



Legal Alert: DHCR's Proposed Amendments to the Rent Stabilization Code

September 2, 2022

As we advised yesterday, on August 31, 2022 DHCR published **proposed** amendments to the Rent Stabilization Code (“RSC”), NYS Tenant Protection Regulations (“TPR”) and the NYS & NYC Rent Control Regulations. The following highlights those proposed amendments to the RSC that are particularly significant, especially because some of them are not supported by the HSTPA (thus making them subject to legal challenges should they become enacted), including,

1. Precluding owners from setting a first rent upon combining units and, instead,
 - Where two rent stabilized apartments are combined, the legal regulated rent of the newly created unit is the combined rents, plus the IAI rent increase for each. IAI increases can be used for apartment reconfigurations, subject to the HSTPA limitations.
 - Where an owner increases or decreases the size of a rent stabilized apartment, the rent is adjusted by the percentage equal to the percent change in the size of the apartment.
 - Where an owner takes space from a rent stabilized apartment to increase the size of an unregulated apartment, the new enlarged apartment becomes rent stabilized. However, the proposed amendments do not instruct as to how to calculate the new rent.
 - Requiring the owner to provide a designation of the “surviving” apartment for purposes of registration by using one of the prior apartment designations. It is obvious that DHCR will be able to track the rental history of a newly created unit much easier by mandating this.
 - If the foregoing goes into effect, for overcharge purposes DHCR will require the rental history of both apartments.

- 2 . Substantial Rehabilitation requirements
 - Owners must replace *at least* 75% of building-wide and individual housing accommodation systems.
 - Eliminates provision that excused an owner from the replacement of a building or apartment system that was recently upgraded, is structurally sound or which have historic merit.
 - Eliminates presumption that the building was in a deteriorated condition due to being 80% vacant.

- 3 . Changes to calculation of base date rent, overcharges and the default formula

- The proposed amendments offer two different base dates for determining the legal regulated rent in the context of overcharge proceedings; (1) for claims filed before June 14, 2019, the base date will be the date four years prior to the date of such claim; (2) for claims filed on or after June 14, 2019, the base date shall be June 14, 2015, which obviously represents a deviation from the six-year lookback period articulated by the HSTPA.
- Owners who purchase buildings at judicial or other sales are no longer shielded from application of the default formula in setting the rent.
- While owners must maintain records for 6-years, an owner's decision to not maintain records will not limit the DHCR or Court's authority to engage in a full examination of all available records to determine the legal regulated rent.

4 . Significant proposed changes that are not supported by the HSTPA,

- Owner will be required to add domestic partners to leases upon request.
- Precludes collection of an MCI rent increase retroactively to the effective date of a Rent Reduction Order.
- Provides that the continued payment of rent and execution of renewal leases by a tenant who vacated an apartment will not preclude a claim by a family member seeking tenancy rights pursuant to a claim of succession.
- Removal of a preferential rent from a current rent-stabilized tenant's lease will be considered harassment.

Many of the proposed amendments, not noted above, codify those portions of the HSTPA as written. These include the elimination of vacancy allowances, high rent vacancy decontrol, the complete overhaul and drastic reduction in temporary IAI and MCI rent increases, an expansion of the look-back period and recordkeeping requirements from four to six-years (if not indefinitely), amongst others.

The next phase will be for the public to comment. The date set for comment is November 15, 2022. If you have any questions, please contact Randi B. Gilbert Esq. & Jillian N. Bittner Esq. of the Administrative Law Department.