STATE OF NEW YORK

8011

IN SENATE

January 5, 2024

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 emergency tenant protection act of nineteen seventy-four, in relation to exemptions from rent stabilization on the basis of substantial rehabilitation; to define clearly the scope of the fraud exception to the pre-HSTPA four-year rule for calculating rents; and to amend part B of a chapter of the laws of 2023 relating to defining clearly the scope of the fraud exception to the pre-HSTPA four-year rule for calculating rents, as proposed in legislative bills numbers S. 2980-C and A. 6216-B, in relation to claims of fraudulent schemes and determination relating thereto and in relation to the effectiveness thereof

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

Section 1. Subparagraph (d) of paragraph 15 of subdivision c of section 26-511 of the administrative code of the city of New York, as added by part A of a chapter of the laws of 2023 amending the administrative code of the city of New York and the emergency tenant protection act of nineteen seventy-four relating to establishing the legal regulated rent for the combination of two or more vacant apartments, as proposed in legislative bills numbers S. 2980-C and A. 6216-B, is amended to read as follows:

(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), (c) or (f) of this paragraph~~].

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

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§ 2. Subparagraph (iv) of paragraph 13 of 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, as added by part A of a chapter of the laws of 2023 amending the administrative code of the city of New York and the emergency tenant protection act of nineteen seventy-four relating to establishing the legal regulated rent for the combination of two or more vacant apartments, as proposed in legislative bills numbers S. 2980-C and A. 6216-B, is amended to read as follows:

(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~~].

§ 3. 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, as amended by part A of a chapter of the laws of 2023 amending the administrative code of the city of New York and the emergency tenant protection act of nineteen seventy-four relating to establishing the legal regulated rent for the combination of two or more vacant apartments, as proposed in legislative bills numbers S. 2980-C and A. 6216-B, 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 **a** substantial rehabilitation**, where the work for such rehabilitation was initiated on or after the first day of January, two thousand twenty-four,** 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; **or**

(c) any additional grounds as set forth by regulation;

§ 4. Section 2 of part B of a chapter of the laws of 2023 relating to defining clearly the scope of the fraud exception to the pre-HSTPA four-year rule for calculating rents, as proposed in legislative bills numbers S. 2980-C and A. 6216-B, is amended, and a new section 2-a is added to read as follows:

§ 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.~~] **or for such other purposes permitted under law or the regulations of the New York State division of housing and community renewal.**

§ 2-a. When a colorable claim that an owner has engaged in a fraudulent scheme to deregulate a unit is properly raised as part of a proceeding before a court of competent jurisdiction or the state division of housing and community renewal, a court of competent jurisdiction or the state division of housing and community renewal shall issue a determination as to whether the owner knowingly engaged in such fraudulent scheme after a consideration of the totality of the circumstances. In making such determination, the court or the division shall consider all of the relevant facts and all applicable statutory and regulatory law and controlling authorities, provided that there need not be a finding that all of the elements of common law fraud, including evidence of a misrepresentation of material fact, falsity, scienter, reliance and injury, were satisfied in order to make a determination that a fraudulent scheme to deregulate a unit was committed if the totality of the circumstances nonetheless indicate that such fraudulent scheme to deregulate a unit was committed.

§ 5. Section 3 of part B of a chapter of the laws of 2023 relating to defining clearly the scope of the fraud exception to the pre-HSTPA four-year rule for calculating rents, as proposed in legislative bills numbers S. 2980-C and A. 6216-B, is amended to read as follows:

§ 3. This act shall take effect immediately **and shall apply to any action or proceeding in any court or any application, complaint or proceeding before an administrative agency on the effective date of this act**.

§ 6. This act shall take effect immediately; provided, however that sections one, two, and three of this act shall take effect on the same date and in the same manner as part A of a chapter of the laws of 2023 amending the administrative code of the city of New York and the emergency tenant protection act of nineteen seventy-four relating to establishing the legal regulated rent for the combination of two or more vacant apartments, as proposed in legislative bills numbers S. 2980-C and A. 6216-B, takes effect; and provided further, however, that sections four and five of this act shall take effect on the same date and in the same manner as part B of a chapter of the laws of 2023 relating to defining clearly the scope of the fraud exception to the

pre-HSTPA four-year rule for calculating rents, as proposed in legislative bills numbers S. 2980-C and A. 6216-B, takes effect; and provided further, however, 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 provided under section 26-520 of such law.