

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

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).

The Housing Stability and Tenant Protection Act (HSTPA) of 2019, effective June 14, 2019 eliminated High-Rent Vacancy and High-Rent High-Income Deregulation. Prior to June 14, 2019, when a rent controlled apartment was vacated and the next tenant was charged a rent at or above the deregulation rent threshold, the apartment was exempt from rent regulation. The owner had to serve the new tenant with the required notice and registration indicating the apartment's new status and which also informed the tenant of their right to file a Fair Market Rent Appeal.

Usually, a FMRA is a challenge to the negotiated first stabilized rent, and it must be filed by a tenant within six 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 occurs first. 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 refund 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.

For more information or assistance, you may visit your Borough Rent Office.

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6th Floor
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75 South Broadway
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