



Housing Stability and Tenant Protection Act of 2019

Summary of Provisions

- Part A: Makes rent regulation permanent
- Part B: Repeals 20% vacancy bonus and longevity increase
- Part C: Limits ability of RGB to circumvent State changes
- Part D: Repeals high rent and high income deregulation
- Part E: Makes preferential rents coextensive with tenancy.
- Part F: SIX year rule (see attached)
- Part G: Gives all NY cities the option to opt into ETPA
- Part H: Rent Control – no more 7.5% increases
- Part I: Owner Use – only for “immediate and compelling necessity”, only one apartment, 15 year tenants must be offered ‘comparable’ apartments
- Part J: Gives tenancy rights to subtenants of Not for Profit agencies
- Part K: IAI – MCI (see attached)
- Part L: DHCR must prepare annual statistical report
- Part M: RPL/RPAPL changes (see attached)
- Part N: Coops

Part O: Manufactured Homes

Part A: Rent Regulation permanent, subject to locality finding a state of emergency and a vacancy rate of less than 5%; in effect immediately, no more need for extenders

Part B: Repeals 20% Vacancy Bonus, in effect immediately

Part C: RGB and County Rent Boards cannot enact vacancy bonus. RGB cannot institute poor or longevity tax, repeals *Casado*; in effect immediately

Part D: Repeals high rent and high income decontrol, no more vacancy decontrol, in effect immediately

Part E: Makes preferential rent permanent for the duration of the tenancy, small carve out for affordable housing developments with regulatory agreements; in effect immediately

Part F: Overcharge Statute of Limitations Takes effect immediately, *and applies to pending proceedings*

- Extends SOL to 6 years from 4
- Allows collection of 6 years of damages, including 6 years of trebles (rather than 2)
- Eliminates DHCR's 'safe harbor' policy that allowed landlords to refund the overcharges when they got caught and then avoid treble damages
- 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, you go back to the most recent one before that. And, if you have any argument that that registration is not perfectly 'reliable', you have a shot of going back even further.
- In addition, courts and HCR may consider ALL rent history that is 'reasonably necessary' for a determination.
- Overrides *Collazo* to allow the tenant to choose her forum.
- Owners don't have to keep old records, BUT they destroy them at their own peril.
- Four year rule exceptions – current RSC exceptions are now written into the RSL, *plus:*

- A new 'reliability' exception which includes whether 'an unexplained rent increase' renders a registration 'unreliable'
 - 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 pref rent'
- CPLR 213-a harmonized with the RSL

Part G. Expands EPTA to allow any locality in the state to opt in to the emergency tenant protection act. Still only covers localities with a 5% vacancy, 6 units or more, built before 1974.

Part H: Rent Control. Eliminates 7.5% a year increases. Eliminates fuel 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.

Part I: Owner Occupancy. Owner has to use apartment for his or his family's primary residence, can only be for one unit, and the landlord has to show "immediate or compelling necessity", tenants who have been in residence for more than 15 years must be offered comparable apartments, as do seniors and disabled tenants. Creates a cause of action for tenants who surrender due to fraud of landlord.

Part J: Amends the non primary residence provision. Gives tenancy rights to subtenants in scattersite housing run by not-for-profits.

Part K: IAls and MCIs: Takes effect immediately

IAls

- Total expenditure capped at \$15,000 every 15 years. The landlord can make improvements three or more times in a 15 year period but cannot claim more than a total of \$15,000.
- Amortization changed from 1/40 to 1/168 (for buildings with 35 or fewer apartments) or 1/180 (for buildings with 35 or more apartments). Combined with the cap, this means landlords can increase the rent by no more than either \$89/month or \$83/month for IAls in any 15 year period.
- IAls expire after 30 years
- Costs must be 'reasonable and verifiable' and work must be done by unaffiliated licensed contractors.
- Apartment must be clear of B and C violations.
- IAls during tenancy must be consented to on official form in tenant's primary language
- HCR must establish a schedule of reasonable costs

MCIs

- HCR must establish a 'reasonable cost' schedule
- Work inside individual apartments is no longer eligible (e.g., kitchen/bathroom replacement)
- 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

- MCIs expire after 30 years. MCIs are now called “temporary MCIs.”
- Annual cap is 2%, down from 6%. Landlord may add full balance of MCI to rent upon vacancy though.
- No more retroactive lump charges
- Tenants get 60 days to respond to owner’s application.
- 2% cap applies retroactively to MCIs approved on or after 6/16/12
- HCR must audit and inspect 25% of MCIs.
- Amortization is over 12 years (buildings of 35 units or less) or 12.5 years (buildings of more than 35 units) – increased from current 7 years.

Part L: HCR must produce annual reports pursuant to the requirements of this section.

Part M: RPL/RPAPL changes Takes effect immediately, except holdover notice provisions take effect after 120 days.

RPL

- 223-b (retaliation): adds complaints to landlord about breach of warranty of habitability. Makes the presumption applicable to complaints within a year (not 6 months currently), requires the landlord to “establish” (not give a “credible explanation of”) a non-retaliatory motive.
- 226-c/232-a: 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. Takes effect in 120 days
- 227-e: after tenant breaks lease, landlords have duty to mitigate by renting at lower of market rent *or tenant’s last rent*
- 227-f: bans discrimination based on tenant screening reports
- 235-e: expands protections regarding rent receipts, creates an affirmative defense for failure to give rent receipts (whatever that means)
- 238-a: bars or limits application fees prior to rental (including background checks) to \$20.

RPAPL: takes effect immediately “and applies to proceedings subsequent to the effective date,” except rent deposit provisions take effect after 30 days.

- 702: excludes non-rent fees (a/c fees, late fees etc.) and charges from nonpayments.
- 711: overrides *Andrews v Acacia Network*, to forbid self-help eviction of all “lawful occupants.” Rent demands must give *14 days’* notice. Overrides *Poulakas v. Ortiz* – landlords may still bring nonpayments against next of kin, but can only get a possessory judgment against the estate and cannot evict occupants or affect their succession claims.
- 732: petition returnable in 10 days not 5 days. Tenants have 10 days to answer rather than 5.

- 733: holdovers must be served at least *ten* days in advance, rather than 5.
- 743: landlords can no longer demand answers in advance of holdover return date.
- 745: rent deposits – see last page
- 747-a: repeals provision barring stays of eviction without deposit of judgment amount.
- 749: warrants now effective only against *named respondents*.
 - Marshals must give 14 calendar days' notice.
 - Antiquated language about 'annulling' the landlord-tenant relationship is deleted
 - *Bodenheim* is codified, as is court's authority to restore post-eviction
 - Court is *mandated* to vacate warrant upon full tender any time prior to execution.
- 753(1): court may now stay issuance of the warrant for up to *ONE YEAR* rather than 6 months for good cause shown. 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.
- 753(4): tenants have 30 days to cure breach of lease, rather than 10.
- 757: If a tenant is evicted as a result of a foreclosure proceeding, records relating to the lessee will be sealed and be confidential.
- 768: creates a new state-wide illegal eviction law expanding NYC's law upstate.

General Obligations Law

- 7-108(a) security deposits in non-regulated units limited to one month and specific provisions to protect tenants w/r/t security deposits. Takes effect in 30 days

Judiciary Law

- 212: Prohibits selling of residential tenancy rent or eviction data by court system. Takes effect immediately

Part N: Coops and Condos: Takes effect immediately

- Eliminates eviction plans
- For non-eviction plans, 51% of bona fide tenants must buy or no co-op or condo.
- No eviction against seniors and disabled in market rate rentals in coops and condos (some detail here)

Part O: Manufactured Homes (in NYC only impacts one community on SI) takes effect in 30 days

- Many changes to manufactured home communities which protect tenants including a cap on rents of 3% (landlords can get 6% but only if can show hardship)

New Rent Deposit Provisions - 745(2)

- UNDER NO CIRCUMSTANCES may the court strike defenses or counterclaims based on failure to make a deposit
- 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 against us
- Rent deposits applications must be made by motion on notice
- 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
- Upon failure to deposit, immediate trial *may* be ordered at court's discretion. Court may also for good cause extend time for deposit.