

FACT SHEET



Andrew M. Cuomo, Governor

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DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION

#31 Guide to Rent Increases for Rent Stabilized Apartments in Westchester County

A tenant residing in a rent stabilized apartment or in a * **free market/deregulated apartment** that was previously rent stabilized, may make a request to the Division of Housing and Community Renewal (DHCR) for a printout of the rent registration history of the apartment. The rent registration printout will show the apartment status and rents registered by the building owner with DHCR.

The tenant can examine the printout along with this fact sheet to try to determine if previous rent increases were lawful and/or if the previously rent stabilized apartment was lawfully deregulated. If the tenant believes that the rent charged or the deregulation of the apartment was unlawful, they should discuss it with the building owner. If the tenant is unable to resolve the matter with the owner, he or she may file a complaint of rent overcharge with DHCR.

In examining the printout, the tenant may notice the registration of two rents in a given year, the legal rent and a lower "preferential rent". A preferential rent is a rent which an owner agrees to charge that is lower than the legal regulated rent that the owner could lawfully collect. In general, existing regulations limit DHCR examination of rental histories to the four years that precede the date of the complaint. However, the Rent Code Amendments of 2014 do provide that when an owner claims that the rent being charged is "preferential", DHCR will examine the lease and rent history immediately preceding such preferential rent, even if it is before 4 years, to assure that the higher "legal" rent is correctly calculated and lawful. See Fact Sheet # 40.

The rent registration history printout of the apartment and the overcharge complaint form may be requested online at www.nyshcr.org, by phone at 718-739-6400 or in person at a Borough Rent Office.

* **Deregulation of a high-rent apartment may occur as follows:**

High-Rent Vacancy Deregulation

When a tenant moves into a vacant apartment and the rent has lawfully reached the Deregulation Rent Threshold (DRT), the apartment qualifies for permanent High-Rent Vacancy Deregulation. The Rent Code Amendments of 2014 (RCA 2014) require an owner to serve the first deregulated tenant with two documents. The first is a notice created by DHCR (HRVD-N) detailing the previous rent and how the new rent was calculated. The second is a DHCR annual apartment registration, indicating the apartment status as permanently exempt and should be filed on the April 1st following the deregulation. These documents notify the tenant of their right to file a formal complaint with DHCR challenging the rent and the deregulation status.

High-Rent High-Income Deregulation

Upon application to and the issuance of an order by the DHCR, apartments which have a legal regulated rent or maximum rent at the DRT and which are occupied by persons whose total annual federal adjusted gross incomes, as reported on their New York State Income Tax returns, have been in excess of \$200,000 for each of the two preceding calendar years, may be permanently deregulated.

Four common ways owners may increase rents are:

1. Vacancy and Renewal Lease Rent Increases

The Emergency Tenant Protection Act (ETPA) provides for the establishment of County Rent Guidelines Boards in Nassau, Rockland and Westchester Counties. These Guideline Boards independently set the maximum allowable rates for rent adjustments effective October 1st each year for renewal leases in ETPA apartments; and for vacancy leases may authorize a vacancy allowance in addition to the statutory vacancy increase.

Tenants in residence have the right to select a lease renewal for a one or two year term. The owner must offer notice of renewal by certified mail or personal delivery on lease renewal forms, Owner's Notice To Tenant for Renewal Lease, (DHCR form RTP-8 Outside NYC) not more than 120 days and not less than 90 days before the existing lease expires.

The owner may charge the tenant a County Rent Guidelines Board authorized adjustment based on the length of the renewal lease term selected by the tenant. For example, if the guidelines adjustment for renewal leases determined by an ETPA county Rent Guidelines Board effective from October 1st, until September 30th, of a given year was 3% for a one year lease renewal and a tenant in that county with a rent of \$800 decided to renew his or her lease for a one year term, the new rent would be computed as follows:
 $\$800 \text{ (old rent)} \times .03 = \$24 \text{ (rent increase)} = \824 (new rent) .

Pursuant to the Rent Act of 2011, effective June 24, 2011, owners can charge and collect no more than one (1) vacancy increase in a calendar year (January 1st through December 31st). The rent may also be increased for lawful Individual Apartment Improvements and/or Major Capital Improvements.

- With the lease, a tenant should receive an ETPA Standard Lease Addenda that states how the rent was computed and asserts that any increases are lawful. The Addenda was created pursuant to the RCA 2014 to include expanded reporting requirements and notification to tenants concerning Individual Apartment Improvements and related rent increase calculations.
- Based on the RCA 2014, Vacancy Lease rent increases cannot be collected if a DHCR Order reducing rent for decreased services is in effect. Copies of these orders can be obtained by filing a Request for Records Access (Form REC-1).
- If the owner did not collect a permanent vacancy increase within eight years of the new vacancy lease then, in addition to the percentage increase set forth below, the owner is also entitled to collect a further vacancy increase equal to 0.6 percent multiplied by the number of years since the collection of the last permanent increase.
- If the previous legal rent was less than \$300.00 per month then, in addition to such vacancy increases set forth above, the owner is also entitled to collect a further increase of \$100.00 per month.
- If the previous legal rent was between \$300.00 per month and \$500.00 per month, the owner is entitled to collect a vacancy increase equal to the greater of the combined vacancy increases described above or \$100.00 per month.

Listed below are the statutory vacancy lease increases and the guidelines adopted by the Westchester County Rent Guidelines Board for leases commencing during the periods given below.

Period During which Lease Commenced	* One Year Lease Term Renewal	* Two Year Lease Term Renewal	** Statutory Vacancy Increase	
			1 year	2 year
10/1/13 - 9/30/14	Greater of 3% or \$15 (Greater of 2.4% or \$12 if tenant pays for either heat or hot water)	Greater of 4% or \$20 (Greater 3.2% or \$16 if tenant pays for either heat or hot water)	19%	20%
10/1/14 - 9/30/15	1.5% (1.2% if tenant pays for either heat or hot water)	2.5% (2% if tenant pays for either heat or hot water)	19%	20%
10/1/15 - 9/30/16	1.75% (1.4% if tenant pays for either heat or hot water)	2.75% (2.2% if tenant pays for either heat or hot water)	19%	20%
10/1/16 - 9/30/17	0%	0.5% (0.4% if tenant pays for either heat or hot water)	19.5%	20%
10/1/17 - 9/30/18	1 % (0.8% if tenant pays for either heat or hot water)	1.5% (1.2% if tenant pays for either heat or hot water)	19.5%	20%

* When a tenant signs a renewal lease, the legal regulated rent adjustment for the renewal lease will only be the adjustment for a one or two-year lease cited in the chart above. However, if the owner is collecting a preferential rent and continues to offer it upon renewal, the owner can increase it by the Westchester County Rent Guidelines Board adjustment or any amount that does not bring the preferential rent above the newly increased legal regulated rent.

**The Rent Act of 2015 provides that if a vacating tenant was paying a preferential rent, the vacancy lease rent increase that can be applied to the vacating tenant's legal rent will be limited to 5% if the last vacancy lease commenced less than two years ago, 10% if less than three years ago, 15% if less than four years ago and 20% if four or more years ago.

2. Major Capital Improvement Rent Increases Approved By DHCR

Where an owner makes a building-wide improvement, such as the installation of a new boiler, the owner may be entitled to charge each rent stabilized tenant in the building a rent increase based on an MCI. The MCI increase cannot be charged until a DHCR order is issued authorizing the charge and setting the amount. The MCI increase is allocated on a per room basis, and becomes a permanent part of the legal regulated rent for the purpose of applying future rent increases. The Rent Act of 2015 requires DHCR to compute the rent increase based upon an eight-year period of amortization for buildings with 35 or fewer apartments and a nine-year period for buildings with more than 35 apartments. There is a 15 percent cap on the amount of the increase that may be collected each year. (See **Fact Sheet #24**, "Major Capital Improvements (MCI)", for additional information). The RCA 2014 provides that the portion of an MCI rent increase that is scheduled to be collected after the issuance date of a DHCR rent reduction order, cannot be collected. It becomes collectible on the effective date of a DHCR rent restoration order.

If an apartment is vacant or becomes vacant while an application to the DHCR for a MCI rent increase is pending, the owner must notify any incoming tenant of the basis for the previously filed application, and that the rent will be increased if the MCI application is approved. Failure to include this notice of anticipated rent increase in vacancy leases will result in no MCI increase being approved for this apartment during the term of the vacancy lease. An owner who charges such increases without this notification will be subject to overcharge penalties.

An example of a satisfactory MCI notification clause in a vacancy lease is the following: "An application for a major capital improvement rent increase has been filed under Docket No. _____ with DHCR based upon the following work _____. Should DHCR issue an order granting the rent increase, the rent provided for in this lease will be increased accordingly."

3. Individual Apartment Improvement Rent Increase

Where an owner installs a new appliance in or makes an improvement to an apartment, the owner can raise the rent by 1/40th or 1/60th of the costs. In an occupied apartment, the owner must first obtain the written consent of the tenant to the increase, in order to charge and collect it. In a vacant apartment, tenant consent is not required.

Pursuant to the Rent Act of 2011, effective September 24, 2011, in buildings that contain more than 35 apartments, the owner can collect a permanent rent increase equal to 1/60th of the cost of the Individual Apartment Improvement (IAI). In buildings that contain 35 apartments or less, the owner can collect a permanent rent increase equal to 1/40th of the cost of the IAI, as had previously been allowed.

For example, if a new dishwasher is installed in a vacant apartment, in a 100 unit building, and the cost is \$900, the rent can be increased by \$15 (1/60th of \$900). The same installation in a 20 unit building would result in a \$22.50 rent increase (1/40th of \$900). The increase, if taking place on a vacancy, is added to the legal rent after the application of the statutory vacancy increase, not before.

See Operational Bulletin 2016-1 for additional information.

The RCA 2014 calls for greater transparency and accessibility to supporting documentation for IAI rent increases. The DHCR ETPA Standard Lease Addenda (RA-LR1(ETPA)) and the Notice of Apartment Deregulation Pursuant to High Rent Vacancy (HRVD-N) require owners to provide detailed IAI cost explanations and the Addenda gives tenants an option to request more detailed supporting documentation from the owner, in a lawfully prescribed manner. It also provides that an IAI rent increase cannot be collected, if its collection commenced after the effective date of a DHCR rent reduction order. It becomes collectible on the effective date of a DHCR rent restoration order. See Fact Sheets # 2 and # 35.

Note: For **occupied rent controlled apartments only**, before increasing the rent, the owner must file an "Owner's Notice of Rent Increase Based on Increases/New Furnishings/Equipment/Painting; and Tenant's Statement of Consent" (DHCR Form RN-79b) with DHCR.

Security Deposit

The amount of a security deposit that an owner may collect is generally limited to one month's rent. However, if the tenant originally paid a greater security deposit when the apartment first came under rent stabilization, and has been in continuous occupancy since that date, such deposit may continue in effect until the tenant reaches the age of 65, or receives Social Security disability retirement benefits or SSI benefits. The next rent stabilized tenant to occupy the apartment, however, cannot be required to deposit more than one month's rent as security.

When a lease is renewed at a higher rent, or the rent is lawfully increased during the term of the lease, the owner may collect additional money from the tenant to bring the security deposit up to the new monthly rent. If after the tenant vacates the apartment, he or she disagrees with the owner over the payment of interest or the return of the security deposit, and such disagreement cannot be resolved between them, the tenant may contact the Consumer Frauds and Protection Bureau of the New York State Attorney General's Office or begin a proceeding in a court of competent jurisdiction (usually, Small Claims Court).

Sources:

Emergency Tenant Protection Regulations Section 2502.4(a)

Emergency Tenant Protection Regulations Section 2502.7(a)

Emergency Tenant Protection Regulations Section 2505.4

Related Material:

Fact Sheet #24, Major Capital Improvements (MCI) Questions and Answers

Fact Sheet #40, Preferential Rents

Operational Bulletin 2016-1, Individual Apartment Improvements

Municipalities in Westchester County with ETPA

Village of Croton-on-Hudson

Village of Dobbs Ferry

Town of Eastchester

Town of Greenburgh

Town of Harrison

Village of Hastings-on-Hudson

Village of Irvington-on-Hudson

Village of Larchmont

Town of Mamaroneck

Village of Mamaroneck

Village of Mount Kisco

City of Mount Vernon

City of New Rochelle

Village of Sleepy Hollow

Village of Pleasantville

Village of Port Chester

City of Rye

Village of Tarrytown

City of White Plains

City of Yonkers

For further information or assistance contact DHCR's office at: **75 South Broadway**
White Plains, NY 10601
(914) 948-4434