

FACT SHEET



Andrew M. Cuomo, Governor

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DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION

#6 Fair Market Rent Appeals

Fair Market Rent Appeals

In NYC, when a tenant moves out of a rent controlled apartment, the apartment becomes decontrolled. If that apartment is in a building built before January 1, 1974, containing six or more units at any time, it becomes rent stabilized. The owner must register the unit with the NYS Division of Housing and Community Renewal (DHCR) by completing the Initial Apartment Registration, (DHCR Form RR-1) and must provide the tenant with a copy by certified mail. The owner may charge the first stabilized tenant a rent negotiated between them, which is subject to the tenant's right to file a "Fair Market Rent Appeal" (FMRA).

However, when a previously rent controlled apartment is vacated and the rent charged to the next tenant is at or above the Deregulation Rent Threshold, the apartment is exempt from rent regulation pursuant to High-Rent Vacancy Deregulation. This first deregulated tenant must be served with a DHCR High-Rent Vacancy Deregulation notice (HRVD-N) and an apartment registration indicating the apartment status as permanently exempt, as per the Rent Code Amendment of 2014. Owners are required to use the DHCR annual apartment registration form for this purpose. The tenant may challenge the deregulation by filing a Fair Market Rent Appeal with DHCR within 90 days of service of this notice or service of a copy of the registration statement, whichever occurs first. DHCR reserves the right to convert an overcharge complaint to a Fair Market Rent Appeal, based on the previous regulatory status of the apartment.

Usually, a FMRA is a challenge to the negotiated first stabilized rent, and it must be filed by a tenant within four years after the vacancy or within 90 days after the owner mails the requisite written notice (Form RR-1) of the initial legal regulated rent by certified mail to the tenant, whichever first occurs. If the tenant challenges this initial legal regulated rent and it is found to be excessive, the rent as adjusted by DHCR will become the Adjusted Initial Legal Regulated Rent. Once a FMRA is filed, no subsequent tenant may file such appeal. If the appeal is denied or not filed in a timely manner, then the negotiated initial legal regulated rent becomes the lawful rent, not subject to challenge. All future rent increases, whether for a renewal or vacancy lease, are subject to limitations provided under the Rent Stabilization Law.

The tenant must allege in such appeal that the initial rent is in excess of the fair market rent, and facts which, to the best of his or her information and belief, support such allegation.

In determining a FMRA, consideration will be given not only to the applicable guidelines promulgated for such purposes by the Rent Guidelines Board, but also rents prevailing for substantially similar ("comparable") accommodations located in the same general area as the subject building on the date the complaining tenant moved into the subject apartment.

A "comparable" apartment may be either a rent stabilized or an unregulated unit. The number of rooms in the "comparable" apartment may not exceed the number of rooms in the subject apartment. The rent for a rent stabilized "comparable" apartment will be considered only if it is unchallenged (no challenge to its rent is pending before the DHCR).

The fair market rent will generally be established at the greater of the Special Guidelines component promulgated by the Rent Guidelines Board and the highest registered rent for a comparable rent stabilized apartment in the subject building on the date the complainant moved in, plus lawful increases for individual apartment improvements.

The owner may also elect to submit for consideration the rent of either a "comparable" rent stabilized apartment located outside of the subject building or a "comparable" unregulated apartment located either within or outside of the subject building.

If the owner elects to offer the rent of a "comparable" rent stabilized apartment located outside of the subject building, it must be properly registered with the DHCR. The rent for such apartment will be averaged with the highest registered rent for a "comparable" apartment in the subject building. The fair market rent will be established at the greater of the average of the comparable rents and the Special Guidelines component, plus lawful increases for individual apartment improvements.

If the owner elects to offer the rent of a "comparable" unregulated apartment, the fair market rent will be established at the average of the rent for the unregulated "comparable" and the Special Guidelines component, plus lawful increases for individual apartment improvements.

An order determining a FMRA and establishing the legal regulated rent at an amount lower than that being paid by the tenant will direct the current owner to refund the excess rent to the tenant in cash, check, or money order, and to the extent that the present owner is liable for all or any part of the refund, such current owner may credit such refund against future rents over a period not in excess of six months. If the refund exceeds the total rent due for six months, the tenant at his or her option may continue to abate his or her rent until the refund is fully credited, or request the current owner to re-fund any balance outstanding at the end of the six-month period.

A current owner who is a party to a FMRA will be jointly liable with a prior owner for excess rent collected by a prior owner, and each owner will re-main severally liable for the excess rent collected by each. DHCR shall consider a current owner to be a party to a FMRA if one of the following events occurs before the issuance of a Rent Administrator's order resolving the FMRA:

- 1) DHCR serves the current owner with a copy of the FMRA and affords the current owner an opportunity to file an answer; or
- 2) whether or not DHCR serves a copy of the FMRA on the current owner, the current owner files an answer to the FMRA; or
- 3) the current owner, after purchase of the building, fails to notify DHCR of the change of ownership as required by the Rent Stabilization Code, and DHCR serves the prior owner with a copy of the FMRA at the address given in the last filed registration and at the address specified by the tenant in the FMRA, if the address specified by the tenant is different from the address specified by the prior owner on the last filed registration statement.

Judicial Sale Exception

In the absence of collusion between the current owner and any prior owner, where no records sufficient to establish the fair market rent were provided at a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, an owner who purchases upon or subsequent to such sale shall not be liable for excess rent collected by any owner prior to such sale. An owner who did not purchase at such sale, but who purchased subsequent to such sale shall also not be liable for excess rent collected by any prior owner subsequent to such sale to the extent that such excess rent is the result of excess rent collected prior to such sale. If the refund exceeds the total rent due for six months, the tenant at his or her option may continue to abate his or her rent until the refund is fully credited, or request that the present owner refund any balance outstanding at the end of such six-month period.

A Receiver who is appointed by a court of competent jurisdiction to receive rent for the use or occupation of a housing accommodation shall not, in the absence of collusion or any relationship between such Receiver and any owner or other Receiver, be liable for excess rent collected by any owner or other Receiver, where records sufficient to establish the fair market rent have not been made available to such Receiver.

For more information or assistance, call the DHCR Rent InfoLine, or visit your Borough or County Rent Office.

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25 Beaver Street
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