

## DHCR Adoption of New Rules

The Division of Housing and Community Renewal (DHCR) certified adoption of regulations it proposed in August of last year. RSA testified against adoption of these regulations in November 2022. These new regulations include changes in the Rent Stabilization Code which include the following:

### 1. Eliminates ability to charge a first rent when combining units:

- Where two rent-stabilized apartments are combined: the legal regulated rent of the newly created unit is the combined rents of the stabilized apartments, plus the IAI allowance for each unit (i.e. \$15,000 per unit). This new apartment would have to be registered under the same designation as one of the prior rent-stabilized apartments.
- Where one rent-stabilized apartment is combined with one unregulated apartment – OR – when one unregulated apartment is made larger by adding a portion of a rent-stabilized apartment: the newly created unit is subject to rent stabilization, but it is not clear what the new rent would be.
- Where the outside perimeter of a rent-stabilized apartment is either increased or decreased: the new legal regulated rent would increase or decrease by a percentage that corresponds with the increase or decrease in square footage size from the original apartment size.

The following points remain unclear from the proposed regulations:

- What the legal regulated rent is when combining a rent-controlled apartment with another apartment, or expanding/decreasing its size;
- What the legal regulated rent or regulatory status of an apartment is when combining unregulated units, dividing unregulated units, combining unregulated units with portions of the common area of the building, or creating new units in a new space in a rent-stabilized building.

### 2. Changes to Substantial Rehabilitation:

- Must replace at least 75% of building-wide and individual housing accommodation systems (before it was “not to exceed 75%”).
- Eliminates owner’s ability to demonstrate need for replacing a building system that did not otherwise need replacement but was desirable due to its aesthetic or historic merit.
- Eliminates presumption available to owner that the building is substandard/seriously deteriorated where the building is 80% vacant.

### 3. Changes to calculation of base date rent, overcharges, the default formula, etc.:

- An obvious result of *Regina*, the proposed amendments bifurcate rent overcharge complaints/proceedings to determine the legal regulated rent filed before and after June 14, 2019.
- Especially for overcharges filed after June 14, 2019, HCR may look to the “most recent reliable annual registration statement” filed six or more years prior to the filing of a complaint for overcharge/initiation of a proceeding, but in no event shall that date be prior to June 14, 2015 (one concern is that there will not really be a “six year” look back period for any overcharge filed after June 14, 2019.)
- The default formula now applies to owners who purchase at judicial or other such sales, and proposed regulation removes the ability of an owner to offer a full rent history to preclude imposition of the default formula.
- While property owners are only required to keep records for six years (unless otherwise provided in the RSC/RSL), HCR may examine all records available to determine the legal regulated rent regardless of whether owner elected to keep records for a longer period.

### 4. Additional key points not contemplated by the 2019 HSTPA found in these regulations:

- Owners must add domestic partners to leases upon request (not just spouses).
- Victims of domestic violence and tenants paying \$1 under an order issued by a governmental agency/court are exempt from the requirement to maintain the premises as their primary residence during a period of temporary absence.
- Removing a preferential rent from an existing rent-stabilized tenant’s lease (or a would-be successor) may constitute HCR harassment.
- “Common ownership” is defined as “any identity of interest or relationship based on family ties or financial interest between the owner/managing agent of a property and any other entity with which the owner/managing agent conducts business.” (This is relevant for purposes of IAI and MCI applications).

Please click here to read RSA testimony provided at the time of initial proposal by DHCR: <https://bit.ly/3MuxXqw>.

Although these regulations have been certified as adopted, when upon publication in the New York State Register on November 8<sup>th</sup> they will go into effect. ■