

FACT SHEET



Andrew M. Cuomo, Governor

A PUBLICATION OF NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION

#18 Appealing a Rent Administrator's Order: Petition for Administrative Review

This fact sheet contains general information on this topic and does not supersede the directions provided on the back of the PAR form, any relevant DHCR Policy Statements, Advisory Opinions, Operational Bulletins or requirements of the rent stabilization laws and codes.

An owner, tenant, or other party to the proceeding who wants to appeal a DHCR Rent Administrator's order may file a Petition for Administrative Review (PAR) with DHCR.

Filing requirements

- **Filed within 35 days of the Rent Administrator order issuance date (not the date received by any party).**
- Filed on a *Petition for Administrative Review* form (DHCR Form RAR-2) and be completed and signed by the petitioner or a duly designated representative. Sufficient copies of the completed PAR form, supporting documentation and the DHCR order being appealed are required to be attached. Owners filing PARs of orders affecting multiple tenants should include a sufficient number of copies for DHCR to serve upon each affected tenant. Owners are also required to submit a self-sticking 4" wide and 1" high mailing label addressed to each affected tenant, if there are multiple tenants.
- Specify the alleged errors and list the issues upon which the order should be reviewed. The scope of review in the PAR proceeding is generally limited to the facts or evidence presented to the Rent Administrator, which must also be raised in the PAR. If you are seeking to submit new facts or evidence on PAR, in order to more efficiently process your PAR, such material should be identified with your reason why it should now be accepted and reviewed.
- **Must be filed in person or by mail at Gertz Plaza, 92-31 Union Hall Street, Jamaica, New York 11433.** If the PAR is hand-delivered, it must be received within the 35 day filing period. If the PAR is mailed, it must be postmarked within the required filing period. If a private postage meter is used and the envelope does not have an official U.S. Postal Service postmark, the PAR must be received by DHCR within the required time period or must be accompanied by proof that it was mailed within the required time period. PARs received after the time limit will be dismissed.
- May be filed by two or more owners or tenants (a joint PAR), where at least one ground is common to all persons so filing and needs to be verified by each person joining therein. At the Commissioner's discretion, the PAR may be treated as joint or several, and two or more PARs that have at least one ground in common may be consolidated.

Processing a PAR

- Upon the receipt of the PAR, DHCR examines it to determine if it is going to be accepted, rejected or dismissed.
- If the PAR submission is procedurally defective, it will result in the issuance of a rejection order which gives the party filing the appeal directions on what needs to be corrected and gives a time frame to submit a corrected and completed PAR.
- Once a PAR is accepted for filing, a copy of a completed PAR is served by DHCR on the opposing party with a form allowing each party to respond to DHCR within a specified time frame.
- DHCR may also send other responses and submissions, with an opportunity to comment, to adversely affected parties, as warranted. DHCR will then review all of the submissions, request additional information if necessary, and issue a decision in the form of a written order signed by the Deputy Commissioner.
- Depending upon the situation under review, the order may be a Grant, Grant in Part, Termination, Dismissal or a Remand to the Rent Administrator.

Judicial Review

- Once the order signed by the Deputy Commissioner is issued, it can be further appealed by either party, by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review of the matter. **The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order.** A notice of petition must be served on DHCR, Counsel's Office, 25 Beaver Street, New York, New York 10004 and at the office of the New York State Attorney General. It is advisable to consult with an attorney in private practice before proceeding.

Amending a PAR Filing

- In general, there are two types of amendments, an amendment as of right and an amendment for good cause shown.
- A common example of an amendment as of right is when the petitioner has filed a records access request/FOIL to review the Rent Administrator case file, while the 35 day time limit to file the PAR is running. In this situation, the PAR must be filed within the 35 day time limit and should include a statement that a records access request/FOIL is pending, and further state that once the file has been reviewed, an amended submission will be submitted to DHCR. A copy of the records access request/FOIL should be attached to the PAR.
- Common examples of good cause shown include the hiring of an attorney after the initial PAR filing, to correct mistakes or newly discovered evidence that could not have been reasonably offered earlier. This type of amendment must be made in writing to the PAR Director.
- If a party requests an extension of time to submit an answer, it must be made in writing and specify why the extension is being requested.
- **For a more detailed discussion of this topic, please refer to DHCR Advisory Opinion 92-1 Amendments, Supplements, Extensions and Refilings of PARs.**

Effects of a PAR Filing on Rents Adjusted/Established in Rent Administrator Orders

- In general, a PAR filing (that is not rejected by DHCR) has the effect of placing a stay (freeze) on the retroactive (past) portion of the rent adjustment but not on the prospective (going forward) portion.

Example 1

Ms. Smith receives a rent reduction order for decrease in services issued by a DHCR Rent Administrator on June 15, 2014, that has an earlier (retroactive) effective date of February 1, 2014. The owner appeals the decision and files a PAR. On July 1, 2014, Ms. Smith is entitled to the prospective portion of the rent reduction order and can pay a rent that is reduced by a guideline adjustment. However, she is not entitled to the related refund, retroactive back to February 1, 2014. If the owner's PAR is granted, Ms. Smith will owe the owner any rent reductions previously taken. If the owner's PAR is denied, the owner will owe Ms. Smith the retroactive rent adjustments/refund.

Example 2

Mr. Jones receives a rent overcharge order issued by a DHCR Rent Administrator on August 10, 2014, that lowers the legal rent from \$1,800 to \$1,500 and directs a refund of \$10,000 for previously collected overcharges. The owner appeals the decision and files a PAR. On September 1, 2014, Mr. Jones is entitled to the prospective portion of the overcharge order and can pay the newly established legal rent of \$1,500. However, he is not entitled to collect the retroactive portion of the order, which is the refund of \$10,000. If the owner's PAR is granted, Mr. Jones will owe the owner any rent adjustments previously taken. If the owner's PAR is denied, the owner will owe Mr. Jones the retroactive rent adjustment/refund.

Example 3

The Beltway Corporation receives an order increasing rents for major capital improvements (MCI) issued by a DHCR Rent Administrator on March 10, 2014, that has an earlier (retroactive) effective date of January 1, 2014. The tenants appeal the decision and file a PAR. On April 1, 2014, the Beltway Corporation is entitled to collect the prospective portion of the MCI order and can increase the rent for each tenant in the approved amount of \$5 per room per month. However, they cannot collect the retroactive portion of the order from the tenants which would have allowed them to collect the increase retroactive back to January 1, 2014. If the tenants' PAR is granted, the Beltway Corporation will owe the tenants any rent adjustments previously taken. If the tenants' PAR is denied, the Beltway Corporation will be allowed to collect the MCI increase owed by the tenants for the retroactive period which commenced on January 1, 2014. Collection may begin on the first rent payment date after the PAR order is issued. For buildings located in NYC, the collection is limited to 6% of the rent in effect on the rent roll date cited in the MCI order; the limitation is 15% for buildings located in Nassau, Rockland and Westchester counties. The exception to this principle is, if the tenant's PAR is denied and subsequent to its issuance the tenant is going to move out, the unpaid portion of the remaining arrears is collectible in a lump sum.

Please note the following. In this situation, if the owner did not get the full dollar amount increase being sought (a grant in part) and had filed a PAR and the tenants did not, the owner would have been entitled to collect the retroactive portion of the order. It would not have been stayed (frozen).

- A PAR filing has the effect of placing a stay (freeze) on a DHCR Rent Administrator order that issues a directive but does not adjust the rent.

Example 4

The Sander Corporation receives a DHCR order granting a Petition for High Income High Rent Deregulation. The order deregulates the subject apartment and the owner wants to raise the previously regulated rent to a free market rent. The tenant in the subject apartment appeals the decision and files a PAR. As a result of the PAR filing, the order of deregulation is stayed (frozen). The owner cannot deregulate the apartment and can increase the rent at the time of the renewal only by the lawful rent stabilization guidelines. Once the PAR is decided, the owner and tenant will be bound by the order and directives it contains.

Sources:

New York City Rent Stabilization Code, Section 2529, Section 2530
Tenant Protection Regulations, Section 2510
DHCR Advisory Opinion 92-1
DHCR Operational Bulletin 90-1

For more information or assistance, call the DHCR
Rent InfoLine, or visit your Borough or County Rent
Office.

Queens
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
(718) 739-6400

Lower Manhattan
25 Beaver Street
5th Floor
New York, NY 10004

Brooklyn
55 Hanson Place
7th Floor
Brooklyn, NY 11217

Bronx
1 Fordham Plaza
4th Floor
Bronx, NY 10458

Upper Manhattan
163 W. 125th Street
5th Floor
New York, NY 10027

Westchester County
75 South Broadway
3rd Floor
White Plains, NY 10601