

STATE OF NEW YORK

9175

IN SENATE

October 10, 2018

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

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four, the emergency housing rent control law and the civil practice law and rules, in relation to the statute of limitations on rent overcharges for regulated units; in relation to requiring owners to keep rent records for six years; and in relation to deregulated units as a result of overcharges

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

1 Section 1. Subdivisions a and g of section 26-516 of the administra-
2 tive code of the city of New York, subdivision a as amended by chapter
3 116 of the laws of 1997, are amended to read as follows:
4 a. Subject to the conditions and limitations of this subdivision, any
5 owner of housing accommodations who, upon complaint of a tenant, or of
6 the state division of housing and community renewal, is found by the
7 state division of housing and community renewal, after a reasonable
8 opportunity to be heard, to have collected an overcharge above the rent
9 authorized for a housing accommodation subject to this chapter shall be
10 liable to the tenant for a penalty equal to three times the amount of
11 such overcharge. [~~In no event shall such~~ Except as provided for in
12 section 26-504.4 of this chapter, treble damage [~~penalty~~ penalties
13 shall not be assessed against an owner based solely on said owner's
14 failure to file a timely or proper initial or annual rent registration
15 statement. If the owner establishes by a preponderance of the evidence
16 that the overcharge was not willful, the state division of housing and
17 community renewal shall establish the penalty as the amount of the over-
18 charge plus interest. (i) Except as to complaints filed pursuant to
19 clause (ii) of this paragraph, the legal regulated rent for purposes of
20 determining an overcharge, shall be the rent indicated in the annual
21 registration statement filed [~~four~~ six years prior to the most recent
22 registration statement, (or, if more recently filed, the initial regis-
23 tration statement) plus in each case any subsequent lawful increases and

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

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1 adjustments. Where the amount of rent set forth in the annual rent
2 registration statement filed [~~four~~ six] years prior to the most recent
3 registration statement is not challenged within [~~four~~ six] years of its
4 filing, neither such rent nor service of any registration shall be
5 subject to challenge at any time thereafter. (ii) As to complaints
6 filed within ninety days of the initial registration of a housing accom-
7 modation, the legal regulated rent shall be deemed to be the rent
8 charged on the date [~~four~~ six] years prior to the date of the initial
9 registration of the housing accommodation (or, if the housing accommo-
10 dation was subject to this chapter for less than [~~four~~ six] years, the
11 initial legal regulated rent) plus in each case, any lawful increases
12 and adjustments. Where the rent charged on the date [~~four~~ six] years
13 prior to the date of the initial registration of the accommodation
14 cannot be established, such rent shall be established by the division.

15 Where the rent charged on the date [~~four~~ six] years prior to the date
16 of initial registration of the housing accommodation cannot be estab-
17 lished, such rent shall be established by the division provided that
18 where a rent is established based on rentals determined under the
19 provisions of the local emergency housing rent control act such rent
20 must be adjusted to account for no less than the minimum increases which
21 would be permitted if the housing accommodation were covered under the
22 provisions of this chapter. Where the amount of rent set forth in the
23 annual rent registration statement filed [~~four~~ six] years prior to the
24 most recent registration statement is not challenged within [~~four~~ six]
25 years of its filing, neither such rent nor service of any registration
26 shall be subject to challenge at any time thereafter.

27 (1) The order of the state division of housing and community renewal
28 shall apportion the owner's liability between or among two or more
29 tenants found to have been overcharged by such owner during their
30 particular tenancy of a unit.

31 (2) Except as provided under clauses (i) and (ii) of this paragraph, a
32 complaint under this subdivision shall be filed with the state division
33 of housing and community renewal within [~~four~~ six] years of the first
34 overcharge alleged and no determination of an overcharge and no award or
35 calculation of an award of the amount of an overcharge may be based upon
36 an overcharge having occurred more than [~~four~~ six] years before the
37 complaint is filed. (i) No penalty of three times the overcharge may be
38 based upon an overcharge having occurred more than [~~two~~ six] years
39 before the complaint is filed or upon an overcharge which occurred prior
40 to April first, nineteen hundred eighty-four. (ii) Any complaint based
41 upon overcharges occurring prior to the date of filing of the initial
42 rent registration as provided in section 26-517 of this chapter shall be
43 filed within ninety days of the mailing of notice to the tenant of such
44 registration. This paragraph shall preclude examination of the rental
45 history of the housing accommodation prior to the [~~four-year~~ six-year]
46 period preceding the filing of a complaint pursuant to this subdivision.

47 (3) Any affected tenant shall be notified of and given an opportunity
48 to join in any complaint filed by an officer or employee of the state
49 division of housing and community renewal.

50 (4) An owner found to have overcharged may be assessed the reasonable
51 costs and attorney's fees of the proceeding and interest from the date
52 of the overcharge at the rate of interest payable on a judgment pursuant
53 to section five thousand four of the civil practice law and rules.

54 (5) The order of the state division of housing and community renewal
55 awarding penalties may, upon the expiration of the period in which the
56 owner may institute a proceeding pursuant to article seventy-eight of

1 the civil practice law and rules, be filed and enforced by a tenant in
2 the same manner as a judgment or not in excess of twenty percent thereof
3 per month may be offset against any rent thereafter due the owner.

4 g. Any owner who has duly registered a housing accommodation pursuant
5 to section 26-517 of this chapter shall not be required to maintain or
6 produce any records relating to rentals of such accommodation for more
7 than ~~four~~ six years prior to the most recent registration or annual
8 statement for such accommodation.

9 § 2. Subdivision b and subparagraph (g) of paragraph 1 of subdivision
10 g of section 26-405 of the administrative code of the city of New York,
11 subparagraph (g) of paragraph 1 of subdivision g as amended by section
12 31 of part A of chapter 20 of the laws of 2015, are amended to read as
13 follows:

14 b. Such agency, to effectuate the purposes of this chapter, and in
15 accordance with the standards set forth in paragraph two of subdivision
16 c of this section, may set aside and correct any maximum rent resulting
17 from illegality, irregularity in vital matters ~~[ex]~~, fraud, or rent
18 overcharges regardless of whether there was fraud or illegality, occur-
19 ring prior to or after May first, nineteen hundred sixty-two.

20 (g) There has been since July first, nineteen hundred seventy, a major
21 capital improvement required for the operation, preservation or mainte-
22 nance of the structure. An adjustment under this subparagraph (g) for
23 any order of the commissioner issued after the effective date of the
24 rent act of 2015 shall be in an amount sufficient to amortize the cost
25 of the improvements pursuant to this subparagraph (g) over an eight-year
26 period for buildings with thirty-five or fewer units or a nine year
27 period for buildings with more than ~~thirty-five~~ thirty-five units, or

28 § 3. Section 26-504.2 of the administrative code of the city of New
29 York is amended by adding a new subdivision c to read as follows:

30 c. Notwithstanding section 26-516 of this chapter and section two
31 hundred thirteen-a of the civil practice law and rules, the periods
32 provided for therein for examination of the rental history of the accom-
33 modation for the determination of an overcharge and whether the accommo-
34 dation is subject to this law are extended by the period during which
35 the owner is not in compliance with the requirements of subdivision b of
36 this section.

37 § 4. The administrative code of the city of New York is amended by
38 adding a new section 26-504.4 to read as follows:

39 § 26-504.4 Deregulation. Notwithstanding any provision of law to the
40 contrary, where a unit is deregulated as a result of overcharges, the
41 unit shall be returned to rent stabilization under the applicable
42 sections of law, within six months. Where an owner fails to register
43 such unit as rent stabilized pursuant to section 26-517 of this chapter,
44 the state division of housing and community renewal shall impose a
45 penalty equal to the amount of such overcharge, plus accrued interest.
46 For each year an owner fails to register such unit pursuant to section
47 26-517 of this chapter, penalties imposed by the state division of hous-
48 ing and community renewal shall be at least two thousand dollars and
49 shall not exceed ten thousand dollars.

50 § 5. Paragraph 1 of subdivision a of section 12 of section 4 of chap-
51 ter 576 of the laws of 1974, constituting the emergency tenant
52 protection act of nineteen seventy-four, as amended by chapter 403 of
53 the laws of 1983, the opening paragraph and clause (i) of subparagraph
54 (b) as amended by chapter 116 of the laws of 1997, is amended to read as
55 follows:

(1) Subject to the conditions and limitations of this paragraph, any owner of housing accommodations in a city having a population of less than one million or a town or village as to which an emergency has been declared pursuant to section three, who, upon complaint of a tenant or of the state division of housing and community renewal, is found by the state division of housing and community renewal, after a reasonable opportunity to be heard, to have collected an overcharge above the rent authorized for a housing accommodation subject to this act shall be liable to the tenant for a penalty equal to three times the amount of such overcharge. ~~[In no event shall such]~~ Except as provided for in section five-b of this section, treble damage ~~[penalty]~~ penalties shall not be assessed against an owner based solely on said owner's failure to file a proper or timely initial or annual rent registration statement. If the owner establishes by a preponderance of the evidence that the overcharge was neither willful nor attributable to his negligence, the state division of housing and community renewal shall establish the penalty as the amount of the overcharge plus interest at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules. (i) Except as to complaints filed pursuant to clause (ii) of this paragraph, the legal regulated rent for purposes of determining an overcharge, shall be deemed to be the rent indicated in the annual registration statement filed ~~[four]~~ six years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement) plus in each case any subsequent lawful increases and adjustments. Where the amount of rent set forth in the annual rent registration statement filed ~~[four]~~ six years prior to the most recent registration statement is not challenged within ~~[four]~~ six years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter. (ii) As to complaints filed within ninety days of the initial registration of a housing accommodation, the legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent charged on the date ~~[four]~~ six years prior to the date of the initial registration of the housing accommodation (or, if the housing accommodation was subject to this act for less than ~~[four]~~ six years, the initial legal regulated rent) plus in each case, any lawful increases and adjustments. Where the rent charged on the date ~~[four]~~ six years prior to the date of the initial registration of the accommodation cannot be established, such rent shall be established by the division. Where the amount of rent set forth in the annual rent registration statement filed ~~[four]~~ six years prior to the most recent registration statement is not challenged within ~~[four]~~ six years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter.

(a) The order of the state division of housing and community renewal shall apportion the owner's liability between or among two or more tenants found to have been overcharged by such owner during their particular tenancy of a unit.

(b) (i) Except as provided under clauses (ii) and (iii) of this subparagraph, a complaint under this subdivision shall be filed with the state division of housing and community renewal within ~~[four]~~ six years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than ~~[four]~~ six years before the complaint is filed. This paragraph shall preclude examination of the rental history of the housing accommodation prior to the

1 [~~four-year~~] ~~six-year~~ period preceding the filing of a complaint pursuant
2 to this subdivision.

3 (ii) No penalty of three times the overcharge may be based upon an
4 overcharge having occurred more than [~~two~~] ~~six~~ years before the
5 complaint is filed or upon an overcharge which occurred prior to April
6 first, nineteen hundred eighty-four.

7 (iii) Any complaint based upon overcharges occurring prior to the date
8 of filing of the initial rent registration as provided in subdivision b
9 of section twelve-a of this act shall be filed within ninety days of the
10 mailing of notice to the tenant of such registration.

11 (c) Any affected tenant shall be notified of and given an opportunity
12 to join in any complaint filed by an officer or employee of the state
13 division of housing and community renewal.

14 (d) An owner found to have overcharged shall, in all cases, be
15 assessed the reasonable costs and attorney's fees of the proceeding, and
16 interest from the date of the overcharge at the rate of interest payable
17 on a judgment pursuant to section five thousand four of the civil prac-
18 tice law and rules.

19 (e) The order of the state division of housing and community renewal
20 awarding penalties may, upon the expiration of the period in which the
21 owner may institute a proceeding pursuant to article seventy-eight of
22 the civil practice law and rules, be filed and enforced by a tenant in
23 the same manner as a judgment or, in the alternative, not in excess of
24 twenty percent thereof per month may be offset against any rent there-
25 after due the owner.

26 (f) Unless a tenant shall have filed a complaint of overcharge with
27 the division which complaint has not been withdrawn, nothing contained
28 in this section shall be deemed to prevent a tenant or tenants, claiming
29 to have been overcharged, from commencing an action or interposing a
30 counterclaim in a court of competent jurisdiction for damages equal to
31 the overcharge and the penalty provided for in this section, including
32 interest from the date of the overcharge at the rate of interest payable
33 on a judgment pursuant to section five thousand four of the civil prac-
34 tice law and rules, plus the statutory costs and allowable disbursements
35 in connection with the proceeding. Such action must be commenced or
36 counterclaim interposed within [~~four~~] ~~six~~ years of the date of the
37 alleged overcharge but no recovery of three times the amount of the
38 overcharge may be awarded with respect to any overcharge which had
39 occurred more than [~~two~~] ~~six~~ years before the action is commenced or
40 counterclaim is interposed.

41 § 6. Paragraph 8 of subdivision a of section 12 of section 4 of chap-
42 ter 576 of the laws of 1974, constituting the emergency tenant
43 protection act of nineteen seventy-four, as amended by chapter 403 of
44 the laws of 1983, is amended to read as follows:

45 (8) Any owner who has duly registered a housing accommodation pursuant
46 to section twelve-a of this act shall not be required to maintain or
47 produce any records relating to rentals of such accommodation more than
48 [~~four~~] ~~six~~ years prior to the most recent registration or annual state-
49 ment for such accommodation.

50 § 7. Subdivision c of section 12 of section 4 of chapter 576 of the
51 laws of 1974, constituting the emergency tenant protection act of nine-
52 teen seventy-four, as added by chapter 102 of the laws of 1984, is
53 amended to read as follows:

54 c. The state division of housing and community renewal may, by regu-
55 lation, provide for administrative review of all orders and determi-
56 nations issued by it pursuant to this act. Any such regulation shall

1 provide that if a petition for such review is not determined within
2 ninety days after it is filed, it shall be deemed to be denied. Howev-
3 er, the division may grant one extension not to exceed thirty days with
4 the consent of the party filing such petition; any further extension may
5 only be granted with the consent of all parties to the petition. No
6 proceeding may be brought pursuant to article seventy-eight of the civil
7 practice law and rules to [~~challenge~~] challenge any order or determi-
8 nation which is subject to such administrative review unless such review
9 has been sought and either (1) a determination thereon has been made or
10 (2) the ninety-day period provided for determination of the petition for
11 review (or any extension thereof) has expired.

12 § 8. Section 4 of chapter 576 of the laws of 1974, constituting the
13 emergency tenant protection act of nineteen seventy-four, is amended by
14 adding a new section 5-b to read as follows:

15 § 5-b. Deregulation. Notwithstanding any provision of law to the
16 contrary, where a unit is deregulated as a result of overcharges, the
17 unit shall be re-regulated pursuant to this chapter within six months.
18 Where an owner fails to register such unit as rent stabilized pursuant
19 to section twelve-a of this section, the state division of housing and
20 community renewal shall impose a penalty equal to the amount of such
21 overcharge, plus accrued interest. For each year an owner fails to
22 register such unit pursuant to section twelve-a of this section, penal-
23 ties imposed by the state division of housing and community renewal
24 shall be at least two thousand dollars and shall not exceed ten thousand
25 dollars.

26 § 9. Subdivision 3 of section 5 of chapter 274 of the laws of 1946,
27 constituting the emergency housing rent control law, as amended by chap-
28 ter 337 of the laws of 1961, is amended to read as follows:

29 3. The commission may from time to time to effectuate the purposes of
30 this act adopt, promulgate, amend or rescind such rules, regulations or
31 orders as it may deem necessary or proper for the control of evictions.
32 It may require that an order granting a certificate of eviction be
33 obtained from it prior to the institution of any action or proceeding
34 for the recovery of possession of any housing accommodation subject to a
35 maximum rent under this act upon the grounds specified in subdivision
36 two of this section or where it finds that the requested removal or
37 eviction is not inconsistent with the purposes of this act and would not
38 be likely to result in the circumvention or evasion thereof; provided,
39 however, that no such order shall be required in any action or proceed-
40 ing brought pursuant to the provisions of subdivision one of this
41 section.

42 The commission on its own initiative or on application of a tenant may
43 revoke or cancel an order granting such certificate of eviction at any
44 time prior to the execution of a warrant in a summary proceeding to
45 recover possession of real property by a court whenever it finds that:

46 (a) the certificate of eviction was obtained by fraud or illegality;
47 [~~or~~]

48 (b) the landlord's intentions or circumstances have so changed that
49 the premises, possession of which is sought, will not be used for the
50 purpose specified in the certificate[~~+~~]; or

51 (c) the certificate of eviction was obtained as a result of over-
52 charges, regardless of whether there was fraud or illegality.

53 The commencement of a proceeding by the commission to revoke or cancel
54 an order granting a certificate of eviction shall stay such order until
55 the final determination of the proceeding regardless of whether the
56 waiting period in the order has already expired. In the event the

1 commission cancels or revokes such an order, the court having jurisdic-
2 tion of any summary proceeding instituted in such case shall take appro-
3 priate action to dismiss the application for removal of the tenant from
4 the real property and to vacate and annul any final order or warrant
5 granted or issued by the court in the matter.

6 § 10. Subdivision 5 of section 11 of chapter 274 of the laws of 1946,
7 constituting the emergency housing rent control law, as amended by chap-
8 ter 706 of the laws of 1966, is amended to read as follows:

9 5. If any landlord who receives rent from a tenant violates a regu-
10 lation or order prescribing the maximum rent with respect to the housing
11 accommodations for which such rent is received from such tenant, the
12 tenant paying such rent may, within [~~two~~] six years from the date of the
13 occurrence of the violation, except as hereinafter provided, bring an
14 action against the landlord on account of the overcharge as hereinafter
15 defined. In such action, the landlord shall be liable for reasonable
16 attorney's fees and costs as determined by the court, plus whichever of
17 the following sums is the greater: (a) Such amount not more than three
18 times the amount of the overcharge, or the overcharges, upon which the
19 action is based as the court in its discretion may determine, or (b) an
20 amount not less than twenty-five dollars nor more than fifty dollars, as
21 the court in its discretion may determine; provided, however, that such
22 amount shall be the amount of the overcharge or overcharges or twenty-
23 five dollars, whichever is greater, if the defendant proves that the
24 violation of the regulation or order in question was neither willful nor
25 the result of failure to take practicable precautions against the occur-
26 rence of the violation. As used in this section, the word "overcharge"
27 shall mean the amount by which the consideration paid by a tenant to a
28 landlord exceeds the applicable maximum rent. If any landlord who
29 receives rent from a tenant violates a regulation or order prescribing
30 maximum rent with respect to the housing accommodations for which such
31 rent is received from such tenant, and such tenant either fails to
32 institute an action under this subdivision within thirty days from the
33 date of the occurrence of the violation or is not entitled for any
34 reason to bring the action, the commission may institute an action on
35 behalf of the state within such [~~two-year~~] six-year period. If such
36 action is instituted by the commission, the tenant affected shall there-
37 after be barred from bringing an action for the same violation or
38 violations. Any action under this subdivision by either the tenant or
39 the commission, as the case may be, may be brought in any court of
40 competent jurisdiction. Recovery, by judgment or otherwise, in an
41 action for damages under this subdivision shall be a bar to the recovery
42 under this subdivision of any recovery, by judgment or otherwise, in any
43 other action against the same landlord on account of the same overcharge
44 or overcharges prior to the institution of the action in which such
45 recovery of damages was obtained. Where recovery by judgment or other-
46 wise is obtained in an action instituted by the commission under this
47 subdivision, there shall be paid over to the tenant from the moneys
48 recovered, one-third of such recovery, exclusive of costs and disburse-
49 ment or the amount of the overcharge or overcharges, whichever is the
50 greater.

51 § 11. Section 213-a of the civil practice law and rules, as amended by
52 chapter 116 of the laws of 1997, is amended to read as follows:

53 § 213-a. Actions to be commenced within [~~four~~] six years; residential
54 rent overcharge. An action on a residential rent overcharge shall be
55 commenced within [~~four~~] six years of the first overcharge alleged and no
56 determination of an overcharge and no award or calculation of an award

1 of the amount of any overcharge may be based upon an overcharge having
2 occurred more than [~~four~~ six] years before the action is commenced. This
3 section shall preclude examination of the rental history of the housing
4 accommodation prior to the [~~four-year~~ six-year] period immediately
5 preceding the commencement of the action.

6 § 12. This act shall take effect on the one hundred eightieth day
7 after it shall have become a law; provided that the amendments to chap-
8 ter 4 of title 26 of the administrative code of the city of New York
9 made by sections one, three and four of this act shall expire on the
10 same date as such law expires and shall not affect the expiration of
11 such law as provided under section 26-520 of such law; provided, howev-
12 er, that the amendments to section 26-405 of the city rent and rehabili-
13 tation law made by section two of this act shall remain in full force
14 and effect only as long as the public emergency requiring the regulation
15 and control of residential rents and evictions continues, as provided in
16 subdivision 3 of section 1 of the local emergency housing rent control
17 act; provided, however, that the amendments to the emergency tenant
18 protection act of nineteen seventy-four made by sections five, six,
19 seven and eight of this act shall expire on the same date as such act
20 expires and shall not affect the expiration of such act as provided in
21 section 17 of chapter 576 of the laws of 1974; provided, further, that
22 the amendments to section 4 of the emergency housing rent control law
23 made by sections nine and ten of this act shall expire on the same date
24 as such law expires and shall not affect the expiration of such law as
25 provided in subdivision 2 of section 1 of chapter 274 of the laws of
26 1946.