

FACT SHEET



Andrew M. Cuomo, Governor

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DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION

#39 Comparative and Alternative Hardship

The Emergency Tenant Protection Act (ETPA) and Rent Stabilization Law (RSL) provide a mechanism for adjusting rents pursuant to orders issued by the Rent Guidelines Boards, which determine, on an annual basis, the rent adjustment if any, to which an owner is entitled upon execution of new or renewal leases. Both the ETPA and RSL also provide, in the unusual situation, where the rent adjustments are insufficient to permit a particular property to keep up with increased operating costs, that the owner can file with the DHCR an application for building-wide rent adjustments based upon a hardship.

Comparative Hardship Outside of New York City

An owner must establish, by application, the existence of a hardship as further defined, and the DHCR will determine whether additional adjustments in rent are needed to enable the owner to maintain approximately the same average ratio (as defined by usage) between operating expenses and gross rents as was realized for the preceding five year period.

Comparative Hardship Inside New York City

DHCR grants an appropriate rent adjustment where:

- 1) The owner has been unable to maintain the same average net income in a current three year period when compared with the average net income during a three year base period, generally defined as 1968 through 1970;
- 2) The circumstances and accuracy of the information provided in the owner's application have been adequately substantiated by submission of copies of certified financial statements or federal income tax returns and other pertinent documents which might be required; and
- 3) All other pre-requisites for the granting of such rent adjustments have been met.

In order to conform with the Rent Stabilization Code, to restore the owner's average net income in the current period to the average net income in the base period, the rent adjustment granted by the DHCR is computed as follows:

- 1) The average net income for the current period is subtracted from the average net income for the base period (after adjustments). The result represents the dollar amount of annual gross rent adjustment.

- 2) The dollar amount may be converted into a percentage rent adjustment by dividing such amount by the annual gross rent roll of the stabilized apartments submitted with the application. (The rent roll should be current within two (2) months of the date of the filing of the application).

The collection of any adjustment in the legal regulated rent for any apartment cannot exceed six (6) percent in any year from the effective date of the order authorizing the adjustment over the rent set forth in the schedule of gross rents.

Alternative Hardship

Rent adjustments based upon alternative hardship enable owners of buildings not owned as cooperatives or condominiums, acquired by the same owners or a related entity three years prior to the application, to receive an appropriate rent adjustment where the DHCR finds (subject to the definitions and restrictions stated in the regulations) that such an increase is necessary because the annual operating expenses are not less than 95 percent of the gross rental income. Instructions which accompany the forms referred to in this Fact Sheet provide further details.

Alternative Hardship Procedures

I. Restrictions

The restrictions against applying for or receiving an alternative hardship rent adjustment are listed below, with further explanations where appropriate.

a) Maintenance of Services

While DHCR has broad discretionary authority with respect to alternative hardship, the requirement of maintenance of services limits such discretion. The regulations specifically bar an owner from applying for or collecting further rent increases upon a determination by the DHCR that there is a failure to maintain services. However, where the DHCR determines that insufficient income is the cause of such failure to maintain required services, hardship adjustments may be granted upon condition that such services will be restored within a reasonable time, and certain tenant-caused violations may be excepted.

b) Pending Tax Certiorari Proceedings or Objections

The regulations require the resolution of legal objections to real

estate taxes and water and sewer charges for the test year.
c) Ownership by the Same or Related Entity for 36 Months

The regulations require that the owner or an entity related to the owner must have acquired the building at least 36 months prior to the date of the application in order for an owner to be eligible for an alternative hardship adjustment. For the purpose of eligibility to file an application for an alternative hardship rent adjustment, a cooperative corporation or the Board of Managers of a condominium will not be considered the owner of the building. Individual shareholders or unit owners will also not be considered building owners for this purpose.

d) Five (5) Percent Equity in the Property

An owner's equity must exceed five (5) percent of the sum of:

- (a) the arm's length purchase price of the property; and
- (b) the cost of any capital improvements for which the owner has not collected a rent adjustment; and
- (c) any repayment of principal of any mortgage or loan used to finance the purchase of the property or used to finance any capital improvements for which the owner has not obtained an adjustment in rent; and
- (d) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner.

Owners will generally satisfy this requirement and avoid the more complex calculations required, if the arm's length purchase price of their property, less the unrepaid principal of any loan or mortgage used to finance the purchase of the property, exceeds five (5) percent of the arm's length purchase price.

e) The Grant of a Previous Hardship Rent Adjustment

The regulations have the effect of prohibiting the filing or granting of an application where any hardship rent adjustment that previously had been granted became effective less than 36 months prior to the filing date of the new application, or if a six (6) percent rent adjustment is still in effect based on a prior hardship application.

II. Mortgage Interest as an Includable Expense and its Impact on Processing

The alternative hardship, unlike the two comparative hardship formulas, allows for the inclusion of interest on a "bona fide" mortgage as an allowable expense in computing the appropriate rent adjustment. Even where the mortgage is bona fide, the DHCR on its own initiative, where warranted, or in the face of a meaningful tenant objection, will also ascertain whether the claimed mortgage interest expense is reasonable, actual, applicable to the operation and maintenance of property, reasonably allocable to the test year and in keeping with the general legisla-

tive purposes and intent.

Because mortgage interest, as an allowable expense, is a feature belonging solely to a particular hardship application, adjudication of mortgage interest expense issues can only be further defined on a case by case basis.

Issuance and Effective Date of the Order

The DHCR will, after taking all necessary and appropriate action, issue a determination either dismissing the application if it fails to substantially comply with the provisions of the Regulations, or granting the application, in whole or in part.

In the event the application is granted, the collection of any rent adjustment exceeding six (6) percent of the legal regulated rent in effect on the filing of the application shall be spread forward in similar increments and added to the legal regulated rent as established or set in future years. In buildings containing residential apartment units subject to Rent Control or otherwise exempt from regulation, adjustments for both income and expenses will be made to calculate the appropriate share for those apartments subject to the application.

In New York City, the legal regulated rent may be adjusted effective the first rent payment date occurring 30 days after the filing of the application, unless otherwise set forth in the order.

The effective date of rent adjustments for buildings located outside of New York City is the date of issuance of the order, unless otherwise set forth in the order. Rent adjustments will be expressed on a percentage basis.

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

2400 Halsey Street
Bronx, NY 10461

Upper Manhattan

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

Westchester County

75 South Broadway
2nd Floor
White Plains, NY 10601