STATE OF NEW YORK

2980--C

Cal. No. 747

2023-2024 Regular Sessions

IN SENATE

January 26, 2023

Introduced by Sens. KAVANAGH, CLEARE, HOYLMAN-SIGAL, JACKSON, KRUEGER, MYRIE, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 establishing the legal regulated rent for the combination of two or more vacant apartments; to amend the public housing law, in relation to defining permanently vacated; to amend the emergency tenant protection act of nineteen seventy-four, in relation to exemptions from rent stabilization on the basis of substantial rehabilitation; and to repeal paragraph (d) of subdivision 4 of section 14 of the public housing law, in relation thereto (Part A); to define clearly the scope of the fraud exception to the pre-HSTPA four-year rule for calculating rents (Part B); and to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the public housing law, in relation to the failure of owners to file rent registration statements and the enforcement powers of the commissioner of housing and community renewal (Part C)

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

Section 1. This act enacts into law components of legislation relating to rent regulation and tenant protection. Each component is wholly contained within a Part identified as Parts A through C. The effective date for each particular provision contained within such Part is set

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

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forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Subdivision c of section 26-511 of the administrative code of the city of New York is amended by adding a new paragraph 15 to read as follows:

(15) (a) where an owner combines two or more vacant housing accommodations or combines a vacant housing accommodation with an occupied housing accommodation, such initial rent for such new housing accommodation shall be the combined legal rent for both previous housing accommodations, subject to any applicable guideline increases and any other increases authorized by this chapter including any individual apartment improvement increases applicable for both housing accommodations. If an owner combines a rent regulated accommodation with an apartment not subject to rent regulation, the resulting apartment shall be subject to this chapter. If an owner increases the area of an apartment not subject to rent regulation by adding space that was previously part of a rent regulated apartment, each apartment shall be subject to this chapter.

(b) where an owner substantially increases the outer dimension of a vacant housing accommodation, such initial rent shall be the prior rent of such housing accommodation, increased by a percentage that is equal to the percentage increase in the dwelling space and such other increases authorized by this chapter including any applicable guideline increase and individual apartment improvement increase that could be authorized for the unit prior to the alteration of the outer dimensions.

(c) notwithstanding subparagraphs (a) and (b) of this paragraph, such increases may be denied based on the occurrence of such vacancy due to harassment, fraud, or other acts of evasion which may require that such rent be set in accordance with section 26-516 of this title.

(d) where the vacant housing accommodations are combined, modified, divided or the dimension of such housing accommodation otherwise altered and these changes are being made pursuant to a preservation regulatory agreement with a federal, state or local governmental agency or instrumentality, the rent stabilized rents charged thereafter shall be based on an initial rent set by such agency or instrumentality, provided such initial rent shall not be higher than if the initial rent was calculated in accordance with subparagraphs (a), (b), (e) or (f) of this paragraph.

(e) where an owner substantially decreases the outer dimensions of a vacant housing accommodation, such initial rent shall be the prior rent of such housing accommodation, decreased by the same percentage the square footage of the original apartment was decreased by and such other increases authorized by this chapter including any applicable guideline increase and individual apartment improvement increase that could be authorized for the apartment prior to the alteration of the outer dimensions.

(f)(i) when an owner combines two or more rent regulated apartments, the owner may use each of the previous apartments' remaining individual apartment improvement allowances for the purposes of a temporary individual apartment improvement rent increase. The owner shall subsequently designate a surviving apartment for the purposes of registration that

has the same apartment number as one of the prior apartments. If that prior apartment has any reimbursable individual apartment improvement money remaining after the combination, that money may be reimbursed for future individual apartment improvements undertaken within the subsequent fifteen years following the combination.

(ii) in order for an owner to qualify for a temporary individual apartment improvement rent increase when apartments are combined, the requirements for an individual apartment improvement, including all notification requirements under this chapter shall be met.

(g) owners shall maintain the records and rent histories of all combined apartments, both prior to and post combination, for the purposes of rent setting, overcharge and all other proceedings to which the records are applicable.

§ 2. Subdivision (a) of section 10-b of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, is amended by adding a new paragraph 13 to read as follows:

13. (i) where an owner combines two or more vacant housing accommodations or combines a vacant housing accommodation with an occupied housing accommodation, such initial rent for such new housing accommodation shall be the combined legal rent for both previous housing accommodations, subject to any applicable guideline increases and any other increases authorized by this chapter including any individual apartment improvement increases applicable for both housing accommodations. If an owner combines a rent regulated accommodation with an apartment not subject to rent regulation, the resulting apartment shall be subject to this act. If an owner increases the area of an apartment not subject to rent regulation by adding space that was previously part of a rent regulated apartment, each apartment shall be subject to this act.

(ii) where an owner substantially increases the outer dimension of a vacant housing accommodation, such initial rent shall be the prior rent of such housing accommodation, increased by a percentage that is equal to the percentage increase in the dwelling space and such other increases authorized by this act including any applicable guideline increase and individual apartment improvement increase that could be authorized for the unit prior to the alteration of the outer dimensions.

(iii) notwithstanding subparagraphs (i) and (ii) of this paragraph, such increases may be denied based on the occurrence of such vacancy due to harassment, fraud, or other acts of evasion which may require that such rent be set in accordance with section twelve of this act.

(iv) where the vacant housing accommodations are combined, modified, divided or the dimension of such housing accommodation otherwise altered and these changes are being made pursuant to a preservation regulatory agreement with a federal, state or local governmental agency or instrumentality, the rent stabilized rents charged thereafter shall be based on an initial rent set by such agency or instrumentality, provided such initial rent shall not be higher than if the initial rent was calculated in accordance with subparagraphs (i), (ii), (v) or (vi) of this paragraph.

(v) where an owner substantially decreases the outer dimensions of a vacant housing accommodation, such initial rent shall be the prior rent of such housing accommodation, decreased by the same percentage the square footage of the original apartment was decreased by and such other increases authorized by this act including any applicable guideline increase and individual apartment improvement increase that could be

authorized for the apartment prior to the alteration of the outer dimensions.

(vi)(1) when an owner combines two or more rent regulated apartments, the owner may use each of the previous apartments' remaining individual apartment improvement allowances for the purposes of a temporary individual apartment improvement rent increase. The owner shall subsequently designate a surviving apartment for the purposes of registration that has the same apartment number as one of the prior apartments. If that prior apartment has any reimbursable individual apartment improvement money remaining after the combination, that money may be reimbursed for future individual apartment improvements undertaken within the subsequent fifteen years following the combination.

(2) in order for an owner to qualify for a temporary individual apartment improvement rent increase when apartments are combined, the requirements for an individual apartment improvement, including all notification requirements under this act shall be met.

(vii) owners shall maintain the records and rent histories of all combined apartments, both prior to and post combination, for the purposes of rent setting, overcharge and all other proceedings to which the records are applicable.

§ 3. The opening paragraph of paragraph (a) of subdivision 4 of section 14 of the public housing law, as added by chapter 116 of the laws of 1997, is amended to read as follows:

that unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, any member of the tenant's family, as defined in paragraph (c) of this subdivision, shall succeed to the rights of a tenant under such acts and laws where the tenant has permanently vacated the housing accommodation and such family member has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years, or where such person is a "senior citizen" or a "disabled person," as defined in paragraph (c) of this subdivision, for a period of no less than one year, immediately prior to the permanent vacating of the housing accommodation by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods. For the purposes of this paragraph, "permanently vacated" shall mean the date when the tenant of record permanently stops residing in the housing accommodation regardless of subsequent contacts with the unit or the signing of lease renewals or continuation of rent payments. The minimum periods of required residency set forth in this subdivision shall not be deemed to be interrupted by any period during which the "family member" temporarily relocates because he or she:

§ 4. Paragraph (d) of subdivision 4 of section 14 of the public housing law is REPEALED.

§ 5. Paragraph 5 of subdivision a of section 5 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, is amended to read as follows:

(5) housing accommodations in buildings completed or buildings substantially rehabilitated as family units on or after January first, nineteen hundred seventy-four; provided that an owner claiming exemption from rent stabilization on the basis of substantial rehabilitation shall seek approval from state division of housing and community renewal within one year of the completion of the substantial rehabilitation, or for any building previously alleged to have been substantially rehabilitated before the effective date of the chapter of the laws of two thousand

twenty-three that amended this paragraph, within six months of such effective date, and ultimately obtain such approval, which shall be denied on the following grounds:

(a) the owner or its predecessors in interest have engaged in harassment of tenants in the five years preceding the completion of the substantial rehabilitation;

(b) the building was not in a substandard or seriously deteriorated condition requiring substantial rehabilitation;

§ 6. This act shall take effect immediately and shall apply to all pending proceedings on and after such date; provided 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 one 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.

PART B

Section 1. Legislative findings. The legislature hereby finds and declares that in light of court decisions arising under the Housing Stability and Tenant Protection Act of 2019 (HSTPA), including **Regina Metro v. DHCR**, it is public policy that the legislature define clearly the scope of the fraud exception to the pre-HSTPA four-year rule for calculating rents which remains unsettled and the subject of litigation where courts have diverged from the controlling authority of **Thornton v. Baron** and **Grimm v. DHCR** to impose a common law fraud standard that is not found in these cases and is inconsistent with the intent of the legislature to discourage and penalize fraud against the rent regulatory system itself, as well as against individual tenants, and it is therefore public policy that the legislature codify, without expanding or reducing the liability of landlords under pre-HSTPA law, the standard for applying that exception.

§ 2. (a) 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 purposes of determining the status of any apartment under the rent stabilization law;

(b) With respect to the calculation of legal rents for the period either prior to or subsequent to June 14, 2019, an owner shall be deemed to have committed fraud if the owner shall have committed a material breach of any duty, arising under statutory, administrative or common law, to disclose truthfully to any tenant, government agency or judicial or administrative tribunal, the rent, regulatory status, or lease information, for purposes of claiming an unlawful rent or claiming to have deregulated an apartment, whether or not the owner's conduct would be considered fraud under the common law, and whether or not a complaining tenant specifically relied on untruthful or misleading statements in registrations, leases, or other documents. The following conduct shall be presumed to have been the product of such fraud: (1) the unlawful deregulation of any apartment, including such deregulation as results from claiming an unlawful increase such as would have brought the rent over the deregulation threshold that existed under prior law, unless the landlord can prove good faith reliance on a directive or ruling by an administrative agency or court; or (2) beginning October 1, 2011, failing to register, as rent stabilized, any apartment in a building receiving J-51 or 421-a benefits.

§ 3. This act shall take effect immediately.

PART C

Section 1. Subdivision e of section 26-517 of the administrative code of the city of New York, as amended by chapter 253 of the laws of 1993, is amended to read as follows:

e. The failure to file a proper and timely initial or annual rent registration statement shall, until such time as such registration is filed, bar an owner from applying for or collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement or if no such statements have been filed, the legal regulated rent in effect on the date that the housing accommodation became subject to the registration requirements of this section. The filing of a late registration shall result in the prospective elimination of such sanctions and provided that increases in the legal regulated rent were lawful except for the failure to file a timely registration, the owner, upon the service and filing of a late registration, shall not be found to have collected an overcharge at any time prior to the filing of the late registration. [~~If such late registration is filed subsequent to the filing of an overcharge complaint, the owner shall be assessed a late filing surcharge for each late registration in an amount equal to fifty percent of the timely rent registration fee.~~] **In addition to all other requirements set forth in this subdivision, in the event a timely rent registration is not filed and after notice of such delinquency is provided by the state division of housing and community renewal to the owner in the form of electronic mail and mail to the address listed in the owner's most recent registration statement, the owner shall be subject to a fine of five hundred dollars per unregistered unit for each month the registration is delinquent. Such a fine shall be imposed by order, and such order imposing a fine shall be deemed a final determination for the purposes of judicial review. Such fine may, upon the expiration of the period for seeking review pursuant to article seventy-eight of the civil practice law and rules, be docketed and enforced in the manner of a judgment of the supreme court by the state division of housing and community renewal.**

§ 2. Subdivision e of section 12-a of section 4 of chapter 576 of the laws of 1974 constituting the emergency tenant protection act of nineteen seventy-four, as amended by chapter 253 of the laws of 1993, is amended to read as follows:

e. The failure to file a proper and timely initial or annual rent registration statement shall, until such time as such registration is filed, bar an owner from applying for or collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement or if no such statements have been filed, the legal regulated rent in effect on the date that the housing accommodation became subject to the registration requirements of this section. The filing of a late registration shall result in the prospective elimination of such sanctions and provided that increases in the legal regulated rent were lawful except for the failure to file a timely registration, the owner, upon the service and filing of a late registration, shall not be found to have collected an overcharge at any time prior to the filing of the late registration. [~~If such late registration is filed subsequent to the filing of an overcharge complaint, the owner shall be assessed a late filing surcharge for each late registration in an amount equal to fifty percent of the timely rent registration fee.~~] **In addition to all other requirements set forth in this subdivision, in the event a timely rent registration is not filed and after notice of such delin-**

quency is provided by the division of housing and community renewal to the owner in the form of electronic mail and mail to the address listed in the owner's most recent registration statement, the owner shall be subject to a fine of five hundred dollars per unregistered unit for each month the registration is delinquent. Such a fine shall be imposed by order, and such order imposing a fine shall be deemed a final determination for the purposes of judicial review. Such fine may, upon the expiration of the period for seeking review pursuant to article seventy-eight of the civil practice law and rules, be docketed and enforced in the manner of a judgment of the supreme court by the division of housing and community renewal.

§ 3. Subdivision 1 of section 14 of the public housing law is amended by adding a new paragraph (x) to read as follows:

(x) enforce the emergency tenant protection act of nineteen seventy-four, the emergency housing rent control law, the local emergency housing rent control act, the rent stabilization law of nineteen sixty-nine and any regulations, rules and policies enacted pursuant thereto, in addition to any other laws, rules or regulations related to housing that is financed, administered, overseen or otherwise regulated by the agency or its related entities which constitute component parts of the division; such enforcement authority shall include, but not be limited to, all of the powers granted by the other provisions of this subdivision, the statutes, rules, regulations and other documents governing the administration of housing by the division, and, where applicable, the power to issue orders.

§ 4. This act shall take effect immediately, provided that the amendments to section 26-517 of chapter 4 of title 26 of the administrative code of the city of New York made by section one 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.

§ 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through C of this act shall be as specifically set forth in the last section of such Parts.