STATE OF NEW YORK

7193

2021-2022 Regular Sessions

IN SENATE

June 5, 2021
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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;

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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 dereg-
10   lation 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.