

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:

1 Section 1. This act enacts into law components of legislation relating
2 to rent regulation and tenant protection. Each component is wholly
3 contained within a Part identified as Parts A through C. The effective
4 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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1 forth in the last section of such Part. Any provision in any section
2 contained within a Part, including the effective date of the Part, which
3 makes reference to a section "of this act", when used in connection with
4 that particular component, shall be deemed to mean and refer to the
5 corresponding section of the Part in which it is found. Section three of
6 this act sets forth the general effective date of this act.

7

PART A

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

11 (15) (a) where an owner combines two or more vacant housing accommo-
12 modations or combines a vacant housing accommodation with an occupied
13 housing accommodation, such initial rent for such new housing accommo-
14 dation shall be the combined legal rent for both previous housing accom-
15 modations, subject to any applicable guideline increases and any other
16 increases authorized by this chapter including any individual apartment
17 improvement increases applicable for both housing accommodations. If an
18 owner combines a rent regulated accommodation with an apartment not
19 subject to rent regulation, the resulting apartment shall be subject to
20 this chapter. If an owner increases the area of an apartment not subject
21 to rent regulation by adding space that was previously part of a rent
22 regulated apartment, each apartment shall be subject to this chapter.

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

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

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

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

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

1 has the same apartment number as one of the prior apartments. If that
2 prior apartment has any reimbursable individual apartment improvement
3 money remaining after the combination, that money may be reimbursed for
4 future individual apartment improvements undertaken within the subse-
5 quent fifteen years following the combination.

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

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

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

18 13. (i) where an owner combines two or more vacant housing accommo-
19 datations or combines a vacant housing accommodation with an occupied
20 housing accommodation, such initial rent for such new housing accommo-
21 dation shall be the combined legal rent for both previous housing accom-
22 modations, subject to any applicable guideline increases and any other
23 increases authorized by this chapter including any individual apartment
24 improvement increases applicable for both housing accommodations. If an
25 owner combines a rent regulated accommodation with an apartment not
26 subject to rent regulation, the resulting apartment shall be subject to
27 this act. If an owner increases the area of an apartment not subject to
28 rent regulation by adding space that was previously part of a rent regu-
29 lated apartment, each apartment shall be subject to this act.

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

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

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

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

1 authorized for the apartment prior to the alteration of the outer dimen-
2 sions.

3 (vi)(1) when an owner combines two or more rent regulated apartments,
4 the owner may use each of the previous apartments' remaining individual
5 apartment improvement allowances for the purposes of a temporary indi-
6 vidual apartment improvement rent increase. The owner shall subsequently
7 designate a surviving apartment for the purposes of registration that
8 has the same apartment number as one of the prior apartments. If that
9 prior apartment has any reimbursable individual apartment improvement
10 money remaining after the combination, that money may be reimbursed for
11 future individual apartment improvements undertaken within the subse-
12 quent fifteen years following the combination.

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

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

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

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

44 § 4. Paragraph (d) of subdivision 4 of section 14 of the public hous-
45 ing law is REPEALED.

46 § 5. Paragraph 5 of subdivision a of section 5 of section 4 of chapter
47 576 of the laws of 1974, constituting the emergency tenant protection
48 act of nineteen seventy-four, is amended to read as follows:

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

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

4 (a) the owner or its predecessors in interest have engaged in harass-
5 ment of tenants in the five years preceding the completion of the
6 substantial rehabilitation;

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

9 § 6. This act shall take effect immediately and shall apply to all
10 pending proceedings on and after such date; provided that the amendments
11 to section 26-511 of chapter 4 of title 26 of the administrative code of
12 the city of New York made by section one of this act shall expire on the
13 same date as such law expires and shall not affect the expiration of
14 such law as provided under section 26-520 of such law.

15 PART B

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

30 § 2. (a) Nothing in this act, or the HSTPA, or prior law, shall be
31 construed as restricting, impeding or diminishing the use of records of
32 any age or type, going back to any date that may be relevant, for
33 purposes of determining the status of any apartment under the rent
34 stabilization law;

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

54 § 3. This act shall take effect immediately.

1

PART C

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

5 e. The failure to file a proper and timely initial or annual rent
6 registration statement shall, until such time as such registration is
7 filed, bar an owner from applying for or collecting any rent in excess
8 of the legal regulated rent in effect on the date of the last preceding
9 registration statement or if no such statements have been filed, the
10 legal regulated rent in effect on the date that the housing accommo-
11 dation became subject to the registration requirements of this section.
12 The filing of a late registration shall result in the prospective elimi-
13 nation of such sanctions and provided that increases in the legal regu-
14 lated rent were lawful except for the failure to file a timely registra-
15 tion, the owner, upon the service and filing of a late registration,
16 shall not be found to have collected an overcharge at any time prior to
17 the filing of the late registration. [~~If such late registration is filed
18 subsequent to the filing of an overcharge complaint, the owner shall be
19 assessed a late filing surcharge for each late registration in an amount
20 equal to fifty percent of the timely rent registration fee.~~] In addition
21 to all other requirements set forth in this subdivision, in the event a
22 timely rent registration is not filed and after notice of such delin-
23 quency is provided by the state division of housing and community
24 renewal to the owner in the form of electronic mail and mail to the
25 address listed in the owner's most recent registration statement, the
26 owner shall be subject to a fine of five hundred dollars per unregis-
27 tered unit for each month the registration is delinquent. Such a fine
28 shall be imposed by order, and such order imposing a fine shall be
29 deemed a final determination for the purposes of judicial review. Such
30 fine may, upon the expiration of the period for seeking review pursuant
31 to article seventy-eight of the civil practice law and rules, be docket-
32 ed and enforced in the manner of a judgment of the supreme court by the
33 state division of housing and community renewal.

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

38 e. The failure to file a proper and timely initial or annual rent
39 registration statement shall, until such time as such registration is
40 filed, bar an owner from applying for or collecting any rent in excess
41 of the legal regulated rent in effect on the date of the last preceding
42 registration statement or if no such statements have been filed, the
43 legal regulated rent in effect on the date that the housing accommo-
44 dation became subject to the registration requirements of this section.
45 The filing of a late registration shall result in the prospective elimi-
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47 lated rent were lawful except for the failure to file a timely registra-
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54 to all other requirements set forth in this subdivision, in the event a
55 timely rent registration is not filed and after notice of such delin-

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

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

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

26 § 4. This act shall take effect immediately, provided that the amend-
27 ments to section 26-517 of chapter 4 of title 26 of the administrative
28 code of the city of New York made by section one of this act shall
29 expire on the same date as such law expires and shall not affect the
30 expiration of such law as provided under section 26-520 of such law.

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

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