

# RSA Reporter

WE HOUSE NEW YORK

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## Housing Policy In State Budget

### *Good Cause Eviction Included, With Many Exceptions & Exemptions*

State legislators approved a slew of new rules as part of the 2024-25 Fiscal Year (FY) New York State Budget. Good Cause Eviction (GCE) and modest Individual Apartment Improvement (IAI) adjustments were included.

For the past several years, RSA has been an active participant in supporting and coordinating a statewide coalition of apartment building owners, regional builders, civic associations and homeowner groups – Homeowners for An Affordable New York (HFAANY) – speaking against Good Cause Eviction overreach. As an industry we advocated for common sense policy, informing legislators around the city and state, through media and with other stakeholders, on the damages of this policy. Our efforts resulted in a law not as devastating as the bill urged by advocates and left-leaning elected officials. In fact, tenant groups and activists have been howling about the compromise law nearly as much, or more than, owner groups.

#### **GOOD CAUSE EVICTION**

##### **Budget Bill Part HH**

**Good Cause Eviction**, creates a new Article 6-A in the Real Property Law, which would do the following for all housing accommodations in NYC owned by landlords with a portfolio greater than 10 units (**Does not apply to rent regulated apartments**). More coverage exceptions are listed below:

1. Landlords who are covered by the bill may not evict/exclude from possession/fail to renew or remove a tenant from a housing accommodation except for **good cause**.
2. Landlords who are covered by the bill may not take an

**unreasonable rent increase or a renewal lease**, which is defined as a rent increase which is the lesser of:

The inflation index, defined as 5% plus annual percentage change in the CPI (**see table on page 4**) or 10%

A landlord may rebut the presumption that a rent increase is unreasonable in court. The court may consider all relevant facts, including landlord costs for fuel and other utilities, insurance, maintenance, property taxes, whether the owner undertook significant repairs defined as replacement or substantial modification of structural, electrical, plumbing or mechanical systems that requires a permit, or abatement of hazardous material (lead, mold, asbestos).

**Good Cause** is defined as:

1. **Nonpayment** of rent (so long as the basis is not an unreasonable rent increase)
2. **Breach of a substantial obligation of the lease agreement** and failure to cure following service of a written notice.
3. **Nuisance**
4. **Illegal occupancy** (however, a vacate order would have to be issued first).
5. **Illegal use of the premises**
6. **Failure to provide access** for landlord repairs
7. **Owner use and occupancy** as the landlord's principle residence, or that of their spouse, domestic partner, child, stepchild, parent, step-parent, sibling, grandparent,

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grandchild, parent-in-law or sibling-in-law. Cannot remove a tenant who is 65 years of age or older or who is disabled.

### 8. Demolition

### 9. Withdrawal from the rental market

10. **Tenant fails to agree to reasonable changes in the lease at renewal**, including reasonable rent increases, as long as written notice of the changes to the lease were provided at least 30 days but not more than 90 days in advance.

The law applies to all “covered housing accommodations” in NYC. Local governments throughout the State may opt in. **DOES NOT APPLY to:**

1. **Properties owned by “small landlords”**, defined as those who **own up to 10 units in the state**. (However, if property is owned by an LLC, each natural person with a direct or indirect ownership interest in the entity or any affiliated entity must own less than or equal to 10 units, otherwise the entity does not qualify as a small landlord).
2. **Owner-occupied** properties with up to 10 units.
3. **Units that are sublet** where sublessor wishes to recover possession for their own personal use and occupancy
4. **Employee occupied units**
5. **Otherwise rent regulated units**
6. **NYS Affordable housing**
7. **Units owned in a Condominium or Cooperative**
8. **Units where a C of O was issued on or after 1/1/2009, for a 30 year period**
9. **Seasonal dwelling** (this may include vacation rentals and off campus student housing).
10. **Units in a medical facility**
11. **Manufactured homes**
12. **Hotel room/class B dwellings**
13. **Dorms operated by schools**

14. **Units located in or for use by a religious institution**

15. **Units where the rent charged is greater than 245% of FMR** for a unit of that type.

**Effective Date:** While portions of the new law will not be effective until August 2024, the requirement to provide renewal leases and to not exceed a reasonable rent increase are effective immediately.

- If you have sent a lease renewal offer to a covered fair market tenant, you will have to review it to make sure it conforms with the requirements of the new law, including the reasonable rent increase requirement.
- If you have sent a notice informing a tenant that you will not renew their lease, or a notice terminating a month-to-month tenancy, and you are covered by this law, then you should consult with counsel as you may have to rescind or reissue any such notice so that it conforms with the new law.

On May 3<sup>rd</sup>, the Department of Homes and Community Renewal (DHCR) released The Good Cause Eviction Law Required Notice establishing the CPI increase. This amount, plus five percent, is the maximum increase one can charge for a free-market renewal lease. Also included in the notice are the FMR amounts to be used by owners to determine if a unit is exempt from the GCE law. <https://tinyurl.com/2j7bk6mu>

There will be both notice and lease requirements that will be effective August 2024 in line with the new law. RSA will develop and provide templates for these required notices in the coming week.

While the industry was able to prevent more extreme and destructive proposals, the introduction of Good Cause Eviction to New York City’s housing market marks a significant shift in state policy. We will continue to advocate on behalf of owner rights and common sense policy, and will keep you apprised of new information as it soon follows.

NYS Consumer Price Indices: Effective [May 1, 2024]		
	New York-Newark-Jersey City, NY-NJ-PA	Northeast Region
Annual % Change in Consumer Price Index for Preceding Calendar Year (2022 to 2023)	3.82%	3.45%
Applicable NYS Counties (provided that, outside of NYC, only applies if a village, town, or city has adopted GCE law)	Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Westchester	Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, Yates

Included in the Good Cause Eviction Law Required Notice are the current Fair Market Rates (FMR) amounts to be used by owners to determine if a unit is exempt from the GCE law. Rental units are not covered by the GCE law if they have a monthly rent above the applicable FMR threshold as determined by the U.S. Department of Housing and Urban Development by county are listed below.

If New York City and in any village, town, or city other than New York City that adopts the GCE law does not provide for a different FMR threshold, the GCE law does not cover a rental unit rented for more than 245% of FMR. DHCR is required to publish FMR on or before August 1st of each year, we will continue to update you should their be adjustments. ■



## Homes and Community Renewal

May 2024

### Good Cause Eviction Law Required DHCR Notice

#### Introduction

On April 20, 2024, Governor Hochul signed the Good Cause Eviction (GCE) law into effect. Under that law, on or before August 1<sup>st</sup> of each year, the Division of Housing and Community Renewal (DHCR) is required to publish the information contained in this notice.

#### Geographic Applicability

As of April 20, 2024, the GCE law is in effect in New York City pursuant to § 212 of the Real Property Law.<sup>1</sup> Other villages, towns, or cities (collectively, “municipalities”) that wish to opt-in the GCE law must pass a local law pursuant to § 213 of the Real Property Law. DHCR is required to publish a list of all municipalities, other than New York City, that have adopted a local law. The list will include the municipality name, the applicable percentage of Fair Market Rent that will qualify as an exemption from the provisions of the GCE law adopted by the municipality, and the definition of small landlord adopted by the municipality. This list will be published annually, on or before August 1st of each year along with the other information contained in this notice.

As of May 1, 2024, no municipalities have opted into the GCE law pursuant to § 213(1) of the Real Property Law.

#### Fair Market Rent and Fair Market Rent Percentage Exception

Pursuant to §§ 211(2)(a) and 214(15) of the Real Property Law, rental units are not covered by the GCE law if they have a monthly rent above the applicable Fair Market Rent threshold. In New York City and in any village, town, or city other than New York City that adopts the GCE law and does not provide for a different Fair Market Rent threshold, the GCE law does not cover a rental unit rented for more than 245% of Fair Market Rent. Fair Market Rent is determined by the U.S. Department of Housing and Urban Development by county.

DHCR is required to publish Fair Market Rent and 245% of Fair Market Rent for each unit type, by county, on or before August 1st of each year.

See the charts linked at: <https://tinyurl.com/2j7bk6mu> for current Fair Market Rent and 245% of current Fair Market Rent.

<sup>1</sup> Sections two, three, four, and five of the GCE law, which govern the content of certain notices landlords must provide to tenants, do not go into effect until 120 days after April 20.

## What's New In New York Housing Continued...

### *IAI's Now Permanent Along With Modest Cap Increase*

While it is widely held among reasonable building owners that the IAI increases in the budget are woefully inadequate, understanding this is still important please see below.

As part of the 2024/25 New York State Budget deal, Individual Apartment Improvement (IAI) caps have been lifted. This change, effective in six months, will impact stabilized apartments that predate 1974 with six or more units, as well as some newer buildings built with a tax subsidy.

#### **IAI Adjustments**

Budget Bill Part FF

The Budget contains significant changes to IAIs. These modifications provide:

1. IAI rent increases are permanent.
2. Two tiers for IAI allowances:
  - a. The new cap for IAIs is \$30,000 within a fifteen-year period. The amortization schedule remains at 1/168 and 1/180, meaning the monthly increase for a \$30,000 renovation is \$178 and \$166, respectively. This \$30,000 limit applies to IAI's filed after June 14, 2019.
3. In certain circumstances, this cap can be \$50,000 with an amortization rate of 1/144 for buildings with 35 or fewer units and 1/156 for buildings over 35 units for a monthly increase of \$347 per month or \$320 per month, respectively. This applies to buildings in two categories:
  - a. A vacancy after 25 years of occupancy immediately prior to the vacancy; or

- b. For units timely registered as vacant by December 31 in each of 2022, 2023 and 2024.

The Division of Housing and Community Renewal (DHCR) must provide prior certification that the unit is eligible for the higher IAI. These costs will be recoverable if immediately prior to undertaking the work the owner submitted evidence to DHCR demonstrating the improvement, was needed due to a substandard condition or exceeding its useful life immediately prior to the work and proof afterward including photos, receipts, and proof of payments that the work was done. DHCR may audit this work. Disallowed work will be deemed willful overcharges, prior approval is vital.

The unit is not eligible for this enhanced tier of IAI adjustments if within five years prior there has been a finding by DHCR or court for treble damages for an overcharge in that building or a finding of tenant harassment by an owner.

We recognize that further clarification as to how the new prior certification requirement for IAIs will be implemented for apartments occupied for 25 years and the expenditure of \$50,000 on improvements and continue to engage DHCR on this new process. At RSA we believe it is in everyone's best interest to have a quick, easy to understand process that does not slow down the return of units to the rental market. Stay tuned for future email blasts where we will keep you apprised of new information as follows. ■

## Make Your Voice Heard At RGB!

In preparation for our 2024 RGB submission we are gathering data from our members to highlight affordable housing provider experiences, and advocate for sensible lease increases. RSA is surveying its membership to evaluate the costs of property taxes, insurance, and Local Law 97 (LL97) compliance throughout the past three years. As we continue our advocacy, we are asking you- our members- to make your voice heard too, as we did last year. We are asking for your stories.

All information provided is purely for RSA advocacy on behalf of our membership, your submissions will remain protected with only first name, last initial and property neighborhood. Email address is required and only used for RSA staff to keep track of data. We encourage you to fill out this form to help you and fellow members.

Please click on the following link: <https://tinyurl.com/yc8bx77v> to submit information that will help RSA submission.