

SUMMARY REGULATORY IMPACT STATEMENT
EMERGENCY TENANT PROTECTION REGULATIONS

1. STATUTORY AUTHORITY:

The Emergency Tenant Protection Act of 1974 (“ETPA”) (McKinney Unconsol. Law 8621, et seq.), Laws of 1974 Ch. 576, section 10a provide authority to the Division of Housing and Community Renewal (“DHCR”) to amend the Emergency Tenant Protection Regulations (“TPR”). 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 overall legislative objectives are contained in Section 2 of the Emergency Tenant Protection Act (“ETPA”). The legislature has determined that, because of a serious public emergency, the regulation of residential rents and evictions is necessary to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety and general welfare.

DHCR is specifically authorized by ETPA §8630 to promulgate regulations to protect tenants and the public interest 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by HSTPA to promulgate regulations to implement and enforce new provisions added, as well as provisions amended or repealed by HSTPA and the accompanying Clean-up law.

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 were significant amendments 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 detailed in the full Regulatory Impact Statement available on DHCR's website at <https://hcr.ny.gov/regulatory-information>. Some of those are highlighted below:

a. Individual Apartment Improvements (IAIs) (9 NYCRR §2502.4)

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

b. Major Capital Improvements (MCIs) (9 NYCRR §2502.4)

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

c. Rent Regulation for Supportive Housing Units (9 NYCRR §2500.9)

HSTPA also amended three sections of the Emergency Tenant Protection Act McK.Unconsol. Laws §8625(a)(6) and §(a)(10) to extend rent stabilization to previously exempt housing accommodations (§8625(a)(10)) or to buildings (§8625(a)(6)) used by not-for-profit corporations that were providing permanent housing accommodations with governmental services for vulnerable individuals with disabilities who were homeless or at risk of

homelessness. These new inclusions are applicable to such housing accommodations provided “as of and after” the effective date of HSTPA.

d. High Rent/High Income Deregulation (9 NYCRR §2511)

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.

e. Rent Overcharges (9 NYCRR §2506.1)

The HSTPA made changes with respect to the processing and determination of rent overcharge cases which are reflected in these regulations.

The proposed amendments are consistent with the legislature’s requirements and with the Court of Appeals decision in Matter of Regina Metropolitan Co. LLC v. New York State Division of Housing and Community Renewal, 2020 NY Slip. Op. 02127 (2020).

f. Apartment Reconfigurations (9 NYCRR §2501.1)

While not expressly addressed by HSTPA, other provisions of HSTPA made these amendments necessary.

g. Succession Rights (9 NYCRR §2503.5)

Family members remaining in a rent stabilized unit after the vacatur of the named lease holder have the right to remain in the apartment and continue to receive renewal leases. 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 §2503.5(d)(1)).

Presently, there is a split between the Appellate Division, 1st Department and 2nd Department as to how to measure the two-year period. DHCR's regulations reflect that true fraud and an extended period of misrepresentation will not be rewarded by adopting the approach of the 2nd Department. 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.

h. Rent Guidelines Board/Rent Guideline Increase on Vacancy (9 NYCRR §2502.7)

HSTPA requires the Rent Guidelines Board to establish a single "unitary" guideline applicable to both vacancy and renewal leases. HSTPA also includes a repeal of the ETPA and RSL provisions allowing for the imposition of what was commonly called the "vacancy bonus" which is also reflected in these regulations. However, HSTPA did not intend to place a greater burden on existing tenants by excluding new tenants upon execution of their leases from the guideline increases.

i. Affordable Housing Regulatory Agreements (9 NYCRR §2500.9)

The proposed regulation will implement HSTPA by allowing other federal project based rental assistance administered by a public housing agency eligible to administer section 8 subsidies, to obtain these increases upon renewal with a supervising agency's consent.

j. Deconversion (9 NYCRR §2500.9)

DHCR, by these amendments, provides that upon "deconversion," the rent may be determined by a number of different processes, based on a variety of factors.

k. High Rent Vacancy Deregulation (9 NYCRR §2500.9)

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

l. 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 avoiding 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 the equitable and hardship exceptions. The rule change conforms with the major implementation requirements of HSTPA based on Regina Metropolitan.

m. Actual Physical Address for Registration (9 NYCRR §2509.1)

Part of the requirements of the ETPA is that each owner registers their building and each apartment annually. The proposed regulation requires owners to provide a brick-and-mortar address instead of utilizing a post office box address.

n. Substantial Rehabilitation (9 NYCRR §2500.9)

There is an exclusion from regulation of buildings that were “substantially rehabilitated” as family units after January 1, 1974. The amendments include among other things, reinforcement of the regulatory requirement by stating more explicitly that a minimum of seventy-five percent of the buildings’ systems need to be replaced.

o. Demolition (9 NYCRR §2504.4)

The new regulations add a “good faith” requirement to demolition, require the applicant at the time of the application to submit proof of financial ability to complete the proposed work,

along with proof that the local building department has already approved the plans for demolition, increases the stipends given to residents displaced by demolition, allows DHCR to revoke a demolition order if the owner fails to act in good faith or fails to undertake construction within a reasonable time, and permits DHCR to initiate enforcement proceedings *sua sponte* for failure to comply and make those penalties applicable to subsequent purchasers. The amended regulations clarify the existence of DHCR's powers with respect to enforcement.

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 mandatory 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. Compliance costs are already a generally accepted expense of owning regulated housing. In general, the increased compliance costs are less a product of the promulgation of these regulations, but the enactment of 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 mandatory 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. Owners need, with the new overcharge provisions, to retain proof of the legality of rent for a longer period, but a prudent owner would have already retained that information for other purposes, such as to resolve possible jurisdictional disputes. 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 stabilized property participates in another State, City or Federal housing program. In those instances, there may be a need to comply with the TPR 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 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 are the subject of current 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.