 facilities, so as to insure that the level of rent adjustments author-  
6 ized under this law will not be subverted and made ineffective. Any  
7 provision of the regulations permitting an owner to refuse to renew a  
8 lease on grounds that the owner seeks to recover possession of the hous-  
9 ing accommodation for his own use and occupancy or for the use and occu-  
10 pancy of his immediate family shall require that an owner demonstrate  
11 immediate and compelling need and shall not apply where a member of the  
12 housing accommodation is sixty-two years of age or older, has been a  
13 tenant in a housing accommodation in that building for twenty years or  
14 more, or has an impairment which results from anatomical, physiological  
15 or psychological conditions, other than addiction to alcohol, gambling,  
16 or any controlled substance, which are demonstrable by medically accept-  
17 able clinical and laboratory diagnostic techniques, and which are  
18 expected to be permanent and which prevent the tenant from engaging in  
19 any substantial gainful employment.

20 ~~[(a-1)]~~ **a-1.** provides that, notwithstanding any provision of this act,  
21 the legal regulated rent for any vacancy lease entered into after the  
22 effective date of this subdivision shall be as hereinafter set forth.  
23 The previous legal regulated rent for such housing accommodation shall  
24 be increased by ~~[the following: (i) if the vacancy lease is for a term~~  
25 ~~of two years,]~~ twenty percent of the previous legal regulated rent~~[, or~~  
26 ~~(ii) if the vacancy lease is for a term of one year the increase shall~~  
27 ~~be twenty percent of the previous legal regulated rent less an amount~~  
28 ~~equal to the difference between (a) the two year renewal lease guideline~~  
29 ~~promulgated by the guidelines board of the county in which the housing~~  
30 ~~accommodation is located applied to the previous legal regulated rent~~  
31 ~~and (b) the one year renewal lease guideline promulgated by the guide-~~  
32 ~~lines board of the county in which the housing accommodation is located~~  
33 ~~applied to the previous legal regulated rent. However, where the amount~~  
34 ~~charged and paid by the prior tenant pursuant to paragraph fourteen of~~  
35 ~~this subdivision, was less than the legal regulated rent, such increase~~  
36 ~~to the legal regulated rent shall not exceed: five percent of the~~  
37 ~~previous legal regulated rent if the last vacancy lease commenced less~~  
38 ~~than two years ago; ten percent of the previous legal regulated rent if~~  
39 ~~the last vacancy commenced less than three years ago; fifteen percent of~~  
40 ~~the previous legal regulated rent if the last vacancy lease commenced~~  
41 ~~less than four years ago; twenty percent of the previous legal regulated~~  
42 ~~rent if the last vacancy lease commenced four or more years ago].~~ In  
43 addition, if the legal regulated rent was not increased with respect to  
44 such housing accommodation by a permanent vacancy allowance within eight  
45 years prior to a vacancy lease executed on or after the effective date  
46 of this subdivision, the legal regulated rent may be further increased  
47 by an amount equal to the product resulting from multiplying such previ-  
48 ous legal regulated rent by six-tenths of one percent and further multi-  
49 plying the amount of rent increase resulting therefrom by the greater of  
50 (A) the number of years since the imposition of the last permanent  
51 vacancy allowance, or (B) if the rent was not increased by a permanent  
52 vacancy allowance since the housing accommodation became subject to this  
53 act, the number of years that such housing accommodation has been  
54 subject to this act. Provided that if the previous legal regulated rent  
55 was less than three hundred dollars the total increase shall be as  
56 calculated above plus one hundred dollars per month. Provided, further,

1 that if the previous legal regulated rent was at least three hundred  
2 dollars and no more than five hundred dollars in no event shall the  
3 total increase pursuant to this subdivision be less than one hundred  
4 dollars per month. Such increase shall be in lieu of any allowance  
5 authorized for the one or two year renewal component thereof, but shall  
6 be in addition to any other increases authorized pursuant to this act  
7 including an adjustment based upon a major capital improvement, or a  
8 substantial modification or increase of dwelling space or services, or  
9 installation of new equipment or improvements or new furniture or  
10 furnishings provided in or to the housing accommodation pursuant to  
11 section six of this act. The increase authorized in this subdivision  
12 may not be implemented more than one time in any calendar year, notwith-  
13 standing the number of vacancy leases entered into in such year.

14 § 2. Paragraphs 4, 5-a and 12 of subdivision c of section 26-511 of  
15 the administrative code of the city of New York, paragraph 5-a as  
16 amended by section 16-a of part A of chapter 20 of the laws of 2015, are  
17 amended to read as follows:

18 (4) includes provisions requiring owners to grant a one or two year  
19 vacancy or renewal lease at the option of the tenant; provided, however,  
20 that for vacancy and renewal leases which take effect on or after Janu-  
21 ary first, two thousand eighteen, such code shall require owners to  
22 grant a new one year vacancy or renewal lease, except where a mortgage  
23 or mortgage commitment existing as of April first, nineteen hundred  
24 sixty-nine, provides that the mortgagor shall not grant a one year  
25 lease;

26 (5-a) provides that, notwithstanding any provision of this chapter,  
27 the legal regulated rent for any vacancy lease entered into after the  
28 effective date of this paragraph shall be as hereinafter provided in  
29 this paragraph. The previous legal regulated rent for such housing  
30 accommodation shall be increased by ~~[the following: (i) if the vacancy~~  
31 ~~lease is for a term of two years,~~ twenty percent of the previous legal  
32 regulated rent ~~[, or (ii) if the vacancy lease is for a term of one year~~  
33 ~~the increase shall be twenty percent of the previous legal regulated~~  
34 ~~rent less an amount equal to the difference between (a) the two year~~  
35 ~~renewal lease guideline promulgated by the guidelines board of the city~~  
36 ~~of New York applied to the previous legal regulated rent and (b) the one~~  
37 ~~year renewal lease guideline promulgated by the guidelines board of the~~  
38 ~~city of New York applied to the previous legal regulated rent. However,~~  
39 ~~where the amount charged and paid by the prior tenant pursuant to para-~~  
40 ~~graph fourteen of this subdivision, was less than the legal regulated~~  
41 ~~rent, such increase to the legal regulated rent shall not exceed: five~~  
42 ~~percent of the previous legal regulated rent if the last vacancy lease~~  
43 ~~commenced less than two years ago; ten percent of the previous legal~~  
44 ~~regulated rent if the last vacancy lease commenced less than three years~~  
45 ~~ago; fifteen percent of the previous legal regulated rent if the last~~  
46 ~~vacancy lease commenced less than four years ago; twenty percent of the~~  
47 ~~previous legal regulated rent if the last vacancy lease commenced four~~  
48 ~~or more years ago].~~ In addition, if the legal regulated rent was not  
49 increased with respect to such housing accommodation by a permanent  
50 vacancy allowance within eight years prior to a vacancy lease executed  
51 on or after the effective date of this paragraph, the legal regulated  
52 rent may be further increased by an amount equal to the product result-  
53 ing from multiplying such previous legal regulated rent by six-tenths of  
54 one percent and further multiplying the amount of rent increase result-  
55 ing therefrom by the greater of (A) the number of years since the im-  
56 position of the last permanent vacancy allowance, or (B) if the rent was

1 not increased by a permanent vacancy allowance since the housing accom-  
2 modation became subject to this chapter, the number of years that such  
3 housing accommodation has been subject to this chapter. Provided that if  
4 the previous legal regulated rent was less than three hundred dollars  
5 the total increase shall be as calculated above plus one hundred dollars  
6 per month. Provided, further, that if the previous legal regulated rent  
7 was at least three hundred dollars and no more than five hundred dollars  
8 in no event shall the total increase pursuant to this paragraph be less  
9 than one hundred dollars per month. Such increase shall be in lieu of  
10 any allowance authorized for the one or two year renewal component ther-  
11 eof, but shall be in addition to any other increases authorized pursuant  
12 to this chapter including an adjustment based upon a major capital  
13 improvement, or a substantial modification or increase of dwelling space  
14 or services, or installation of new equipment or improvements or new  
15 furniture or furnishings provided in or to the housing accommodation  
16 pursuant to this section. The increase authorized in this paragraph may  
17 not be implemented more than one time in any calendar year, notwith-  
18 standing the number of vacancy leases entered into in such year.

19 (12) permits subletting of units subject to this law pursuant to  
20 section two hundred twenty-six-b of the real property law provided that  
21 (a) the rental charged to the subtenant does not exceed the stabilized  
22 rent plus a ten percent surcharge payable to the tenant if the unit  
23 sublet was furnished with the tenant's furniture; (b) the tenant can  
24 establish that at all times he or she has maintained the unit as his or  
25 her primary residence and intends to occupy it as such at the expiration  
26 of the sublease; (c) an owner may terminate the tenancy of a tenant who  
27 sublets or assigns contrary to the terms of this paragraph but no action  
28 or proceeding based on the non-primary residence of a tenant may be  
29 commenced prior to the expiration date of his or her lease; (d) where an  
30 apartment is sublet the prime tenant shall retain the right to a renewal  
31 lease and the rights and status of a tenant in occupancy as they relate  
32 to conversion to condominium or cooperative ownership; (e) where a  
33 tenant violates the provisions of subparagraph (a) of this paragraph the  
34 subtenant shall be entitled to damages of three times the overcharge and  
35 may also be awarded attorneys fees and interest from the date of the  
36 overcharge at the rate of interest payable on a judgment pursuant to  
37 section five thousand four of the civil practice law and rules; (f) the  
38 tenant may not sublet the unit for more than a total of two years,  
39 including the term of the proposed sublease, out of the four-year period  
40 preceding the termination date of the proposed sublease; provided,  
41 however, that for subleases commencing on or after January first, two  
42 thousand eighteen, a tenant may not sublet the unit for more than one  
43 year. The provisions of this subparagraph shall only apply to subleases  
44 commencing on and after July first, nineteen hundred eighty-three; (g)  
45 for the purposes of this paragraph only, the term of the proposed  
46 sublease may extend beyond the term of the tenant's lease. In such  
47 event, such sublease shall be subject to the tenant's right to a renewal  
48 lease. The subtenant shall have no right to a renewal lease. It shall be  
49 unreasonable for an owner to refuse to consent to a sublease solely  
50 because such sublease extends beyond the tenant's lease; and (h)  
51 notwithstanding the provisions of section two hundred twenty-six-b of  
52 the real property law, a not-for-profit hospital shall have the right to  
53 sublet any housing accommodation leased by it to its affiliated person-  
54 nel without requiring the landlord's consent to any such sublease and  
55 without being bound by the provisions of subparagraphs (b), (c) and (f)  
56 of this paragraph. Commencing with the effective date of this subpara-

1 graph, whenever a not-for-profit hospital executes a renewal lease for a  
2 housing accommodation, the legal regulated rent shall be increased by a  
3 sum equal to fifteen percent of the previous lease rental for such hous-  
4 ing accommodation, hereinafter referred to as a vacancy surcharge,  
5 unless the landlord shall have received within the seven year period  
6 prior to the commencement date of such renewal lease any vacancy  
7 increases or vacancy surcharges allocable to the said housing accommo-  
8 dation. In the event the landlord shall have received any such vacancy  
9 increases or vacancy surcharges during such seven year period, the  
10 vacancy surcharge shall be reduced by the amount received by any such  
11 vacancy increase or vacancy surcharges.

12 § 3. This act shall take effect immediately; provided that:

13 (a) the amendments to section 10 of the emergency tenant protection  
14 act of nineteen seventy-four made by section one of this act shall  
15 expire on the same date as such act expires and shall not affect the  
16 expiration of such act as provided in section 17 of chapter 576 of the  
17 laws of 1974; and

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