

Housing Stability and Tenant Protection Act of 2019



**THE
LEGAL AID
SOCIETY**

Rent Regulation

Former Law

- Rent Regulation was subject to expiration every four or five years and had to be renewed:

For Example:

- In 2011 Rent Regulation was extended to June 15, 2015
- In 2015 Rent Regulation was extended to June 15, 2019

Part A: Rent Regulation

- Rent Regulation is permanent and will not sunset unless the Legislature repeals or terminates.
- Localities still must find a state of emergency and have a vacancy rate of less than 5%,
- Effective immediately.

Vacancy and Longevity Bonus – Former Law

- Vacancy bonus
 - When an apartment subject to rent stabilization becomes vacant, the RSL provides for a 20% vacancy increase if the new tenant chooses a two-year lease. (The vacancy increase for a one-year lease is reduced by the difference between the RGB increase for a two-year and a one-year lease, currently 2%). RSL §26-511(c)(5-a).
 - In addition, where a landlord has not obtained a vacancy allowance within the last eight years, the owner can add .6% increase for each year. Id.
- *Note since 2015, preferential rent tenancies, had a different vacancy bonus structure*

Part B: Vacancy Bonus and Longevity Bonus

- Repeals the vacancy bonus - no more 20% increases
- Repeals the longevity bonus – no more increases for long time tenants vacating

Rent Guidelines Board

Former Law

- The Board set vacancy allowances until 1997 when the 20% statutory bonus was introduced.
- Casado v. Markus upheld the legality of Rent Guidelines Board Orders that enacted adjustments based on a tenant's rent ("poor tax") and the time elapsed since the last vacancy lease ("longevity tax").

Part C: Rent Guidelines Board

- The Rent Guidelines Board and County Rent Boards (“RGB”) cannot enact any adjustments for vacancy leases (“vacancy bonus”).
- RGB cannot set additional increases based on the current rental cost of a unit or the amount of time since the owner was authorized to take additional rent increases, such as a vacancy bonus (“poor/longevity tax”)
 - Repeals **Casado v. Markus**
- Effective immediately

VACANCY/HIGH INCOME DECONTROL

Former Law

- Vacancy Decontrol
 - If the legal regulated rent reached \$2774.76, the next vacancy lease would not be subject to rent regulation

- High Income Decontrol
 - The next renewal lease would not be subject to rent regulation if the legal regulated rent reached \$2774.76 and the household income reached \$200k in each of the two preceding calendar years

Part D: VACANCY/HIGH INCOME DECONTROL

- Vacancy Decontrol
 - Has been repealed

- High Income Decontrol
 - Has been repealed

- For 421a market rate units built after the 2015 amendments to the 421a law, those units can continue to be decontrolled on vacancy

Preferential Rent – former law

- 30% of the registered rents are preferential
- A preferential rent is one in which the landlord agrees to charge a rent that is lower than the legal rent. RSL §26-511(c)(14)
- The landlord can decide to raise the rent to the legal rent at each and every lease renewal. EPTA § 10(a-2)
 - Unless the lease indicates that the preferential rent is for the life of the tenancy. *Coffina v. N.Y.State Div. of Hous. & Cmty Renewal*, 61 A.D. 3d 404 (1st Dep't 2009)
- The median gap between monthly preferential and legal maximum rents increased 55% citywide, from \$286 in 2008 to \$444 in 2015. In Manhattan, the difference tops \$800.

Part E – Preferential Rent

- A tenant can keep the preferential tenant for as long as the tenant lives in the apartment. All lawful increases will be taken from the preferential rent.
- **EFFECTIVE DATE: IMMEDIATELY.** Any tenant who is entitled to receive a renewal lease on or after the effective date of the act, upon renewal of such lease, the amount of rent that may be charged and paid by the tenant shall be no more than the amount charged and paid by the tenant prior to the renewal plus applicable guidelines increases.

RENT CONTROL

Former Law

- An up to 7.5% annual rent increases allowed under the Maximum Base Rent (MBR) system.
- Tenants pay a “fuel pass-along” charge that varies each year with the cost of fuel

Part H: RENT CONTROL

- Eliminates 7.5% a year increases.
- Prohibits fuel adjustments or pass alongs.
- Increases based on an average of the last 5 years RGB increases or 7.5% whichever is lower.
- Landlord still must apply for increases.
- Effective immediately

Part I – Owner Use

- Landlords can bring a case to recover **one** unit in a building they owned for the use of the landlord or an immediate family member of the landlord
 - The landlord must show “immediate and compelling necessity” for the apartment
 - The unit must be for the landlord or the landlord’s family member “primary residence.”
- Creates a cause of action for tenants who surrender due to fraud of landlord.

Part I – Owner Use

- If the landlord seeks the apartment of a tenant who is:
 - 62 years or older,
 - Lived in the apartment for **fifteen** years or more or
 - is disabled.
- The landlord must offer a comparable apartment
- Effective Immediately

Exemptions from Rent Stabilization – certain not for profits – Former Law

- Exempted housing owned or operated for charitable or educational purposes
- Exempted housing in buildings operated for charitable purposes on a non-profit basis
- Exempts housing accommodations which are not occupied as the tenant's primary residence (created a cause of action for non-primary residence)
- These provisions were interpreted to allow scattersite housing to be exempt from rent stabilization
- Provisions were also interpreted to deny not for profits the ability to renew leases which meant that their subtenants often homeless or disabled were evicted
- Much confusing case law on these issues.

Part J Tenancy Rights to certain subtenants of not for profits

- Eliminates two exemptions from rent stabilization for providers of ‘government contracted services’ who provide housing to “vulnerable” individuals or individuals with disabilities who are or were homeless or at risk of homelessness
- Takes effect on lease renewal
- Gives tenancy rights to “affiliated” subtenants in housing run by not-for-profits for providing permanent housing to individuals who are or were homeless or at risk of homelessness.
- Effective date of tenancy rights provision is immediate.

COOPS

Former Law

- A non-eviction is effective only if written purchase agreements are executed and delivered to 15% of bona fide tenants in occupancy or purchasers that certify they will take occupancy upon vacancy.

Part N: COOPS

- Eliminates eviction plans
- A non-eviction plan is effective only if written purchase agreements are executed and delivered to 51% of bona fide tenants in occupancy.
- Elderly and disabled tenants are protected from eviction unless for specified cause (non-eviction plan)
- Elderly and disabled tenants whose apartments fall out of regulation after the plan has been accepted are protected from “unconscionable rent increases (non-eviction plan)
- Expanded exclusive rights to purchase period for tenants in occupancy
- Effective immediately

Overcharge Statute of Limitations

- Extends SOL to 6 years from 4.
- Allows collection of SIX years of damages, including SIX years of trebles (rather than two).

Overcharge Statute of Limitations

- Establishes the ‘base rent’ as the amount in the last *RELIABLE* registration filed 6 or more years in the past.
- If there is no 6th year registration, the court looks back to the most recent one before that. If the most recent that registration is not ‘reliable’, the court or DHCR can look back further.
- In addition, courts and DHCR may consider ALL rent history that is ‘reasonably necessary’ for a determination.

Overcharge Statute of Limitations

- Six year rule exceptions – current RSC exceptions are now written into the RSL, including fraud, rent reduction orders, etc., *plus*:
 - A new ‘reliability’ exception which allows inquiry into whether ‘an unexplained rent increase’ renders a registration ‘unreliable.’
 - Determinations as to whether an apartment is subject to RS – eliminates HCR’s carve out in the RSC for high rent deregulation.
 - Examination of old orders and regulatory agreements.
 - ‘Propriety of a LRR during a period when the tenant was charged a preferential rent.’ (Fact Sheet 40 exception).

Overcharge Statute of Limitations

- Eliminates DHCR's 'safe harbor' policy -- landlords can't avoid treble damages by refunding overcharges after they get caught. New rule applies to courts as well as DHCR.
- Tenants guaranteed right to choose their forum. Overrides *Collazo* and prohibits courts from remanding cases to DHCR unless issues are uniquely within DHCR's expertise.
- Owners don't have to keep old records, but discard them at their own peril.

IAI and MCI Increases

- HPD's analysis showed that half the rent stabilized apartments were two vacancies away from the deregulation threshold.
- The average MCI increase per room has increased from 2013 when it was \$8.71 to 2018 when it was \$13.81
- In 2018, HCR approved \$217,261,769 in MCIs.

No more! 😊



**THE \$20,000 STOVE:
How Fraudulent Rent Increases
Undermine New York's Affordable Housing**

IAI Increases

- Total expenditure capped at \$15,000 every 15 years. The landlord can make improvements up to three times in a 15 year period but cannot claim more than a total of \$15,000.
- Rate of increase
 - For buildings with more than 35 units, the landlord may take 1/180th of the cost of the improvement
 - For buildings with 35 or fewer units, the landlord may take 1/168th of the cost of the improvement
- This means that the increases for IAI's will go up no more than \$83 or \$89 every fifteen years.

IAI Increases

- Costs must be ‘reasonable and verifiable’ and work must be done by unaffiliated licensed contractors.
- Apartment must be clear of B and C violations.
- HCR must establish a schedule of reasonable costs

IAI Increases

- IAIs expire after 30 years
- IAIs during tenancy must be consented to on official form in tenant's primary language (if the language is one of the top six languages spoken in NY State)
- The fifteen year period begins after the first IAI is taken.

IAI Increases – example

Old Law

Landlord could spend unlimited funds in apartment.

Calculations:

Landlord spends \$50,000 in empty apartment

Building is 30 units

$$\$50,000/40 = \$1250$$

Landlord can raise the rent \$1250

New Law

Total expenditure capped at \$15,000 every 15 years.

Calculations:

Landlord spends \$15,000 in empty apartment

Building is 30 units

$$\$15,000/168 = \$89$$

Landlord can raise the rent \$89

MCI Increases

- MCIs must be “essential for the preservation, energy efficiency, functionality or infrastructure of the entire building, including heating, windows, plumbing and roofing, but shall not be for operational costs or unnecessary cosmetic improvements”

MCI Increases

- DHCR must create a “schedule of reasonable costs” that “shall set a ceiling for what can be recovered”
 - Cost must be actual, reasonable and verifiable
- Work inside individual apartments is no longer eligible (e.g., kitchen/bathroom replacement)

MCI Increases

- Must deduct any government grants and insurance payments
- If building has less than 35% rent regulated tenants, no MCIs
- Building must be clear of both B and C violations

MCI Increases

- Pay back period
 - buildings with thirty-five units or fewer, 144 months.
 - buildings with more than 35 units, 150 months
- Annual cap is 2% but Landlord may add full balance of MCI to rent upon vacancy though.
- No more retroactive charges
- The landlord can take percentage increase annually until the aggregate rent increase reaches $1/144^{\text{th}}$ or $1/150^{\text{th}}$ of the cost of the improvement

MCI Increases

- MCIs expire after 30 years. MCIs are now called “temporary MCIs.”
- Tenants get 60 days to respond to owner’s application.
- Increases go into effect the first of the month after the date of mailing + 60 days
- HCR must audit and inspect 25% of MCIs.

MCI Increases – example

Old Law

Landlord spends \$1 million in 100 unit building.

MCI increase is \$10,000 per apartment, divided by 96 = \$104.

Tenant with \$1000 rent pays:

Year 1: \$1060

Year 2: \$1104

New Law

Landlord spends \$1 million in 100 unit building.

MCI increase is \$10,000 per apartment, divided by 144 = \$69.

Tenant with \$1000 rent pays:

Year 1: \$1020

Year 2: \$1040

Year 3: \$1060

Year 4: \$1069

Rent Deposits

“UNDER NO CIRCUMSTANCES shall the respondent’s failure or inability to pay use and occupancy as ordered by the court constitute a basis to dismiss any of the respondent’s defenses or counterclaims, with or without prejudice to their assertion in another forum.”

Rent Deposits

- Use and occupancy is now prospective only for date of landlord's motion.
- Time trigger is *60 days* from first appearance.
- Adjournment to seek counsel does NOT count toward the 'two adjournments.'
- Only adjournments at tenant's *sole* request count toward the elapsed time.
- Rent deposit applications must be made by motion on notice.

Rent Deposits

- Defenses to use and occupancy expanded to include warranty, overcharge and violation of CO.
- Use and occupancy cannot exceed legal regulated rent, or tenant's rent share under a subsidy program. UO also cannot exceed 30% of any fixed income, not just SSI.
- Upon failure to deposit, immediate trial *may* be ordered at court's discretion. Court may also for good cause extend time for deposit.

RPL – RPAPL changes

- RPL §223-b (Retaliatory Eviction):
 - Adds complaints to landlord or landlord’s agent (previously governmental authority)
 - Adds complaints about breach of warranty of habitability.
 - Adds to section on substantial alteration of lease terms, offering a new lease with a unreasonable rent increase.
 - Makes the presumption applicable to complaints within a year (previously 6 months).
 - Requires the landlord to “establish” (not give a “credible explanation of”) a non-retaliatory motive.

RPL – RPAPL changes

- RPL §226-c, RPL §232-a, RPL §232-b, Notices of non renewal or rent increase of more than 5%
 - If a tenant has a lease of less than one year *and* has occupied the apartment for less than one year, 30 days notice of nonrenewal,
 - if a tenant has a lease of one – less than 2 years, *or* has occupied the apartment for more than 1 year, 60 days notice of nonrenewal.
 - If a tenant has a lease or has lived in a unit for 2 years or more, 90 days notice of nonrenewal.
 - Only for residential tenancies
 - Takes effect in 120 days

RPL – RPAPL changes

- RPL §227-e: Duty to Mitigate: Tenant breaks a lease during the lease term: after tenant breaks lease, landlords have duty to mitigate by renting at lower of market rent *or tenant's last rent*
- RPL §234: Attorneys fees – no attorneys fees allowed on a default judgement
- RPL §235-e: expands protections regarding rent receipts, requires landlords to notify tenants about failure to receive rent, creates an affirmative defense if the landlord failed to provide such notice.

RPL – RPAPL changes

- RPL §238-a: Limitation on fees
 - Application fees for new apartment: bars or limits application fees prior to rental (including background checks) to \$20.
 - Late fees are limited to \$50 or 5% of the rent whichever is less.
- RPL changes take effect immediately except for changes to the notice provisions for termination of tenancy/increase in rent. Those provisions take effect 120 days after June 14, 2019

RPL – RPAPL changes

- RPAPL §702 excludes non-rent fees and charges from non payments
 - Legal fees? See RPL §234.
- RPAPL §711 –
 - prohibits self help evictions of all “lawful occupants”.
 - Overrules Andrews v. Acasia Network
 - Requires written rent demands with 14 days notice.
 - Overrules Poulakas v. Ortiz – landlords cannot get a possessory judgment against next of kin, only the estate

RPL – RPAPL changes

- RPAPL §731: in a nonpayment proceedings, payment of the full amount of rent due prior to the hearing on the petition, must be accepted by the landlord and renders the proceeding moot
- RPAPL §732: non payment proceedings
 - Section 1: Petitions are returnable in 10 days not 5 days
 - Section 2: After a court issues a possessory judgment, tenants have five days to pay but there is now an exception to this standard which can be found in RPAPL §753
 - Section 3: Tenants have 10 days to answer, not five. Additionally, this section refers to §753

RPL – RPAPL changes

- RPAPL §733: holdovers must be served at least ten days in advance not five days
- RPAPL §743: Landlords can't demand answers in holdovers prior to the return date.

RPL – RPAPL changes

■ RPAPL §745

- Court must grant at least a fourteen day adjournment at the request of either party
- Second or subsequent adjournments are at the Court's discretion
- Rent Deposit Law (see previous slides)

■ RPAPL §747-a

- Repeals section which barred stays of eviction without deposit of judgement amount

RPL – RPAPL changes

■ RPAPL §749 Warrants

- Marshals must give 14 calendar days notice
- Repealed language which said that issuance of the warrant annulled the landlord tenant relationship
- Law codifies court's discretion to stay execution of the warrant on good cause shown and to restore tenants post eviction
- Court must vacate the warrant prior to eviction upon payment or deposit of full rent due

RPL – RPAPL changes

- RPAPL §753 (the title of this Section used to reference holdovers) Stays
 - RPAPL §753(1) courts may stay issuance of warrants for up to one year. The court must consider ill health, exacerbation of an ongoing condition, child's enrollment in a local school, or any other extenuating life circumstance affecting the ability of the tenant or tenant family to relocate and maintain quality of life.
 - RPAPL §753(4) tenants have 30 days to cure breach of lease – used to be 10 days.

RPL – RPAPL changes

- RPAPL §757 – if a tenant is evicted as a result of a foreclosure proceedings, court records will be sealed and no disclosure of information relating to the lessee shall be authorized.
- RPAPL §768 expands NYC’s illegal eviction law upstate.
- All RPAPL sections take effect immediately and apply to proceedings commenced on or after the effective date of the Act. (but see Rent deposit slide)

Security Deposits

- General Obligations law §7-108(a) Security Deposits
 - No more than one month's rent
 - Landlord can withhold security deposit for
 - damage to the unit above wear and tear,
 - non payment of rent or non payment of utility charges payable directly to landlord as part of lease
 - moving and storage of tenant's belongings
 - New scheme of inspections
 - Landlord must provide within 14 days a notice listing reasons for withholding the security deposit or the security deposit
 - If the landlords fails to provide the 14 written statement, the landlord cannot keep the security deposit
- Effective date of this section: Security deposit law goes into effect 30 days after the effective date of the act and applies to any lease or rental agreement or renewal of a lease or rental agreement entered into on or after July 14th

Blacklist provisions

- New RPL §227-f: Tenant Screening Bureaus: bans discrimination based on tenant screening reports
 - But no private right of action, only the AG can enforce
- Judiciary Law §212: OCA cannot sell data related to residential tenancy, rent or evictions