

# STATE OF NEW YORK

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6352

2023-2024 Regular Sessions

## IN SENATE

April 17, 2023

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Introduced by Sens. COMRIE, FERNANDEZ, SEPULVEDA, MANNION, PARKER, RYAN, SCARCELLA-SPANTON, SKOUFIS -- 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, in relation to certain housing accommodations; and to amend chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, in relation to certain hardship provisions

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

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

4     (15) provides that, notwithstanding any other provision of this chap-  
5 ter to the contrary, when a housing accommodation subject to this chap-  
6 ter has been vacated after continuous tenancy or occupancy of ten years  
7 or more prior to vacancy, and the owner has submitted documentation to  
8 the division demonstrating restoration of the unit as set forth in  
9 section 26-511.2 of this chapter, the new legal regulated rent shall be  
10 the rent agreed to by the owner and first tenant after such restoration  
11 and reserved in a lease or other rental agreement; provided that such  
12 new legal regulated rent may be adjusted on audit by the division under  
13 section 26-511.2 of this chapter, or on application of a tenant under  
14 section 26-513.1 of this chapter. The legal regulated rent adjustment  
15 set forth in this paragraph shall be known as the local regulated hous-  
16 ing restoration adjustment.

17     § 2. The administrative code of the city of New York is amended by  
18 adding a new section 26-511.2 to read as follows:

19     § 26-511.2 The local regulated housing restoration adjustment. a. The  
20 division of housing and community renewal, the "division" shall estab-  
21 lish a notification procedure and documentation submission guidelines

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

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1 for the local regulated housing restoration adjustment. Documentation  
2 to qualify for the local regulated housing restoration adjustment shall  
3 be limited to:

- 4   (1) XRF test results demonstrating a lead-free housing accommodation  
5   under applicable local definitions;  
6   (2) any required tenant protection plans or similar submission in  
7   connection with such restoration;  
8   (3) any required contractor licenses;  
9   (4) list and specifications of new electric appliances installed;  
10   (5) before and after photos;  
11   (6) lease or rental agreement listing new legal regulated rent; and  
12   (7) legal regulated rent amount or amounts for substantially similar  
13   unit or units as defined by section 26-513.1 of this chapter.

14   b. The local regulated housing restoration adjustment shall not be  
15   permitted:

- 16   (1) for units that are rented within a twenty-four-month period after  
17   an arm's length transfer of ownership;  
18   (2) for units that are rented within a thirty-six-month period after  
19   determination by the division that the owner has engaged in unlawful  
20   harassment with respect to the unit; or  
21   (3) after an eviction, unless the eviction was pursuant to order,  
22   judgment, or other decree by court or governmental or legal authority  
23   for reasons including nonpayment of rent, expiration or termination of  
24   the lease term or license or other occupancy right, violation of a  
25   substantial obligation of the tenancy, or any other grounds permitted  
26   under this chapter.

27   c. The division shall establish an audit process to review a percent-  
28   age, as established by the division, of housing accommodations that  
29   register adjusted legal regulated rents under the local regulated hous-  
30   ing restoration adjustment. The division's established audit process  
31   shall be subject to the following requirements:

32   (1) any audit shall be limited to: (i) confirmation that documentation  
33   set forth in subdivision a of this section has been submitted; (ii)  
34   visual inspection of the subject unit; and (iii) review of the unit's  
35   registered rent in comparison to the legal regulated rents of substan-  
36   tially similar housing accommodations in the same geographic area  
37   considering the same factors set forth in section 26-513.1 of this chap-  
38   ter, including the owner's right to submit the legal regulated rent of a  
39   substantially similar unit or units. Such audit shall be initiated with-  
40   in one year of the filing of an annual apartment registration indicating  
41   an adjustment to the legal regulated rent under the local regulated  
42   housing restoration adjustment.

43   (2) if an audit under this subdivision determines that an owner has  
44   failed to submit documentation set forth in subdivision a of this  
45   section and the owner then fails to submit any missing documentation  
46   after sixty days' written notice from the division, the division may  
47   then set the subject unit's legal regulated rent based upon an evalua-  
48   tion of documentation provided but in no event shall the legal regu-  
49   lated rent be set at an amount less than HUD fair market value for the  
50   statistical metropolitan area or the small area fair market rent as  
51   determined by the local housing authority provided that applicable hous-  
52   ing quality standards have been confirmed by inspection as set forth in  
53   this section.

54   (3) if an audit under this subdivision determines that the owner  
55   submitted documentation set forth in subdivision a of this section but  
56   that the registered rent exceeds the level permitted under section

1 26-513.1 of this chapter, the division may set the legal regulated rent  
2 at the greater of the legal regulated rent for a substantially similar  
3 housing accommodation in the same geographic area or the HUD fair market  
4 value for the statistical metropolitan area or the small area fair  
5 market rent as determined by the local housing authority. Any required  
6 refunds shall be made in accordance with section 26-513.1 of this chap-  
7 ter.

8 d. Access to the documentation submitted as part of the local regu-  
9 lated housing restoration adjustment shall be governed by the same laws  
10 governing access to building and apartment registrations filed with the  
11 division.

12 § 3. The administrative code of the city of New York is amended by  
13 adding a new section 26-513.1 to read as follows:

14 § 26-513.1 Application for adjustment of local regulated housing  
15 restoration adjustment. a. The tenant of a housing accommodation that  
16 was vacant on, or became vacant after, June 14, 2019, and has been  
17 subject to the local regulated housing restoration adjustment, may file  
18 with the commissioner of housing and community renewal within 120 days  
19 after notice has been received under subdivision c of this section an  
20 application for the adjustment of the rent for such housing accommo-  
21 dation. Such applications shall be subject to the following:

22 (1) in the application, the tenant must allege that the local regu-  
23 lated housing restoration adjustment rent exceeds the rent for substam-  
24 tially similar units within the same geographic area.

25 (2) in determining an application filed pursuant to this section, the  
26 commissioner shall only consider legal regulated rents for substantially  
27 similar housing accommodations within a one-mile radius of the subject  
28 unit in the same borough or applicable municipal subdivision. Substan-  
29 tially similar housing accommodations are those rent-stabilized units  
30 with similar room counts and square footage, similar levels of code  
31 compliance, including state laws, local laws and codes for health, safe-  
32 ty, and environmental sustainability, similar regulatory status, similar  
33 apartment conditions and quality of fixtures and finishes, similar unit  
34 and building amenities, similar quality and condition of the building  
35 and common areas, and with vacancy or renewal leases starting within  
36 twelve months from the start date of the complaining tenant's vacancy  
37 lease. For purposes of considering legal regulated rents of similar  
38 housing accommodations, the geographic area may be expanded by incre-  
39 ments of one-quarter mile radii as many times as necessary to find a  
40 substantially similar housing accommodation located in the same borough  
41 or applicable municipal subdivision. Notwithstanding the foregoing, any  
42 local regulated housing restoration adjustment rent amount that does not  
43 exceed the HUD fair market value for the statistical metropolitan area  
44 or the small area fair market rent as determined by the local housing  
45 authority shall be determined to be fair.

46 (3) the owner of the housing accommodation subject to an application  
47 under this section shall be given an opportunity to submit proof of  
48 legal regulated rents for up to three substantially similar housing  
49 accommodations, in addition to any already submitted as part of the  
50 notification procedure under section 26-511.2 of this chapter.

51 (4) when the local regulated housing restoration adjustment rent  
52 amount is determined to exceed the legal regulated rent for a substam-  
53 tially similar housing accommodation as defined by this section, the  
54 commissioner of housing and community renewal shall order that the legal  
55 regulated rent for the subject unit shall be the greater of the legal  
56 regulated rent for a substantially similar housing accommodation in the

1 same geographic area or the HUD fair market value for the statistical  
2 metropolitan area or the small area fair market rent as determined by  
3 the local housing authority. Any required refunds shall be made by the  
4 owner in cash or as a credit against unpaid rent over a period not to  
5 exceed of six months.

6 b. Notwithstanding subdivision a of this section, provided that the  
7 owner has submitted to the division documentation in accordance with  
8 subdivision a of section 26-511.2 of this chapter, the division shall  
9 only determine whether the rent charged to the first tenant after the  
10 local regulated housing restoration adjustment is supported by the rent  
11 for a substantially similar unit. Any documentation deficiencies shall  
12 be resolved through the audit process set forth in section 26-511.2 of  
13 this chapter.

14 c. In the lease execution package for the first lease after the legal  
15 rent was adjusted under the local regulated housing restoration adjust-  
16 ment, the owner shall give notice, both in the lease and subsequently in  
17 writing by certified mail, or by electronic delivery if the tenant has  
18 opted to receive electronic delivery of documents, to the tenant of such  
19 housing accommodation on a form prescribed by the commissioner of hous-  
20 ing and community renewal that the local regulated housing restoration  
21 adjustment was applied, including notification of the prior legal regu-  
22 lated rent, a description of work completed, the building address and  
23 legal regulated rent amounts for at least one and up to three substan-  
24 tially similar units, and such tenant's right to file an application  
25 challenging the new legal regulated rent of such housing accommodation.

26 § 4. Paragraph 5 of subdivision d of section 6 of section 4 of chapter  
27 576 of the laws of 1974, constituting the emergency tenant protection  
28 act of nineteen seventy-four, as amended by chapter 102 of the laws of  
29 1984, is amended and a new paragraph 6 is added to read as follows:

30 (5) as an alternative to the hardship application provided under para-  
31 graph four of this subdivision, owners of buildings acquired by the same  
32 owner or a related entity owned by the same principals three years prior  
33 to the date of application may apply to the division for increases in  
34 excess of the level of applicable guideline increases established under  
35 this law based on a finding by the commissioner that such guideline  
36 increases are not sufficient to enable the owner to maintain an annual  
37 gross rent income for such building which exceeds the annual operating  
38 expenses of such building by a sum equal to at least five percent of  
39 such gross rent. For the purposes of this paragraph, operating expenses  
40 shall consist of the actual, reasonable, costs of fuel, labor, utili-  
41 ties, taxes, other than income or corporate franchise taxes, fees,  
42 permits, necessary contracted services and non-capital repairs, insur-  
43 ance, parts and supplies, management fees and other administrative costs  
44 and mortgage interest. For the purposes of this paragraph, mortgage  
45 interest shall be deemed to mean interest on a bona fide mortgage  
46 including an allocable portion of charges related thereto. Criteria to  
47 be considered in determining a bona fide mortgage other than an institu-  
48 tional mortgage shall include; condition of the property, location of  
49 the property, the existing mortgage market at the time the mortgage is  
50 placed, the term of the mortgage, the amortization rate, the principal  
51 amount of the mortgage, security and other terms and conditions of the  
52 mortgage. The commissioner shall set a rental value for any unit occu-  
53 pied by the owner or a person related to the owner or unoccupied at the  
54 owner's choice for more than one month at the last regulated rent plus  
55 the minimum number of guidelines increases or, if no such regulated rent  
56 existed or is known, the commissioner shall impute a rent consistent

1 with other rents in the building. The amount of hardship increase shall  
2 be such as may be required to maintain the annual gross rent income as  
3 provided by this paragraph. The division shall not grant a hardship  
4 application under this paragraph or paragraph four of this subdivision  
5 for a period of three years subsequent to granting a hardship applica-  
6 tion under the provisions of this paragraph. The collection of any  
7 increase in the rent for any housing accommodation pursuant to this  
8 paragraph shall not exceed six percent in any year from the effective  
9 date of the order granting the increase over the rent set forth in the  
10 schedule of gross rents, with collectability of any dollar excess above  
11 said sum to be spread forward in similar increments and added to the  
12 rent as established or set in future years. No application shall be  
13 approved unless the owner's equity in such building exceeds five percent  
14 of: (i) the arms length purchase price of the property; (ii) the cost of  
15 any capital improvements for which the owner has not collected a  
16 surcharge; (iii) any repayment of principal of any mortgage or loan used  
17 to finance the purchase of the property or any capital improvements for  
18 which the owner has not collected a surcharge; and (iv) any increase in  
19 the equalized assessed value of the property which occurred subsequent  
20 to the first valuation of the property after purchase by the owner. For  
21 the purposes of this paragraph, owner's equity shall mean the sum of (i)  
22 the purchase price of the property less the principal of any mortgage or  
23 loan used to finance the purchase of the property, (ii) the cost of any  
24 capital improvement for which the owner has not collected a surcharge  
25 less the principal of any mortgage or loan used to finance said improve-  
26 ment, (iii) any repayment of the principal of any mortgage or loan used  
27 to finance the purchase of the property or any capital improvement for  
28 which the owner has not collected a surcharge, and (iv) any increase in  
29 the equalized assessed value of the property which occurred subsequent  
30 to the first valuation of the property after purchase by the owner[~~-~~];  
31 or

32 (6) provides that, notwithstanding any other provision of this chapter  
33 to the contrary, when a housing accommodation subject to this chapter  
34 has been vacated after continuous tenancy or occupancy of ten years or  
35 more prior to vacancy, and the owner has submitted documentation to the  
36 division demonstrating restoration of the unit as set forth in subdivi-  
37 sion (a-1) of section ten of this chapter, the new legal regulated rent  
38 shall be the rent agreed to by the owner and first tenant after such  
39 restoration and reserved in a lease or other rental agreement; provided  
40 that such new legal regulated rent may be adjusted on audit by the divi-  
41 sion under subdivision (a-1) of section ten of this section, or on  
42 application of a tenant under subdivision d-1 of section nine of this  
43 chapter. The legal regulated rent adjustment set forth in this paragraph  
44 shall be known as the local regulated housing restoration adjustment.

45 § 5. Section 10 of section 4 of chapter 576 of the laws of 1974,  
46 constituting the emergency tenant protection act of nineteen seventy-  
47 four is amended by adding a new subdivision (a-1) to read as follows:

48 (a-1) the division of housing and community renewal shall establish a  
49 notification procedure and documentation submission guidelines for the  
50 local regulated housing restoration adjustment. a. Documentation to  
51 qualify for the local regulated housing restoration adjustment shall be  
52 limited to:

53 (1) XRF test results demonstrating a lead-free housing accommodation  
54 under applicable local definitions;

55 (2) any required tenant protection plans or similar submission in  
56 connection with such restoration;

1       (3) any required contractor licenses;  
2       (4) list and specifications of new electric appliances installed;  
3       (5) before and after photos;  
4       (6) lease or rental agreement listing new legal regulated rent; and  
5       (7) legal regulated rent amount or amounts for substantially similar  
6       unit or units as defined by section 26-513.1 of the administrative code  
7       of the city of New York.

8       b. The local regulated housing restoration adjustment shall not be  
9       permitted:

10      (1) for units that are rented within a twenty-four-month period after  
11       an arm's length transfer of ownership;

12      (2) for units that are rented within a thirty-six-month period after  
13       determination by the division that the owner has engaged in unlawful  
14       harassment with respect to the unit; or

15      (3) after an eviction, unless the eviction was pursuant to order,  
16       judgment, or other decree by court or governmental or legal authority  
17       for reasons including nonpayment of rent, expiration or termination of  
18       the lease term or license or other occupancy right, violation of a  
19       substantial obligation of the tenancy, or any other grounds permitted  
20       under this chapter.

21      c. The division of housing and community renewal shall establish an  
22       audit process to review a percentage, as established by the division, of  
23       housing accommodations that register adjusted legal regulated rents  
24       under the local regulated housing restoration adjustment. The divi-  
25       sion's established audit process shall be subject to the following  
26       requirements:

27      (1) any audit shall be limited subdivision to: (i) confirmation that  
28       documentation set forth in paragraph a of this subdivision has been  
29       submitted, (ii) visual inspection of the subject unit, and (iii) review  
30       of the unit's registered rent in comparison to the legal regulated rents  
31       of substantially similar housing accommodations in the same geographic  
32       area considering the same factors set forth in subdivision d-1 of  
33       section nine of this chapter, including the owner's right to submit the  
34       legal regulated rent of a substantially similar unit or units. Such  
35       audit shall be initiated within one year of the filing of an annual  
36       apartment registration indicating an adjustment to the legal regulated  
37       rent under the local regulated housing restoration adjustment;

38      (2) if an audit under this subdivision determines that an owner has  
39       failed to submit documentation set forth in paragraph a of this subdivi-  
40       sion and the owner then fails to submit any missing documentation after  
41       sixty days' written notice from the division, the division may then set  
42       the subject unit's legal regulated rent based upon an evaluation of  
43       documentation provided but in no event shall the legal regulated rent be  
44       set at an amount less than HUD fair market value for the statistical  
45       metropolitan area or the small area fair market rent as determined by  
46       the local housing authority provided that applicable housing quality  
47       standards have been confirmed by inspection as set forth above;

48      (3) if an audit under this subdivision determines that the owner  
49       submitted documentation set forth in paragraph a of this subdivision but  
50       that the registered rent exceeds the legal regulated rent of a substan-  
51       tially similar housing accommodation in the same geographic area, then  
52       the division may set the legal regulated rent at the greater of the  
53       legal regulated rent for a substantially similar housing accommodation  
54       in the same geographic area or the HUD fair market value for the statis-  
55       tical metropolitan area or the small area fair market rent as determined

1 by the local housing authority. Any required refunds shall be made in  
2 accordance with subdivision d-1 of section nine of this chapter; and  
3 d. Access to the documentation submitted as part of the local regu-  
4 lated housing restoration adjustment shall be governed by the same laws  
5 governing access to building and apartment registrations filed with the  
6 division.

7 § 6. Section 9 of section 4 of chapter 576 of the laws of 1974,  
8 constituting the emergency tenant protection act of nineteen seventy-  
9 four is amended by adding a new subdivision d-1 to read as follows:

10 d-1. (1) The tenant of a housing accommodation that was vacant on, or  
11 became vacant after, June 14, 2019, and has been subject to the local  
12 regulated housing restoration adjustment, may file with the commissioner  
13 within 120 days after notice has been received under paragraph three of  
14 this subdivision an application for the adjustment of the rent for such  
15 housing accommodation. Such applications shall be subject to the  
16 following:

17 (i) in the application, the tenant must allege that the local regu-  
18 lated housing restoration adjustment rent exceeds the rent for a  
19 substantially similar unit within the same geographic area;

20 (ii) in determining an application filed pursuant to this section, the  
21 commissioner of housing and community renewal shall only consider legal  
22 regulated rents for substantially similar regulated housing accommo-  
23 dations within a one-mile radius of the subject unit in the same borough  
24 or applicable municipal subdivision. Substantially similar housing  
25 accommodations are those rent-stabilized units with similar room counts  
26 and square footage, similar levels of code compliance, including state  
27 laws, local laws and codes for health, safety, and environmental  
28 sustainability, similar regulatory status, similar apartment conditions  
29 and quality of fixtures and finishes, similar unit and building amen-  
30 ities, similar quality and condition of the building and common areas,  
31 and with vacancy or renewal leases starting within twelve months from  
32 the start date of the complaining tenant's vacancy lease. For purposes  
33 of considering legal regulated rents of similar housing accommodations,  
34 the geographic area may be expanded by increments of one-quarter mile  
35 radii as many times as necessary to find a substantially similar housing  
36 accommodation located in the same borough or applicable municipal subdi-  
37 vision. Notwithstanding the foregoing, any local regulated housing  
38 restoration adjustment rent amount that does not exceed the HUD fair  
39 market value for the statistical metropolitan area or the small area  
40 fair market rent as determined by the local housing authority shall be  
41 presumed to be fair;

42 (iii) the owner of the housing accommodation subject to an application  
43 under this section shall be given an opportunity to submit proof of  
44 legal regulated rents for up to three substantially similar housing  
45 accommodations, in addition to any already submitted as part of the  
46 notification procedure under paragraph three of this subdivision; and

47 (iv) when the local regulated housing restoration adjustment rent  
48 amount is determined to exceed the legal regulated rent for a substan-  
49 tially similar housing accommodation as defined by this section, the  
50 commissioner of housing and community renewal shall order that the legal  
51 regulated rent for the subject unit shall be the greater of the legal  
52 regulated rent for a substantially similar housing accommodation in the  
53 same geographic area or the HUD fair market value for the statistical  
54 metropolitan area or the small area fair market rent as determined by  
55 the local housing authority. Any required refunds shall be made by the

1 owner in cash or as a credit against unpaid rent over a period not to  
2 exceed of six months.

3 (2) Notwithstanding paragraph a of this subdivision, provided that the  
4 owner has submitted to the division documentation in accordance with  
5 subdivision (a-1) of section ten of this chapter, the division shall  
6 only determine whether the rent charged to the first tenant after the  
7 local regulated housing restoration adjustment is supported by a compa-  
8 rable legal regulated rent for a substantially similar regulated unit.  
9 Any documentation deficiencies shall be resolved through the audit proc-  
10 ess set forth in subdivision (a-1) of section ten of this chapter.

11 (3) In the lease execution package for the first lease after the legal  
12 rent was adjusted under the local regulated housing restoration adjust-  
13 ment, the owner shall give notice, both in the lease and subsequently in  
14 writing by certified mail, or by electronic delivery if the tenant has  
15 opted to receive electronic delivery of documents, to the tenant of such  
16 housing accommodation on a form prescribed by the commissioner of hous-  
17 ing and community renewal that the local regulated housing restoration  
18 adjustment was applied, including notification of the prior legal regu-  
19 lated rent, a description of work completed, the building address and  
20 legal regulated rent amounts for at least one and up to three substan-  
21 tially similar units, and such tenant's right to file an application for  
22 adjustment of the new legal regulated rent of such housing accommo-  
23 dation.

24 § 7. This act shall take effect immediately; and provided that the  
25 amendments to chapter 4 of title 26 of the administrative code of the  
26 city of New York made by sections one, two and three of this act shall  
27 expire on the same date as such law expires and shall not affect the  
28 expiration of such law as provided under section 26-520 of such law.