

RENT STABILIZATION CODE

EMERGENCY TENANT PROTECTION REGULATIONS

STATE RENT AND EVICTION REGULATIONS

CITY RENT AND EVICTION REGULATIONS

#### ASSESSMENT OF PUBLIC COMMENTS FOR REGULATORY AMENDMENTS

A Notice of Proposed Rule Making was published in the State Register on August 31, 2022 and a public hearing was held on November 15, 2022 regarding the proposed changes to the above regulations. Written comments were accepted before and during at least 5 days after the public hearing and oral comments were received at the public hearing.

A synopsis of the comments and DHCR's responses are discussed below. Please see the Assessment of Public Comments for additional comments and responses on DHCR's website.

#### **Overcharge Processing (9 NYCRR § 2526.1; 9 NYCRR § 2506.1)**

Comment(s): DHCR should apply the statute and policies in place at the time the overcharge occurred, not those in place when the complaint is filed.

DHCR should eliminate the use of a base date when determining the legal rent including when there is a dispute regarding the reliability of a registration or illegal deregulation.

#### **Response:**

DHCR drafted its proposed amendments to align with HSTPA, as clarified and limited by the Court of Appeals decision in *Regina Metropolitan Co., LLC v. New York State Div. of Housing & Community Renewal*, ("Regina").

#### **Demolition (9 NYCRR § 2524.5(a)(2); 9 NYCRR § 2504.4(f); 9 NYCRR § 2104.8; 9 NYCRR § 2204.8)**

Comment(s): Demolition rules should require that owners must show post-demolition plans as a condition for approval of a demolition application.

The change in the proposed regulations requiring qualified demolitions to include removal of the entire building was largely supported. However, others stated that the change requiring total demolition rather than substantial demolition violates Court decisions upholding longstanding DHCR policy.

#### **Response:**

The suggestion of including post-demolition plans as a condition of approval was engendered by a court decision in *First N.Y. LLC v DHCR* which post-dates the publication of these proposed rules. Although DHCR acknowledges the importance of this issue, changes to the regulation to address *First N.Y.* are beyond the scope of this regulatory initiative. *First N.Y.* also does not necessarily bar post-demolition

inquiries in all demolition applications and DHCR does not rule out addressing this matter through a separate regulatory initiative.

The existence of prior policies does not preclude making changes to them by regulation.

### **High Rent Deregulation Between 2015 and 2019**

Comment(s): DHCR should address the meaning of prior legislation with respect to deregulation for the above time period.

#### **Response:**

That prior legislation was itself repealed and there are extant court rulings and possibly future litigation on the matter.

### **Succession**

Comment(s): DHCR should not have addressed succession in its regulations. DHCR should clarify that vacatur of the unit means that the tenant of record has established a primary residence elsewhere.

#### **Response:**

Regulations dealing with succession fall within DHCR's purview. The suggested clarification is not a necessary addition.

### **First Rent and Apartment Reconfiguration (9 NYCRR §2521.1; 9 NYCRR §2501.1)**

Comments: DHCR should allow owners to charge a "market" value rent when two stabilized apartments are combined or apartments are divided. The proposed regulations do not adequately consider the amount of work necessary for reconfiguration .

DHCR should require owners to request permission from DHCR before reconfiguration of units. The combination of unregulated units should be addressed in these regulations.

#### **Response:**

The regulation will require the use of an appropriate rent-setting methodology consistent with the RSL, using legal rents, individual apartment increases (IAIs), and square footage where apartments are combined, divided, or reconfigured. Prior approval is not part of this initiative and is not appropriate under IAI standards.

The combination of unregulated apartments is neither the subject of this rule change nor within DHCR's purview.

**Substantial Rehabilitation (9 NYCRR §2520.11; 9 NYCRR §2500.9)**

Comment(s): Substantial rehabilitation claims should be denied by regulation where the improvements were primarily financed with government funds, where the landlord’s conduct contributed to the deteriorated condition of the building, or there was tenant harassment. There was support for DHCR’s removal of the 80% “vacancy presumption” (i.e., that a building with this level of vacancies was presumptively in need of substantial rehabilitation).

Requiring an owner to establish a substantial rehabilitation going back decades unfairly requires the production of documents and evidence. The proposed amendments will severely restrict an owner’s ability to perform substantial rehabilitations or resolve questions concerning substantial rehabilitation. The proposed regulations may require replacement of more than 75% of the building systems thus encouraging wasteful and unnecessary replacements of systems.

**Response:**

Claims of a substantial rehabilitation exemption, while self-executing, can be subject to review. It is therefore incumbent on each owner to maintain the records necessary to establish the exemption.

Claims that the former 80% rule was a safe harbor preventing inquiry into the condition of the premises, are overstated. It never ruled out additional fact-finding in an appropriate case.

DHCR agrees that governmental funding for rehabilitation often precludes the use of this exemption and whether an exemption applies requires case-by-case review. The creation of a *per se* rule is not part of this regulatory initiative.

**Major Capital Improvements (MCIs) (9 NYCRR §2522.4; 9 NYCRR §2502.4; 9 NYCRR §2102.3; 9 NYCRR §2202.4)**

Comment(s): There should be a rule denying any MCI if the necessary work permits were not properly signed off at the time of the MCI application, there is clear evidence of incomplete or deficient work, or there is a concealment of an owner’s identity of interest. DHCR should abandon its prior reasonable costs regulations.

The new statutory limitations on MCIs were too restrictive and their application to pending MCI proceedings violates *Regina*.

**Response:**

These comments largely reflected objections to the statutory provisions themselves, proposals outside the scope of this regulatory initiative, or operational suggestions rather regulatory changes.

The new regulations conform to HSTPA. DHCR applies the new HSTPA MCI standards to proceedings pending at the Rent Administrator’s level, but not to PAR applications on orders issued prior to the enactment of HSTPA.

**Individual Apartment Improvements (IAIs) 9 NYCRR §2522.4; 9 NYCRR §2502.4; 9 NYCRR §2102.3; 9 NYCRR §2202.4)**

Comment(s): The HSTPA IAI modifications are too restrictive.

DHCR should promulgate a schedule of reasonable costs for IAIs or create standard procedures for obtaining bids prior to commencement of IAI work and require all contractors to be licensed.

**Response:**

DHCR largely tracked the statutory language of HSTPA with respect to the IAI provisions. HSTPA does not mandate a reasonable cost "schedule" but only that the costs be reasonable. Proposing a mandatory contracting process for bids prior to installation is beyond the scope of this regulatory initiative. Licensed contractors must be used where required by law.

**Default Formula (9 NYCRR §2522.6; NYCRR §2502.6, 9 NYCRR§ 2202.22, 9 NYCRR §2102.6)**

Comment(s): DHCR should add back a modified default formula for owners who purchase buildings at a judicial sale. DHCR should further define alternative sampling methods for setting rents where there is a default.

**Response:**

DHCR sought to balance the requirement of preservation of rent records and judicial sale purchases. DHCR needs to retain discretion when sampling issues arise based on the facts presented.

**Apartment Registration (9 NYCRR §2528.4; 9 NYCRR §2509.3)**

Comment(s): Approval should be required to file a late registration; owners who stop registering units should submit documentation explaining why the unit is no longer required to be registered.

**Response:**

Penalties for late registration are set by statute.

DHCR does provide methodologies to obtain rent histories and has an enforcement program, pursuant to law, pertaining to registration.

**Additional Protections for Victims of Domestic Abuse (9 NYCRR §2523.5, 9 NYCRR §2503.5, 9 NYCRR §2204.6, 9 NYCRR §2104.6)**

Comment(s): Additional protections should be given to victims of domestic violence.

**Response:**

Domestic violence victim protections have been added to the regulations.

**Supportive Housing (9 NYCRR §2520.11, 9 NYCRR §2500.9)**

Comment(s): While DHCR does support protections for clients in supportive housing after the exit of the not-for-profit agency, DHCR should also provide them with rent reductions. The existence of rent-stabilized protections should be added with respect to primary residence also.

**Response:**

DHCR agrees that the HSTPA provides for the continued occupancy of residents as rent-stabilized tenants. However, the rent stabilized rents in accordance with law are based on the prior legal rents, which here, would be that paid by the not-for-profit provider. Primary residence protections have been added.