STATE OF NEW YORK

1255

2021-2022 Regular Sessions

IN SENATE

January 8, 2021

Introduced by Sens. GIANARIS, BAILEY, BIAGGI, BRESLIN, GOUNARDES, HOYLMAN, JACKSON, LIU, MYRIE, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT eliminating rent increases based on major capital improvements; to amend chapter 274 of the laws of 1946, constituting the emergency housing rent control law, the emergency tenant protection act of nineteen seventy-four and the administrative code of the city of New York, in relation to eliminating rent increases to pay for major capital improvements

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

Section 1. Legislative findings and declaration of emergency. The legislature hereby finds and declares that the serious public emergency which led to the enactment of the existing laws regulating residential rents and evictions continues to exist. The legislature further finds that a majority of households currently occupying housing accommodations subject to rent laws are rent-burdened; that permanent increases in rents are no longer necessary to incentivize rental property owners to make, or to compensate landlords for, necessary major capital improvements; that publicly funded tax incentives and other subsidies are available to rental property owners to support major capital improvements; that value from major capital improvements accrues to rental property owners through increased property values and sale prices; that, due to market conditions in localities subject to rent laws, rental property owners are already able to realize a reasonable return on their investments in major capital improvements through increased property values and sale prices alone; and that provisions for hardship increases under existing rent laws already ensure that rental property owners are able to operate rent regulated housing without incurring undue losses.

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

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The legislature further declares and finds that a substantial number of the rent increases previously granted for major capital improvements were tainted by inflated costs, particularly in the last seven years; that the provision of rent increases for major capital improvements in existing rent laws has resulted in exactions of unjust, unreasonable and oppressive rents, as well as profiteering, speculation and other disruptive practices tending to produce tenant dislocation and threats to the public health, safety and general welfare; that such results were contrary to the intent and purpose of the existing rent laws; that it is therefore necessary to amend the rent laws to remove any provision of a rent increase based upon major capital improvements; and that it is additionally necessary to repeal rent increases based upon major capital improvements that became effective within the previous seven years.

§ 2. (a) The division of housing and community renewal, the "division", shall administer the elimination of rent increases based upon major capital improvements pursuant to this act. The division shall no longer grant rent increases on the basis of major capital improvements at buildings subject to rent regulation or rent stabilization pursuant to the emergency rent control law, the emergency tenant protection act and/or the administrative code of the city of New York. All pending applications for rent increases based upon major capital improvements shall be denied, and the division shall issue orders disposing of pending applications as necessary.

(b) Any rent increase based upon major capital improvements previously ordered by the division, pursuant to the emergency rent control law, the emergency tenant protection act and/or the administrative code of the city of New York, with an effective date within the seven years prior to the effective date of this act shall be repealed effective immediately unless the division finds a basis for limiting the repeal pursuant to subdivision (d) of this section. For all affected housing accommodations, the division shall determine what the present legal rent would be for each such accommodation if the division had not ordered any rent increases based upon major capital improvements during the repeal period, and this amount shall be the proposed new legal rent.

(c) Within 180 days of the effective date of this act, the division of housing and community renewal shall determine the proposed new legal rents for all affected housing accommodations pursuant to subdivision (b) of this section and shall also provide written notification to all current owners and tenants of affected accommodations as to the amount of the proposed new legal rents, the basis for the department's determination, and the time for each affected party to submit additional information that the division shall consider before issuing a final order determining the new legal rents, which shall not be less than 45 days. Unless an owner of an affected building has submitted a timely application to the division for a limitation pursuant to subdivision (d) of this section, the division shall issue a final order determining the new legal rents for affected housing accommodations within 365 days of the effective date of this act.

(d) (1) Within 90 days of receiving written notice of proposed new legal rents from the division pursuant to subdivision (c) of this section, a building owner may apply to the commissioner of housing and community renewal for an order limiting the amount of the repeal of rent increases under this act based upon a finding by the commissioner of housing and community renewal that the proposed new legal rents 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. In buildings for which the commissioner of housing and community renewal finds that the proposed new legal rents 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, the repeal amount of rent increases based upon major capital improvements shall be limited to an amount such that the annual operating expenses of the building do not exceed ninety-five percent of the new proposed annual gross rent income for such building.

(2) For the purposes of this subdivision, 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 noncapital repairs, insurance, parts and supplies, management fees and other administrative costs and mortgage interest. For the purposes of this subdivision, 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. For the purposes of this subdivision, gross annual rent income for a building shall include a rental value set by the commissioner of housing and community renewal 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 proposed new legal rents in the building.

(e) The division shall require that owners refund any increase in a tenant's security deposit amount collected in excess of a new legal rent established under this act within thirty days of the department's issuance of an order determining new legal rents. Such excess security deposit amount may be refunded in the form of a rent credit applied toward the affected tenant's next monthly rent payment, and affected tenants are entitled to self-deduct the refund amount from future rent payments.

(f) The new legal rent shall be the legal rent beginning on the date rent is required to be paid next succeeding the issuance of a final order determining new legal rents under this act.

(g) Any lease agreement executed after the issuance of a final order determining new legal rents under this act shall be deemed to incorporate the rent amounts and effective dates set forth in such order.

(h) Any tenant residing in an affected housing accommodation may assert their entitlement to the repeal of prior rent under subdivision (b) of this section, as a defense or counterclaim in any legal proceeding predicated upon a landlord's claim of default in the payment of rent pursuant to an agreement. Any court with jurisdiction over a landlord's claim as to a tenant's default in the payment of rent shall also adjudicate and have primary jurisdiction over the tenant's assertion of a defense or counterclaim under this provision if the department has not yet issued an order determining the new legal rent. A court order made under this subdivision shall not in any way be deemed to impair a build-

ing owner's right or time to apply for a limitation under subdivision (d) of this section.

(i) All final orders issued by the department pursuant to subdivisions (b), (c), and (d) of this section shall be subject to appeal pursuant to existing procedures for administrative review before the division.

§ 3. Paragraph 2 of subdivision 3-a, subparagraphs 7, 8, 9 and 10 of the second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, paragraph 2 of subdivision 3-a of section 4 and subparagraph 8 of the second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 as amended by section 8 of part K of chapter 36 of the laws of 2019, subparagraphs 9 and 10 of the second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 as amended by section 25 of part B of chapter 97 of the laws of 2011, subparagraph 7 of the second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 as separately amended by section 25 of part Q of chapter 39 of the laws of 2019 and section 14 of part K of chapter 36 of the laws of 2019, are amended to read as follows:

(2) the amount of increases in maximum rent authorized by order because of increases in dwelling space, services, furniture, furnishings or equipment [~~and the amount of the temporary increase authorized by order because of a major capital improvement~~].

(7) [~~there has been since March first, nineteen hundred fifty, a major capital improvement essential for the preservation, energy efficiency, functionality, or infrastructure of the entire building, improvement of the structure including heating, windows, plumbing and roofing, but shall not be for operational costs or unnecessary cosmetic improvements; which for any order of the commissioner issued after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph the cost of such improvement shall be amortized over a twelve-year period for buildings with thirty-five or fewer units or a twelve and one-half year period for buildings with more than thirty-five units, and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved; provided, however, where an application for a temporary major capital improvement increase has been filed, a tenant shall have sixty days from the date of mailing of a notice of a proceed-~~

~~ing in which to answer or reply. The state division of housing and community renewal shall provide any responding tenant with the reasons for the division's approval or denial of such application; 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 informed 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 two per centum unless the tenants have agreed to a higher percentage of increase, as herein provided; [~~(9)~~] **or (8)** 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)~~] **(9)** 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.

§ 4. Paragraphs 3, 4, and 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, paragraph 3 of subdivision d as amended by section 26 of part Q of chapter 39 of the laws of 2019, paragraph 4 of subdivision d as amended by chapter 403 of the laws of 1983, paragraph 5 of subdivision d as amended by chapter 102 of the laws of 1984, are amended to read as follows:

(3) [~~there has been since January first, nineteen hundred seventy-four a major capital improvement essential for the preservation, energy efficiency, functionality, or infrastructure of the entire building, improvement of the structure including heating, windows, plumbing and roofing, but shall not be for operation costs or unnecessary cosmetic improvements. An adjustment under this paragraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this paragraph over a twelve-year period for a building with thirty-five or fewer housing accommodations, or a twelve and one-half period for a building with more than thirty-five housing accommodations and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board, for any determination issued by the division of housing and community renewal after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph. Temporary major capital improvement increases shall be collectable prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, the collection of any rent increases for any renewal lease commenc-~~

~~ing on or after June 14, 2019, due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved, or~~

~~(4)~~] an owner by application to the state division of housing and community renewal for increases in the rents in excess of the rent adjustment authorized by the rent guidelines board under this act establishes a hardship, and the state division finds that the rate of rent adjustment is not sufficient to enable the owner to maintain approximately the same ratio between operating expenses, including taxes and labor costs but excluding debt service, financing costs, and management fees, and gross rents which prevailed on the average over the immediate preceding five year period, or for the entire life of the building if less than five years, or

[~~(5)~~] **(4)** as an alternative to the hardship application provided under paragraph [~~four~~] **three** 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 be such as may be required to maintain the annual gross rent income as provided by this paragraph. The division shall not grant a hardship application under this paragraph or paragraph [~~four~~] **three** of this subdivision for a period of three years subsequent to granting a hardship application under the provisions of this paragraph. The collection of any increase in the rent for any housing accommodation pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. No application shall be approved unless the owner's equity in such building exceeds five percent of: (i) the arms length purchase price of the property; (ii) the cost of any capital improvements for which the owner has not

collected a surcharge; (iii) any repayment of principal of any mortgage or loan used to finance the purchase of the property or any capital improvements for which the owner has not collected a surcharge; and (iv) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner. For the purposes of this paragraph, owner's equity shall mean the sum of (i) the purchase price of the property less the principal of any mortgage or loan used to finance the purchase of the property, (ii) the cost of any capital improvement for which the owner has not collected a surcharge less the principal of any mortgage or loan used to finance said improvement, (iii) any repayment of the principal of any mortgage or loan used to finance the purchase of the property or any capital improvement for which the owner has not collected a surcharge, and (iv) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner.

§ 5. Subparagraphs (g), (h), (i), (j), (k), (m) and (o) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, subparagraph (g) as amended by section 27 of part Q of chapter 39 of the laws of 2019, subparagraph (k) as amended by chapter 749 of the laws of 1990, are amended to read as follows:

(g) [~~There has been since July first, nineteen hundred seventy, a major capital improvement essential for the preservation energy efficiency, functionality, or infrastructure of the entire building, improvement of the structure including heating, windows, plumbing and roofing but shall not be for operational costs or unnecessary cosmetic improvements. The temporary increase based upon a major capital improvement under this subparagraph for any order of the commissioner issued after the effective date of the chapter of the laws of two thousand nineteen that amended this subparagraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph (g) over a twelve-year period for buildings with thirty-five or fewer units or a twelve and one-half year period for buildings with more than thirty-five units, and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved, or~~

~~(h) There have been since March first, nineteen hundred fifty-nine, 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 whenever the city rent agency has determined that the improvements proposed were part of a plan designed for overall improvement of the structure or increases in services, it may authorize increases in maximum rents for all housing accommodations affected upon the express consent of the tenants in occupancy of at least fifty-one per centum of the housing accommodations, and provided further 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~~

~~(i)~~] There has been, since March first, nineteen hundred fifty-nine, 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 city rent agency or pursuant to the state rent act or the federal act; or

[~~(j)~~] **(h)** 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.

[~~(k) The landlord has incurred, since January first, nineteen hundred seventy, in connection with and in addition to a concurrent major capital improvement pursuant to subparagraph (g) of this paragraph, other expenditures to improve, restore or preserve the quality of the structure. An adjustment under this subparagraph shall be granted only if such improvements represent an expenditure equal to at least ten per centum of the total operating and maintenance expenses for the preceding year. An adjustment under this subparagraph shall be in addition to any adjustment granted for the concurrent major capital improvement and shall be in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph over a seven-year period.~~]

[~~(m)~~] **(i)** Where the rehabilitation or improvement of sub-standard or deteriorated housing accommodations has been financed under a governmental program providing assistance through loans, loan insurance or tax abatement or has been undertaken under another rehabilitation program not so financed but approved by the commissioner.

[~~(o)~~] **(j)** (1) There has been an increase in heating and heating fuel expenditures in a property resulting from a city-wide rise in heating fuel costs such that the verifiable expenditures for heating or heating fuel in a property for nineteen hundred seventy-four exceeds the verifiable expenditures for such heating or heating fuel during nineteen hundred seventy-three.

(2) To obtain a rental adjustment pursuant to this subparagraph [~~(o)~~], the landlord must certify that he or she is presently maintaining all essential services required to be furnished with respect to the housing accommodations covered by such certification, and that he or she will continue to so maintain such essential services for the period of any such adjustment.

(3) To obtain a rental adjustment pursuant to this subparagraph [~~(o)~~], the landlord must certify on information and belief that he or she will not be earning an amount in excess of the statutory return specified in subparagraph (a) of **this** paragraph [~~one of subdivision g of this section~~] after collection of such rental adjustment, with respect to the

building or buildings serviced by a single heating plant; and where the building, or buildings serviced by a single heating plant, contains forty-nine or fewer housing accommodations, the landlord must certify that the amount expended directly for heating or heating fuel in nineteen hundred seventy-four equalled or exceeded ten per cent of the total rental income which was derived from the property during nineteen hundred seventy-four; and, where the building, or buildings serviced by a single heating plant, contains fifty or more housing accommodations the landlord must certify that the amount expended directly for heating or heating fuel in nineteen hundred seventy-four equalled or exceeded seven and one-half percentum of the total rental income which was derived from the property during nineteen hundred seventy-four.

(4) The total rental adjustments for a property to be allocated or deemed allocated pursuant to this subparagraph [~~(o)~~] shall not exceed one-half of the gross amount by which the total verifiable expenditures for heating or heating fuel for nineteen hundred seventy-four exceeds the total verifiable expenditures for such heating or heating fuel for nineteen hundred seventy-three.

(5) Such total rental adjustments shall be allocated or deemed allocated pursuant to this subparagraph [~~(o)~~] to all housing accommodations subject to this chapter, to all other housing accommodations, and to all commercial, professional and similar facilities in or associated with the property in a manner to be determined by the agency. In no event shall any adjustment in maximum rent pursuant to this subparagraph [~~(o)~~] for any housing accommodations subject to this chapter exceed a monthly increase of two dollars per room, as defined by item eight below. In any apartment containing five or more rooms, any increase shall not exceed the total of nine dollars.

(6) Any adjustment pursuant to this subparagraph [~~(o)~~] shall be effective for all or part of the period July first, nineteen hundred seventy-five through June thirtieth, nineteen hundred seventy-six. Any adjustment pursuant to this subparagraph shall automatically expire no later than June thirtieth, nineteen hundred seventy-six.

(7) The rental increases provided for herein shall be effective and collectible upon the landlord's filing a report with the agency on forms prescribed by the agency and upon giving such notice to the tenants as the agency shall prescribe, subject to adjustments upon order of the agency.

(8) In determining the amount of an adjustment allocation of an adjustment pursuant to this subparagraph [~~(o)~~], only living rooms, kitchens over fifty-nine square feet in area, dining rooms and bedrooms shall be considered rooms; bathrooms, foyers, and kitchenettes shall not be considered rooms.

§ 6. Subdivision a of section 26-407 of the administrative code of the city of New York is amended to read as follows:

a. Notwithstanding any provisions of this chapter, any labor cost pass-along rent increase requested of, or received from, any tenant on or after July first, nineteen hundred seventy-two[~~, pursuant to the provisions of subparagraph (1) of paragraph one of subdivision g of section 26-405 of this title,~~] shall not exceed the maximum rent adjustment as provided under this chapter after the effective date of this section.

§ 7. Paragraph 6 of subdivision c of section 26-511 of the administrative code of the city of New York as separately amended by section 12 of part K of chapter 36 and section 28 of part Q of chapter 39 of the laws of 2019, is amended to read as follows:

(6) provides criteria whereby the commissioner may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide [~~(a)~~] as to hardship applications, for a finding that the level of fair rent increase is not sufficient to enable the owner to maintain approximately the same average annual net income (which shall be computed without regard to debt service, financing costs or management fees) for the three year period ending on or within six months of the date of an application pursuant to such criteria as compared with annual net income, which prevailed on the average over the period nineteen hundred sixty-eight through nineteen hundred seventy, or for the first three years of operation if the building was completed since nineteen hundred sixty-eight or for the first three fiscal years after a transfer of title to a new owner provided the new owner can establish to the satisfaction of the commissioner that he or she acquired title to the building as a result of a bona fide sale of the entire building and that the new owner is unable to obtain requisite records for the fiscal years nineteen hundred sixty-eight through nineteen hundred seventy despite diligent efforts to obtain same from predecessors in title and further provided that the new owner can provide financial data covering a minimum of six years under his or her continuous and uninterrupted operation of the building to meet the three year to three year comparative test periods herein provided[~~; and (b) as to completed building-wide major capital improvements, for a finding that such improvements are deemed depreciable under the Internal Revenue Code and that the cost is to be amortized over a twelve-year period for a building with thirty-five or fewer housing accommodations, or a twelve and one-half-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 the chapter of the laws of two thousand nineteen that amended this paragraph and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved or based upon cash purchase price exclusive of interest or service charges. Where an application for a temporary major capital improvement increase has been filed, a tenant shall have sixty days from the date of mailing of a notice of a proceeding in which to answer or reply. The state division of housing and~~

~~community renewal shall provide any responding tenant with the reasons for the division's approval or denial of such application.~~] Notwithstanding anything to the contrary contained herein, no hardship increase granted pursuant to this paragraph shall, when added to the annual gross rents, as determined by the commissioner, exceed the sum of, (i) the annual operating expenses, (ii) an allowance for management services as determined by the commissioner, (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund which is operated under the supervision of the banking or insurance laws of the state of New York or the United States, and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for the purposes of this paragraph shall be six times the annual gross rent. The collection of any increase in the stabilized rent for any apartment pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the stabilized rent as established or set in future years;

§ 8. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein. It is further declared to be the intent of the legislature that this act would have been enacted even if subdivisions (b), (c), (d), (e), (f), (g), (h), and (i) of section two of this act had not been included herein.

§ 9. This act shall take effect immediately; provided:

(a) that the amendments to section 26-511 of chapter 4 of title 26 of the administrative code of the city of New York made by section seven of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided under section 26-520 of such law; and

(b) that the amendments to sections 26-405 and 26-407 of the city rent and rehabilitation law made by sections five and six of this act shall remain in full force and effect only as long as the public emergency requiring the regulation and control of residential rents and evictions continues, as provided in subdivision 3 of section 1 of the local emergency housing rent control act.

(c) Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.