

# STATE OF NEW YORK

5659

2023-2024 Regular Sessions

## IN SENATE

March 10, 2023

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT 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 tenant responses to applications for a major capital improvement rent increase

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

1 Section 1. Paragraph 1 of subdivision g of section 26-405 of the  
2 administrative code of the city of New York is amended by adding a new  
3 subparagraph (g-1) to read as follows:

4 (g-1) Where an application for a major capital improvement rent  
5 increase has been filed, a tenant shall have one hundred twenty days  
6 from the date of mailing of a notice of a proceeding in which to answer  
7 or reply. The city rent agency shall provide any responding tenant with  
8 the reasons for the city rent agency's approval or denial of such appli-  
9 cation; or

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

14 (6) provides criteria whereby the commissioner may act upon applica-  
15 tions by owners for increases in excess of the level of fair rent  
16 increase established under this law provided, however, that such crite-  
17 ria shall provide (a) as to hardship applications, for a finding that  
18 the level of fair rent increase is not sufficient to enable the owner to  
19 maintain approximately the same average annual net income (which shall  
20 be computed without regard to debt service, financing costs or manage-  
21 ment fees) for the three year period ending on or within six months of  
22 the date of an application pursuant to such criteria as compared with

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

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1 annual net income, which prevailed on the average over the period nine-  
2 teen hundred sixty-eight through nineteen hundred seventy, or for the  
3 first three years of operation if the building was completed since nine-  
4 teen hundred sixty-eight or for the first three fiscal years after a  
5 transfer of title to a new owner provided the new owner can establish to  
6 the satisfaction of the commissioner that he or she acquired title to  
7 the building as a result of a bona fide sale of the entire building and  
8 that the new owner is unable to obtain requisite records for the fiscal  
9 years nineteen hundred sixty-eight through nineteen hundred seventy  
10 despite diligent efforts to obtain same from predecessors in title and  
11 further provided that the new owner can provide financial data covering  
12 a minimum of six years under his or her continuous and uninterrupted  
13 operation of the building to meet the three year to three year compar-  
14 ative test periods herein provided; and (b) as to completed building-  
15 wide major capital improvements, for a finding that such improvements  
16 are deemed depreciable under the Internal Revenue Code and that the cost  
17 is to be amortized over a twelve-year period for a building with thir-  
18 ty-five or fewer housing accommodations, or a twelve and one-half-year  
19 period for a building with more than thirty-five housing accommodations,  
20 for any determination issued by the division of housing and community  
21 renewal after the effective date of the the chapter of the laws of two  
22 thousand nineteen that amended this paragraph and shall be removed from  
23 the legal regulated rent thirty years from the date the increase became  
24 effective inclusive of any increases granted by the applicable rent  
25 guidelines board. Temporary major capital improvement increases shall be  
26 collectible prospectively on the first day of the first month beginning  
27 sixty days from the date of mailing notice of approval to the tenant.  
28 Such notice shall disclose the total monthly increase in rent and the  
29 first month in which the tenant would be required to pay the temporary  
30 increase. An approval for a temporary major capital improvement increase  
31 shall not include retroactive payments. The collection of any increase  
32 shall not exceed two percent in any year from the effective date of the  
33 order granting the increase over the rent set forth in the schedule of  
34 gross rents, with collectability of any dollar excess above said sum to  
35 be spread forward in similar increments and added to the rent as estab-  
36 lished or set in future years. Upon vacancy, the landlord may add any  
37 remaining balance of the temporary major capital improvement increase to  
38 the legal regulated rent. Notwithstanding any other provision of the  
39 law, for any renewal lease commencing on or after June 14, 2019, the  
40 collection of any rent increases due to any major capital improvements  
41 approved on or after June 16, 2012 and before June 16, 2019 shall not  
42 exceed two percent in any year for any tenant in occupancy on the date  
43 the major capital improvement was approved or based upon cash purchase  
44 price exclusive of interest or service charges. Where an application for  
45 a temporary major capital improvement increase has been filed, a tenant  
46 shall have sixty days from the date of mailing of a notice of a proceed-  
47 ing in which to answer or reply. The state division of housing and  
48 community renewal shall provide any responding tenant with the reasons  
49 for the division's approval or denial of such application. Where an  
50 application for a major capital improvement rent increase has been  
51 filed, a tenant shall have one hundred twenty days from the date of  
52 mailing of a notice of a proceeding in which to answer or reply. The  
53 state division of housing and community renewal shall provide any  
54 responding tenant with the reasons for the division's approval or denial  
55 of such application. Notwithstanding anything to the contrary contained  
56 herein, no hardship increase granted pursuant to this paragraph shall,

1 when added to the annual gross rents, as determined by the commissioner,  
2 exceed the sum of, (i) the annual operating expenses, (ii) an allowance  
3 for management services as determined by the commissioner, (iii) actual  
4 annual mortgage debt service (interest and amortization) on its indebt-  
5 edness to a lending institution, an insurance company, a retirement fund  
6 or welfare fund which is operated under the supervision of the banking  
7 or insurance laws of the state of New York or the United States, and  
8 (iv) eight and one-half percent of that portion of the fair market value  
9 of the property which exceeds the unpaid principal amount of the mort-  
10 gage indebtedness referred to in subparagraph (iii) of this paragraph.  
11 Fair market value for the purposes of this paragraph shall be six times  
12 the annual gross rent. The collection of any increase in the stabilized  
13 rent for any apartment pursuant to this paragraph shall not exceed six  
14 percent in any year from the effective date of the order granting the  
15 increase over the rent set forth in the schedule of gross rents, with  
16 collectability of any dollar excess above said sum to be spread forward  
17 in similar increments and added to the stabilized rent as established or  
18 set in future years;

19 § 3. Subdivision d of section 6 of section 4 of chapter 576 of the  
20 laws of 1974, constituting the emergency tenant protection act of nine-  
21 teen seventy-four, is amended by adding a new paragraph (3-b) to read as  
22 follows:

23 (3-b) an application for a major capital improvement rent increase has  
24 been filed, a tenant shall have one hundred twenty days from the date of  
25 mailing of a notice of a proceeding in which to answer or reply. The  
26 state division of housing and community renewal shall provide any  
27 responding tenant with the reasons for the division's approval or denial  
28 of such application; or

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

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

1 increments and added to the rent as established or set in future years.  
2 Upon vacancy, the landlord may add any remaining balance of the tempo-  
3 rary major capital improvement increase to the legal regulated rent.  
4 Notwithstanding any other provision of the law, for any renewal lease  
5 commencing on or after June 14, 2019, the collection of any rent  
6 increases due to any major capital improvements approved on or after  
7 June 16, 2012 and before June 16, 2019 shall not exceed two percent in  
8 any year for any tenant in occupancy on the date the major capital  
9 improvement was approved; provided, however, where an application for a  
10 temporary major capital improvement increase has been filed, a tenant  
11 shall have sixty days from the date of mailing of a notice of a proceed-  
12 ing in which to answer or reply. The state division of housing and  
13 community renewal shall provide any responding tenant with the reasons  
14 for the division's approval or denial of such application; provided,  
15 however, where an application for a major capital improvement rent  
16 increase has been filed, a tenant shall have one hundred twenty days  
17 from the date of mailing of a notice of a proceeding in which to answer  
18 or reply. The state division of housing and community renewal shall  
19 provide any responding tenant with the reasons for the division's  
20 approval or denial of such application; or

21 § 5. This act shall take effect on the ninetieth day after it shall  
22 have become a law; provided that:

23 (a) the amendments to section 26-405 of the city rent and rehabili-  
24 tation law made by section one of this act shall remain in full force  
25 and effect only as long as the public emergency requiring the regulation  
26 and control of residential rents and evictions continues, as provided in  
27 subdivision 3 of section 1 of the local emergency housing rent control  
28 act; and

29 (b) the amendments to section 26-511 of chapter 4 of title 26 of the  
30 administrative code of the city of New York made by section two of this  
31 act shall expire on the same date as such law expires and shall not  
32 affect the expiration of such law as provided under section 26-520 of  
33 such law.