

# STATE OF NEW YORK

7193

2021-2022 Regular Sessions

## IN SENATE

June 5, 2021

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to apply the Housing Stability and Tenant Protection Act of 2019 to rent calculations and rent records maintenance and destruction

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

1 Section 1. Legislative findings. The legislature hereby finds and  
2 declares that:

3 (a) the pool of rent regulated apartments in New York state contains  
4 an unacceptably high number of apartments in which the current rents are  
5 based on prior rents that exceeded the legal regulated rent at the time  
6 they were charged, but for which remedies were limited under the law in  
7 effect before the effective date of the Housing Stability and Tenant  
8 Protection Act of 2019 (HSTPA);

9 (b) it is public policy prospectively to reduce, insofar as possible,  
10 those rents to a level in line with what they would have been in the  
11 absence of the unlawful rent setting and deregulations that were permit-  
12 ted under prior law to go unremedied, and therefore to impose the rent  
13 calculation standards of the HSTPA prospectively from the date of its  
14 enactment, including in cases where the pre-HSTPA rent has already been  
15 established by a court or administrative agency;

16 (c) the purpose of the prospective application of the penalty and  
17 record review provisions of the HSTPA is to prevent the perpetual  
18 collection of unlawful and inflated rents, and to encourage the volun-  
19 tary registration of any rent stabilized apartment for which any prior  
20 annual registration statement has not been filed, and to encourage the  
21 voluntary recalculation of unreliable pre-HSTPA rents;

22 (d) in light of court decisions arising under the HSTPA of 2019,  
23 including Regina Metro v. DHCR, it is public policy that the legislature  
24 define clearly the prospective reach of that law, and limit, to the  
25 extent required by the constitution, the retroactive reach of that law;

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

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1 (e) despite Regina, the scope of the fraud exception to the pre-HSTPA  
2 four year rule for calculating rents remains unsettled and the subject  
3 of litigation, and it is therefore public policy that the legislature  
4 codify, without expanding or reducing the liability of landlords under  
5 pre-HSTPA law, the standard for applying that exception;

6 (f) the New York state division of housing and community renewal  
7 (DHCR) misinterpreted the rent stabilization law for a significant peri-  
8 od of time with respect to the regulatory obligations arising from the  
9 receipt of J-51 and 421-a tax benefits resulting in the unlawful deregulation  
10 of tens of thousands of rent-stabilized apartments, the setting  
11 of unlawful rents, and the collection of millions of dollars of rent  
12 overcharges, during a housing emergency. Both landlords and tenants  
13 relied upon the DHCR's misinterpretation of the law. In Regina, the  
14 Court of Appeals settled many of the issues arising from overcharge  
15 claims by tenants who were misled into refraining from filing overcharge  
16 cases during the period when DHCR's erroneous interpretation of the law  
17 was in effect, but left open the issue of whether a landlord's ongoing  
18 collection of overcharges and failure to return apartments to rent-sta-  
19 bilization, after the law was clarified, should be treated as fraud;

20 (g) the integrity of the registration system for rent regulated hous-  
21 ing has been eroded by the use of base date rents, rather than the  
22 service and filing of reliable registration statements, to set rents  
23 under the law in effect between the enactment of the Rent Regulation  
24 Reform Act of 1997 and the HSTPA. It is therefore public policy to  
25 impose, prospectively from the date of the enactment of the HSTPA, a  
26 rent calculation formula that, insofar as possible, derives the legal  
27 regulated rents for apartments from reliable registration statements  
28 served upon tenants and made available to the public; and

29 (h) because pre-HSTPA law with respect to the maintenance by landlords  
30 of rent records was complex, and has an ongoing impact upon the calcu-  
31 lation of post-HSTPA rents, it is necessary to codify the pre-HSTPA law  
32 that applied to the destruction of rent records prior to the enactment  
33 of the HSTPA, and to define clearly the impact of such law upon the  
34 prospective calculation of rents under the HSTPA.

35 § 2. (a) The legal rent for all rent stabilized apartments for the  
36 period from July 1, 2019 and thereafter shall be determined in accord-  
37 ance with Part F of the HSTPA. Where the legal regulated rent for a rent  
38 stabilized apartment for the period prior to June 14, 2019 has been  
39 determined by any court or administrative agency, that determination  
40 shall not foreclose a recalculation of the post-HSTPA rent, except that  
41 any pre-HSTPA rent that, as of June 14, 2019, is lower than the rent  
42 that would be permitted to be charged under the HSTPA, shall be deemed  
43 to be the lawful rent under the HSTPA on June 15, 2019, and shall be  
44 used as the basis for calculating subsequent rents under the HSTPA;

45 (b) Subdivision (a) of this section shall apply to all cases, includ-  
46 ing those pending as of June 14, 2019 before any court, appellate tribu-  
47 nal, or administrative agency in which a claim for rent overcharges or  
48 rent arrears has been asserted with respect to rent stabilized housing,  
49 the legal regulated rent for the period from June 14, 2019 and thereaft-  
50 er shall be determined in accordance with Part F of the HSTPA. The  
51 legal regulated rent for the portion of any overcharge claim involving  
52 rents paid prior to June 14, 2019 shall be determined under pre-HSTPA  
53 law, including the default formula in cases of fraud, as codified here-  
54 in.

55 (c) Nothing in this act, or the HSTPA, or prior law, shall be  
56 construed as restricting, impeding or diminishing the use of records of

1 any age or type, going back to any date that may be relevant, for  
2 purposes of determining the status of any apartment under the rent  
3 stabilization law;

4 (d) The legal regulated rent payable for the period prior to June 14,  
5 2019 shall be calculated in accordance with the law in effect prior to  
6 the HSTPA, including the prior four year limitation on the consideration  
7 of rent records, and including the fraud exception to such limitation  
8 and such other exceptions as existed under prior law and under the regu-  
9 lations of the New York state division of housing and community renewal.  
10 Nothing in this act shall be construed as limiting such exceptions or as  
11 limiting the application of any equitable doctrine that extends statutes  
12 of limitations generally. With respect to the calculation of legal  
13 rents for the period prior to June 14, 2019, an owner shall be deemed to  
14 have committed fraud if the owner shall have committed a material breach  
15 of any duty, arising under statutory, administrative or common law, to  
16 disclose truthfully to any tenant, government agency or judicial or  
17 administrative tribunal, the rent, regulatory status, or lease informa-  
18 tion, for purposes of claiming an unlawful rent or claiming to have  
19 deregulated an apartment. The following conduct shall be presumed to  
20 have been the product of such fraud: (1) the unlawful deregulation of  
21 any apartment, including such deregulation as results from claiming an  
22 unlawful increase such as would have brought the rent over the deregu-  
23 lation threshold that existed under prior law, unless the landlord can  
24 prove good faith reliance on a directive or ruling by an administrative  
25 agency or court; or (2) beginning October 1, 2011, failing to register,  
26 as rent stabilized, any apartment in a building receiving J-51 or 421-a  
27 benefits;

28 (e) In accordance with the practice of the New York state division of  
29 housing and community renewal prior to June 14, 2019, where fraud is not  
30 established, base rents of apartments unlawfully deregulated shall be  
31 calculated as the average of rents for comparable rent stabilized apart-  
32 ments in the building, rather than the default formula applicable to  
33 cases involving fraud;

34 (f) For the period prior to June 14, 2019, neither the version of  
35 subdivision g of section 26-516 of the administrative code of the city  
36 of New York then in effect, nor the version of section 2523.7 of the  
37 rent stabilization code (9 NYCRR 2523.7) then in effect shall be  
38 construed as permitting the destruction of rent records for units that  
39 have not been properly and timely registered. Where records have been  
40 permitted to be destroyed by virtue of proper registration, and no other  
41 law required the maintenance of such records, and where the owner has  
42 proven that such records were actually destroyed in accordance with  
43 prior law and that such destruction took place prior to June 15, 2019,  
44 the registration served and filed prior to such lawful destruction of  
45 records shall be presumed to be reliable, for purposes of any post-HSTPA  
46 calculation of the rent, but that presumption shall be rebuttable. The  
47 parties shall be entitled to discovery of any evidence found to be  
48 reasonably necessary to demonstrate the legal rent. Nothing in this  
49 paragraph shall be interpreted as authorizing the destruction of any  
50 record, that under prior law was relevant to establishing (1) the status  
51 of an apartment as regulated or unregulated; (2) the presence or absence  
52 of fraud with respect to renting any housing accommodation; (3) the  
53 presence or absence of willfulness in the collection of overcharges; (4)  
54 the useful life of any item, the replacement of which is claimed by the  
55 owner to qualify an apartment for a rent increase; (5) the duration of  
56 any tenancy, such as would establish whether an owner was entitled under

1 prior law to a longevity increase; or (6) compliance with any law that,  
2 independently of the rent stabilization law, required or requires the  
3 maintenance of such records. Where the calculation of the rent is  
4 dependent upon records that the owner has improperly destroyed, includ-  
5 ing where the records were destroyed without the apartment having been  
6 registered, the rent shall be calculated in accordance with the default  
7 formula.

8 § 3. This act shall take effect immediately.