

# STATE OF NEW YORK

3639

2023-2024 Regular Sessions

## IN ASSEMBLY

February 3, 2023

Introduced by M. of A. FITZPATRICK, TAGUE -- Multi-Sponsored by -- M. of A. MANKTELOW -- read once and referred to the Committee on Housing

AN ACT to amend the administrative code of the city of New York and the emergency tenant protection act of nineteen seventy-four, in relation to determining primary residency; and to amend the tax law, in relation to verification of residence

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

1 Section 1. Clause 10 of subparagraph (i) of paragraph 2 of subdivision  
2 e of section 26-403 of the administrative code of the city of New York,  
3 as amended by chapter 422 of the laws of 2010, is amended to read as  
4 follows:

5 (10) Housing accommodations not occupied by the tenant, not including  
6 subtenants or occupants, as his or her primary residence, as determined  
7 by a court of competent jurisdiction. For purposes of determining  
8 primary residency, as used in this chapter, the failure to file a New  
9 York city resident income tax return for the two preceding calendar  
10 years (setting forth the housing accommodation as his or her residence)  
11 by an individual required by law to file such a return, shall result in  
12 a finding that the tenant does not occupy the unit as his or her primary  
13 residence; provided, however, that this provision shall not apply to an  
14 individual who has requested an extension of time for payment of tax, or  
15 who is not required to file a resident income tax return, or where any  
16 other factor exists which would excuse the timely filing of the return;  
17 provided further, that the timely filing of the return, alone, shall not  
18 result in a presumption that the individual does occupy the unit as his  
19 or her primary residence or that the filing of an action to determine a  
20 tenant's primary residence shall not preclude such tenant from filing an  
21 amended tax return provided that such amended return is filed within  
22 sixty days of the commencement of the action. Further, for the purposes  
23 of determining primary residency, a tenant who is a victim of domestic  
24 violence, as defined in section four hundred fifty-nine-a of the social  
25 services law, who has left the unit because of such violence, and who  
26 asserts an intent to return to the housing accommodation shall be deemed

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

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1 to be occupying the unit as his or her primary residence. No action or  
2 proceeding shall be commenced seeking to recover possession on the  
3 ground that a housing accommodation is not occupied by the tenant as his  
4 or her primary residence unless the owner or lessor shall have given  
5 thirty days notice to the tenant of his or her intention to commence  
6 such action or proceeding on such grounds.

7 § 2. Subparagraph (f) of paragraph 1 of subdivision a of section  
8 26-504 of the administrative code of the city of New York, as amended by  
9 chapter 422 of the laws of 2010, is amended to read as follows:

10 (f) not occupied by the tenant, not including subtenants or occupants,  
11 as his or her primary residence, as determined by a court of competent  
12 jurisdiction[~~, provided, however that no~~]. For purposes of determining  
13 primary residency, as used in this chapter, the failure to file a New  
14 York city resident income tax return for the two preceding calendar  
15 years (setting forth the housing accommodation as his or her residence)  
16 by an individual required by law to file such a return, shall result in  
17 a finding that the tenant does not occupy the unit as his or her primary  
18 residence; provided, however, that this provision shall not apply to an  
19 individual who has requested an extension of time for payment of tax, or  
20 who is not required to file a resident income tax return, or where any  
21 other factor exists which would excuse the timely filing of a return;  
22 provided further, that the timely filing of the return, alone, shall not  
23 result in a presumption that the individual does occupy the unit as his  
24 or her primary residence or that the filing of an action to determine a  
25 tenant's primary residence shall not preclude such tenant from filing an  
26 amended tax return provided that such amended return is filed within  
27 sixty days of the commencement of the action. further, no action or  
28 proceeding shall be commenced seeking to recover possession on the  
29 ground that a housing accommodation is not occupied by the tenant as his  
30 or her primary residence unless the owner or lessor shall have given  
31 thirty days notice to the tenant of his or her intention to commence  
32 such action or proceeding on such grounds. For the purposes of determin-  
33 ing primary residency, a tenant who is a victim of domestic violence, as  
34 defined in section four hundred fifty-nine-a of the social services law,  
35 who has left the unit because of such violence, and who asserts an  
36 intent to return to the housing accommodation shall be deemed to be  
37 occupying the unit as his or her primary residence. For the purposes of  
38 this subparagraph where a housing accommodation is rented to a not-for-  
39 profit hospital for residential use, affiliated subtenants authorized to  
40 use such accommodations by such hospital shall be deemed to be tenants,  
41 or

42 § 3. Paragraph 11 of subdivision a of section 5 of section 4 of chap-  
43 ter 576 of the laws of 1974, constituting the emergency tenant  
44 protection act of nineteen seventy-four, as amended by section 1 of part  
45 J of chapter 36 of the laws of 2019, is amended to read as follows:

46 (11) housing accommodations which are not occupied by the tenant, not  
47 including subtenants or occupants, as his or her primary residence, as  
48 determined by a court of competent jurisdiction. For the purposes of  
49 determining primary residency, a tenant who is a victim of domestic  
50 violence, as defined in section four hundred fifty-nine-a of the social  
51 services law, who has left the unit because of such violence, and who  
52 asserts an intent to return to the housing accommodation shall be deemed  
53 to be occupying the unit as his or her primary residence. Further, for  
54 purposes of determining primary residency, as used in this chapter, the  
55 failure to file a New York state resident income tax return for the two  
56 preceding calendar years (setting forth the housing accommodation as his

1 or her residence) by an individual required by law to file such a  
2 return, shall result in a finding that the tenant does not occupy the  
3 unit as his or her primary residence; provided, however, that this  
4 provision shall not apply to an individual who has requested an exten-  
5 sion of time for payment of tax, or who is not required to file a resi-  
6 dent income tax return, or where any other factor exists which would  
7 excuse the timely filing of the return; provided further, that the time-  
8 ly filing of the return, alone, shall not result in a presumption that  
9 the individual does occupy the unit as his or her primary residence or  
10 that the filing of an action to determine a tenant's primary residence  
11 shall not preclude such tenant from filing an amended tax return  
12 provided that such amended return is filed within sixty days of the  
13 commencement of the action. For the purposes of this paragraph, where a  
14 housing accommodation is rented to a not-for-profit hospital for resi-  
15 dential use, affiliated subtenants authorized to use such accommodations  
16 by such hospital shall be deemed to be tenants. For the purposes of  
17 this paragraph, where a housing accommodation is rented to a not-for-  
18 profit for providing, as of and after [~~the effective date of the chapter~~  
19 ~~of the laws of two thousand nineteen that amended this paragraph~~] June  
20 fourteenth, two thousand nineteen, permanent housing to individuals who  
21 are or were homeless or at risk of homelessness, affiliated subtenants  
22 authorized to use such accommodations by such not-for-profit shall be  
23 deemed to be tenants. No action or proceeding shall be commenced seeking  
24 to recover possession on the ground that a housing accommodation is not  
25 occupied by the tenant as his or her primary residence unless the owner  
26 or lessor shall have given thirty days notice to the tenant of his or  
27 her intention to commence such action or proceeding on such grounds.

28 § 4. The tax law is amended by adding a new section 171-bb to read as  
29 follows:

30 § 171-bb. Verification of residence filing address. (1) The commis-  
31 sioner is authorized to verify to owners of multiple dwellings covered  
32 by the city rent and rehabilitation law, the rent stabilization law of  
33 nineteen hundred sixty-nine and/or the emergency tenant protection act  
34 of nineteen seventy-four whether or not, in a given calendar year, a New  
35 York city or New York state resident income tax return was filed by an  
36 individual who is a tenant in the owner's multiple dwelling and, if so,  
37 the residence address which is set forth on the tax return. Such  
38 verification shall be in writing and shall be considered a certificate  
39 or affidavit for the purposes of rule forty-five hundred twenty of the  
40 civil practice law and rules.

41 (2) The department may charge a reasonable fee, to be determined by  
42 the commissioner, in payment to the department for the expense incurred  
43 in verifying the filing and residence address.

44 (3) The commissioner shall promulgate such rules and regulations as it  
45 deems necessary to carry out the provisions of this section.

46 § 5. This act shall take effect immediately; provided that the amend-  
47 ment to section 26-403 of the city rent and rehabilitation law made by  
48 section one of this act shall remain in full force and effect only so  
49 long as the public emergency requiring the regulation and control of  
50 residential rents and evictions continues, as provided in subdivision 3  
51 of section 1 of the local emergency housing rent control act; and  
52 provided further that the amendment to section 26-504 of chapter 4 of  
53 title 26 of the administrative code of the city of New York made by  
54 section two of this act shall expire on the same date as such law  
55 expires and shall not affect the expiration of such law as provided  
56 under section 26-520 of such law.