

# STATE OF NEW YORK

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3437

2019-2020 Regular Sessions

## IN SENATE

February 7, 2019

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Introduced by Sen. MYRIE -- 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 and the emergency housing rent control law, in relation to the adjustment of maximum allowable rent and requiring the division of housing and community renewal to confirm improvements have been made prior to the approval of rent increases

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

1 Section 1. Subparagraphs (e) and (g) of paragraph 1 of subdivision g  
2 of section 26-405 of the administrative code of the city of New York,  
3 subparagraph (e) as amended by section 15 of part B of chapter 97 of the  
4 laws of 2011 and subparagraph (g) as amended by section 31 of part A of  
5 chapter 20 of the laws of 2015, are amended and a new paragraph 8 is  
6 added to read as follows:

7 (e) The landlord and tenant by mutual voluntary written agreement  
8 agree to a substantial increase or decrease in dwelling space or a  
9 change in the services, furniture, furnishings or equipment provided in  
10 the housing accommodations. An adjustment under this subparagraph shall  
11 be equal to one-fortieth, in the case of a building with thirty-five or  
12 fewer housing accommodations, or one-sixtieth, in the case of a building  
13 with more than thirty-five housing accommodations where such adjustment  
14 takes effect on or after September twenty-fourth, two thousand eleven,  
15 of the total cost incurred by the landlord in providing such modifica-  
16 tion or increase in dwelling space, services, furniture, furnishings or  
17 equipment, including the cost of installation, but excluding finance  
18 charges, provided further that an owner who is entitled to a rent  
19 increase pursuant to this subparagraph shall not be entitled to a  
20 further rent increase based upon the installation of similar equipment,

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

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1 or new furniture or furnishings within the useful life of such new  
2 equipment, or new furniture or furnishings. An owner entitled to a rent  
3 increase pursuant to this subparagraph shall only be entitled to such  
4 increase for a period of five years from the date of the adjustment. The  
5 owner shall give written notice to the city rent agency of any such  
6 adjustment pursuant to this subparagraph; or

7 (g) There has been since July first, nineteen hundred seventy, a major  
8 capital improvement required for the operation, preservation or mainte-  
9 nance of the structure. An adjustment under this subparagraph [~~(g) for~~  
10 ~~any order of the commissioner issued after the effective date of the~~  
11 ~~rent act of 2015 shall be in an amount sufficient to amortize the cost~~  
12 ~~of the improvements pursuant to this subparagraph (g) over an eight year~~  
13 ~~period for buildings with thirty five or fewer units or a nine year~~  
14 ~~period for buildings with more than thirty five units]~~ shall only be in  
15 effect for a period of five years from the date of such adjustment, or

16 (8) Before ordering any adjustment in rent pursuant to subparagraphs  
17 (e) and (g) of paragraph one of this subdivision, the division of hous-  
18 ing and community renewal shall require the owner of the property to  
19 file a statement with the division containing information outlining the  
20 scope of the work and the date of completion of such work. Upon receipt  
21 of such statement, the division of housing and community renewal shall  
22 inspect the property to ensure the specified work has been completed. No  
23 increase shall be collectible under subparagraphs (e) and (g) of para-  
24 graph one of this subdivision where the division of housing and communi-  
25 ty renewal has determined the specified work has not been completed.

26 § 2. Paragraphs 6 and 13 of subdivision c of section 26-511 of the  
27 administrative code of the city of New York, paragraph 6 as amended by  
28 section 29 of part A of chapter 20 of the laws of 2015 and paragraph 13  
29 as amended by section 16 of part B of chapter 97 of the laws of 2011,  
30 are amended and two new paragraphs 6-b and 15 are added to read as  
31 follows:

32 (6) provides criteria whereby the commissioner may act upon applica-  
33 tions by owners for increases in excess of the level of fair rent  
34 increase established under this law provided, however, that such crite-  
35 ria shall provide [~~(a)~~] as to hardship applications, for a finding that  
36 the level of fair rent increase is not sufficient to enable the owner to  
37 maintain approximately the same average annual net income (which shall  
38 be computed without regard to debt service, financing costs or manage-  
39 ment fees) for the three year period ending on or within six months of  
40 the date of an application pursuant to such criteria as compared with  
41 annual net income, which prevailed on the average over the period nine-  
42 teen hundred sixty-eight through nineteen hundred seventy, or for the  
43 first three years of operation if the building was completed since nine-  
44 teen hundred sixty-eight or for the first three fiscal years after a  
45 transfer of title to a new owner provided the new owner can establish to  
46 the satisfaction of the commissioner that he or she acquired title to  
47 the building as a result of a bona fide sale of the entire building and  
48 that the new owner is unable to obtain requisite records for the fiscal  
49 years nineteen hundred sixty-eight through nineteen hundred seventy  
50 despite diligent efforts to obtain same from predecessors in title and  
51 further provided that the new owner can provide financial data covering  
52 a minimum of six years under his or her continuous and uninterrupted  
53 operation of the building to meet the three year to three year compar-  
54 ative test periods herein provided[~~, and (b) as to completed building-~~  
55 ~~wide major capital improvements, for a finding that such improvements~~  
56 ~~are deemed depreciable under the Internal Revenue Code and that the cost~~

~~1 is to be amortized over an eight-year period for a building with thir-~~  
~~2 ty-five or fewer housing accommodations, or a nine-year period for a~~  
~~3 building with more than thirty-five housing accommodations, for any~~  
~~4 determination issued by the division of housing and community renewal~~  
~~5 after the effective date of the rent act of 2015, based upon cash~~  
~~6 purchase price exclusive of interest or service charges].~~ Notwithstand-  
7 ing anything to the contrary contained herein, no hardship increase  
8 granted pursuant to this paragraph shall, when added to the annual gross  
9 rents, as determined by the commissioner, exceed the sum of, (i) the  
10 annual operating expenses, (ii) an allowance for management services as  
11 determined by the commissioner, (iii) actual annual mortgage debt  
12 service (interest and amortization) on its indebtedness to a lending  
13 institution, an insurance company, a retirement fund or welfare fund  
14 which is operated under the supervision of the banking or insurance laws  
15 of the state of New York or the United States, and (iv) eight and one-  
16 half percent of that portion of the fair market value of the property  
17 which exceeds the unpaid principal amount of the mortgage indebtedness  
18 referred to in subparagraph (iii) of this paragraph. Fair market value  
19 for the purposes of this paragraph shall be six times the annual gross  
20 rent. The collection of any increase in the stabilized rent for any  
21 apartment pursuant to this paragraph shall not exceed six percent in any  
22 year from the effective date of the order granting the increase over the  
23 rent set forth in the schedule of gross rents, with collectability of  
24 any dollar excess above said sum to be spread forward in similar incre-  
25 ments and added to the stabilized rent as established or set in future  
26 years;

27 (6-b) provides criteria whereby the commissioner may act upon applica-  
28 tion by owners for increases in excess of the level of fair rent  
29 increase established under this law provided, however, that as to  
30 completed building-wide major capital improvements, an owner shall only  
31 be entitled to a rent increase for a five year period from the date of  
32 the approved increase.

33 (13) provides that an owner is entitled to a rent increase where there  
34 has been a substantial modification or increase of dwelling space or an  
35 increase in the services, or installation of new equipment or improve-  
36 ments or new furniture or furnishings provided in or to a tenant's hous-  
37 ing accommodation, on written tenant consent to the rent increase. In  
38 the case of a vacant housing accommodation, tenant consent shall not be  
39 required. The ~~permanent~~ increase in the legal regulated rent for the  
40 affected housing accommodation shall be one-fortieth, in the case of a  
41 building with thirty-five or fewer housing accommodations, or one-sixti-  
42 eth, in the case of a building with more than thirty-five housing accom-  
43 modations where such ~~permanent~~ increase takes effect on or after  
44 September twenty-fourth, two thousand eleven, of the total cost incurred  
45 by the landlord in providing such modification or increase in dwelling  
46 space, services, furniture, furnishings or equipment, including the cost  
47 of installation, but excluding finance charges; provided, however, the  
48 increase allowable under this paragraph shall only be in effect for a  
49 period of five years from the date of such increase. Provided further  
50 that an owner who is entitled to a rent increase pursuant to this para-  
51 graph shall not be entitled to a further rent increase based upon the  
52 installation of similar equipment, or new furniture or furnishings with-  
53 in the useful life of such new equipment, or new furniture or  
54 furnishings.

55 (15) provides that before ordering any adjustment in rent pursuant to  
56 paragraphs six-b and thirteen of this subdivision, the division of hous-

ing and community renewal shall require the owner of the property to file a statement with the division containing information outlining the scope of the work and the date of completion of such work. Upon receipt of such statement, the division of housing and community renewal shall inspect the property to ensure the specified work has been completed. No increase shall be collectible under paragraphs six-b and thirteen of this subdivision where the division of housing and community renewal has determined the specified work has not been completed.

§ 3. Paragraphs 1 and 3 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, paragraph 1 as amended by section 18 of part B of chapter 97 of the laws of 2011 and paragraph 3 as amended by section 30 of part A of chapter 20 of the laws of 2015, are amended and a new paragraph 6 is added to read as follows:

(1) there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings, provided in or to a tenant's housing accommodation, on written tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required. The ~~permanent~~ increase in the legal regulated rent for the affected housing accommodation shall be one-fortieth, in the case of a building with thirty-five or fewer housing accommodations, or one-sixtieth, in the case of a building with more than thirty-five housing accommodations where such ~~permanent~~ increase takes effect on or after September twenty-fourth, two thousand eleven, of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges; provided, however, the increase allowable under this paragraph shall only be in effect for a period of five years from the date of such increase.

Provided further that an owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings.

(3) there has been since January first, nineteen hundred seventy-four a major capital improvement required for the operation, preservation or maintenance of the structure. An adjustment under this paragraph shall ~~[be in an amount sufficient to amortize the cost of the improvements pursuant to this paragraph over an eight year period for a building with thirty-five or fewer housing accommodations, or a nine year period for a building with more than thirty-five housing accommodations, for any determination issued by the division of housing and community renewal after the effective date of the rent act of 2015]~~ only be in effect for a period of five years from the date of such adjustment, or

(6) Before ordering any adjustment in rent pursuant to paragraphs one and three of this subdivision, the division of housing and community renewal shall require the owner of the property to file a statement with the division containing information outlining the scope of the work and the date of completion of such work. Upon receipt of such statement, the division of housing and community renewal shall inspect the property to ensure the specified work has been completed. No increase shall be collectible under paragraphs one and three of this subdivision where the division of housing and community renewal has determined the specified work has not been completed.

1 § 4. Clauses 5 and 7 of the second undesignated paragraph of paragraph  
2 (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946,  
3 constituting the emergency housing rent control law, clause 5 as amended  
4 by section 25 of part B of chapter 97 of the laws of 2011 and clause 7  
5 as amended by section 32 of part A of chapter 20 of the laws of 2015,  
6 are amended to read as follows:

7 (5) the landlord and tenant by mutual voluntary written agreement  
8 agree to a substantial increase or decrease in dwelling space or a  
9 change in the services, furniture, furnishings or equipment provided in  
10 the housing accommodations; provided that an owner shall be entitled to  
11 a rent increase where there has been a substantial modification or  
12 increase of dwelling space or an increase in the services, or installa-  
13 tion of new equipment or improvements or new furniture or furnishings  
14 provided in or to a tenant's housing accommodation. The [~~permanent~~]  
15 increase in the maximum rent for the affected housing accommodation  
16 shall be one-fortieth, in the case of a building with thirty-five or  
17 fewer housing accommodations, or one-sixtieth, in the case of a building  
18 with more than thirty-five housing accommodations where such [~~permanent~~]  
19 increase takes effect on or after September twenty-fourth, two thousand  
20 eleven, of the total cost incurred by the landlord in providing such  
21 modification or increase in dwelling space, services, furniture,  
22 furnishings or equipment, including the cost of installation, but  
23 excluding finance charges provided further that an owner who is entitled  
24 to a rent increase pursuant to this clause shall not be entitled to a  
25 further rent increase based upon the installation of similar equipment,  
26 or new furniture or furnishings within the useful life of such new  
27 equipment, or new furniture or furnishings; provided, however, the  
28 increase allowable under this clause shall only be in effect for a peri-  
29 od of five years from the date of such increase. The owner shall give  
30 written notice to the commission of any such adjustment pursuant to this  
31 clause; provided, however, before any adjustment in rent shall take  
32 effect pursuant to this clause, the division of housing and community  
33 renewal shall require the owner of the property to file a statement with  
34 the division containing information outlining the scope of the work and  
35 the date of completion of such work. Upon receipt of such statement, the  
36 division of housing and community renewal shall inspect the property to  
37 ensure the specified work has been completed. No increase shall be  
38 collectible under this clause where the division of housing and communi-  
39 ty renewal has determined the specified work has not been completed; or

40 (7) there has been since March first, nineteen hundred fifty, a major  
41 capital improvement required for the operation, preservation or mainte-  
42 nance of the structure; which [~~for any order of the commissioner issued~~  
43 ~~after the effective date of the rent act of 2015 the cost of such~~  
44 ~~improvement shall be amortized over an eight year period for buildings~~  
45 ~~with thirty five or fewer units or a nine year period for buildings with~~  
46 ~~more than thirty-five units,] shall only be in effect for a period of  
47 five years from the date of such adjustment. Before ordering any adjust-  
48 ment in rent pursuant to this clause, the division of housing and commu-  
49 nity renewal shall require the owner of the property to file a statement  
50 with the division containing information outlining the scope of the work  
51 and the date of completion of such work. Upon receipt of such statement,  
52 the division of housing and community renewal shall inspect the property  
53 to ensure the specified work has been completed. No increase shall be  
54 collectible under this clause where the division of housing and communi-  
55 ty renewal has determined the specified work has not been completed; or  
56 § 5. This act shall take effect immediately; provided that:~~

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

7 (b) the amendments to section 26-511 of chapter 4 of title 26 of the  
8 administrative code of the city of New York made by section two of this  
9 act shall expire on the same date as such law expires and shall not  
10 affect the expiration of such law as provided under section 26-520 of  
11 such law;

12 (c) the amendments to section 6 of the emergency tenant protection act  
13 of nineteen seventy-four made by section three of this act shall expire  
14 on the same date as such act expires and shall not affect the expiration  
15 of such act as provided in section 17 of chapter 576 of the laws of  
16 1974;

17 (d) the amendments to section 4 of the emergency housing rent control  
18 law made by section four of this act shall expire on the same date as  
19 such law expires and shall not affect the expiration of such law as  
20 provided in subdivision 2 of section 1 of chapter 274 of the laws of  
21 1946.