

STATE OF NEW YORK

2980--B

2023-2024 Regular Sessions

IN SENATE

January 26, 2023

Introduced by Sens. KAVANAGH, CLEARE, HOYLMAN-SIGAL, JACKSON, KRUEGER, 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

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 9 of subdivision a of section 26-405 of the administrative code of the city of New York, in relation to public hearings by the city rent agency (Part A); to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four, and the emergency housing rent control law, in relation to major capital improvements (Part B); to amend the multiple dwelling law, in relation to rent impairing violations; and to amend the real property actions and proceedings law, in relation to eviction proceedings (Part C); to apply the Housing Stability and Tenant Protection Act of 2019 to rent calculations and rent records maintenance and destruction (Part D); 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 E)

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

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

LBD07250-09-3

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 E. The effective date for each particular provision contained within such Part is set 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. Paragraph 9 of subdivision a of section 26-405 of the administrative code of the city of New York is REPEALED.

§ 2. 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 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 the emergency tenant protection act of nineteen seventy-four. 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 the emergency tenant protection act of nineteen seventy-four.

(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 this subdivision.

(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.

(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

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

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

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

25 13. (i) where an owner combines two or more vacant housing accommo-
26 dations or combines a vacant housing accommodation with an occupied
27 accommodation, such initial rent for such new housing accommodation
28 shall be the combined legal rent for both previous housing accommo-
29 dations, subject to any applicable guideline increases and any other
30 increases authorized by this chapter including any individual apartment
31 improvement increases applicable for both housing accommodations. If an
32 owner combines a rent regulated accommodation with an apartment not
33 subject to rent regulation, the resulting apartment shall be subject to
34 this act. If an owner increases the area of an apartment not subject to
35 rent regulation by adding space that was previously part of a rent regu-
36 lated apartment, each apartment shall be subject to this act.

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

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

48 (iv) where the vacant housing accommodations are combined, modified,
49 divided or the dimension of such housing accommodation otherwise altered
50 and these changes are being made pursuant to a preservation regulatory
51 agreement with a federal, state or local governmental agency or instru-
52 mentality, the rent stabilized rents charged thereafter shall be based
53 on an initial rent set by such agency or instrumentality.

54 (v) where an owner substantially decreases the outer dimensions of a
55 vacant housing accommodation, such initial rent shall be the prior rent
56 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 physically moves out of the housing accommodation and permanently ceases to use it as their primary residence, 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 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

1 any building previously alleged to have been substantially rehabilitated
2 before the effective date of the chapter of the laws of two thousand
3 twenty-three that amended this paragraph, within six months of such
4 effective date, and ultimately obtain such approval, which shall be
5 denied on the following grounds:

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

9 (b) the building was not in a seriously deteriorated condition requir-
10 ing substantial rehabilitation;

11 (c) the owner's or its predecessors in interest's acts or omissions in
12 failing to maintain the building materially contributed to the seriously
13 deteriorated condition of the premises; or

14 (d) the substantial rehabilitation work was performed in a piecemeal
15 fashion and was not completed in a reasonable amount of time, during
16 which period the building was at least eighty percent vacant;

17 § 5. This act shall take effect immediately and shall apply to all
18 pending proceedings on and after such date; provided that the amendments
19 to section 26-511 of chapter 4 of title 26 of the administrative code of
20 the city of New York made by section two of this act shall expire on the
21 same date as such law expires and shall not affect the expiration of
22 such law as provided under section 26-520 of such law.

23 PART B

24 Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section
25 26-405 of the administrative code of the city of New York, as amended by
26 section 27 of part Q of chapter 39 of the laws of 2019, is amended to
27 read as follows:

28 (g) There has been since July first, nineteen hundred seventy, a major
29 capital improvement essential for the preservation energy efficiency,
30 functionality, or infrastructure of the entire building, improvement of
31 the structure including heating, windows, plumbing and roofing but shall
32 not be for operational costs or unnecessary cosmetic improvements. The
33 temporary increase based upon a major capital improvement under this
34 subparagraph for any order of the commissioner issued after the effec-
35 tive date of the chapter of the laws of two thousand nineteen that
36 amended this subparagraph shall be in an amount sufficient to amortize
37 the cost of the improvements pursuant to this subparagraph (g) over a
38 twelve-year period for buildings with thirty-five or fewer units or a
39 twelve and one-half year period for buildings with more than thirty-five
40 units, and shall be removed from the legal regulated rent thirty years
41 from the date the increase became effective inclusive of any increases
42 granted by the applicable rent guidelines board. Temporary major capital
43 improvement increases shall be collectible prospectively on the first
44 day of the first month beginning sixty days from the date of mailing
45 notice of approval to the tenant. Such notice shall disclose the total
46 monthly increase in rent and the first month in which the tenant would
47 be required to pay the temporary increase. An approval for a temporary
48 major capital improvement increase shall not include retroactive
49 payments. The collection of any increase shall not exceed two percent in
50 any year from the effective date of the order granting the increase over
51 the rent set forth in the schedule of gross rents, with collectability
52 of any dollar excess above said sum to be spread forward in similar
53 increments and added to the rent as established or set in future years.
54 Upon vacancy, the landlord may add any remaining balance of the tempo-

1 rary major capital improvement increase to the legal regulated rent.
2 Notwithstanding any other provision of the law, for any renewal lease
3 commencing on or after June 14, 2019, the collection of any rent
4 increases due to any major capital improvements approved on or after
5 June 16, 2012 and before June 16, 2019 shall not exceed two percent in
6 any year for any tenant in occupancy on the date the major capital
7 improvement was approved[7]; provided, however, no application for a
8 major capital improvement rent increase shall be approved by the divi-
9 sion of housing and community renewal unless the owner of the property
10 has filed all copies of permits pertaining to the major capital improve-
11 ment work with such application. Any application submitted with fraudu-
12 lent permits or without required permits shall be denied; or

13 § 2. Paragraph 6 of subdivision c of section 26-511 of the administra-
14 tive code of the city of New York, as separately amended by section 12
15 of part K of chapter 36 and section 28 of part Q of chapter 39 of the
16 laws of 2019, is amended to read as follows:

17 (6) provides criteria whereby the commissioner may act upon applica-
18 tions by owners for increases in excess of the level of fair rent
19 increase established under this law provided, however, that such crite-
20 ria shall provide (a) as to hardship applications, for a finding that
21 the level of fair rent increase is not sufficient to enable the owner to
22 maintain approximately the same average annual net income (which shall
23 be computed without regard to debt service, financing costs or manage-
24 ment fees) for the three year period ending on or within six months of
25 the date of an application pursuant to such criteria as compared with
26 annual net income, which prevailed on the average over the period nine-
27 teen hundred sixty-eight through nineteen hundred seventy, or for the
28 first three years of operation if the building was completed since nine-
29 teen hundred sixty-eight or for the first three fiscal years after a
30 transfer of title to a new owner provided the new owner can establish to
31 the satisfaction of the commissioner that he or she acquired title to
32 the building as a result of a bona fide sale of the entire building and
33 that the new owner is unable to obtain requisite records for the fiscal
34 years nineteen hundred sixty-eight through nineteen hundred seventy
35 despite diligent efforts to obtain same from predecessors in title and
36 further provided that the new owner can provide financial data covering
37 a minimum of six years under his or her continuous and uninterrupted
38 operation of the building to meet the three year to three year compar-
39 ative test periods herein provided; and (b) as to completed building-
40 wide major capital improvements, for a finding that such improvements
41 are deemed depreciable under the Internal Revenue Code and that the cost
42 is to be amortized over a twelve-year period for a building with thir-
43 ty-five or fewer housing accommodations, or a twelve and one-half-year
44 period for a building with more than thirty-five housing accommodations,
45 for any determination issued by the division of housing and community
46 renewal after the effective date of the [the] chapter of the laws of two
47 thousand nineteen that amended this paragraph and shall be removed from
48 the legal regulated rent thirty years from the date the increase became
49 effective inclusive of any increases granted by the applicable rent
50 guidelines board. Temporary major capital improvement increases shall be
51 collectible prospectively on the first day of the first month beginning
52 sixty days from the date of mailing notice of approval to the tenant.
53 Such notice shall disclose the total monthly increase in rent and the
54 first month in which the tenant would be required to pay the temporary
55 increase. An approval for a temporary major capital improvement increase
56 shall not include retroactive payments. The collection of any increase

1 shall not exceed two percent in any year from the effective date of the
2 order granting the increase over the rent set forth in the schedule of
3 gross rents, with collectability of any dollar excess above said sum to
4 be spread forward in similar increments and added to the rent as estab-
5 lished or set in future years. Upon vacancy, the landlord may add any
6 remaining balance of the temporary major capital improvement increase to
7 the legal regulated rent. Notwithstanding any other provision of the
8 law, for any renewal lease commencing on or after June 14, 2019, the
9 collection of any rent increases due to any major capital improvements
10 approved on or after June 16, 2012 and before June 16, 2019 shall not
11 exceed two percent in any year for any tenant in occupancy on the date
12 the major capital improvement was approved or based upon cash purchase
13 price exclusive of interest or service charges. Where an application for
14 a temporary major capital improvement increase has been filed, a tenant
15 shall have sixty days from the date of mailing of a notice of a proceed-
16 ing in which to answer or reply. The state division of housing and
17 community renewal shall provide any responding tenant with the reasons
18 for the division's approval or denial of such application. The division
19 of housing and community renewal shall require the submission of copies
20 of all permits pertaining to major capital improvement work with any
21 application for a major capital improvement rent increase. Any applica-
22 tion submitted with fraudulent permits or without required permits shall
23 be denied. Notwithstanding anything to the contrary contained herein, no
24 hardship increase granted pursuant to this paragraph shall, when added
25 to the annual gross rents, as determined by the commissioner, exceed the
26 sum of, (i) the annual operating expenses, (ii) an allowance for manage-
27 ment services as determined by the commissioner, (iii) actual annual
28 mortgage debt service (interest and amortization) on its indebtedness to
29 a lending institution, an insurance company, a retirement fund or
30 welfare fund which is operated under the supervision of the banking or
31 insurance laws of the state of New York or the United States, and (iv)
32 eight and one-half percent of that portion of the fair market value of
33 the property which exceeds the unpaid principal amount of the mortgage
34 indebtedness referred to in subparagraph (iii) of this paragraph. Fair
35 market value for the purposes of this paragraph shall be six times the
36 annual gross rent. The collection of any increase in the stabilized rent
37 for any apartment pursuant to this paragraph shall not exceed six
38 percent in any year from the effective date of the order granting the
39 increase over the rent set forth in the schedule of gross rents, with
40 collectability of any dollar excess above said sum to be spread forward
41 in similar increments and added to the stabilized rent as established or
42 set in future years;

43 § 3. Paragraph 3 of subdivision d of section 6 of section 4 of chapter
44 576 of the laws of 1974, constituting the emergency tenant protection
45 act of nineteen seventy-four, as amended by section 26 of part Q of
46 chapter 39 of the laws of 2019, is amended to read as follows:

47 (3) there has been since January first, nineteen hundred seventy-four
48 a major capital improvement essential for the preservation, energy effi-
49 ciency, functionality, or infrastructure of the entire building,
50 improvement of the structure including heating, windows, plumbing and
51 roofing, but shall not be for operation costs or unnecessary cosmetic
52 improvements. An adjustment under this paragraph shall be in an amount
53 sufficient to amortize the cost of the improvements pursuant to this
54 paragraph over a twelve-year period for a building with thirty-five or
55 fewer housing accommodations, or a twelve and one-half period for a
56 building with more than thirty-five housing accommodations and shall be

1 removed from the legal regulated rent thirty years from the date the
2 increase became effective inclusive of any increases granted by the
3 applicable rent guidelines board, for any determination issued by the
4 division of housing and community renewal after the effective date of
5 the chapter of the laws of two thousand nineteen that amended this para-
6 graph. Temporary major capital improvement increases shall be collecta-
7 ble prospectively on the first day of the first month beginning sixty
8 days from the date of mailing notice of approval to the tenant. Such
9 notice shall disclose the total monthly increase in rent and the first
10 month in which the tenant would be required to pay the temporary
11 increase. An approval for a temporary major capital improvement increase
12 shall not include retroactive payments. The collection of any increase
13 shall not exceed two percent in any year from the effective date of the
14 order granting the increase over the rent set forth in the schedule of
15 gross rents, with collectability of any dollar excess above said sum to
16 be spread forward in similar increments and added to the rent as estab-
17 lished or set in future years. Upon vacancy, the landlord may add any
18 remaining balance of the temporary major capital improvement increase to
19 the legal regulated rent. Notwithstanding any other provision of the
20 law, the collection of any rent increases for any renewal lease commenc-
21 ing on or after June 14, 2019, due to any major capital improvements
22 approved on or after June 16, 2012 and before June 16, 2019 shall not
23 exceed two percent in any year for any tenant in occupancy on the date
24 the major capital improvement was approved[7]; provided, however, no
25 application for a major capital improvement rent increase shall be
26 approved by the division of housing and community renewal unless the
27 owner of the property has filed all copies of permits pertaining to the
28 major capital improvement work with such application. Any application
29 submitted with fraudulent permits or without required permits shall be
30 denied; or

31 § 4. Subparagraph 7 of the second undesignated paragraph of paragraph
32 (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946,
33 constituting the emergency housing rent control law, as separately
34 amended by section 25 of part Q of chapter 39 and section 14 of part K
35 of chapter 36 of the laws of 2019, is amended to read as follows:

36 (7) there has been since March first, nineteen hundred fifty, a major
37 capital improvement essential for the preservation, energy efficiency,
38 functionality, or infrastructure of the entire building, improvement of
39 the structure including heating, windows, plumbing and roofing, but
40 shall not be for operational costs or unnecessary cosmetic improvements;
41 which for any order of the commissioner issued after the effective date
42 of the chapter of the laws of two thousand nineteen that amended this
43 paragraph the cost of such improvement shall be amortized over a twelve-
44 year period for buildings with thirty-five or fewer units or a twelve
45 and one-half year period for buildings with more than thirty-five units,
46 and shall be removed from the legal regulated rent thirty years from the
47 date the increase became effective inclusive of any increases granted by
48 the applicable rent guidelines board. Temporary major capital improve-
49 ment increases shall be collectible prospectively on the first day of
50 the first month beginning sixty days from the date of mailing notice of
51 approval to the tenant. Such notice shall disclose the total monthly
52 increase in rent and the first month in which the tenant would be
53 required to pay the temporary increase. An approval for a temporary
54 major capital improvement increase shall not include retroactive
55 payments. The collection of any increase shall not exceed two percent in
56 any year from the effective date of the order granting the increase over

1 the rent set forth in the schedule of gross rents, with collectability
2 of any dollar excess above said sum to be spread forward in similar
3 increments and added to the rent as established or set in future years.
4 Upon vacancy, the landlord may add any remaining balance of the tempo-
5 rary major capital improvement increase to the legal regulated rent.
6 Notwithstanding any other provision of the law, for any renewal lease
7 commencing on or after June 14, 2019, the collection of any rent
8 increases due to any major capital improvements approved on or after
9 June 16, 2012 and before June 16, 2019 shall not exceed two percent in
10 any year for any tenant in occupancy on the date the major capital
11 improvement was approved; provided, however, where an application for a
12 temporary major capital improvement increase has been filed, a tenant
13 shall have sixty days from the date of mailing of a notice of a proceed-
14 ing in which to answer or reply. The state division of housing and
15 community renewal shall provide any responding tenant with the reasons
16 for the division's approval or denial of such application; provided,
17 however, no application for a major capital improvement rent increase
18 shall be approved by the division of housing and community renewal
19 unless the owner of the property has filed all copies of permits
20 pertaining to the major capital improvement work with such application.
21 Any application submitted with fraudulent permits or without required
22 permits shall be denied; or

23 § 5. This act shall take effect immediately; provided that the amend-
24 ments to section 26-405 of the city rent and rehabilitation law made by
25 section one of this act shall remain in full force and effect only as
26 long as the public emergency requiring the regulation and control of
27 residential rents and evictions continues, as provided in subdivision 3
28 of section 1 of the local emergency housing rent control act; provided,
29 further, that the amendments to section 26-511 of the rent stabilization
30 law of nineteen hundred sixty-nine made by section two of this act shall
31 expire on the same date as such law expires and shall not affect the
32 expiration of such law as provided under section 26-520 of such law, as
33 from time to time amended.

34 PART C

35 Section 1. Subdivision 3 of section 302-a of the multiple dwelling
36 law, as added by chapter 911 of the laws of 1965, is amended to read as
37 follows:

38 3. a. If (i) the official records of the department shall note that a
39 rent impairing violation exists or existed in respect to a multiple
40 dwelling and that notice of such violation has been given by the depart-
41 ment, by mail, to the owner last registered with the department and (ii)
42 such note of the violation [~~is~~] was not cancelled or removed of record
43 within [~~six~~] three months after the date of such notice of such
44 violation, then for the period that such violation remains uncorrected
45 after the expiration of said [~~six~~] three months, no rent shall be recov-
46 ered by any owner for any premises in such multiple dwelling used by a
47 resident thereof for human habitation in which the condition constitut-
48 ing such rent impairing violation exists, provided, however, that if the
49 violation is one that requires approval of plans by the department for
50 the corrective work and if plans for such corrective work shall have
51 been duly filed within [~~three months~~] one month from the date of notice
52 of such violation by the department to the owner last registered with
53 the department, the [~~six months~~] three month period aforementioned shall
54 not begin to run until the date that plans for the corrective work are

1 approved by the department; if plans are not filed within said [~~three-~~
2 ~~months~~] one month period or if so filed, they are disapproved and amend-
3 ments are not duly filed within thirty days after the date of notifica-
4 tion of the disapproval by the department to the person having filed the
5 plans, the [~~six-months~~] three month period shall be computed as if no
6 plans whatever had been filed under this proviso. If a condition consti-
7 tuting a rent impairing violation exists in the part of a multiple
8 dwelling used in common by the residents or in the part under the
9 control of the owner thereof, the violation shall be deemed to exist in
10 the respective premises of each resident of the multiple dwelling.

11 b. The provisions of subparagraph a shall not apply if (i) the condi-
12 tion referred to in the department's notice to the owner last registered
13 with the department did not in fact exist, notwithstanding the notation
14 thereof in the records of the department; (ii) the condition which is
15 the subject of the violation has in fact been corrected within the three
16 month period required by subparagraph a of this subdivision, though the
17 note thereof in the department has not been removed or cancelled; (iii)
18 the violation has been caused by the resident from whom rent is sought
19 to be collected or by members of his family or by his guests or by
20 another resident of the multiple dwelling or the members of the family
21 of such other resident or by his guests, or (iv) the resident proceeded
22 against for rent has refused entry to the owner for the purpose of
23 correcting the condition giving rise to the violation.

24 c. To raise a defense under subparagraph a in any action to recover
25 rent or in any special proceeding for the recovery of possession because
26 of non-payment of rent, the resident must affirmatively plead and prove
27 the material facts under subparagraph a [~~, and must also deposit with the~~
28 ~~clerk of the court in which the action or proceeding is pending at the~~
29 ~~time of filing of the resident's answer the amount of rent sought to be~~
30 ~~recovered in the action or upon which the proceeding to recover~~
31 ~~possession is based, to be held by the clerk of the court until final~~
32 ~~disposition of the action or proceeding at which time the rent deposited~~
33 ~~shall be paid to the owner, if the owner prevails, or be returned to the~~
34 ~~resident if the resident prevails. Such deposit of rent shall vitiate~~
35 ~~any right on the part of the owner to terminate the lease or rental~~
36 ~~agreement of the resident because of nonpayment of rent~~].

37 d. If a resident voluntarily pays rent or an installment of rent when
38 he or she would be privileged to withhold the same under subparagraph a,
39 he or she shall [~~not thereafter~~] have [~~any~~] a claim or cause of action
40 to recover back the rent or installment of rent so paid. A voluntary
41 payment within the meaning hereof shall mean payment other than one made
42 pursuant to a judgment in an action or special proceeding.

43 e. [~~If upon the trial of any action to recover rent or any special~~
44 ~~proceeding for the recovery of possession because of non-payment of rent~~
45 ~~it shall appear that the resident has raised a defense under this~~
46 ~~section in bad faith, or has caused the violation or has refused entry~~
47 ~~to the owner for the purpose of correcting the condition giving rise to~~
48 ~~the violation, the court, in its discretion, may impose upon the resi-~~
49 ~~dent the reasonable costs of the owner, including counsel fees, in main-~~
50 ~~taining the action or proceeding not to exceed one hundred dollars.~~] The
51 department shall notify the resident and owner when a rent impairing
52 violation has been placed in their apartment. The notification shall
53 include a list of the rent impairing violations placed and an explana-
54 tion of the resident's right to raise the rent impairing violations as a
55 defense in any action to recover rent or in any special proceeding for
56 the recovery of possession because of non-payment of rent.

§ 2. Subdivisions 10 and 11 of section 713 of the real property actions and proceedings law, subdivision 10 as amended by chapter 467 of the laws of 1981 and subdivision 11 as added by chapter 312 of the laws of 1962, are amended to read as follows:

10. The person in possession has entered the property or remains in possession by force or unlawful means and he or she or his or her predecessor in interest was not in quiet possession for three years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer. Any lawful occupant, physically or constructively in possession, who has been evicted or dispossessed without the court process mandated by section seven hundred eleven of this article, may commence a proceeding under this subdivision to be restored to possession, and shall be so restored upon proof that their eviction was unlawful; no notice to quit shall be required in order to maintain a proceeding under this subdivision.

11. The person in possession entered into possession as an incident to employment by petitioner, and the time agreed upon for such possession has expired or, if no such time was agreed upon, the employment has been terminated[~~, no notice to quit shall be required in order to maintain the proceeding under this subdivision~~].

§ 3. Subdivisions 2 and 3 of section 732 of the real property actions and proceedings law, as amended by section 14 of part M of chapter 36 of the laws of 2019, are amended to read as follows:

2. If the respondent answers, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination, except as provided in section seven hundred fifty-three of this article. If the respondent fails to appear on such date, the court, after making an assessment, pursuant to section thirty-two hundred fifteen of the civil practice law and rules, may issue a judgment in favor of the petitioner and the issuance of the warrant shall be stayed for a period not to exceed ten days from the date of service, except as provided in section seven hundred fifty-three of this article.

3. If the respondent fails to answer within ten days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, [~~the judge shall render judgment in favor of the petitioner and~~] the petitioner may make an application for a default judgment. Upon this application, the clerk shall fix a date for inquest and immediately notify by mail the parties or their attorneys of such date. If the respondent fails to appear on such date, the court, after making an assessment, pursuant to section thirty-two hundred fifteen of the civil practice law and rules, may issue a judgment in favor of the petitioner and may stay the issuance of the warrant for a period of not to exceed ten days from the date of service, except as provided in section seven hundred fifty-three of this article.

§ 4. This act shall take effect immediately and shall apply to all pending proceedings on and after such date.

PART D

Section 1. Legislative findings. The legislature hereby finds and declares that:

1 (a) the pool of rent regulated apartments in New York state contains
2 an unacceptably high number of apartments in which the current rents are
3 based on prior rents that exceeded the legal regulated rent at the time
4 they were charged, but for which remedies were limited under the law in
5 effect before the effective date of the Housing Stability and Tenant
6 Protection Act of 2019 (HSTPA);

7 (b) it is public policy prospectively to reduce, insofar as possible,
8 those rents to a level in line with what they would have been in the
9 absence of the unlawful rent setting and deregulations that were permit-
10 ted under prior law to go unremedied, and therefore to impose the rent
11 calculation standards of the HSTPA prospectively from the date of its
12 enactment, including in cases where the pre-HSTPA rent has already been
13 established by a court or administrative agency;

14 (c) the purpose of the prospective application of the penalty and
15 record review provisions of the HSTPA is to prevent the perpetual
16 collection of unlawful and inflated rents, and to encourage the volun-
17 tary registration of any rent stabilized apartment for which any prior
18 annual registration statement has not been filed, and to encourage the
19 voluntary recalculation of unreliable pre-HSTPA rents;

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

24 (e) despite Regina, the scope of the fraud exception to the pre-HSTPA
25 four-year rule for calculating rents remains unsettled and the subject
26 of litigation, and courts have diverged from the controlling authority
27 of Thornton v. Baron and Grimm v. DHCR to impose a common law fraud
28 standard that is not found in these cases and is inconsistent with the
29 intent of the legislature to discourage and penalize fraud against the
30 rent regulatory system itself, as well as against individual tenants,
31 and it is therefore public policy that the legislature codify, without
32 expanding or reducing the liability of landlords under pre-HSTPA law,
33 the standard for applying that exception;

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

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

(h) 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 purposes of determining the status of any apartment under the rent stabilization law;

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

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

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

§ 3. This act shall take effect immediately.

PART E

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,

1 shall not be found to have collected an overcharge at any time prior to
2 the filing of the late registration. [~~If such late registration is filed~~
3 ~~subsequent to the filing of an overcharge complaint, the owner shall be~~
4 ~~assessed a late filing surcharge for each late registration in an amount~~
5 ~~equal to fifty percent of the timely rent registration fee.~~] In addition
6 to all other requirements set forth in this subdivision, in the event a
7 timely rent registration is not filed and after notice of such delin-
8 quency is provided by the state division of housing and community
9 renewal to the owner in the form of electronic mail and mail to the
10 address listed in the owner's most recent registration statement, the
11 owner shall be subject to a fine of five hundred dollars per unregis-
12 tered unit for each month the registration is delinquent. Such a fine
13 shall be imposed by order, and such order imposing a fine shall be
14 deemed a final determination for the purposes of judicial review. Such
15 fine may, upon the expiration of the period for seeking review pursuant
16 to article seventy-eight of the civil practice law and rules, be docket-
17 ed and enforced in the manner of a judgment of the supreme court by the
18 state division of housing and community renewal.

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

23 e. The failure to file a proper and timely initial or annual rent
24 registration statement shall, until such time as such registration is
25 filed, bar an owner from applying for or collecting any rent in excess
26 of the legal regulated rent in effect on the date of the last preceding
27 registration statement or if no such statements have been filed, the
28 legal regulated rent in effect on the date that the housing accommo-
29 dation became subject to the registration requirements of this section.
30 The filing of a late registration shall result in the prospective elimi-
31 nation of such sanctions and provided that increases in the legal regu-
32 lated rent were lawful except for the failure to file a timely registra-
33 tion, the owner, upon the service and filing of a late registration,
34 shall not be found to have collected an overcharge at any time prior to
35 the filing of the late registration. [~~If such late registration is filed~~
36 ~~subsequent to the filing of an overcharge complaint, the owner shall be~~
37 ~~assessed a late filing surcharge for each late registration in an amount~~
38 ~~equal to fifty percent of the timely rent registration fee.~~] In addition
39 to all other requirements set forth in this subdivision, in the event a
40 timely rent registration is not filed and after notice of such delin-
41 quency is provided by the division of housing and community renewal to
42 the owner in the form of electronic mail and mail to the address listed
43 in the owner's most recent registration statement, the owner shall be
44 subject to a fine of five hundred dollars per unregistered unit for each
45 month the registration is delinquent. Such a fine shall be imposed by
46 order, and such order imposing a fine shall be deemed a final determi-
47 nation for the purposes of judicial review. Such fine may, upon the
48 expiration of the period for seeking review pursuant to article seven-
49 ty-eight of the civil practice law and rules, be docketed and enforced
50 in the manner of a judgment of the supreme court by the division of
51 housing and community renewal.

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

54 (x) enforce the emergency tenant protection act of nineteen seventy-
55 four, the emergency housing rent control law, the local emergency hous-
56 ing rent control act, the rent stabilization law of the city of New York

1 and any regulations, rules and policies enacted pursuant thereto, in
2 addition to any other laws, rules or regulations related to housing that
3 is financed, administered, overseen or otherwise regulated by the agency
4 or its related entities which constitute component parts of the divi-
5 sion; such enforcement authority shall include, but not be limited to,
6 all of the powers granted by the other provisions of this subdivision,
7 the statutes, rules, regulations and other documents governing the
8 administration of housing by the division, and, where applicable, the
9 power to issue orders.

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

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

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