

**Legal Alert: DHCR has Certified Adoption of the  
Amendments to the Rent Stabilization Code**

**October 24, 2023**

The Division of Housing and Community Renewal (“DHCR”) has certified adoption of the amendments to the Rent Stabilization Code (“RSC”), NYS Tenant Protection Regulations (“TPR”) and the NYS & NYC Rent Control Regulations, initially proposed in August 2022. These amendments will be effective as of the date of publication in the State Register, which will be November 8, 2023.

The following highlights the amendments to the RSC that are particularly significant, especially because some of them do not appear to be supported by the HSTPA (thus making them subject to legal challenges), including,

1. Eliminates ability for owners to set a first rent when combining units, and instead provides,
  - 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 unit (subject to HSTPA limitations, i.e., \$15,000 per unit).
  - Where an owner increases or decreases the size of a rent stabilized apartment, the new legal regulated rent is adjusted by the percentage that corresponds with the increase or decrease in square footage of the original 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 amendments do not instruct as to how to calculate the new rent.
  - Requires the owner to use the same designation of one of the prior apartments for purposes of filing annual registrations. It is obvious that DHCR will be able to track the rental history of a newly created unit much easier by mandating this.
  - We anticipate that as a consequence of the foregoing, DHCR will require the rental history of both apartments be produced when a tenant files a rent overcharge complaint.
2. Changes to Substantial Rehabilitation requirements
  - Owners must replace *at least 75%* of building-wide and individual housing accommodation systems (the prior language was, “not to exceed 75%”).
  - Eliminates the provision that excused an owner from the replacement of a building or apartment system that was recently upgraded, is structurally sound or which have aesthetic or historic merit.
  - Eliminates the presumption that the building was in a substandard or seriously deteriorated condition premised upon it being 80% vacant.
3. Changes to calculation of base date rent, overcharges and the default formula
  - As a result of *Regina Metropolitan Co., LLC v DHCR*, the amendments bifurcate rent overcharge complaints to determine the base date rent; (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 amendments to the Code, which are not grounded in 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.

Additional 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.

We will continue to update you as more information becomes available. If you have any questions or wish to discuss how the foregoing may impact you, please do not hesitate to contact the Administrative Law Department.