

Legal Alert: Rent Stabilization Chapter Amendments Introduced into Legislature

January 5, 2024

As we advised, on December 22, 2023 Governor Hochul signed into law Senate Bill 2980C (A6216B), with the agreement that certain chapter amendments would be passed by the Legislature during the January session. Yesterday, those amendments were introduced. They are available [here](#).

The amendments will not be law unless and until they are passed by the Legislature and signed by the Governor. The significant proposed chapter amendments modify the criteria for deregulation due to substantial rehabilitation and the fraud standard.

(1) S2980C, as signed by the Governor, provides that for an owner to claim exemption from rent regulation due to substantial rehabilitation, they must obtain approval from DHCR within 6 months of the effective date of this law, regardless of when the substantial rehabilitation was performed. The chapter amendment modifies this requirement, and provides that DHCR approval is *only required* where the work for such rehabilitation was initiated on or after January 1, 2024.

(2) While the Legislature still intends to abrogate the fraud standard articulated by the Court of Appeals in *Regina Metropolitan*, the language has been drastically tempered in the chapter amendments.

The amendment provides that when a colorable claim that an owner has engaged in a fraudulent scheme to deregulate a unit is properly raised as part of a proceeding before a Court or DHCR, the Court or DHCR “shall issue a determination as to whether the owner knowingly engaged in such fraudulent scheme after a consideration of the totality of the circumstances. In making such determination, the court or the division shall consider all of the relevant facts and all applicable statutory and regulatory law and controlling authorities, provided that *there need not be a finding that all of the elements of common law fraud, including evidence of a misrepresentation of material fact, falsity, scienter, reliance and injury, were satisfied* in order to make a determination that a fraudulent scheme to deregulate a unit was committed if the totality of the circumstances nonetheless indicate that such fraudulent scheme to deregulate a unit was committed.”

The change to the fraud standard, even as modified by the chapter amendments, suggests it is intended to be applied retroactively as deregulation is no longer available pursuant to the Housing Stability and Tenant Protection Act of 2019; however, any attempt to retroactively apply the foregoing will be subject to legal challenges as unconstitutional.

We will continue to update you with respect to the chapter amendments, and ultimately, the law, as those developments become available.