

STATE OF NEW YORK

2356

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

Introduced by M. of A. O'DONNELL, MOSLEY, SEAWRIGHT -- 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 approving major capital improvement rent increases and 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
18 for the operation or preservation of the structure. However, no major
19 capital improvement rent increase will be approved by the division of
20 housing and community renewal unless the work performed is an enhance-
21 ment or upgrade to a housing accommodation or service therein; or is an
22 addition to such housing accommodation and otherwise eligible according

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

LBD03017-01-9

1 to the prerequisites for major capital improvement rent increases. Any
2 repair or replacement intended to maintain an existing service shall not
3 be eligible for a major capital improvement rent increase. No applica-
4 tion for a major capital improvement rent increase may be approved if
5 there exist any outstanding hazardous violations at the time of the
6 consideration of such application, as determined pursuant to regulations
7 of the division of housing and community renewal or any agency adminis-
8 tering and enforcing a building code in the jurisdiction in which the
9 property is located, unless it is determined by the division of housing
10 and community renewal that such work is essential to the alleviation of
11 the violations and such approval is consistent with the provisions of
12 this section. Except in the case of emergency or good cause, the owner
13 of the property shall file, not less than thirty days before the
14 commencement of the improvement, with the division of housing and commu-
15 nity renewal a statement containing information outlining the scope of
16 work, expected date of completion for such work and an affidavit setting
17 forth the following information: (a) every owner of record and owner of
18 a substantial interest in the property or entity owning the property or
19 sponsoring the improvement; and (b) a statement that none of such
20 persons had, within the five years prior to the improvement, been found
21 to have harassed or unlawfully evicted tenants by judgment or determi-
22 nation of a court or agency under the penal law, any state or local law
23 regulating rents or any state or local law relating to harassment of
24 tenants or unlawful eviction. Upon receipt of the scope of work and
25 affidavit provided for herein, the division of housing and community
26 renewal shall provide the tenants in occupancy in such buildings with
27 such information. The division of housing and community renewal shall,
28 in addition, implement procedures including, but not limited to, elicit-
29 ing tenant comments to determine whether major capital improvement reha-
30 bilitation work has been satisfactorily completed. No major capital
31 improvement rent increase shall become effective until any defective or
32 deficient rehabilitation work has been cured. The increase permitted for
33 such capital improvement shall be collected as a monthly surcharge to
34 the maximum rent. It shall be separately designated and billed as such
35 and shall not be compounded by any other adjustment to the maximum rent.
36 The surcharge allocable to each apartment shall be an amount equal to
37 the cost of the improvement divided by eighty-four, divided by the
38 number of rooms in the building, and then multiplied by the number of
39 rooms in such apartment; provided that the surcharge allocable to any
40 apartment in any one year may not exceed an amount equal to six percent
41 of the monthly rent collected by the owner for such apartment as set
42 forth in the schedule of gross rents. Any excess above said six percent
43 shall be carried forward and collected in future years as a further
44 surcharge not to exceed an additional six percent in any one year period
45 until the total surcharge equals the amount it would have been if the
46 aforementioned six percent limitation did not apply; or

47 § 2. Subparagraph (k) of paragraph 1 of subdivision g of section
48 26-405 of the administrative code of the city of New York, as amended by
49 chapter 749 of the laws of 1990, is amended to read as follows:

50 (k) The landlord has incurred, since January first, nineteen hundred
51 seventy, in connection with and in addition to a concurrent major capi-
52 tal improvement pursuant to subparagraph (g) of this paragraph, other
53 expenditures to improve, restore or preserve the quality of the struc-
54 ture. An adjustment under this subparagraph shall be granted only if
55 such improvements represent an expenditure equal to at least ten per
56 centum of the total operating and maintenance expenses for the preceding

1 year. An adjustment under this subparagraph shall be in addition to any
2 adjustment granted for the concurrent major capital improvement and
3 shall be [~~in an amount sufficient to amortize the cost of the improve-~~
4 ~~ments pursuant to this subparagraph over a seven-year period~~] imple-
5 mented in the same manner as such major capital improvement as a further
6 surcharge to the maximum rent.

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

10 (6) provides criteria whereby the commissioner may act upon applica-
11 tions by owners for increases in excess of the level of fair rent
12 increase established under this law provided, however, that such crite-
13 ria shall provide [~~(a) as~~] in regard to hardship applications, for a
14 finding that the level of fair rent increase is not sufficient to enable
15 the owner to maintain approximately the same average annual net income
16 (which shall be computed without regard to debt service, financing costs
17 or management fees) for the three year period ending on or within six
18 months of the date of an application pursuant to such criteria as
19 compared with annual net income, which prevailed on the average over the
20 period nineteen hundred sixty-eight through nineteen hundred seventy, or
21 for the first three years of operation if the building was completed
22 since nineteen hundred sixty-eight or for the first three fiscal years
23 after a transfer of title to a new owner provided the new owner can
24 establish to the satisfaction of the commissioner that he or she
25 acquired title to the building as a result of a bona fide sale of the
26 entire building and that the new owner is unable to obtain requisite
27 records for the fiscal years nineteen hundred sixty-eight through nine-
28 teen hundred seventy despite diligent efforts to obtain same from prede-
29 cessors in title and further provided that the new owner can provide
30 financial data covering a minimum of six years under his or her contin-
31 uous and uninterrupted operation of the building to meet the three year
32 to three year comparative test periods herein provided[~~; and (b) as to~~
33 ~~completed building-wide major capital improvements, for a finding that~~
34 ~~such improvements are deemed depreciable under the Internal Revenue Code~~
35 ~~and that the cost is to be amortized over an eight year period for a~~
36 ~~building with thirty five or fewer housing accommodations, or a nine-~~
37 ~~year period for a building with more than thirty five housing accommo-~~
38 ~~dations, for any determination issued by the division of housing and~~
39 ~~community renewal after the effective date of the rent act of 2015,~~
40 ~~based upon cash purchase price exclusive of interest or service charg-~~
41 ~~es~~]. Notwithstanding anything to the contrary contained herein, no

42 hardship increase granted pursuant to this paragraph shall, when added
43 to the annual gross rents, as determined by the commissioner, exceed the
44 sum of, (i) the annual operating expenses, (ii) an allowance for manage-
45 ment services as determined by the commissioner, (iii) actual annual
46 mortgage debt service (interest and amortization) on its indebtedness to
47 a lending institution, an insurance company, a retirement fund or
48 welfare fund which is operated under the supervision of the banking or
49 insurance laws of the state of New York or the United States, and (iv)
50 eight and one-half percent of that portion of the fair market value of
51 the property which exceeds the unpaid principal amount of the mortgage
52 indebtedness referred to in subparagraph (iii) of this paragraph. Fair
53 market value for the purposes of this paragraph shall be six times the
54 annual gross rent. The collection of any increase in the stabilized rent
55 for any apartment pursuant to this paragraph shall not exceed six
56 percent in any year from the effective date of the order granting the

1 increase over the rent set forth in the schedule of gross rents, with
2 collectability of any dollar excess above said sum to be spread forward
3 in similar increments and added to the stabilized rent as established or
4 set in future years;

5 § 4. Subdivision c of section 26-511 of the administrative code of the
6 city of New York is amended by adding three new paragraphs 6-b, 6-c and
7 6-d to read as follows:

8 (6-b) provides criteria whereby the commissioner may act upon applica-
9 tion by owners for increases in excess of the level of fair rent
10 increase established under this law provided, however, that such crite-
11 ria shall provide that:

12 (i) as to completed building-wide major capital improvements, first,
13 that a finding that such improvements are deemed depreciable under the
14 internal revenue code and such improvements are required for the opera-
15 tion or preservation of the structure;

16 (ii) however, no major capital improvement rent increase will be
17 approved by the division of housing and community renewal unless the
18 work performed is an enhancement or upgrade to a housing accommodation
19 or service therein; or is an addition to such housing accommodation and
20 otherwise eligible according to the prerequisites for major capital
21 improvement rent increases. Any repair or replacement intended to main-
22 tain an existing service shall not be eligible for a major capital
23 improvement rent increase;

24 (iii) no application for a major capital improvement rent increase may
25 be approved if there exist any outstanding hazardous violations at the
26 time of the consideration of such application, as determined pursuant to
27 regulations of the division of housing and community renewal or any
28 agency administering and enforcing a building code in the jurisdiction
29 in which the property is located, unless it is determined by the divi-
30 sion of housing and community renewal that such work is essential to the
31 alleviation of the violations and such approval is consistent with the
32 provisions of this section. Except in the case of emergency or good
33 cause, the owner of the property shall file, not less than thirty days
34 before the commencement of the improvement, with the division of housing
35 and community renewal a statement containing information outlining the
36 scope of work, expected date of completion for such work and an affida-
37 vit setting forth the following information:

38 (A) every owner of record and owner of a substantial interest in the
39 property or entity owning the property or sponsoring the improvement;
40 and

41 (B) a statement that none of such persons had, within the five years
42 prior to the improvement, been found to have harassed or unlawfully
43 evicted tenants by judgment or determination of a court or agency under
44 the penal law, any state or local law regulating rents or any state or
45 local law relating to harassment of tenants or unlawful eviction.

46 Upon receipt of the scope of work and affidavit provided for herein,
47 the division of housing and community renewal shall provide the tenants
48 in occupancy in such buildings with such information. The division of
49 housing and community renewal shall, in addition, implement procedures
50 including, but not limited to, eliciting tenant comments to determine
51 whether major capital improvement rehabilitation work has been satisfac-
52 torily completed. No major capital improvement rent increase shall
53 become effective until any defective or deficient rehabilitation work
54 has been cured.

55 (6-c) the increase permitted for such capital improvement shall be
56 collected as a monthly surcharge to the legal regulated rent. It shall

1 be separately designated and billed as such and shall not be compounded
2 by any annual adjustment of the level of fair rent provided for under
3 subdivision b of section 26-510 of this law. The surcharge allocable to
4 each apartment shall be an amount equal to the cost of the improvement
5 divided by eighty-four divided by the number of rooms in the building,
6 and then multiplied by the number of rooms in such apartment; provided
7 that the surcharge allocable to any apartment, in any one year may not
8 exceed an amount equal to six percent of the monthly rent collected by
9 the owner for such apartment as set forth in the schedule of gross
10 rents. Any excess above said six percent shall be carried forward and
11 collected in future years as a further surcharge not to exceed an addi-
12 tional six percent in any one year period until the total surcharge
13 equals the amount it would have been if the aforementioned six percent
14 limitation did not apply.

15 (6-d) collection of surcharges in excess of the level of fair rent
16 authorized pursuant to paragraph six-b and six-c of this subdivision
17 shall cease when the owner has recovered the cost of the major capital
18 improvement.

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

23 (3) (i) collection of surcharges in addition to the legal regulated
24 rent authorized pursuant to subparagraph (ii) of this paragraph shall
25 cease when the owner has recovered the cost of the major capital
26 improvement;

27 (ii) there has been since January first, nineteen hundred seventy-four
28 a major capital improvement [~~required for the operation, preservation or~~
29 ~~maintenance of the structure. An adjustment under this paragraph shall~~
30 ~~be in an amount sufficient to amortize the cost of the improvements~~
31 ~~pursuant to this paragraph over an eight year period for a building with~~
32 ~~thirty five or fewer housing accommodations, or a nine year period for a~~
33 ~~building with more than thirty-five housing accommodations, for any~~
34 ~~determination issued by the division of housing and community renewal~~
35 ~~after the effective date of the rent act of 2015,]; provided that the~~
36 commissioner first finds that such improvements are deemed depreciable
37 under the internal revenue code and such improvements are required for
38 the operation or preservation of the structure. However, no major capi-
39 tal improvement rent increase will be approved by the division of hous-
40 ing and community renewal unless the work performed is an enhancement or
41 upgrade to a housing accommodation or service therein; or is an addition
42 to such housing accommodation and otherwise eligible according to the
43 prerequisites for major capital improvement rent increases. Any repair
44 or replacement intended to maintain an existing service shall not be
45 eligible for a major capital improvement rent increase. No application
46 for a major capital improvement rent increase may be approved if there
47 exist any outstanding hazardous violations at the time of the consider-
48 ation of such application, as determined pursuant to regulations of the
49 division of housing and community renewal or any agency administering
50 and enforcing a building code in the jurisdiction in which the property
51 is located, unless it is determined by the division of housing and
52 community renewal that such work is essential to the alleviation of the
53 violations and such approval is consistent with the provisions of this
54 section. Except in the case of emergency or good cause, the owner of the
55 property shall file, not less than thirty days before the commencement
56 of the improvement, with the division of housing and community renewal a

1 statement containing information outlining the scope of work, expected
2 date of completion for such work and an affidavit setting forth the
3 following information: (a) every owner of record and owner of a substan-
4 tial interest in the property or entity owning the property or sponsor-
5 ing the improvement; and (b) a statement that none of such persons had,
6 within the five years prior to the improvement, been found to have
7 harassed or unlawfully evicted tenants by judgment or determination of a
8 court or agency under the penal law, any state or local law regulating
9 rents or any state or local law relating to harassment of tenants or
10 unlawful eviction. Upon receipt of the scope of work and affidavit
11 provided for herein, the division of housing and community renewal shall
12 provide the tenants in occupancy in such buildings with such informa-
13 tion. The division of housing and community renewal shall, in addition,
14 implement procedures including, but not limited to, eliciting tenant
15 comments to determine whether major capital improvement rehabilitation
16 work has been satisfactorily completed. No major capital improvement
17 rent increase shall become effective until any defective or deficient
18 rehabilitation work has been cured. The increase permitted for such
19 capital improvement shall be collected as a monthly surcharge to the
20 legal regulated rent. It shall be separately designated and billed as
21 such and shall not be compounded by any annual rent adjustment author-
22 ized by the rent guidelines board under this act. The surcharge allocable
23 to each apartment shall be an amount equal to the cost of the
24 improvement divided by eighty-four, divided by the number of rooms in
25 the building, and then multiplied by the number of rooms in such apart-
26 ment; provided that the surcharge allocable to any apartment in any one
27 year may not exceed an amount equal to six percent of the monthly rent
28 collected by the owner for such apartment as set forth in the schedule
29 of gross rents. Any excess above said six percent shall be carried
30 forward and collected in future years as a further surcharge not to
31 exceed an additional six percent in any one year period until the total
32 surcharge equals the amount it would have been if the aforementioned six
33 percent limitation did not apply, or

34 § 6. The second undesignated paragraph of paragraph (a) of subdivision
35 4 of section 4 of chapter 274 of the laws of 1946, constituting the
36 emergency housing rent control law, as amended by section 25 of part B
37 of chapter 97 of the laws of 2011, subparagraph 7 as amended by section
38 32 of part A of chapter 20 of the laws of 2015, is amended to read as
39 follows:

40 No application for adjustment of maximum rent based upon a sales price
41 valuation shall be filed by the landlord under this subparagraph prior
42 to six months from the date of such sale of the property. In addition,
43 no adjustment ordered by the commission based upon such sales price
44 valuation shall be effective prior to one year from the date of such
45 sale. Where, however, the assessed valuation of the land exceeds four
46 times the assessed valuation of the buildings thereon, the commission
47 may determine a valuation of the property equal to five times the equal-
48 ized assessed valuation of the buildings, for the purposes of this
49 subparagraph. The commission may make a determination that the valuation
50 of the property is an amount different from such equalized assessed
51 valuation where there is a request for a reduction in such assessed
52 valuation currently pending; or where there has been a reduction in the
53 assessed valuation for the year next preceding the effective date of the
54 current assessed valuation in effect at the time of the filing of the
55 application. Net annual return shall be the amount by which the earned
56 income exceeds the operating expenses of the property, excluding mort-

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

1 of the property or appreciably prolongs its life, excluding ordinary
2 repairs, maintenance and replacements; or (7) (i) collection of
3 surcharges to the maximum rent authorized pursuant to item (ii) of this
4 clause shall cease when the owner has recovered the cost of the major
5 capital improvement; (ii) there has been since March first, nineteen
6 hundred fifty, a major capital improvement ~~[required for the operation,~~
7 ~~preservation or maintenance of the structure; which for any order of the~~
8 ~~commissioner issued after the effective date of the rent act of 2015 the~~
9 ~~cost of such improvement shall be amortized over an eight-year period~~
10 ~~for buildings with thirty five or fewer units or a nine year period for~~
11 ~~buildings with more than thirty five units, or];~~ provided that the
12 commissioner first finds that such improvements are deemed depreciable
13 under the internal revenue code and such improvements are required for
14 the operation or preservation of the structure. However, no major capi-
15 tal improvement rent increase will be approved by the division of hous-
16 ing and community renewal unless the work performed is an enhancement or
17 upgrade to a housing accommodation or service therein; or is an addition
18 to such housing accommodation and otherwise eligible according to the
19 prerequisites for major capital improvement rent increases. Any repair
20 or replacement intended to maintain an existing service shall not be
21 eligible for a major capital improvement rent increase. No application
22 for a major capital improvement rent increase may be approved if there
23 exist any outstanding hazardous violations at the time of the consider-
24 ation of such application, as determined pursuant to regulations of the
25 division of housing and community renewal or any agency administering
26 and enforcing a building code in the jurisdiction in which the property
27 is located, unless it is determined by the division of housing and
28 community renewal that such work is essential to the alleviation of the
29 violations and such approval is consistent with the provisions of this
30 section. Except in the case of emergency or good cause, the owner of the
31 property shall file, not less than thirty days before the commencement
32 of the improvement, with the division of housing and community renewal a
33 statement containing information outlining the scope of work, expected
34 date of completion for such work and an affidavit setting forth the
35 following information: (a) every owner of record and owner of a substan-
36 tial interest in the property or entity owning the property or sponsor-
37 ing the improvement; and (b) a statement that none of such persons had,
38 within the five years prior to the improvement, been found to have
39 harassed or unlawfully evicted tenants by judgment or determination of a
40 court or agency under the penal law, any state or local law regulating
41 rents or any state or local law relating to harassment of tenants or
42 unlawful eviction. Upon receipt of the scope of work and affidavit
43 provided for herein, the division of housing and community renewal shall
44 provide the tenants in occupancy in such buildings with such informa-
45 tion. The division of housing and community renewal shall, in addition,
46 implement procedures including, but not limited to, eliciting tenant
47 comments to determine whether major capital improvement rehabilitation
48 work has been satisfactorily completed. No major capital improvement
49 rent increase shall become effective until any defective or deficient
50 rehabilitation work has been cured. The increase permitted for such
51 capital improvement shall be collected as a monthly surcharge to the
52 maximum rent. It shall be separately designated and billed as such and
53 shall not be compounded by any other adjustment to the maximum rent. The
54 surcharge allocable to each apartment shall be an amount equal to the
55 cost of the improvement divided by eighty-four, divided by the number of
56 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; or (8) there has been since

March first, nineteen hundred fifty, in structures containing more than four housing accommodations, other improvements made with the express consent of the tenants in occupancy of at least seventy-five per centum of the housing accommodations, provided, however, that no adjustment granted hereunder shall exceed fifteen per centum unless the tenants have agreed to a higher percentage of increase, as herein provided; or (9) there has been, since March first, nineteen hundred fifty, a subletting without written consent from the landlord or an increase in the number of adult occupants who are not members of the immediate family of the tenant, and the landlord has not been compensated therefor by adjustment of the maximum rent by lease or order of the commission or pursuant to the federal act; or (10) the presence of unique or peculiar circumstances materially affecting the maximum rent has resulted in a maximum rent which is substantially lower than the rents generally prevailing in the same area for substantially similar housing accommodations.

§ 7. Paragraph 5 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 chapter 102 of the laws of 1984, is amended and a new paragraph 6 is added to read as follows:

(5) as an alternative to the hardship application provided under paragraph four of this subdivision, owners of buildings acquired by the same owner or a related entity owned by the same principals three years prior to the date of application may apply to the division for increases in excess of the level of applicable guideline increases established under this law based on a finding by the commissioner that such guideline increases are not sufficient to enable the owner to maintain an annual gross rent income for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such gross rent. For the purposes of this paragraph, operating expenses shall consist of the actual, reasonable, costs of fuel, labor, utilities, taxes, other than income or corporate franchise taxes, fees, permits, necessary contracted services and non-capital repairs, insurance, parts and supplies, management fees and other administrative costs and mortgage interest. For the purposes of this paragraph, mortgage interest shall be deemed to mean interest on a bona fide mortgage including an allocable portion of charges related thereto. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include[+]: condition of the property, location of the property, the existing mortgage market at the time the mortgage is placed, the term of the mortgage, the amortization rate, the principal amount of the mortgage, security and other terms and conditions of the mortgage. The commissioner shall set a rental value for any unit occupied by the owner or a person related to the owner or unoccupied at the owner's choice for more than one month at the last regulated rent plus the minimum number of guidelines increases or, if no such regulated rent existed or is known, the commissioner shall impute a rent consistent with other rents in the building. The amount of hardship increase shall

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

30 or

31 (6) notwithstanding paragraph three of this subdivision there shall be
32 no adjustment for any major capital improvement funded in any part from
33 moneys provided by the New York state energy research and development
34 authority.

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

38 (p) Notwithstanding subparagraph (g) or (k) of this paragraph, there
39 shall be no adjustment for any major capital improvement or for any
40 other expenditures to improve, restore or preserve the quality of a
41 structure if such major capital improvement or such other expenditure is
42 funded in any part from moneys provided by the New York state energy
43 research and development authority.

44 § 9. This act shall take effect immediately; provided that the amend-
45 ments to section 26-405 of the city rent and rehabilitation law made by
46 sections one, two and eight of this act shall remain in full force and
47 effect only so long as the public emergency requiring the regulation and
48 control of residential rents and evictions continues, as provided in
49 subdivision 3 of section 1 of the local emergency housing rent control
50 act; provided that the amendments to section 26-511 of the rent stabili-
51 zation law of nineteen hundred sixty-nine made by sections three and
52 four of this act shall expire on the same date as such law expires and
53 shall not affect the expiration of such law as provided under section
54 26-520 of such law, as from time to time amended; provided that the
55 amendments to section 6 of the emergency tenant protection act of nine-
56 teen seventy-four made by sections five and seven of this act shall

1 expire on the same date as such act expires and shall not affect the
2 expiration of such act as provided in section 17 of chapter 576 of the
3 laws of 1974, as from time to time amended; and provided that the amend-
4 ments to section 4 of the emergency housing rent control law made by
5 section six of this act shall expire on the same date as such law
6 expires and shall not affect the expiration of such law as provided in
7 subdivision 2 of section 1 of chapter 274 of the laws of 1946.