NEW YORK STATE OF OPPORTUNITY.
Homes and Community Renewal
Office of Rent Administration

FACT SHEET # 38

Substantial Rehabilitation

2 PAGES

Introduction

This Fact Sheet is a summary of this topic. For a detailed discussion, please refer to: Operational Bulletin 2023-3, "Substantial Rehabilitation."

Owners claiming exemption from rent stabilization based on substantial rehabilitation for work initiated on or after January 1, 2024, must file an application within one year after completion and obtain an administrative determination from DHCR confirming the exemption. DHCR's policies and authority to investigate, and direct or commence a proceeding on its own initiative regarding owners claiming exemption from rent stabilization based on substantial rehabilitation for work initiated any time prior to January 1, 2024 remain in effect.

The DHCR will find that a building has been substantially rehabilitated within the meaning of the Tenant Protection Regulations or the Rent Stabilization Code, and is therefore exempt from coverage under the Emergency Tenant Protection Act (ETPA) or the Rent Stabilization Law (RSL), respectively, for rent stabilized properties where the owner demonstrates, based upon the totality of the circumstances, that the following criteria have been met:

(1) At least 75% of building-wide and individual housing accommodation systems must have been replaced.

(2) The rehabilitation must have been commenced in a building that was in a substandard or seriously deteriorated condition. Space converted from non-residential use to residential isn't required to have been in substandard or seriously deteriorated condition;

The DHCR will not find the building to have been in a substandard or seriously deteriorated condition where it can be established that the owner has attempted to secure a vacancy by an act of arson resulting in criminal conviction of the owner or the owner's agent, or the DHCR or other governmental entity has made a finding of harassment;

(3) All building systems must comply with all applicable building codes and requirements, and the owner must submit copies of the building's certificate of occupancy.

Where occupied rent regulated housing accommodations have not been rehabilitated, such housing accommodations shall remain rent regulated until vacated, notwithstanding a finding that the remainder of the building has been substantially rehabilitated.

"Constructive Occupancy" by Rent Stabilized Tenants in Substantially Rehabilitated Buildings

Where, because of the existence of hazardous conditions in his or her housing accommodation, a tenant has been ordered by a governmental agency to vacate such housing accommodation, and the tenant has received a court order or an order of the DHCR that provides for payment by the tenant of a nominal rental amount while the vacate order is in effect, and permits the tenant to resume occupancy without interruption of the rent

stabilized status of the housing accommodation upon restoration of the housing accommodation to a habitable condition, such housing accommodation will be excepted from any finding of substantial rehabilitation otherwise applicable to the building. A housing accommodation will also be excepted from a finding of substantial rehabilitation where, although a vacate order has not been issued, the owner has requested the tenant to temporarily vacate so as to facilitate the rehabilitation of the building and the tenant does so for the owner's convenience, without surrendering such accommodation.

However, the exemption from rent regulation based upon substantial rehabilitation will apply to a housing accommodation that is subject to a right of re-occupancy, if the returning tenant subsequently vacates, or if the tenant who is entitled to return pursuant to court or DHCR order chooses not to do so.

Prior Opinion

An owner may apply to the DHCR for an advisory prior opinion that the building will qualify for exemption from rent regulation on the basis of substantial rehabilitation, based upon the owner's rehabilitation plan.

Individual Apartment Improvements, Major Capital Improvements, First Rents and Combined Apartments Distinguished from Substantial Rehabilitation

Where the work performed fails to meet the criteria set forth above for exemption from coverage under the ETPA or RSL on the basis of substantial rehabilitation, the owner may still qualify for rent increases based upon work performed on building-wide systems or in individual apartments. See Fact Sheets #11, #24 and #33, and Operational Bulletin 2024-2.

Where an owner creates a housing accommodation in space previously used for non-residential purposes, the DHCR may find that the resultant housing accommodation was not in existence on the applicable base date. Such a finding may entitle the owner to charge a market or "first rent," subject to guidelines limitations for future rent adjustments.

When two apartments, at least one of which is rent stabilized, are combined to create a new apartment the resulting new apartment is rent stabilized and the legal rent for such apartment is the combined rents of the two original apartments. When an apartment dimensions are increased or decreased the first rent thereafter is to be increased or decreased by the same percentage as the percentage change in the dimensions.

Binding Determination

Where, after completion of the work, DHCR issues a final order determining that the building is exempt from rent regulation on the basis of substantial rehabilitation, that order will be a binding determination on a building-wide basis, notwithstanding occupancy by subsequent tenants. DHCR will not thereafter entertain challenges by subsequent tenants except upon showing that the determination was obtained as a result of fraud by the owner or the owner's agent.

Rent Connect:
rent.hcr.ny.gov

Ask a question:
portal.hcr.ny.gov/app/ask

For translation help:
hcr.ny.gov/language-accessibility

Our website:
hcr.ny.gov/rent

To visit a Borough Rent Office, by appointment only, please contact:

QUEENS
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
718-482-4041

BROOKLYN
55 Hanson Place
6th Floor
Brooklyn, NY 11217
718-722-4778

UPPER MANHATTAN
163 W. 125th Street
5th Floor
New York, NY 10027
212-961-8930

LOWER MANHATTAN
25 Beaver Street
New York, NY 10004
212-480-6238

BRONX
1 Fordham Plaza
4th Floor
Bronx, NY 10458
718-430-0880

WESTCHESTER
75 South Broadway
3rd Floor
White Plains, NY 10601
914-948-4434