STATE OF NEW YORK

5841

2019-2020 Regular Sessions

IN ASSEMBLY

February 20, 2019

Introduced by M. of A. GLICK, CYMBROWITZ, LENTOL, NOLAN, DAVILA -- read once and referred to the Committee on Housing

AN ACT to amend the multiple dwelling law, in relation to interim multiple dwellings; and to amend chapter 4 of the laws of 2013 amending the real property tax law and other laws relating to interim multiple dwellings in a city with a population of one million or more, in relation to making certain provisions permanent

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

Section 1. Subdivision 5 of section 281 of the multiple dwelling law, as amended by chapter 4 of the laws of 2013, is amended to read as follows:

5. **(a)** Notwithstanding the provisions of paragraphs (i), (iii) and (iv) of subdivision two of this section, but subject to paragraphs (i) and (ii) of subdivision one of this section and paragraph (ii) of subdivision two of this section, the term "interim multiple dwelling" shall include buildings, structures or portions thereof that are located in a city of more than one million persons which were occupied for residential purposes as the residence or home of any three or more families living independently from one another for a period of twelve consecutive months during the period commencing January first, two thousand eight, and ending December thirty-first, two thousand nine, provided that the unit **seeking coverage**: is not located in a [~~basement or~~] cellar and has at least one entrance that does not require passage through another residential unit to obtain access to the unit, [~~has at least one window opening onto a street or a lawful yard or court as defined in the zoning resolution for such municipality,~~] and is at least four hundred square feet in area.

(b) The term "interim multiple dwelling" as used in this subdivision shall not include (i) any building in an industrial business zone established pursuant to chapter six-D of title twenty-two of the administra-

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

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tive code of the city of New York except that a building in the Williamsburg/Greenpoint or North Brooklyn industrial business zones **(other than a building within such North Brooklyn business zone that is in a district zoned M3, as such district is described in the zoning resolution of such municipality in effect at the time the application for registration as an interim multiple dwelling or for coverage of residential units under this article is filed)** and a building located in that portion of the Long Island city industrial business zone that has frontage on either side of forty-seventh avenue or is located north of forty-seventh avenue and south of Skillman avenue or in that portion of the Long Island city industrial business zone that is located north of forty-fourth drive, south of Queens plaza north, and west of twenty-third street may be included in the term "interim multiple dwelling," or (ii) units in any building, other than a building that is already defined as an "interim multiple dwelling" pursuant to subdivision one, two, three or four of this section, that, at the time this subdivision shall take effect and continuing [~~at~~] **until** the time of the submission of an application for coverage by any party, also contains a use **in legal operation,** actively and currently pursued, which use is set forth in use [~~groups fifteen through~~] **group** eighteen, as described in the zoning resolution of such municipality in effect on June twenty-first, two thousand ten, and which the loft board has determined in rules and regulation is inherently incompatible with residential use in the same building **by creating an actual risk of harm which cannot be reasonably mitigated**, provided that the loft board may by rule exempt categories of units or buildings from such use incompatibility determinations including but not limited to residentially occupied units or subcategories of such units, and provided, further that if a building does not contain such active uses at the time this subdivision takes effect, no subsequent use by the owner of the building shall eliminate the protections of this section for any residential occupants in the building already qualified for such protections. **A party opposing coverage pursuant to this subdivision shall bear the burden of proving the exception to coverage set forth in subparagraph (ii) of this paragraph.**

(c) The term "interim multiple dwelling," as used in this subdivision shall also include buildings, structures or portions thereof that are located north of West 24th Street and south of West 27th Street and west of tenth avenue and east of eleventh avenue in a city of more than one million persons which were occupied for residential purposes as the residence or home of any two or more families living independently from one another for a period of twelve consecutive months during the period commencing January first, two thousand eight, and ending December thirty-first, two thousand nine and subject to all the conditions and limitations of this subdivision other than the number of units in the building. A reduction in the number of occupied residential units in a building after meeting the aforementioned twelve consecutive month requirement shall not eliminate the protections of this section for any remaining residential occupants qualified for such protections. Non-residential space in a building as of the effective date of this subdivision shall be offered for residential use only after the obtaining of a residential certificate of occupancy for such space and such space shall be exempt from this article, even if a portion of such building may be an interim multiple dwelling.

§ 2. Section 281 of the multiple dwelling law is amended by adding a new subdivision 6 to read as follows:

6. (a) Notwithstanding the provisions of paragraphs (i), (iii) and (iv) of subdivision two of this section, but subject to paragraphs (i) and (ii) of subdivision one of this section and paragraph (ii) of subdivision two of this section, the term "interim multiple dwelling" shall include buildings, structures or portions thereof that are located in a city of more than one million persons which were occupied for residential purposes as the residence or home of any three or more families living independently from one another for a period of twelve consecutive months during the period commencing January first, two thousand fifteen, and ending December thirty-first, two thousand sixteen, provided that the unit seeking coverage: is not located in a cellar and has at least one entrance that does not require passage through another residential unit to obtain access to the unit, and is at least four hundred square feet in area.

(b) The term "interim multiple dwelling" as used in this subdivision shall not include (i) any building in an industrial business zone established pursuant to chapter six-D of title twenty-two of the administrative code of the city of New York except that a building in the Williamsburg/Greenpoint or North Brooklyn industrial business zones other than a building within such North Brooklyn industrial business zone that is in a district zoned M3, as such district is described in the zoning resolution of such municipality in effect at the time the application for registration as an interim multiple dwelling or for coverage of residential units under this article is filed) and a building located in that portion of the Long Island city industrial business zone that has frontage on either side of forty-seventh avenue or is located north of forty-seventh avenue and south of Skillman avenue or in that portion of the Long Island city industrial business zone that is located north of forty-fourth drive, south of Queens plaza north, and west of twenty-third street may be included in the term "interim multiple dwelling", or (ii) units in any building, other than a building that is already defined as an "interim multiple dwelling" pursuant to subdivision one, two, three, four or five of this section, that, at the time this subdivision shall take effect and continuing until the time of the submission of an application for coverage by any party, also contains a use in legal operation, actively and currently pursued, which use is set forth in use group eighteen, as described in the zoning resolution of such municipality in effect on June twenty-first, two thousand ten, and which the loft board has determined in rules and regulation is inherently incompatible with residential use in the same building by creating an actual risk of harm which cannot be reasonably mitigated, provided that the loft board may by rule exempt categories of units or buildings from such use incompatibility determinations including but not limited to residentially occupied units or subcategories of such units, and provided, further that if a building does not contain such active uses at the time this subdivision takes effect, no subsequent use by the owner of the building shall eliminate the protections of this section for any residential occupants in the building already qualified for such protections. A party opposing coverage pursuant to this subdivision shall bear the burden of proving the exception to coverage set forth in subparagraph (ii) of this paragraph.

(c) The term "interim multiple dwelling", as used in this subdivision shall also include buildings, structures or portions thereof that are located north of West 24th Street and south of West 27th Street and west of tenth avenue and east of eleventh avenue in a city of more than one million persons which were occupied for residential purposes as the

residence or home of any two or more families living independently from one another for a period of twelve consecutive months during the period commencing January first, two thousand fifteen, and ending December thirty-first, two thousand sixteen and subject to all the conditions and limitations of this subdivision other than the number of units in the building. A reduction in the number of occupied residential units in a building after meeting the aforementioned twelve consecutive month requirement shall not eliminate the protections of this section for any remaining residential occupants qualified for such protections. Non-residential space in a building as of the effective date of this subdivision shall be offered for residential use only after the obtaining of a residential certificate of occupancy for such space and such space shall be exempt from this article, even if a portion of such building may be an interim multiple dwelling.

§ 3. Section 282 of the multiple dwelling law, as amended by chapter 147 of the laws of 2010, is amended to read as follows:

§ 282. Establishment of special loft unit. 1. In order to resolve complaints of owners of interim multiple dwellings and of residential occupants of such buildings qualified for the protection of this article, and to act upon hardship applications made pursuant to this article, a special loft unit referred to herein as the "loft board" shall be established which shall consist of from four to nine members representative of the public, the real estate industry, loft residential tenants, and loft manufacturing interests, and a chairperson, all to be appointed by the mayor of the municipality and to serve such terms as he may designate. The compensation of the members of the loft board shall be fixed by the mayor. The members of the loft board shall not be considered employees of the state or the municipality, provided, however, that state or municipal employees or officers may be named to the loft board. The mayor shall establish the loft board within ninety days of the effective date of chapter three hundred forty-nine of the laws of nineteen hundred eighty-two. The loft board shall have such office and staff as shall be necessary to carry out functions conferred upon it and may request and receive assistance from any state or municipal agency or department. The loft board shall have the following duties: [~~(a)~~] (i) the determination of interim multiple dwelling status and other issues of coverage pursuant to this article; [~~(b)~~] (ii) the resolution of all hardship appeals brought under this article; [~~(c)~~] (iii) the determination of any claim for rent adjustment under this article by an owner or tenant; [~~(d)~~] (iv) the issuance, after a public hearing, and the enforcement of rules and regulations governing minimum housing maintenance standards in interim multiple dwellings (subject to the provisions of this chapter and any local building code), rent adjustments prior to legalization, compliance with this article and the hearing of complaints and applications made to it pursuant to this article; and [~~(e)~~] (v) determination of controversies arising over the fair market value of a residential tenant's fixtures or reasonable moving expenses.

2. The violation of any rule or regulation promulgated by the loft board shall be punishable by a civil penalty determined by the loft board not to exceed [~~seventeen thousand five hundred~~] twenty-five thousand dollars which may be recovered by the municipality by a proceeding in any court of competent jurisdiction. The corporation counsel may bring and maintain a civil proceeding in the name of the city in the supreme court of the county in which the building, erection or place is located to enjoin violations of this article. The loft board may designate provisions of such rules and regulations for enforcement in

proceedings before the environmental control board of such municipality. Notices of violation returnable to such environmental control board may be issued by officers and employees of the department of buildings of such municipality and served in the same manner as violations returnable to such board within the jurisdiction of such department. The environmental control board, when acting as the designee of the loft board, shall have the power to impose civil penalties, not to exceed [~~seventeen~~] twenty-five thousand [~~five hundred~~] dollars for each violation, and to issue judgments, which may be docketed and enforced as set forth in section one thousand forty-nine-a of the New York city charter.

3. The loft board may charge and collect reasonable fees in the execution of its responsibilities. The loft board may administer oaths, take affidavits, hear testimony, and take proof under oath at public or private hearings.

§ 4. Section 282-a of the multiple dwelling law, as amended by section 22 of part A of chapter 20 of the laws of 2015, is amended to read as follows:

§ 282-a. Applications for coverage of interim multiple dwellings and residential units. [~~1. All applications for registration as an interim multiple dwelling or for coverage of residential units under this article shall be filed with the loft board within six months after the date the loft board shall have adopted all rules or regulations necessary in order to implement the provisions of chapter one hundred forty-seven of the laws of two thousand ten, provided, however, that applications for registration as an interim multiple dwelling or for coverage of residential units under this article may also be filed for a two-year period starting from the effective date of the chapter of the laws of two thousand fifteen which amended this section. The loft board may subsequently amend such rules and regulations but such amendments shall not recommence the time period in which applications may be filed.~~

~~2.~~] Where any occupant has filed an application for coverage pursuant to this article and has received a docket number from the loft board, it shall be unlawful for an owner to cause or intend to cause such occupant to vacate, surrender or waive any rights in relation to such occupancy, due to repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair habitability of such unit, at any time before the loft board has made a final determination, including appeals, to approve or deny such application. This section shall not grant any rights of continued occupancy other than those otherwise granted by law. Any agreement that waives or limits the benefits of this section shall be deemed void as against public policy. In addition to any other remedies provided in this article for failure to be in compliance, in article eight of this chapter, or in the regulations promulgated by the loft board, an occupant who has filed an application with the loft board for coverage under this article may commence an action or proceeding in a court of competent jurisdiction, which notwithstanding any other provision of law shall include the housing part of the New York city civil court, to enforce the provisions of this section.

§ 5. Paragraph (vi) of subdivision 1 of section 284 of the multiple dwelling law, as amended by section 22-a of part A of chapter 20 of the laws of 2015, is amended to read as follows:

(vi) Notwithstanding the provisions of paragraphs (i) through (v) of this subdivision the owner of an interim multiple dwelling made subject to this article by subdivision five of section two hundred eighty-one of

this article (A) shall file an alteration application on or before March twenty-first, two thousand eleven, or, for units that became subject to this article pursuant to chapter four of the laws of two thousand thirteen on or before June eleventh, two thousand fourteen, or, **for units that became subject to this article pursuant to the chapter of the laws of two thousand nineteen that amended this paragraph within nine months from such effective date, or** for units in an interim multiple dwelling that were listed on an application for coverage or registration filed with the loft board pursuant to this article or in a court pleading after March eleventh, two thousand fourteen, within nine months of either the date of the initial application for coverage or the date of the loft board's issuance of an interim multiple dwelling number or the date of the service of the pleading, whichever is earlier, and (B) shall take all reasonable and necessary action to obtain an approved alteration permit on or before June twenty-first, two thousand eleven, or, for units that became subject to this article pursuant to chapter four of the laws of two thousand thirteen on or before September eleventh, two thousand fourteen, or, **for units that became subject to this article pursuant to the chapter of the laws of two thousand nineteen that amended this paragraph within twelve months from such effective date, or** for units in an interim multiple dwelling that were listed on an application for coverage or registration filed with the loft board pursuant to this article or in a court pleading after March eleventh, two thousand fourteen, within twelve months of either the date of the initial application for coverage or the date of the loft board's issuance of an interim multiple dwelling number or the date of the service of the pleading, whichever is earlier, and (C) shall achieve compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building within eighteen months from obtaining such alteration permit, and (D) shall take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for the residential portions of the building or structure on or before December twenty-first, two thousand twelve, or for units that became subject to this article pursuant to chapter four of the laws of two thousand thirteen on or before March eleventh, two thousand sixteen, or, **for units that became subject to this article pursuant to the chapter of the laws of two thousand nineteen that amended this paragraph within thirty-six months from such effective date, or** for units in an interim multiple dwelling that were listed on an application for coverage or registration filed with the loft board pursuant to this article or in a court pleading after March eleventh, two thousand sixteen, within thirty months of either the date of the initial application for coverage or the date of the loft board's issuance of an interim multiple dwelling number or the date of the service of the pleading, whichever is earlier. The loft board may, upon good cause shown, and upon proof of compliance with the standards of safety and fire protection set forth in article seven-B of this chapter, twice extend the time of compliance with the requirement to obtain a residential certificate of occupancy for periods not to exceed twelve months each.

§ 6. Paragraphs (vii), (viii), (ix), (x) and (xi) of subdivision 1 and subdivision 2 of section 284 of the multiple dwelling law, paragraphs (vii), (viii), (ix), (x) and (xi) of subdivision 1 as amended by chapter 135 of the laws of 2010 and subdivision 2 as added by chapter 349 of the laws of 1982, are amended to read as follows:

(vii) **Notwithstanding the provisions of paragraphs (i) through (vi) of this subdivision the owner of an interim multiple dwelling made subject to this article by subdivision six of section two hundred eighty-one of this article (A) shall file an alteration application within nine months from the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph, and (B) shall take all reasonable and necessary action to obtain an approved alteration permit within twelve months from such effective date, and (C) shall achieve compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building within eighteen months from obtaining such alteration permit or eighteen months from such effective date, whichever is later, and (D) shall take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for the residential portions of the building or structure within thirty-six months from such effective date. The loft board may, upon good cause shown, and upon proof of compliance with the standards of safety and fire protection set forth in article seven-B of this chapter, twice extend the time of compliance with the requirement to obtain a residential certificate of occupancy for periods not to exceed twelve months each.**

(viii) An owner who is unable to satisfy any requirement specified in paragraph (ii), (iii), (iv), (v), [~~or~~] (vi)**, or (vii)** of this subdivision for reasons beyond his/her control, including, but not limited to, a requirement to obtain a certificate of appropriateness for modification of a landmarked building, a need to obtain a variance from a board of standards and appeals, or the denial of reasonable access to a residential unit as required by paragraph [~~(xi)~~] **(xii)** of this subdivision, may apply to the loft board for an extension of time to meet the requirement specified in paragraph (ii), (iii), (iv), (v), [~~or~~] (vi)**, or (vii)** of this subdivision. The loft board may grant an extension of time to meet a requirement specified in paragraph (ii), (iii), (iv), (v), [~~or~~] (vi)**, or (vii)** of this subdivision provided that the owner demonstrates that he/she has made good faith efforts to satisfy the requirements.

[~~(viii)~~] **(ix)** If there is a finding by the loft board that an owner has failed to satisfy any requirement specified in paragraph (i), (ii), (iii), (iv), (v), [~~or~~] (vi)**, or (vii)** of this subdivision, such owner shall be subject to all penalties set forth in article eight of this chapter.

[~~(ix)~~] **(x)** In addition to the penalties provided in article eight of this chapter, if there is a finding by the loft board that an owner has failed to satisfy any requirement specified in paragraph (i), (ii), (iii), (iv), (v), [~~or~~] (vi)**, or (vii)** of this subdivision, a court may order specific performance to enforce the provisions of this article upon the application of three occupants of separate residential units, qualified for the protection of this article, or upon the application of the municipality.

[~~(x)~~] **(xi)** If, as a consequence of an owner's unlawful failure to comply with the provisions of paragraph (i), (ii), (iii), (iv), (v), [~~or~~] (vi)**, or (vii)** of this subdivision, any residential occupant qualified for protection pursuant to this article is required to vacate his or her unit as a result of a municipal vacate order, such occupant may recover from the owner the fair market value of any improvements made by such tenant and reasonable moving costs. Any vacate order issued as to such unit by a local government shall be deemed an order to the owner to correct the non-compliant conditions, subject to the provisions of this

article. Furthermore, when such correction has been made, such occupant shall have the right to re-occupy his or her unit and shall be entitled to all applicable tenant protections of this article.

[~~(xi)~~] **(xii)** The occupants of a building shall, upon appropriate notice regarding the timing and scope of the work required, afford the owner reasonable access to their units so that the work necessary for compliance with this article can be carried out. Access shall also be afforded, upon reasonable prior notice, for the purpose of inspecting and surveying units as may be required to comply with the provisions of this article and article seven-B of this chapter. Failure to comply with an order of the loft board regarding access shall be grounds for eviction of a tenant.

2. Every owner of an interim multiple dwelling, every lessee of a whole building part of which is an interim multiple dwelling, and every agent or other person having control of such a dwelling, shall, within sixty days of the effective date of the act which added this article, file with the loft board or any other authority designated by the mayor a notice in conformity with all provisions of section three hundred twenty-five of this chapter and with rules and regulations to be promulgated by the loft board.

§ 7. Subparagraphs (A) and (B) of paragraph (ii) of subdivision 2 of section 286 of the multiple dwelling law, as amended by chapter 4 of the laws of 2013, are amended to read as follows:

(A) Upon the owners' filing of an alteration application, as required by [~~paragraph~~] **paragraphs** (ii), (iii), (iv), (v), [~~or~~] (vi)**, and (vii)** of subdivision one of section two hundred eighty-four of this article, an adjustment equal to three percent of the rent in effect at the time the owner files the alteration application.

(B) Upon obtaining an alteration permit, as required by [~~paragraph~~] **paragraphs** (ii), (iii), (iv), (v), [~~or~~] (vi)**, and (vii)** of subdivision one of section two hundred eighty-four of this article, an adjustment equal to three percent of the rent in effect at the time the owner obtains the alteration permit.

§ 8. Subdivisions (f), (g) and (h) of section 27 of chapter 4 of the laws of 2013 amending the real property tax law and other laws relating to interim multiple dwellings in a city with a population of one million of more, subdivision (h) as amended by section 21 of part A of chapter 20 of the laws of 2015, are amended to read as follows:

(f) sections eighteen, nineteen and twenty of this act shall be deemed to have been in full force and effect on and after June 1, 2011; **and**

(g) notwithstanding any inconsistent provision of this act, the amendment to subdivision 5 of section 281 of the multiple dwelling law made by section twenty-one of this act in relation to the authority of the loft board to exempt categories or subcategories of units or buildings by rule from determinations of inherently incompatible uses shall be deemed to have been in force and effect on and after June 21, 2010 and to authorize rules of the loft board promulgated after such date that make such exemptions[~~; and~~

~~(h) sections twenty-one, twenty-two, twenty-three and twenty-four shall expire and be deemed repealed on June 30, 2019~~].

§ 9. No provision of this act or article 7-C of the multiple dwelling law, as amended by this act, or any other law or prior judgment, shall be construed to prevent an application from being filed with the loft board and considered by such board, or a claim in a court of competent jurisdiction, for coverage or for registration as an interim multiple dwelling or units within a building, including those previously deter-

mined not to be covered, where the basis for such application or claim is that such building or units are subject to such article as a result of the amendments made by this act.

§ 10. This act shall take effect immediately, and shall apply to applications pending approval or on appeal on and after such date.