

# STATE OF NEW YORK

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4047--B

2023-2024 Regular Sessions

## IN ASSEMBLY

February 9, 2023

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Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Housing -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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 permitted  
12 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 voluntary  
19 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;

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

LBD07241-04-3

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

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

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

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

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

(b) Subdivision (a) of this section shall apply to all cases, including those pending as of June 14, 2019 before any court, appellate tribunal, or administrative agency in which a claim for rent overcharges or rent arrears has been asserted with respect to rent stabilized housing, the legal regulated rent for the period from June 14, 2019 and thereafter shall be determined in accordance with Part F of the HSTPA. The legal regulated rent for the portion of any overcharge claim involving rents paid prior to June 14, 2019 shall be determined under pre-HSTPA law, including the default formula in cases of fraud, as codified herein.

(c) Nothing in this act, or the HSTPA, or prior law, shall be construed as restricting, impeding or diminishing the use of records of any age or type, going back to any date that may be relevant, for

1 purposes of determining the status of any apartment under the rent  
2 stabilization law;

3 (d) The legal regulated rent payable for the period prior to June 14,  
4 2019 shall be calculated in accordance with the law in effect prior to  
5 the HSTPA, including the prior four year limitation on the consideration  
6 of rent records, and including the fraud exception to such limitation  
7 and such other exceptions as existed under prior law and under the regu-  
8 lations of the New York state division of housing and community renewal.  
9 Nothing in this act shall be construed as limiting such exceptions or as  
10 limiting the application of any equitable doctrine that extends statutes  
11 of limitations generally.

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

18 (f) For the period prior to June 14, 2019, neither the version of  
19 subdivision g of section 26-516 of the administrative code of the city  
20 of New York then in effect, nor the version of section 2523.7 of the  
21 rent stabilization code (9 NYCRR 2523.7) then in effect shall be  
22 construed as permitting the destruction of rent records for units that  
23 have not been properly and timely registered. Where records have been  
24 permitted to be destroyed by virtue of proper registration, and no other  
25 law required the maintenance of such records, and where the owner has  
26 proven that such records were actually destroyed in accordance with  
27 prior law and that such destruction took place prior to June 15, 2019,  
28 the registration served and filed prior to such lawful destruction of  
29 records shall be presumed to be reliable, for purposes of any post-HSTPA  
30 calculation of the rent, but that presumption shall be rebuttable. The  
31 parties shall be entitled to discovery of any evidence found to be  
32 reasonably necessary to demonstrate the legal rent. Nothing in this  
33 paragraph shall be interpreted as authorizing the destruction of any  
34 record, that under prior law was relevant to establishing (1) the status  
35 of an apartment as regulated or unregulated; (2) the presence or absence  
36 of fraud with respect to renting any housing accommodation; (3) the  
37 presence or absence of willfulness in the collection of overcharges; (4)  
38 the useful life of any item, the replacement of which is claimed by the  
39 owner to qualify an apartment for a rent increase; (5) the duration of  
40 any tenancy, such as would establish whether an owner was entitled under  
41 prior law to a longevity increase; or (6) compliance with any law that,  
42 independently of the rent stabilization law, required or requires the  
43 maintenance of such records. Where the calculation of the rent is  
44 dependent upon records that the owner has improperly destroyed, includ-  
45 ing where the records were destroyed without the apartment having been  
46 registered, the rent shall be calculated in accordance with the default  
47 formula.

48 § 3. This act shall take effect immediately.