

Detangling “succession rights,” a complex issue for rent-regulated tenants



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Let's say you have an elderly family member living in that most coveted of NYC spaces, the rent-regulated unit. When they vacate the apartment—whether they pass away, move into assisted living, or head for milder climes—it's understandable that you'd want to swoop in and take over lease.

But like most everything else in New York, inheriting a stabilized or controlled rental isn't straightforward. Succession rights—which dictate your ability to be named the new leaseholder in a relative's regulated unit—are dependent upon a rigid, and sometimes complex, set of rules. (For more background on the different forms of rent regulation, check out Brick's guide to rent stabilization (<http://www.brickunderground.com/blog/2015/01/rent-stabilization>) and this article delving into rent control (<http://www.brickunderground.com/rent/rent-control-rent-increases>).)

How to qualify for succession rights

If you have designs on a family member's regulated apartment—and you are not a current co-tenant who is already on the lease—be prepared to settle into the unit long before they move on. According to a fact sheet (<http://www.nyshcr.org/Rent/FactSheets/orafac30.pdf>) published by the New York State Division of Homes

and Community Renewal (DHCR), in order to succeed your relative and take over their lease, you must be able to prove that you lived with them for at least two years prior to their vacating. (See more on this below.)

This means that even if the apartment is rented by a parent and is the home in which you grew up, you can't take it over if it hasn't been your primary residence in the years leading up to their leaving. Your succession rights are also at risk if you've left the apartment for extended periods of time—to be considered a permanent tenant, you must reside there for at least six months out of the year. Exceptions are made, though, for military personnel and full-time students, as well as for New Yorkers who have jobs that require temporary relocation, or who have experienced lengthy hospitalizations.

However, if you are a senior citizen—that is, 62 years or older—or if you have a disability, you're only required to co-habitate with the current tenant for one year. (The DHCR defines a disability in this instance as "an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which substantially limit one or more of such person's major life activities.")

The nature of the relationship matters, too: If it's an aunt or cousin whose home you want to move into, you're out of luck. Qualifying family members are limited to spouses, children and stepchildren, parents and stepparents, siblings and stepsiblings, grandparents and grandchildren, and parents-in-law and children-in-law. Per the Metropolitan Council on Housing (http://metcouncilonhousing.org/help_and_answers/su) a tenant advocacy group, those who don't fall under any of these categories should be prepared to provide detailed information about their relationship to the tenant.

Proving your succession rights

At a recent lecture on succession rights, tenant/landlord attorney Justin Brasch stressed the importance of making your intentions clear in advance if you plan to

take over a relative's lease. He suggested sending a letter via certified mail to the landlord—ideally before your relative moves out—explaining that you qualify for succession rights and will become the leaseholder once the current tenant vacates. The Metropolitan Council recommends making the apartment your official, documented residence—create a paper trail, in other words, by receiving mail and bills at that address, and have it listed on your driver's license and other forms of ID.

Even when everything is above board, some landlords, eager to rent the apartment at market rate, will put up a fight and take you to housing court. The Metropolitan Council notes that "landlords sometimes bring eviction cases against the remaining tenant even when that person has the right of succession."

Brasch corroborates this claim; in fact, he said, he was drawn to landlord/tenant law after his own protracted battle with a landlord, who tried to prevent him from taking over his grandfather's rent-controlled unit, even though he had lived in the apartment with him for longer than the required two years.

To be fair, there are times when landlords are right to be dubious: in one case last year, a police officer was indicted (<https://www.dnainfo.com/new-york/20151221/chinatown/off-duty-officer-charged-with-perjury-tampering-with-evidence-da-says>) for perjury after falsely claiming that his brother had succession rights to a rent-controlled Chelsea apartment. But even if you are a would-be leaseholder who has followed regulations to the letter, you may still find your succession rights contested—in which case, consulting a tenant lawyer should be your next step.

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