

FACT SHEET



Andrew M. Cuomo, Governor

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

#38 Substantial Rehabilitation

Introduction

The DHCR will find that a building has been substantially rehabilitated within the meaning of Tenant Protection Regulations Section 2500.9(e) or Rent Stabilization Code Section 2520.11(e), and is therefore exempt from coverage under the Emergency Tenant Protection Act (ETPA) or the Rent Stabilization Law (RSL), respectively, for rent stabilized properties where the owner demonstrates, based upon the totality of the circumstances, that the following criteria have been met:

(1) At least 75% of building-wide and individual housing accommodation systems must have been replaced.

Exceptions regarding the extent of the rehabilitation work required to be effectuated building-wide or as to individual housing accommodations, may be granted where the owner demonstrates that a particular component of the building or system has recently been installed or upgraded, or is structurally sound and does not require replacement, or that the preservation of a particular component is desirable or required by law due to its aesthetic or historic merit;

(2) The rehabilitation must have been commenced in a building that was in a substandard or seriously deteriorated condition. The extent to which the building was vacant of residential tenants when the rehabilitation was commenced constitutes evidence of whether the building was in fact in such condition. Where the rehabilitation was commenced in a building in which at least 80% of the housing accommodations were vacant of residential tenants, DHCR presumes that the building was substandard or seriously deteriorated at that time. Space converted from non-residential use to residential isn't required to have been in substandard or seriously deteriorated condition;

The DHCR will not find the building to have been in a substandard or seriously deteriorated condition where it can be established that the owner has attempted to secure a vacancy by an act of arson resulting in criminal conviction of the owner or the owner's agent, or the DHCR has made a finding of harassment;

(3) All building systems must comply with all applicable building codes and requirements, and the owner must submit copies of the building's certificate of occupancy.

Where occupied rent regulated housing accommodations have not been rehabilitated, such housing accommodations shall remain rent regulated until vacated, notwithstanding a finding that the remainder of the building has been substantially rehabilitated.

"Constructive Occupancy" by Rent Stabilized Tenants in Substantially Rehabilitated Buildings

Where, because of the existence of hazardous conditions in his or her housing accommodation, a tenant has been ordered by a governmental agency to vacate such housing accommodation, and the tenant has received a court order or an order of the DHCR that provides for payment by the tenant of a nominal rental amount while the vacate order is in effect, and permits the tenant to resume occupancy without interruption of the rent stabilized status of the housing accommodation upon restoration of the housing accommodation to a habitable condition, such housing accommodation will be excepted from any finding of substantial rehabilitation otherwise applicable to the building. A housing accommodation will also be excepted from a finding of substantial rehabilitation where, although a vacate order has not been issued, the owner has requested the tenant to temporarily vacate so as to facilitate the rehabilitation of the building and the tenant does so for the owner's convenience, without surrendering such accommodation.

However, the exemption from rent regulation based upon substantial rehabilitation will apply to a housing accommodation that is subject to a right of re-occupancy, if the returning tenant subsequently vacates, or if the tenant who is entitled to return pursuant to court or DHCR order chooses not to do so;

Prior Opinion

An owner may apply to the DHCR for an advisory prior opinion that the building will qualify for exemption from rent regulation on the basis of substantial rehabilitation, based upon the owner's rehabilitation plan;

Individual Apartment Improvements, Major Capital Improvements, and First Rents Distinguished from Substantial Rehabilitation

Where the work performed fails to meet the criteria set forth above for exemption from coverage under the ETPA or RSL on the basis of substantial rehabilitation, the owner may still qualify for rent increases based upon work performed on building-wide systems or in individual apartments. See Fact Sheets #s 11, 12, 24 and 33.

Where an owner significantly changes the perimeter and dimensions of an existing housing accommodation, or creates a housing accommodation in space previously used for non-residential purposes, the DHCR may find that the resultant housing accommodation was not in existence on the applicable base date. Such a finding may entitle the owner to charge a market or "first rent," subject to guidelines limitations for future rent adjustments.

Binding Determination

Where, after completion of the work, DHCR issues a final order determining that the building is exempt from rent regulation on the basis of substantial rehabilitation, that order will be a binding determination on a building-wide basis, notwithstanding occupancy by subsequent tenants. DHCR will not thereafter entertain challenges by subsequent tenants except upon showing that the determination was obtained as a result of fraud by the owner or the owner's agent.

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

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