

STATE OF NEW YORK

105

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. L. ROSENTHAL -- 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 emer-
gency housing rent control law, in relation to limiting adjustments
for major capital improvements where the improvement generates revenue
for the landlord

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

Section 1. Section 26-405 of the administrative code of the city of
New York is amended by adding a new subdivision n to read as follows:

n. Notwithstanding anything to the contrary contained herein, a rent
increase shall be prohibited for a landlord applying for a rent increase
for major capital improvements where the improvement generates revenue
for the landlord.

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

(6) provides criteria whereby the commissioner may act upon applica-
tions by owners for increases in excess of the level of fair rent
increase established under this law provided, however, that such crite-
ria 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 manage-
ment 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 nine-
teen hundred sixty-eight through nineteen hundred seventy, or for the
first three years of operation if the building was completed since nine-

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

LBD01847-01-9

1 teen hundred sixty-eight or for the first three fiscal years after a
2 transfer of title to a new owner provided the new owner can establish to
3 the satisfaction of the commissioner that he or she acquired title to
4 the building as a result of a bona fide sale of the entire building and
5 that the new owner is unable to obtain requisite records for the fiscal
6 years nineteen hundred sixty-eight through nineteen hundred seventy
7 despite diligent efforts to obtain same from predecessors in title and
8 further provided that the new owner can provide financial data covering
9 a minimum of six years under his or her continuous and uninterrupted
10 operation of the building to meet the three year to three year compar-
11 ative test periods herein provided; and (b) as to completed building-
12 wide major capital improvements, for a finding that such improvements
13 are deemed depreciable under the Internal Revenue Code and that the cost
14 is to be amortized over [~~an eight-year~~] a seven-year period [~~for a~~
15 ~~building with thirty-five or fewer housing accommodations, or a nine-~~
16 ~~year period for a building with more than thirty-five housing accommo-~~
17 ~~dations, for any determination issued by the division of housing and~~
18 ~~community renewal after the effective date of the rent act of 2015~~],
19 based upon cash purchase price exclusive of interest or service charges.
20 Notwithstanding anything to the contrary contained herein, a rent
21 increase shall be prohibited for a landlord applying for a rent increase
22 for major capital improvements where the improvement generates revenue
23 for the landlord. Notwithstanding anything to the contrary contained
24 herein, no hardship increase granted pursuant to this paragraph shall,
25 when added to the annual gross rents, as determined by the commissioner,
26 exceed the sum of, (i) the annual operating expenses, (ii) an allowance
27 for management services as determined by the commissioner, (iii) actual
28 annual mortgage debt service (interest and amortization) on its indebt-
29 edness to a lending institution, an insurance company, a retirement fund
30 or welfare fund which is operated under the supervision of the banking
31 or insurance laws of the state of New York or the United States, and
32 (iv) eight and one-half percent of that portion of the fair market value
33 of the property which exceeds the unpaid principal amount of the mort-
34 gage indebtedness referred to in subparagraph (iii) of this paragraph.
35 Fair market value for the purposes of this paragraph shall be six times
36 the annual gross rent. The collection of any increase in the stabilized
37 rent for any apartment pursuant to this paragraph shall not exceed six
38 percent in any year from the effective date of the order granting the
39 increase over the rent set forth in the schedule of gross rents, with
40 collectability of any dollar excess above said sum to be spread forward
41 in similar increments and added to the stabilized rent as established or
42 set in future years;

43 § 3. Section 6 of section 4 of chapter 576 of the laws of 1974,
44 constituting the emergency tenant protection act of nineteen seventy-
45 four, is amended by adding a new subdivision h to read as follows:

46 h. Notwithstanding anything to the contrary contained herein, a rent
47 increase shall be prohibited for a landlord applying for a rent increase
48 for major capital improvements where the improvement generates revenue
49 for the landlord.

50 § 4. The second undesignated paragraph of paragraph (a) of subdivision
51 4 of section 4 of chapter 274 of the laws of 1946, constituting the
52 emergency housing rent control law, as amended by section 25 of part B
53 of chapter 97 of the laws of 2011 and subparagraph 7 as amended by
54 section 32 of part A of chapter 20 of the laws of 2015, is amended to
55 read as follows:

1 No application for adjustment of maximum rent based upon a sales price
2 valuation shall be filed by the landlord under this subparagraph prior
3 to six months from the date of such sale of the property. In addition,
4 no adjustment ordered by the commission based upon such sales price
5 valuation shall be effective prior to one year from the date of such
6 sale. Where, however, the assessed valuation of the land exceeds four
7 times the assessed valuation of the buildings thereon, the commission
8 may determine a valuation of the property equal to five times the equal-
9 ized assessed valuation of the buildings, for the purposes of this
10 subparagraph. The commission may make a determination that the valu-
11 ation of the property is an amount different from such equalized
12 assessed valuation where there is a request for a reduction in such
13 assessed valuation currently pending; or where there has been a
14 reduction in the assessed valuation for the year next preceding the
15 effective date of the current assessed valuation in effect at the time
16 of the filing of the application. Net annual return shall be the amount
17 by which the earned income exceeds the operating expenses of the proper-
18 ty, excluding mortgage interest and amortization, and excluding allow-
19 ances for obsolescence and reserves, but including an allowance for
20 depreciation of two per centum of the value of the buildings exclusive
21 of the land, or the amount shown for depreciation of the buildings in
22 the latest required federal income tax return, whichever is lower;
23 provided, however, that (1) no allowance for depreciation of the build-
24 ings shall be included where the buildings have been fully depreciated
25 for federal income tax purposes or on the books of the owner; or (2) the
26 landlord who owns no more than four rental units within the state has
27 not been fully compensated by increases in rental income sufficient to
28 offset unavoidable increases in property taxes, fuel, utilities, insur-
29 ance and repairs and maintenance, excluding mortgage interest and amor-
30 tization, and excluding allowances for depreciation, obsolescence and
31 reserves, which have occurred since the federal date determining the
32 maximum rent or the date the property was acquired by the present owner,
33 whichever is later; or (3) the landlord operates a hotel or rooming
34 house or owns a cooperative apartment and has not been fully compensated
35 by increases in rental income from the controlled housing accommodations
36 sufficient to offset unavoidable increases in property taxes and other
37 costs as are allocable to such controlled housing accommodations,
38 including costs of operation of such hotel or rooming house, but exclud-
39 ing mortgage interest and amortization, and excluding allowances for
40 depreciation, obsolescence and reserves, which have occurred since the
41 federal date determining the maximum rent or the date the landlord
42 commenced the operation of the property, whichever is later; or (4) the
43 landlord and tenant voluntarily enter into a valid written lease in good
44 faith with respect to any housing accommodation, which lease provides
45 for an increase in the maximum rent not in excess of fifteen per centum
46 and for a term of not less than two years, except that where such lease
47 provides for an increase in excess of fifteen per centum, the increase
48 shall be automatically reduced to fifteen per centum; or (5) the land-
49 lord and tenant by mutual voluntary written agreement agree to a
50 substantial increase or decrease in dwelling space or a change in the
51 services, furniture, furnishings or equipment provided in the housing
52 accommodations; provided that an owner shall be entitled to a rent
53 increase where there has been a substantial modification or increase of
54 dwelling space or an increase in the services, or installation of new
55 equipment or improvements or new furniture or furnishings provided in or
56 to a tenant's housing accommodation. The permanent increase in the maxi-

1 mum rent for the affected housing accommodation shall be one-fortieth,
2 in the case of a building with thirty-five or fewer housing accommo-
3 dations, or one-sixtieth, in the case of a building with more than thir-
4 ty-five housing accommodations where such permanent increase takes
5 effect on or after September twenty-fourth, two thousand eleven, of the
6 total cost incurred by the landlord in providing such modification or
7 increase in dwelling space, services, furniture, furnishings or equip-
8 ment, including the cost of installation, but excluding finance charges
9 provided further that an owner who is entitled to a rent increase pursu-
10 ant to this clause shall not be entitled to a further rent increase
11 based upon the installation of similar equipment, or new furniture or
12 furnishings within the useful life of such new equipment, or new furni-
13 ture or furnishings. The owner shall give written notice to the commis-
14 sion of any such adjustment pursuant to this clause; or (6) there has
15 been, since March first, nineteen hundred fifty, an increase in the
16 rental value of the housing accommodations as a result of a substantial
17 rehabilitation of the building or housing accommodation therein which
18 materially adds to the value of the property or appreciably prolongs its
19 life, excluding ordinary repairs, maintenance and replacements; or (7)
20 there has been since March first, nineteen hundred fifty, a major capi-
21 tal improvement required for the operation, preservation or maintenance
22 of the structure; ~~which for any order of the commissioner issued after~~
23 ~~the effective date of the rent act of 2015 the cost of such improvement~~
24 ~~shall be amortized over an eight-year period for buildings with thirty-~~
25 ~~five or fewer units or a nine year period for buildings with more than~~
26 ~~thirty-five units,] or (8) there has been since March first, nineteen~~
27 hundred fifty, in structures containing more than four housing accommo-
28 dations, other improvements made with the express consent of the tenants
29 in occupancy of at least seventy-five per centum of the housing accom-
30 modations, provided, however, that no adjustment granted hereunder shall
31 exceed fifteen per centum unless the tenants have agreed to a higher
32 percentage of increase, as herein provided; or (9) there has been,
33 since March first, nineteen hundred fifty, a subletting without written
34 consent from the landlord or an increase in the number of adult occu-
35 pants who are not members of the immediate family of the tenant, and the
36 landlord has not been compensated therefor by adjustment of the maximum
37 rent by lease or order of the commission or pursuant to the federal act;
38 or (10) the presence of unique or peculiar circumstances materially
39 affecting the maximum rent has resulted in a maximum rent which is
40 substantially lower than the rents generally prevailing in the same area
41 for substantially similar housing accommodations. Notwithstanding
42 anything to the contrary contained herein, adjustments shall be prohib-
43 ited for a landlord applying for a rent increase for major capital
44 improvements where the improvement generates revenue for the landlord.

45 § 5. This act shall take effect on the sixtieth day after it shall
46 have become a law; provided that:

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

53 (b) the amendments to section 26-511 of chapter 4 of title 26 of the
54 administrative code of the city of New York made by section two of this
55 act shall expire on the same date as such law expires and shall not

1 affect the expiration of such law as provided under section 26-520 of
2 such law;
3 (c) the amendment to section 6 of the emergency tenant protection act
4 of nineteen seventy-four made by section three of this act shall expire
5 on the same date as such act expires and shall not affect the expiration
6 of such act as provided in section 17 of chapter 576 of the laws of
7 1974, as from time to time amended; and
8 (d) the amendment to section 4 of the emergency housing rent control
9 law made by section four of this act shall expire on the same date as
10 such law expires and shall not affect the expiration of such law as
11 provided in subdivision 2 of section 1 of chapter 274 of the laws of
12 1946.