

# STATE OF NEW YORK

6527

2019-2020 Regular Sessions

## IN ASSEMBLY

March 11, 2019

Introduced by M. of A. O'DONNELL, BARRON -- 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 1974 and the emergency housing rent control law, in relation to building eligibility for major capital improvement rent surcharges

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) There has been since July first, nineteen hundred seventy, a major  
6 capital improvement required for the operation, preservation or mainte-  
7 nance of the structure. An adjustment under this subparagraph (g) for  
8 any order of the commissioner issued after the effective date of the  
9 rent act of 2015 shall be in an amount sufficient to amortize the cost  
10 of the improvements pursuant to this subparagraph (g) over an eight-year  
11 period for buildings with thirty-five or fewer units or a nine year  
12 period for buildings with more than [~~thiry-five~~ thirty-five units~~[-]~~;  
13 provided, however, that no adjustment shall be allowed for any building  
14 in which more than fifty percent of the habitable units are not subject  
15 to rent stabilization or rent control, or

16 § 2. Paragraph 6-a of subdivision c of section 26-511 of the adminis-  
17 trative code of the city of New York is amended to read as follows:

18 (6-a) provides criteria whereby as an alternative to the hardship  
19 application provided under paragraph six of this subdivision owners of  
20 buildings acquired by the same owner or a related entity owned by the  
21 same principals three years prior to the date of application may apply  
22 to the division for increases in excess of the level of applicable  
23 guideline increases established under this law based on a finding by the

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

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1 commissioner that such guideline increases are not sufficient to enable  
2 the owner to maintain an annual gross rent income for such building  
3 which exceeds the annual operating expenses of such building by a sum  
4 equal to at least five percent of such gross rent. For the purposes of  
5 this paragraph, operating expenses shall consist of the actual, reason-  
6 able, costs of fuel, labor, utilities, taxes, other than income or  
7 corporate franchise taxes, fees, permits, necessary contracted services  
8 and non-capital repairs, insurance, parts and supplies, management fees  
9 and other administrative costs and mortgage interest. For the purposes  
10 of this paragraph, mortgage interest shall be deemed to mean interest on  
11 a bona fide mortgage including an allocable portion of charges related  
12 thereto. Criteria to be considered in determining a bona fide mortgage  
13 other than an institutional mortgage shall include; condition of the  
14 property, location of the property, the existing mortgage market at the  
15 time the mortgage is placed, the term of the mortgage, the amortization  
16 rate, the principal amount of the mortgage, security and other terms and  
17 conditions of the mortgage. The commissioner shall set a rental value  
18 for any unit occupied by the owner or a person related to the owner or  
19 unoccupied at the owner's choice for more than one month at the last  
20 regulated rent plus the minimum number of guidelines increases or, if no  
21 such regulated rent existed or is known, the commissioner shall impute a  
22 rent consistent with other rents in the building. The amount of hardship  
23 increase shall be such as may be required to maintain the annual gross  
24 rent income as provided by this paragraph. The division shall not grant  
25 a hardship application under this paragraph or paragraph six of this  
26 subdivision for (i) a period of three years subsequent to granting a  
27 hardship application under the provisions of this paragraph or (ii) to  
28 the owner of any building in which more than fifty percent of the habi-  
29 table units are not subject to rent stabilization or rent control. The  
30 collection of any increase in the rent for any housing accommodation  
31 pursuant to this paragraph shall not exceed six percent in any year from  
32 the effective date of the order granting the increase over the rent set  
33 forth in the schedule of gross rents, with collectability of any dollar  
34 excess above said sum to be spread forward in similar increments and  
35 added to the rent as established or set in future years. No application  
36 shall be approved unless the owner's equity in such building exceeds  
37 five percent of: (i) the arms length purchase price of the property;  
38 (ii) the cost of any capital improvements for which the owner has not  
39 collected a surcharge; (iii) any repayment of principal of any mortgage  
40 or loan used to finance the purchase of the property or any capital  
41 improvements for which the owner has not collected a surcharge and (iv)  
42 any increase in the equalized assessed value of the property which  
43 occurred subsequent to the first valuation of the property after  
44 purchase by the owner. For the purposes of this paragraph, owner's equi-  
45 ty shall mean the sum of (i) the purchase price of the property less the  
46 principal of any mortgage or loan used to finance the purchase of the  
47 property, (ii) the cost of any capital improvement for which the owner  
48 has not collected a surcharge less the principal of any mortgage or loan  
49 used to finance said improvement, (iii) any repayment of the principal  
50 of any mortgage or loan used to finance the purchase of the property or  
51 any capital improvement for which the owner has not collected a  
52 surcharge, and (iv) any increase in the equalized assessed value of the  
53 property which occurred subsequent to the first valuation of the proper-  
54 ty after purchase by the owner.

55 § 3. Paragraph 3 of subdivision d of section 6 of section 4 of chapter  
56 576 of the laws of 1974, constituting the emergency tenant protection

1 act of nineteen seventy-four, as amended by section 30 of part A of  
2 chapter 20 of the laws of 2015, is amended to read as follows:

3 (3) there has been since January first, nineteen hundred seventy-four  
4 a major capital improvement required for the operation, preservation or  
5 maintenance of the structure and more than half of the habitable units  
6 in the building are subject to rent stabilization or rent control. An

7 adjustment under this paragraph shall be in an amount sufficient to  
8 amortize the cost of the improvements pursuant to this paragraph over an  
9 eight-year period for a building with thirty-five or fewer housing  
10 accommodations, or a nine-year period for a building with more than  
11 thirty-five housing accommodations, for any determination issued by the  
12 division of housing and community renewal after the effective date of  
13 the rent act of 2015, or

14 § 4. Subparagraph 7 of the second undesignated subparagraph of para-  
15 graph (a) of subdivision 4 of section 4 of chapter 274 of the laws of  
16 1946, constituting the emergency housing rent control law, as amended by  
17 section 32 of part A of chapter 20 of the laws of 2015, is amended to  
18 read as follows:

19 (7) there has been since March first, nineteen hundred fifty, a major  
20 capital improvement required for the operation, preservation or mainte-  
21 nance of the structure; which for any order of the commissioner issued  
22 after the effective date of the rent act of 2015 the cost of such  
23 improvement shall be amortized over an eight-year period for buildings  
24 with thirty-five or fewer units or a nine year period for buildings with  
25 more than [~~thirty-five~~] thirty-five units[~~7~~]; provided, however, that no  
26 adjustment shall be allowed for any building in which more than fifty  
27 percent of the habitable units are not subject to rent stabilization or  
28 rent control, or

29 § 5. Paragraph 5 of subdivision d of section 6 of section 4 of chapter  
30 576 of the laws of 1974, constituting the emergency tenant protection  
31 act of nineteen seventy-four, as amended by chapter 102 of the laws of  
32 1984, is amended to read as follows:

33 (5) as an alternative to the hardship application provided under para-  
34 graph four of this subdivision, owners of buildings acquired by the same  
35 owner or a related entity owned by the same principals three years prior  
36 to the date of application may apply to the division for increases in  
37 excess of the level of applicable guideline increases established under  
38 this law based on a finding by the commissioner that such guideline  
39 increases are not sufficient to enable the owner to maintain an annual  
40 gross rent income for such building which exceeds the annual operating  
41 expenses of such building by a sum equal to at least five percent of  
42 such gross rent provided, that more than half of the habitable units in  
43 the building are subject to rent stabilization or rent control. For the  
44 purposes of this paragraph, operating expenses shall consist of the  
45 actual, reasonable, costs of fuel, labor, utilities, taxes, other than  
46 income or corporate franchise taxes, fees, permits, necessary contracted  
47 services and non-capital repairs, insurance, parts and supplies, manage-  
48 ment fees and other administrative costs and mortgage interest. For the  
49 purposes of this paragraph, mortgage interest shall be deemed to mean  
50 interest on a bona fide mortgage including an allocable portion of  
51 charges related thereto. Criteria to be considered in determining a  
52 bona fide mortgage other than an institutional mortgage shall include;  
53 condition of the property, location of the property, the existing mort-  
54 gage market at the time the mortgage is placed, the term of the mort-  
55 gage, the amortization rate, the principal amount of the mortgage, secu-  
56 rity and other terms and conditions of the mortgage. The commissioner

1 shall set a rental value for any unit occupied by the owner or a person  
2 related to the owner or unoccupied at the owner's choice for more than  
3 one month at the last regulated rent plus the minimum number of guide-  
4 lines increases or, if no such regulated rent existed or is known, the  
5 commissioner shall impute a rent consistent with other rents in the  
6 building. The amount of hardship increase shall be such as may be  
7 required to maintain the annual gross rent income as provided by this  
8 paragraph. The division shall not grant a hardship application under  
9 this paragraph or paragraph four of this subdivision for a period of  
10 three years subsequent to granting a hardship application under the  
11 provisions of this paragraph. The collection of any increase in the rent  
12 for any housing accommodation pursuant to this paragraph shall not  
13 exceed six percent in any year from the effective date of the order  
14 granting the increase over the rent set forth in the schedule of gross  
15 rents, with collectability of any dollar excess above said sum to be  
16 spread forward in similar increments and added to the rent as estab-  
17 lished or set in future years. No application shall be approved unless  
18 the owner's equity in such building exceeds five percent of: (i) the  
19 arms length purchase price of the property; (ii) the cost of any capital  
20 improvements for which the owner has not collected a surcharge; (iii)  
21 any repayment of principal of any mortgage or loan used to finance the  
22 purchase of the property or any capital improvements for which the owner  
23 has not collected a surcharge; and (iv) any increase in the equalized  
24 assessed value of the property which occurred subsequent to the first  
25 valuation of the property after purchase by the owner. For the purposes  
26 of this paragraph, owner's equity shall mean the sum of (i) the purchase  
27 price of the property less the principal of any mortgage or loan used to  
28 finance the purchase of the property, (ii) the cost of any capital  
29 improvement for which the owner has not collected a surcharge less the  
30 principal of any mortgage or loan used to finance said improvement,  
31 (iii) any repayment of the principal of any mortgage or loan used to  
32 finance the purchase of the property or any capital improvement for  
33 which the owner has not collected a surcharge, and (iv) any increase in  
34 the equalized assessed value of the property which occurred subsequent  
35 to the first valuation of the property after purchase by the owner.

36 § 6. This act shall take effect immediately; provided, however, that  
37 the amendments to section 26-405 of the city rent and rehabilitation law  
38 made by section one of this act shall remain in full force and effect  
39 only as long as the public emergency requiring the regulation and  
40 control of residential rents and evictions continues, as provided in  
41 subdivision 3 of section 1 of the local emergency housing rent control  
42 act; and provided, further, that the amendments to section 26-511 of  
43 chapter 4 of title 26 of the administrative code of the city of New York  
44 made by section two of this act shall expire on the same date as such  
45 law expires and shall not affect the expiration of such law as provided  
46 under section 26-520 of such law; and provided, further, that the amend-  
47 ments to section 6 of the emergency tenant protection act of nineteen  
48 seventy-four made by sections three and five of this act shall expire on  
49 the same date as such act expires and shall not affect the expiration of  
50 such act as provided in section 17 of chapter 576 of the laws of 1974;  
51 and provided, further, that the amendments to section 4 of the emergency  
52 housing rent control law made by section four of this act shall expire  
53 on the same date as such law expires and shall not affect the expiration  
54 of such law as provided in subdivision 2 of section 1 of chapter 274 of  
55 the laws of 1946.