

CITY RENT AND EVICTIONS REGULATIONS SUMMARY REGULATORY IMPACT STATEMENT

1. STATUTORY AUTHORITY:

The Omnibus Housing Act, Laws of 1983, Chap. 403, section 28, (not subdivided), and section 26-405g(1) of the Administrative Code of the City of New York also known as the City Rent and Rehabilitation Law (“CRRL”) provide authority to the Division of Housing and Community Renewal (“DHCR”) to amend the City Rent and Eviction Regulations (“CRER”). The Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 (“HSTPA”), enacted June 14, 2019, and Ch. 39 of the Laws of 2019 (“Clean-up law”) further empowered and required DHCR to promulgate rules and regulations to implement and enforce various provisions of the HSTPA.

2. LEGISLATIVE OBJECTIVES

The CRRL requires, because of a serious public emergency, the regulation of residential rents and evictions to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices to produce threats to public health safety and general welfare. The CRRL is further designed to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions. See CRRL §26-401(a). DHCR is specifically authorized to promulgate regulations by CRRL §26-405 (g)(1) and is specifically empowered by HSTPA to promulgate regulations to implement and enforce new provisions added, as well as provisions amended or repealed by HSTPA and the accompanying Clean-up bill.

3. NEEDS AND BENEFITS

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2014. As noted, in June 2019 there was a significant amendment to the rent laws by HSTPA and there has already been significant litigation interpreting those laws. In addition, DHCR has had years of experience in administration which informs this regulatory process, as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

DHCR personnel have engaged in forums and meetings since the passage of HSTPA where the administration and implementation of the law was discussed. The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Individual Apartment Improvements (IAIs)

HSTPA itself mandated most of the regulatory amendments made with respect to this section.

b. Major Capital Improvements (MCIs)

These provisions are another area that HSTPA changed and directed that DHCR promulgate regulations.

c. High Rent/High Income Deregulation

HSTPA repealed the high rent/high income provisions of the rent laws with an exception with respect to the rules governing Real Property Tax Law §421-a(16). The Clean-up law clarified that units lawfully deregulated, prior to the effective date of HSTPA, remain deregulated. Modifications to the regulations on this topic are required by HSTPA.

d. Maximum Rent

HSTPA made changes with respect to the establishment of the maximum rent. The proposed regulations reflect those changes.

e. Fuel Costs

HSTPA made prohibited fuel cost pass-alongs. The proposed regulations are amended to reflect that as of June 14, 2019, fuel pass-along to tenants under rent control is prohibited. Notwithstanding any other provision of law, rule, regulation, charter or administrative code, tenants of housing accommodations which are subject to rent control under this chapter shall not be subject to a fuel adjustment or pass-along increase in rent and any such increase to such tenant shall be null and void.

f. Succession Rights

Family members remaining in a rent-controlled unit after the vacatur of the named lease holder have the right to remain in the apartment. HSTPA made no changes to the statutory provisions regarding succession. However, DHCR has always been empowered to promulgate regulations, first by its general rent stabilization rule making authority, see, Rent Stabilization Association v. Higgins, 83 N.Y.2d 156, 608 N.Y.S.2d 930 (1993) and subsequently by Public Housing Law §14. The regulations require contemporaneous occupancy by the family members with the named leaseholder for two years as their primary residence prior to the permanent vacatur of the named leaseholder (9 NYCRR §2204.6).

DHCR determined that clarification for rent-controlled tenants that the period of actual physical vacatur of the named lease holder controls. DHCR's regulations that true fraud and an extended period of misrepresentation will not be rewarded, however, evicting long term family residents because the named leaseholder may have been in the process of moving out during the renewal period or was simply postponing an anticipated difficult and problematic interaction with their landlord over whether remaining family had the right to stay is simply too harsh a rule.

g. High Rent Vacancy Deregulation

HSTPA eliminates high rent vacancy (as well as high rent/high income) deregulation as of June 14, 2019, with the exceptions previously noted.

h. Applying changed rules at PAR

The proposed regulation provides that when a law or regulation changes during the pendency of a PAR proceeding, the rules in effect at the time the Rent Administrator (RA) makes its decision controls unless the equities or undue hardship require otherwise. The regulation also allows DHCR, when a new rule requires a higher rent and is imposed, to make the increase prospective, rather than from the initiation of the RA proceeding. This rule reverses the presumptions built into the prior regulation of generally applying new rules on PAR subject to equitable and hardship exception. The rule change conforms with the major implementation requirements of the HSTPA based on Regina Metropolitan.

i. Actual Physical Address for Registration

Part of the requirements of the CRER is that each owner registers their building upon change of ownership. The proposed regulation requires owners to provide an actual physical address instead of utilizing a post office box address.

4. COSTS

The regulated parties are residential tenants and the owners of the rent stabilized housing accommodations in which such tenants reside. There are no additional direct costs imposed on tenants or owners by these amendments as owner direct costs are capped at \$20 per unit per year. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government. Owners of regulated housing accommodations will need to be more vigilant to assure their

compliance with changes and the changes themselves in many instances do require additional filings by owners. For example, IAI's now require contemporaneous filing with DHCR of certain proof that was only necessary to produce previously in the context of an overcharge case or a direct demand by the tenant closely associated with the lease execution. The proof is of a kind an owner looking to establish the propriety of the IAI increase would have maintained prior to HSTPA in the event of a subsequent overcharge claim. Compliance costs are already a generally accepted expense of owning regulated housing. In general, as in the example provided above, the increased compliance costs are less a product of the promulgation of these regulations, but the enactment of the HSTPA.

There are increased penalties in some instances if the regulations are violated.

However, these consequences are consistent with the existing law or otherwise necessary to secure compliance. Tenants will not incur any additional direct costs through implementation of the proposed regulations.

5. LOCAL GOVERNMENT MANDATES

The proposed rulemaking will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK

The amendments will increase the paperwork burden essentially due to the changes made by HSTPA. There will be additional costs associated with filings and the need for additional record retention. Specific claims that a changed regulation may create hardship or inequity can and will be raised in the context of the administrative applications, themselves, where such factual claims can be assessed. However, consistent with HSTPA and the court decisions interpreting it, DHCR has mitigated some of these additional paperwork concerns

by expressly promulgating a regulation that makes the application of these new statutory standards on PAR the exception rather than the rule.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent-controlled property participates in another State, City or Federal housing program. In those instances, there may be a need to comply with the CRER requirements as well as the mandates of that City, State or Federal program.

8. ALTERNATIVES

As stated previously, much of these new regulations are a product of HSTPA, itself foreclosing, much examination of alternatives. Nevertheless, DHCR considered a variety of alternatives to certain rules which were not exactly proscribed by the HSTPA. Most often however, the choices were questions of appropriate statutory interpretation rather than policy choices. A more detailed discussion of the alternatives for the proposed amendments is contained in the full Regulatory Impact Statement available on DHCR's website at:

<https://hcr.ny.gov/regulatory-information>.

9. FEDERAL STANDARDS

The proposed amendments do not exceed or duplicate Federal standards. Many of HSTPA's provisions and rent regulation generally presently are the subject of litigation as to their constitutionality.

10. COMPLIANCE SCHEDULE

By the time of final promulgation of these rules, HSTPA will have been extant for a significant period. Therefore, it is not anticipated that regulated parties will uniformly require

time to comply with the proposed rules. To the extent that DHCR believes they do reflect rules not required by HSTPA, the rules themselves are generally made expressly prospective. Moreover, DHCR regulations provide for an option of additional grace periods for implementation.