

# STATE OF NEW YORK

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2943--B

Cal. No. 746

2023-2024 Regular Sessions

## IN SENATE

January 26, 2023

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Introduced by Sens. KAVANAGH, GIANARIS, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 1 -- committee discharged and said bill committed to the Committee on Housing, Construction and Community Development -- 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 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 permit-  
12 ted 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 volun-

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

LBD07241-05-3

1 tary registration of any rent stabilized apartment for which any prior  
2 annual registration statement has not been filed, and to encourage the  
3 voluntary recalculation of unreliable pre-HSTPA rents;

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

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

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

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

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

47 (b) Subdivision (a) of this section shall apply to all cases, includ-  
48 ing those pending as of June 14, 2019 before any court, appellate tribu-  
49 nal, or administrative agency in which a claim for rent overcharges or  
50 rent arrears has been asserted with respect to rent stabilized housing,  
51 the legal regulated rent for the period from June 14, 2019 and thereaft-  
52 er shall be determined in accordance with Part F of the HSTPA. The  
53 legal regulated rent for the portion of any overcharge claim involving  
54 rents paid prior to June 14, 2019 shall be determined under pre-HSTPA  
55 law, including the default formula in cases of fraud, as codified here-  
56 in.

1 (c) Nothing in this act, or the HSTPA, or prior law, shall be  
2 construed as restricting, impeding or diminishing the use of records of  
3 any age or type, going back to any date that may be relevant, for  
4 purposes of determining the status of any apartment under the rent  
5 stabilization law;

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

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

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

51 § 3. This act shall take effect immediately.