

# STATE OF NEW YORK

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280

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

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Introduced by Sen. BENJAMIN -- 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, the emergency tenant protection act of nineteen seventy-four, the emergency housing rent control law and the civil practice law and rules, in relation to the statute of limitations on rent overcharges for regulated units; in relation to requiring owners to keep rent records for six years; and in relation to deregulated units as a result of overcharges

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

1 Section 1. Subdivisions a and g of section 26-516 of the administra-  
2 tive code of the city of New York, subdivision a as amended by chapter  
3 116 of the laws of 1997, are amended to read as follows:  
4 a. Subject to the conditions and limitations of this subdivision, any  
5 owner of housing accommodations who, upon complaint of a tenant, or of  
6 the state division of housing and community renewal, is found by the  
7 state division of housing and community renewal, after a reasonable  
8 opportunity to be heard, to have collected an overcharge above the rent  
9 authorized for a housing accommodation subject to this chapter shall be  
10 liable to the tenant for a penalty equal to three times the amount of  
11 such overcharge. [~~In no event shall such~~] Except as provided for in  
12 section 26-504.4 of this chapter, treble damage [~~penalty~~] penalties  
13 shall not be assessed against an owner based solely on said owner's  
14 failure to file a timely or proper initial or annual rent registration  
15 statement. If the owner establishes by a preponderance of the evidence  
16 that the overcharge was not willful, the state division of housing and  
17 community renewal shall establish the penalty as the amount of the over-  
18 charge plus interest. (i) Except as to complaints filed pursuant to

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

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clause (ii) of this paragraph, the legal regulated rent for purposes of determining an overcharge, shall be the rent indicated in the annual registration statement filed ~~four~~ six years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement) plus in each case any subsequent lawful increases and adjustments. Where the amount of rent set forth in the annual rent registration statement filed ~~four~~ six years prior to the most recent registration statement is not challenged within ~~four~~ six years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter. (ii) As to complaints filed within ninety days of the initial registration of a housing accommodation, the legal regulated rent shall be deemed to be the rent charged on the date ~~four~~ six years prior to the date of the initial registration of the housing accommodation (or, if the housing accommodation was subject to this chapter for less than ~~four~~ six years, the initial legal regulated rent) plus in each case, any lawful increases and adjustments. Where the rent charged on the date ~~four~~ six years prior to the date of the initial registration of the accommodation cannot be established, such rent shall be established by the division.

Where the rent charged on the date ~~four~~ six years prior to the date of initial registration of the housing accommodation cannot be established, such rent shall be established by the division provided that where a rent is established based on rentals determined under the provisions of the local emergency housing rent control act such rent must be adjusted to account for no less than the minimum increases which would be permitted if the housing accommodation were covered under the provisions of this chapter. Where the amount of rent set forth in the annual rent registration statement filed ~~four~~ six years prior to the most recent registration statement is not challenged within ~~four~~ six years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter.

(1) The order of the state division of housing and community renewal shall apportion the owner's liability between or among two or more tenants found to have been overcharged by such owner during their particular tenancy of a unit.

(2) Except as provided under clauses (i) and (ii) of this paragraph, a complaint under this subdivision shall be filed with the state division of housing and community renewal within ~~four~~ six years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than ~~four~~ six years before the complaint is filed. (i) No penalty of three times the overcharge may be based upon an overcharge having occurred more than ~~two~~ six years before the complaint is filed or upon an overcharge which occurred prior to April first, nineteen hundred eighty-four. (ii) Any complaint based upon overcharges occurring prior to the date of filing of the initial rent registration as provided in section 26-517 of this chapter shall be filed within ninety days of the mailing of notice to the tenant of such registration. This paragraph shall preclude examination of the rental history of the housing accommodation prior to the ~~four-year~~ six-year period preceding the filing of a complaint pursuant to this subdivision.

(3) Any affected tenant shall be notified of and given an opportunity to join in any complaint filed by an officer or employee of the state division of housing and community renewal.

(4) An owner found to have overcharged may be assessed the reasonable costs and attorney's fees of the proceeding and interest from the date

1 of the overcharge at the rate of interest payable on a judgment pursuant  
2 to section five thousand four of the civil practice law and rules.

3 (5) The order of the state division of housing and community renewal  
4 awarding penalties may, upon the expiration of the period in which the  
5 owner may institute a proceeding pursuant to article seventy-eight of  
6 the civil practice law and rules, be filed and enforced by a tenant in  
7 the same manner as a judgment or not in excess of twenty percent thereof  
8 per month may be offset against any rent thereafter due the owner.

9 g. Any owner who has duly registered a housing accommodation pursuant  
10 to section 26-517 of this chapter shall not be required to maintain or  
11 produce any records relating to rentals of such accommodation for more  
12 than ~~four~~ six years prior to the most recent registration or annual  
13 statement for such accommodation.

14 § 2. Subdivision b and subparagraph (g) of paragraph 1 of subdivision  
15 g of section 26-405 of the administrative code of the city of New York,  
16 subparagraph (g) of paragraph 1 of subdivision g as amended by section  
17 31 of part A of chapter 20 of the laws of 2015, are amended to read as  
18 follows:

19 b. Such agency, to effectuate the purposes of this chapter, and in  
20 accordance with the standards set forth in paragraph two of subdivision  
21 c of this section, may set aside and correct any maximum rent resulting  
22 from illegality, irregularity in vital matters ~~[ex]~~, fraud, or rent  
23 overcharges regardless of whether there was fraud or illegality, occur-  
24 ring prior to or after May first, nineteen hundred sixty-two.

25 (g) There has been since July first, nineteen hundred seventy, a major  
26 capital improvement required for the operation, preservation or mainte-  
27 nance of the structure. An adjustment under this subparagraph (g) for  
28 any order of the commissioner issued after the effective date of the  
29 rent act of 2015 shall be in an amount sufficient to amortize the cost  
30 of the improvements pursuant to this subparagraph (g) over an eight-year  
31 period for buildings with thirty-five or fewer units or a nine year  
32 period for buildings with more than ~~thirty-five~~ thirty-five units, or

33 § 3. Section 26-504.2 of the administrative code of the city of New  
34 York is amended by adding a new subdivision c to read as follows:

35 c. Notwithstanding section 26-516 of this chapter and section two  
36 hundred thirteen-a of the civil practice law and rules, the periods  
37 provided for therein for examination of the rental history of the accom-  
38 modation for the determination of an overcharge and whether the accommo-  
39 dation is subject to this law are extended by the period during which  
40 the owner is not in compliance with the requirements of subdivision b of  
41 this section.

42 § 4. The administrative code of the city of New York is amended by  
43 adding a new section 26-504.4 to read as follows:

44 § 26-504.4 Deregulation. Notwithstanding any provision of law to the  
45 contrary, where a unit is deregulated as a result of overcharges, the  
46 unit shall be returned to rent stabilization under the applicable  
47 sections of law, within six months. Where an owner fails to register  
48 such unit as rent stabilized pursuant to section 26-517 of this chapter,  
49 the state division of housing and community renewal shall impose a  
50 penalty equal to the amount of such overcharge, plus accrued interest.  
51 For each year an owner fails to register such unit pursuant to section  
52 26-517 of this chapter, penalties imposed by the state division of hous-  
53 ing and community renewal shall be at least two thousand dollars and  
54 shall not exceed ten thousand dollars.

55 § 5. Paragraph 1 of subdivision a of section 12 of section 4 of chap-  
56 ter 576 of the laws of 1974, constituting the emergency tenant

1 protection act of nineteen seventy-four, as amended by chapter 403 of  
2 the laws of 1983, the opening paragraph and clause (i) of subparagraph  
3 (b) as amended by chapter 116 of the laws of 1997, is amended to read as  
4 follows:

5 (1) Subject to the conditions and limitations of this paragraph, any  
6 owner of housing accommodations in a city having a population of less  
7 than one million or a town or village as to which an emergency has been  
8 declared pursuant to section three, who, upon complaint of a tenant or  
9 of the state division of housing and community renewal, is found by the  
10 state division of housing and community renewal, after a reasonable  
11 opportunity to be heard, to have collected an overcharge above the rent  
12 authorized for a housing accommodation subject to this act shall be  
13 liable to the tenant for a penalty equal to three times the amount of  
14 such overcharge. ~~[In no event shall such]~~ Except as provided for in

15 section five-b of this section, treble damage ~~[penalty]~~ penalties shall  
16 not be assessed against an owner based solely on said owner's failure to  
17 file a proper or timely initial or annual rent registration statement.  
18 If the owner establishes by a preponderance of the evidence that the  
19 overcharge was neither willful nor attributable to his negligence, the  
20 state division of housing and community renewal shall establish the  
21 penalty as the amount of the overcharge plus interest at the rate of  
22 interest payable on a judgment pursuant to section five thousand four of  
23 the civil practice law and rules. (i) Except as to complaints filed  
24 pursuant to clause (ii) of this paragraph, the legal regulated rent for  
25 purposes of determining an overcharge, shall be deemed to be the rent  
26 indicated in the annual registration statement filed ~~[four]~~ six years  
27 prior to the most recent registration statement, (or, if more recently  
28 filed, the initial registration statement) plus in each case any subse-  
29 quent lawful increases and adjustments. Where the amount of rent set  
30 forth in the annual rent registration statement filed ~~[four]~~ six years  
31 prior to the most recent registration statement is not challenged within  
32 ~~[four]~~ six years of its filing, neither such rent nor service of any  
33 registration shall be subject to challenge at any time thereafter. (ii)  
34 As to complaints filed within ninety days of the initial registration of  
35 a housing accommodation, the legal regulated rent for purposes of deter-  
36 mining an overcharge shall be deemed to be the rent charged on the date  
37 ~~[four]~~ six years prior to the date of the initial registration of the  
38 housing accommodation (or, if the housing accommodation was subject to  
39 this act for less than ~~[four]~~ six years, the initial legal regulated  
40 rent) plus in each case, any lawful increases and adjustments. Where the  
41 rent charged on the date ~~[four]~~ six years prior to the date of the  
42 initial registration of the accommodation cannot be established, such  
43 rent shall be established by the division. Where the amount of rent set  
44 forth in the annual rent registration statement filed ~~[four]~~ six years  
45 prior to the most recent registration statement is not challenged within  
46 ~~[four]~~ six years of its filing, neither such rent nor service of any  
47 registration shall be subject to challenge at any time thereafter.

48 (a) The order of the state division of housing and community renewal  
49 shall apportion the owner's liability between or among two or more  
50 tenants found to have been overcharged by such owner during their  
51 particular tenancy of a unit.

52 (b) (i) Except as provided under clauses (ii) and (iii) of this  
53 subparagraph, a complaint under this subdivision shall be filed with the  
54 state division of housing and community renewal within ~~[four]~~ six years  
55 of the first overcharge alleged and no determination of an overcharge  
56 and no award or calculation of an award of the amount of an overcharge

1 may be based upon an overcharge having occurred more than [~~four~~] six  
2 years before the complaint is filed. This paragraph shall preclude exam-  
3 ination of the rental history of the housing accommodation prior to the  
4 [~~four-year~~] six-year period preceding the filing of a complaint pursuant  
5 to this subdivision.

6 (ii) No penalty of three times the overcharge may be based upon an  
7 overcharge having occurred more than [~~two~~] six years before the  
8 complaint is filed or upon an overcharge which occurred prior to April  
9 first, nineteen hundred eighty-four.

10 (iii) Any complaint based upon overcharges occurring prior to the date  
11 of filing of the initial rent registration as provided in subdivision b  
12 of section twelve-a of this act shall be filed within ninety days of the  
13 mailing of notice to the tenant of such registration.

14 (c) Any affected tenant shall be notified of and given an opportunity  
15 to join in any complaint filed by an officer or employee of the state  
16 division of housing and community renewal.

17 (d) An owner found to have overcharged shall, in all cases, be  
18 assessed the reasonable costs and attorney's fees of the proceeding, and  
19 interest from the date of the overcharge at the rate of interest payable  
20 on a judgment pursuant to section five thousand four of the civil prac-  
21 tice law and rules.

22 (e) The order of the state division of housing and community renewal  
23 awarding penalties may, upon the expiration of the period in which the  
24 owner may institute a proceeding pursuant to article seventy-eight of  
25 the civil practice law and rules, be filed and enforced by a tenant in  
26 the same manner as a judgment or, in the alternative, not in excess of  
27 twenty percent thereof per month may be offset against any rent there-  
28 after due the owner.

29 (f) Unless a tenant shall have filed a complaint of overcharge with  
30 the division which complaint has not been withdrawn, nothing contained  
31 in this section shall be deemed to prevent a tenant or tenants, claiming  
32 to have been overcharged, from commencing an action or interposing a  
33 counterclaim in a court of competent jurisdiction for damages equal to  
34 the overcharge and the penalty provided for in this section, including  
35 interest from the date of the overcharge at the rate of interest payable  
36 on a judgment pursuant to section five thousand four of the civil prac-  
37 tice law and rules, plus the statutory costs and allowable disbursements  
38 in connection with the proceeding. Such action must be commenced or  
39 counterclaim interposed within [~~four~~] six years of the date of the  
40 alleged overcharge but no recovery of three times the amount of the  
41 overcharge may be awarded with respect to any overcharge which had  
42 occurred more than [~~two~~] six years before the action is commenced or  
43 counterclaim is interposed.

44 § 6. Paragraph 8 of subdivision a of section 12 of section 4 of chap-  
45 ter 576 of the laws of 1974, constituting the emergency tenant  
46 protection act of nineteen seventy-four, as amended by chapter 403 of  
47 the laws of 1983, is amended to read as follows:

48 (8) Any owner who has duly registered a housing accommodation pursuant  
49 to section twelve-a of this act shall not be required to maintain or  
50 produce any records relating to rentals of such accommodation more than  
51 [~~four~~] six years prior to the most recent registration or annual state-  
52 ment for such accommodation.

53 § 7. Subdivision c of section 12 of section 4 of chapter 576 of the  
54 laws of 1974, constituting the emergency tenant protection act of nine-  
55 teen seventy-four, as added by chapter 102 of the laws of 1984, is  
56 amended to read as follows:

1 c. The state division of housing and community renewal may, by regu-  
2 lation, provide for administrative review of all orders and determi-  
3 nations issued by it pursuant to this act. Any such regulation shall  
4 provide that if a petition for such review is not determined within  
5 ninety days after it is filed, it shall be deemed to be denied. Howev-  
6 er, the division may grant one extension not to exceed thirty days with  
7 the consent of the party filing such petition; any further extension may  
8 only be granted with the consent of all parties to the petition. No  
9 proceeding may be brought pursuant to article seventy-eight of the civil  
10 practice law and rules to [~~challenge~~] challenge any order or determi-  
11 nation which is subject to such administrative review unless such review  
12 has been sought and either (1) a determination thereon has been made or  
13 (2) the ninety-day period provided for determination of the petition for  
14 review (or any extension thereof) has expired.

15 § 8. Section 4 of chapter 576 of the laws of 1974, constituting the  
16 emergency tenant protection act of nineteen seventy-four, is amended by  
17 adding a new section 5-b to read as follows:

18 § 5-b. Deregulation. Notwithstanding any provision of law to the  
19 contrary, where a unit is deregulated as a result of overcharges, the  
20 unit shall be re-regulated pursuant to this chapter within six months.  
21 Where an owner fails to register such unit as rent stabilized pursuant  
22 to section twelve-a of this section, the state division of housing and  
23 community renewal shall impose a penalty equal to the amount of such  
24 overcharge, plus accrued interest. For each year an owner fails to  
25 register such unit pursuant to section twelve-a of this section, penal-  
26 ties imposed by the state division of housing and community renewal  
27 shall be at least two thousand dollars and shall not exceed ten thousand  
28 dollars.

29 § 9. Subdivision 3 of section 5 of chapter 274 of the laws of 1946,  
30 constituting the emergency housing rent control law, as amended by chap-  
31 ter 337 of the laws of 1961, is amended to read as follows:

32 3. The commission may from time to time to effectuate the purposes of  
33 this act adopt, promulgate, amend or rescind such rules, regulations or  
34 orders as it may deem necessary or proper for the control of evictions.  
35 It may require that an order granting a certificate of eviction be  
36 obtained from it prior to the institution of any action or proceeding  
37 for the recovery of possession of any housing accommodation subject to a  
38 maximum rent under this act upon the grounds specified in subdivision  
39 two of this section or where it finds that the requested removal or  
40 eviction is not inconsistent with the purposes of this act and would not  
41 be likely to result in the circumvention or evasion thereof; provided,  
42 however, that no such order shall be required in any action or proceed-  
43 ing brought pursuant to the provisions of subdivision one of this  
44 section.

45 The commission on its own initiative or on application of a tenant may  
46 revoke or cancel an order granting such certificate of eviction at any  
47 time prior to the execution of a warrant in a summary proceeding to  
48 recover possession of real property by a court whenever it finds that:

49 (a) the certificate of eviction was obtained by fraud or illegality;  
50 [~~or~~]

51 (b) the landlord's intentions or circumstances have so changed that  
52 the premises, possession of which is sought, will not be used for the  
53 purpose specified in the certificate[~~or~~]; or

54 (c) the certificate of eviction was obtained as a result of over-  
55 charges, regardless of whether there was fraud or illegality.

1 The commencement of a proceeding by the commission to revoke or cancel  
2 an order granting a certificate of eviction shall stay such order until  
3 the final determination of the proceeding regardless of whether the  
4 waiting period in the order has already expired. In the event the  
5 commission cancels or revokes such an order, the court having jurisdic-  
6 tion of any summary proceeding instituted in such case shall take appro-  
7 priate action to dismiss the application for removal of the tenant from  
8 the real property and to vacate and annul any final order or warrant  
9 granted or issued by the court in the matter.

10 § 10. Subdivision 5 of section 11 of chapter 274 of the laws of 1946,  
11 constituting the emergency housing rent control law, as amended by chap-  
12 ter 706 of the laws of 1966, is amended to read as follows:

13 5. If any landlord who receives rent from a tenant violates a regu-  
14 lation or order prescribing the maximum rent with respect to the housing  
15 accommodations for which such rent is received from such tenant, the  
16 tenant paying such rent may, within [~~two~~] six years from the date of the  
17 occurrence of the violation, except as hereinafter provided, bring an  
18 action against the landlord on account of the overcharge as hereinafter  
19 defined. In such action, the landlord shall be liable for reasonable  
20 attorney's fees and costs as determined by the court, plus whichever of  
21 the following sums is the greater: (a) Such amount not more than three  
22 times the amount of the overcharge, or the overcharges, upon which the  
23 action is based as the court in its discretion may determine, or (b) an  
24 amount not less than twenty-five dollars nor more than fifty dollars, as  
25 the court in its discretion may determine; provided, however, that such  
26 amount shall be the amount of the overcharge or overcharges or twenty-  
27 five dollars, whichever is greater, if the defendant proves that the  
28 violation of the regulation or order in question was neither willful nor  
29 the result of failure to take practicable precautions against the occur-  
30 rence of the violation. As used in this section, the word "overcharge"  
31 shall mean the amount by which the consideration paid by a tenant to a  
32 landlord exceeds the applicable maximum rent. If any landlord who  
33 receives rent from a tenant violates a regulation or order prescribing  
34 maximum rent with respect to the housing accommodations for which such  
35 rent is received from such tenant, and such tenant either fails to  
36 institute an action under this subdivision within thirty days from the  
37 date of the occurrence of the violation or is not entitled for any  
38 reason to bring the action, the commission may institute an action on  
39 behalf of the state within such [~~two-year~~] six-year period. If such  
40 action is instituted by the commission, the tenant affected shall there-  
41 after be barred from bringing an action for the same violation or  
42 violations. Any action under this subdivision by either the tenant or  
43 the commission, as the case may be, may be brought in any court of  
44 competent jurisdiction. Recovery, by judgment or otherwise, in an  
45 action for damages under this subdivision shall be a bar to the recovery  
46 under this subdivision of any recovery, by judgment or otherwise, in any  
47 other action against the same landlord on account of the same overcharge  
48 or overcharges prior to the institution of the action in which such  
49 recovery of damages was obtained. Where recovery by judgment or other-  
50 wise is obtained in an action instituted by the commission under this  
51 subdivision, there shall be paid over to the tenant from the moneys  
52 recovered, one-third of such recovery, exclusive of costs and disburse-  
53 ment or the amount of the overcharge or overcharges, whichever is the  
54 greater.

55 § 11. Section 213-a of the civil practice law and rules, as amended by  
56 chapter 116 of the laws of 1997, is amended to read as follows:

1 § 213-a. Actions to be commenced within [~~four~~] six years; residential  
2 rent overcharge. An action on a residential rent overcharge shall be  
3 commenced within [~~four~~] six years of the first overcharge alleged and no  
4 determination of an overcharge and no award or calculation of an award  
5 of the amount of any overcharge may be based upon an overcharge having  
6 occurred more than [~~four~~] six years before the action is commenced. This  
7 section shall preclude examination of the rental history of the housing  
8 accommodation prior to the [~~four-year~~] six-year period immediately  
9 preceding the commencement of the action.

10 § 12. This act shall take effect immediately; provided that the amend-  
11 ments to chapter 4 of title 26 of the administrative code of the city of  
12 New York made by sections one, three and four of this act shall expire  
13 on the same date as such law expires and shall not affect the expiration  
14 of such law as provided under section 26-520 of such law; provided,  
15 however, that the amendments to section 26-405 of the city rent and  
16 rehabilitation law made by section two of this act shall remain in full  
17 force and effect only as long as the public emergency requiring the  
18 regulation and control of residential rents and evictions continues, as  
19 provided in subdivision 3 of section 1 of the local emergency housing  
20 rent control act; provided, however, that the amendments to the emergen-  
21 cy tenant protection act of nineteen seventy-four made by sections five,  
22 six, seven and eight of this act shall expire on the same date as such  
23 act expires and shall not affect the expiration of such act as provided  
24 in section 17 of chapter 576 of the laws of 1974; provided, further,  
25 that the amendments to section 4 of the emergency housing rent control  
26 law made by sections nine and ten of this act shall expire on the same  
27 date as such law expires and shall not affect the expiration of such law  
28 as provided in subdivision 2 of section 1 of chapter 274 of the laws of  
29 1946.