

## **SPECIAL BULLETIN**

# **DHCR Amends Rent Regulations**

**E**ffective December 20, 2000, the New York State Division of Housing and Community Renewal promulgated amendments to the four bodies of rent regulation that govern regulated apartments throughout New York State. These four regulations are:

- Rent Stabilization Code (*governing rent stabilized apartments in New York City*)
- Emergency Tenant Protection Regulations (*governing rent stabilized apartments outside of New York City*)
- New York City Rent & Eviction Regulation (*governing rent controlled apartments in New York City*)
- State Rent & Eviction Regulations (*governing rent stabilized apartments outside of New York City*)

Various tenant groups and representatives have announced that "the sky is falling" and an intention to challenge many of these amendments; asserting that DHCR has created new rules and wantonly removed pre-existing tenant protections.

Our view is quite different. We believe that DHCR has, generally, codified the substantive and procedural rules that have been in effect for years; albeit spread among various statutes, Operational Bulletins, Policy

Statements, Advisory Opinions and case law. As a result of DHCR's efforts, rather than being forced to examine numerous sources, both owners and tenants may now refer to a single document to determine the applicable rules.

In order to assist our clients, we have prepared the attached chart which highlights some of the more important amendments to the Rent Stabilization Code. We have addressed the Code changes in this Special Bulletin, inasmuch as we wanted to provide you with vital information as quickly as possible, and it is the Code which affects the largest portion of the regulated housing stock held by our firm's clients. In the future, we shall address the changes made to the other regulations.

*Please note: The annexed chart is only a summary of selected portions of the Code amendments. The chart does not summarize every change; even those changes that are addressed are summarized only and the summary should not be construed as providing legal advice for any specific fact pattern. For a more detailed analysis of the Code amendments and how these changes may affect your particular situation, please speak with one of our firm's attorneys.*

**BELKIN BURDEN WENIG & GOLDMAN, LLP**

**AMENDMENTS TO THE RENT STABILIZATION CODE  
Effective December 20, 2000**

<b>TOPIC</b>	<b>CODE §</b>
<p><b>Appliance and Utilities Surcharges</b> (washers, dryers, dishwashers, electricity, gas, cable, telecommunications).</p> <p>Owners are permitted to collect monthly surcharges for tenant installed appliances and for utility services it provides to tenants. DHCR will issue an Operational Bulletin concerning the amounts for appliances, but there will be no limitation on the amounts for utilities. The surcharges do not become part of the legal regulated rent and the appliance does not become a required service.</p>	2522.9 2522.10
<p><b>De Minimis Conditions</b></p> <p>A schedule of building and apartment items that will not be a basis for decrease in required service complaints because they have a minimal impact on tenants, do not affect the use and enjoyment of premises, and/or exist despite regular maintenance. Conditions which have existed for four years or more without complaint, are also considered "de minimis" and not a decrease in a required service.</p>	2523.4(e) & (f)
<p><b>Deconversion</b></p> <p>Codifies procedures for reinstating cooperative and condominium buildings back into the rent stabilization system following a foreclosure of the building or other event that causes a cooperative corporation or condominium association to lose title. The amended Code provides rules concerning the issuance of leases, determination of initial legal regulated rents, and occupancy limitations. It also provides criteria for exempting certain units from re-regulation.</p>	2520.11(l)
<p><b>Deemed Renewal Lease</b></p> <p>When a tenant neglects or refuses to sign a renewal lease offered in a timely manner, and does not surrender the premises, owners may now deem that renewal lease to be the new lease in effect. This remedy is the owner's option; the owner may treat the tenant's failure to renew as grounds for eviction.</p>	2523.5(c)(2)
<p><b>Demolition Notice</b></p> <p>The notice must state (1) the basis for non-renewal: Demolition "for which plans and financing have been obtained, or are in the process of being obtained ..."; (2) while the demolition application is pending, tenant may remain in occupancy; (3) tenant need not vacate until DHCR has issued a final order; and (4) tenant must be offered a prospective renewal lease if the demolition application is withdrawn or denied.</p>	2524.2(e)

<b>Demolition Procedure at DHCR</b> DHCR will not issue an order permitting an owner not to renew leases, until the owner submits approved plans and proof of financial ability. An administrative hearing is not required.	2524.5(a)(2)
<b>Effective date</b> On publication in the New York State Register: 12/20/00. Although not specified, past practice has been that Code changes are, generally, applicable to pending proceedings.	
<b>Expert Affidavits</b> An affidavit submitted by a licensed architect or engineer regarding a tenant's complaint of reduction in building-wide services or an owner's application regarding restoration of such services shall raise a rebuttable presumption that the conditions exist or do not exist, respectively.	2523.4(g)
<b>Fair Market Rent Appeal</b> Sets a strict 4-year statute of limitations on FMRA's (effectively codifying DHCR's prior practice and policy). "[N]o Fair Market Rent Appeal may be filed after four years from the date the housing accommodation was no longer subject to the City Rent Law (Rent Control)." Reinforcing the 4-year doctrine, in determining the fair market rent, DHCR will now look at the prior 4-year rent history of the specific apartment in question, in addition to comparable apartment rentals.	2522.3 2523.1
<b>Foreclosure, Bankruptcy, Receiver</b> Codify various immunities enjoyed by receivers and purchasers of regulated property following a foreclosure or bankruptcy sale. Set limits on liability for rent overcharges, rent registration, and record-keeping requirements.	2522.3 2522.6(b) 2523.7 2526.1(f)
<b>Four Year Rule on Records</b> Owners need not maintain rental records for longer than 4-years prior to the date the most recent apartment registration was required to have been filed. Owners are not required to produce such records in connection with rent overcharge and/or FMRA's.	2523.7

<p><b>"Golub" Notice</b></p> <p>The window period for non-renewal predicate notices is now between 90 (rather than 120) and 150 days before the expiration of the tenant's lease.</p>	<p>2524.2(c)(2) &amp;(3)</p>
<p><b>High Income / High Rent Decontrol</b></p> <p>Procedures for luxury decontrol proceedings, generally consistent with DHCR's practices since the enactment of the Rent Regulation Reform Acts of '93 and '97.</p>	<p>2531 <i>et seq.</i></p>
<p><b>High Income / High Rent Decontrol Notice</b></p> <p>Codifies prior DHCR procedure that enabled owners to reserve the right to terminate a stabilized lease renewed during a pending decontrol proceeding, and offer a market rate lease instead.</p>	<p>2522.5(d)(4) 2522.5(g)(2) 2531.8</p>
<p><b>High Rent Vacancy Decontrol</b></p> <p>An apartment may now become deregulated if the <i>legal regulated rent</i> following a vacancy is \$2000 or more. The change, which traces the language in the RRRA's of '93 and '97, allows owners to deregulate an apartment even if the market does not enable the owner to collect \$2000 or more in rent upon a vacancy.</p>	<p>2520.11(r)</p>
<p><b>Immediate Family (of owner)</b></p> <p>"Immediate family" includes the in-laws of the owner as persons on whose behalf an owner occupancy proceeding can be commenced.</p>	<p>2520.6(n)</p>
<p><b>Initial Legal "Regulated" Rent</b></p> <p>"Initial <i>regulated rent</i>" replaces "initial <i>legal registered rent</i>" throughout the Code, which indicates a reduction in the importance of rent registration and reinforces the 4-year rule.</p>	<p>2521.1</p>
<p><b>Legal "Regulated" Rent</b></p> <p>"Legal <i>regulated rent</i>" replaces "legal <i>registered rent</i>" throughout the Code. Legal regulated rent is the rent charged on the base rate (<i>i.e.</i>, 4-years prior to the filing of the complaint), plus any lawful adjustments.</p>	<p>2520.6(e)</p>

<p><b>Major Capital Improvements</b></p> <p>Enumerates a non-exhaustive list of items that qualify for an MCI rent increase. With respect to tenant-access to the application, owners must maintain a copy of the application, with supporting documentation, on the premises, or at DHCR.</p>	<p>2522.4(a)(2) (i) 2527.3(a)(2)</p>
<p><b>Overcharges</b></p> <p>The "legal <i>regulated</i> rent" (for purposes of determining an overcharge) shall be deemed to be the rent "charged on the base date" plus any lawful adjustments. Neither the amount nor the calculation of a rent overcharge will be based on any period prior to 4-years from the filing of the complaint. Treble damages can not be imposed against an owner based solely on a failure to file a timely or proper registration statement.</p>	<p>2526.1</p>
<p><b>Owner Occupancy</b></p> <p>In making no changes to this provision, DHCR did not adopt the reasoning of various Housing Court judges concerning the alleged special protection for tenants in occupancy of ETPA apartments for 20 years or more.</p>	<p>2524.4(a)</p>
<p><b>Preferential Rent</b></p> <p>Procedures for protecting owners' and tenants' rights when charging a "preferential rent" (<i>i.e.</i>, a rent that is lower than the legal regulated rent) are more clearly spelled out. In order to revert back to the higher amount upon vacancy by the tenant, the prior legal regulated rent had to have been "documented in a manner prescribed by DHCR." On vacancy following a preference, the 4-year rule, plus all intervening guideline and other authorized increases shall govern.</p>	<p>2521.2(b)</p>
<p><b>Primary residence</b></p> <p>Provides a non-exclusive list of factors that were contained in the original non-primary residence law (Ch. 373, L. 1971) and the original RSC ( §54E), and are the same indicia as have generally been used by the Courts.</p>	<p>2520.6(u)</p>
<p><b>Proof of Service</b></p> <p>Proper service of administrative documents (except PAR's and luxury decontrol papers) now include service "electronically" (<i>i.e.</i>, by fax, by e-mail). A contemporaneous affidavit of service providing "dispositive facts" is also deemed to be sufficient proof of service by personal delivery or by mail.</p>	<p>2527.9</p>

<b>Renewal Lease</b> Renewal lease offers may be sent between 90 (rather than 120) and 150 days before the expiration of the tenant's existing lease. This addresses the renewal lease problem of the "gap" between when the RGB-approved rent increases (June) and when they took effect (October).	2523.5(a)
<b>Rent Reduction Orders</b> Owners may collect MCI and Individual Apartment Improvement rent increases while a rent reduction order is in effect.	2523.4(a)(2)
<b>Rent Registration Penalties</b> Owners may file late rent registrations without creating a new liability for rent overcharges or treble damages. This reinforces the 4 year rule.	2528.4
<b>Roommates</b> The Roommate Law (Real Property Law §235-f) is referenced. The prime tenant may not charge a roommate more than that person's proportionate share of the legal regulated rent.	2525.7
<b>Service Complaints</b> Tenants must provide prior written notice to owners of the alleged defective conditions (except heat, hot water or other emergency repair – with respect to heat and hot water complaints, tenants must first obtain a corroborating report from the appropriate city agency.). The tenant cannot complain to DHCR less than 10 days or more than 60 days after notifying the owner. Owners have 45 days to answer the complaint, during which the owner may try to gain access and correct the condition. The "no access by tenant" procedure is codified. Noticed inspections shall be on notice to both parties.	2523.4(c) & (d)
<b>Statutory Vacancy Increase</b> Vacancy lease rents are calculated on the basis of the prior legal regulated rent.	2522.5(f) 2522.8
<b>Stays</b> The filing of a PAR by one tenant contesting an MCI rent increase serves to stay the collection of the retroactive portion of the rent increase only as to that tenant. It does <i>not</i> stay the collection of the rent increase from any other tenant who has not filed a PAR.	2529.12

<p><b>Substantial Rehabilitation</b></p> <p>Factors for exempting a building from rent regulation on the basis of a substantial rehabilitation are enumerated. DHCR will issue an Operational Bulletin setting forth more specific criteria, including a provision stating what percentage (not to exceed 75%) of listed building-wide and individual apartment systems must have been replaced. Another factor is that the building must have been in a substandard or seriously deteriorated condition, with a presumption of such condition where at least 80% of the apartments are vacant. However, non-residential space that is converted to residential use need not have been substandard or deteriorated in order to qualify for exemption. Owners may seek a waiver of any of the factors "for good cause shown", including, but not limited, to where a particular building component or system is shown to have been recently upgraded, or is structurally sound, or of historical value, and should not be replaced.</p>	<p>2520.11(e)</p>
<p><b>Temporary Exemption</b></p> <p>Where an apartment is vacant or temporarily exempt on the "base date" (using the 4 year rule), the legal regulated rent shall be the rent agreed to by the owner and the first rent stabilized tenant taking occupancy thereafter; or in the event a lesser amount is shown in the first registration following the vacancy or exemption, then the legal regulated rent will be the amount reported in that first registration.</p>	<p>2526.1 (a)(3)(iii)</p>
<p><b>Tenant Harassment as Basis for Eviction</b></p> <p>The ground for terminating a tenancy includes circumstances where the tenant is engaging in "an unwarrantable, unreasonable or unlawful use of the property to the annoyance, inconvenience, discomfort or damage of others."</p>	<p>2524.3(b)</p>
<p><b>Useful Life Schedule</b></p> <p>The useful life of various building-wide structures for purposes of satisfying the MCI replacement criteria are codified, with delineated procedures for owners to request a waiver of the useful life standards under various circumstances (e.g. replacement is necessary because of an emergency, fire, vandalism, excessive cost of repair, governmental housing program requirements).</p>	<p>2522.4(a)(2) (i)(d) &amp; (e)</p>
<p><b>Waiver of benefit void</b></p> <p>Notwithstanding the general prohibition against tenant's waiving rights, settlement of housing disputes may permit withdrawal of tenant complaints at DHCR under certain circumstances. In addition, such settlements are binding on subsequent tenants, unless the settlement involves surrender of the apartment or the tenant is no longer in possession at the time of the settlement.</p>	<p>2520.13</p>