

## State Rent and Eviction Regulations Amendments

**9 NYCRR § 2100.3 paragraphs (c), (d), (e), (f), (g), (h) and (i) are re-lettered (d), (e), (f), (g), (h), (i) and (j) and a new paragraph (c) is added as follows:**

(c) Office of the Tenant Protection Unit (TPU). The office of the commission designated by the Administrator to investigate and prosecute violations of the ETPA, the Rent Stabilization Law and the City and State Rent laws. In furtherance of such designation, the TPU may invoke all authority under the ETPA, Rent Stabilization Law, and the State and City rent laws and the regulations thereunder that inures to the Commissioner, commission or the Office of Rent Administration. However, nothing contained herein shall limit the mission and authority of the commission to administer and enforce the ETPA, the Rent Stabilization Law, and the City and State rent laws and all such regulations promulgated thereunder.

[(c)], [(d)], [(e)], [(f)], [(g)], [(h)], [(i)] (d), (e), (f), (g), (h), (i), (j) [re-lettered only – text remains the same]

**9 NYCRR § 2102.4(h)(3) is amended to read as follows:**

3) Recipients of Senior Citizen Rent Increase Exemptions (SCRIE) or Disability Rent Increase Exemptions (DRIE). For a tenant who on the date of the conversion is receiving a SCRIE or DRIE authorized by section 26-405(m) of the City Rent and Rehabilitation Law, the rent is not reduced and the cost of electricity remains included in the rent, although the owner is permitted to install any equipment in such tenant's housing accommodation as is required for effectuation of electrical conversion pursuant to this subdivision.

(i) After the conversion, upon the vacancy of the tenant, the owner, without making application to the commission, is required to reduce the maximum rent for the housing accommodation in accordance with the Schedule of Rent Reductions set forth in *Operational Bulletin 2003-1*, and thereafter [the] any subsequent tenant is responsible for the cost of his or her consumption of electricity, and for the legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion.

(ii) After the conversion, if a tenant ceases to receive a SCRIE or DRIE, the owner, without making application to the commission, may reduce the rent in accordance with the Schedule of Rent Reductions set forth in *Operational Bulletin 2003-1*, and thereafter the tenant is responsible for the cost of his or her electricity, and for the legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion, for as long as the tenant is not receiving a SCRIE or DRIE. Thereafter, in the event that the tenant resumes receiving a SCRIE or DRIE, the owner, without making application to the commission, is required to eliminate the rent reduction and resume responsibility for the tenant's electric bills.

**9 NYCRR § 2104.2(a) is amended to read as follows:**

The tenant is violating a substantial obligation of his tenancy, other than the obligation to surrender possession of such housing accommodation, and has failed to cure such violation after written demand by the landlord that the violation cease within 10 days; or within a three-month period immediately prior to the commencement of the proceeding the tenant has willfully violated such an obligation inflicting serious and substantial injury to the landlord. If the written notice by the owner that the violations cease within ten days is served by mail, then five additional days, because of service by mail, shall be added, for a total of 15 days, before an action or proceeding to recover possession may be commenced after service of the notice required by section 2104.3 of this Title.

**9 NYCRR §2105.8 is amended to read as follows:**

It shall be unlawful for any landlord or any person acting on his behalf, with intent to cause the tenant to vacate, to engage in any course of conduct (including, but not limited to, interruption or discontinuance of essential services or filing of false documents with or making false statements to the commission) which interfere with or disturbs or is intended to interfere with or disturb the comfort, peace, repose or quiet of the tenant in his use or occupancy of the housing accommodations. (See section 10, subdivision 5 of the Act.)

**9 NYCRR § 2108.13 is amended to read as follows:**

The filing and determination of a PAR is a prerequisite to obtaining judicial review of any provision of this Subchapter or any order issued thereunder, except as provided by section 8 of the act. A proceeding for review may be instituted under article 78 of the Civil Practice Law and Rules provided the petition is filed within 60 days after the issuance date of the final determination of the PAR. Issuance date is defined as the date of mailing of the order. Service of the petition upon the Division of Housing and Community Renewal shall be made by either:

**9 NYCRR §2109.1 is amended by adding new subdivisions (d) and (e) to read as follows:**

(d) Unless otherwise expressly provided in this Title, no additional time is required for service by mail of any notice, order, answer, lease offer or other papers, beyond the time period set forth in this Subchapter and such time period provided is inclusive of the time for mailing.

(e) Unless otherwise expressly provided in this Title, no additional time is required to respond or to take any action when served by mail with any notice, order, answer, lease offer, or other papers, beyond the time period set forth in this Subchapter and the

time to respond is commenced upon mailing of said notice, order answer, lease offer or other paper.

**9 NYCRR §2110.2 is amended to add a new paragraph (e) as follows:**

(e) No such ICF may be served on any apartment where the tenant is the recipient of a Senior Citizen Rent Increase Exemption (SCRIE) or a Disability Rent Increase Exemption (DRIE).

## CONSOLIDATED - REGULATORY IMPACT STATEMENT

### 1. STATUTORY AUTHORITY:

The Emergency Housing Rent Control Law, Laws of 1946, Chap 274, subdivision 4(a), as amended by the Laws of 1950, Chap. 250, as amended, as transferred to the Division of Housing and Community Renewal (DHCR) by the Laws of 1964, Chap. 244, provides the authority to the DHCR to amend the State Rent and Eviction Regulations (SRER) and Section 44 of Chap. 97, Part B of the Laws of 2011 further empowers DHCR to promulgate rules and regulations to implement and enforce all provisions of such law and any law renewed or continued by the Rent Law of 2011 which includes the Emergency Housing Rent Control Law (RCL).

### 2. LEGISLATIVE OBJECTIVES

The RCL requires, because of a serious public emergency, the regulation of residential rents and evictions to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices to produce threats to public health, safety and general welfare. The RCL is further designed to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions. See RCL §8581(1). DHCR is specifically authorized to promulgate regulations by RCL §8584(4)(a), and is further empowered by Chapter 97 of the Laws of 2011 to promulgate regulations to implement and enforce the provisions of that chapter and any law continued or renewed by that chapter which includes the RCL.

### 3. NEEDS AND BENEFITS

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2000. Since that time there has been litigation interpreting, not only these regulations, but the laws they implement. In addition, DHCR has had twelve years of experience in administration which informs this process as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

DHCR personnel within its Office of Rent Administration (ORA) engages in close to one hundred forums and meetings on an annual basis where the administration and implementation of these laws are discussed.

In the last year this information gathering process has been enhanced through several additional actions taken by DHCR.

First, DHCR created the Tenant Protection Unit (TPU), a unit designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent Laws. TPU, itself, has met with the various stakeholders in an effort to ascertain what issues and concerns impinge on the owner and tenant community affected by these regulations.

Second, DHCR underwent the regulatory process for the promulgation of amendments expressly required by the Rent Law of 2011. That process generated significant comments on other issues relating to the rent regulations.

Third, this specific promulgation process was preceded by a mass email outreach to known stakeholders in the field to solicit even further comments and suggestions.

The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Addition of TPU.

The inclusion of TPU as a specific term within the regulations, demonstrates DHCR's commitment to the TPU and proactive enforcement of the RCL.

b. Enhanced DRIE and SCRIE Protections

Since the last code review, the State of New York adopted a Disability Rent Increase Exemption (DRIE) for eligible low income disabled tenants similar to the existing Senior Citizen Rent Increase Exemption (SCRIE) available to the low income elderly.

DHCR regulations, which already prohibit the implementation of electrical submetering for SCRIE recipients, will be extended to disabled tenants receiving DRIE.

DHCR also is amending its regulations to exempt both SCRIE and DRIE tenants from the high income/high rent deregulation procedures set forth in the RCL. As those tenancies have already been vetted through other government programs to have income far below that required for deregulation, the procedure, if invoked by the owners, cannot obtain any meaningful result. It simply creates unneeded stress on these vulnerable populations. Even worse, it may result in the inappropriate loss of apartments through these senior or disabled tenants failing to adequately respond to mechanically generated notices as part of the process.

#### c. Harassment Definition

This regulation expands the definition of “harassment” to reflect some of the more up-to-date schemes to deprive tenants of their legitimate rights as rent stabilized tenants. Not every harassing act is designed to create a vacancy, but can include intimidating the tenant in place, to preclude the legitimate exercise of such rights. These actions can include false and illegitimate filings before DHCR

#### 4. COSTS

The regulated parties are tenants and owners of rent controlled housing accommodations. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, local government or business, and therefore impose no costs on those entities which are not already required through the enactment of the CRRL generally or through these amended provisions referenced above. For the owners of regulated housing accommodations, who may need to be initially more vigilant to assure their compliance with these new statutory requirements, costs should be relatively minimal. In fact, compliance costs are already a generally-accepted expense of owning regulated housing. Similarly, tenants will not incur any additional costs through implementation of the proposed regulations.

#### 5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty or responsibility upon any level of local government.

## 6. PAPERWORK

The amendments will not increase the paperwork burden on either regulated parties or the agency. Any particularized specific claims that a changed regulation may create hardship or inequity can and will be best handled in the context of the administrative applications, themselves, where such factual claims can be assessed.

## 7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent controlled property participates in another State, city or federal housing program. In those instances there may be a need to comply with the State Rent and Eviction Regulation as well as the mandates of that city, State or Federal program.

## 8. ALTERNATIVES

DHCR considered a variety of alternatives to many of these new rules. As set forth in part in the Needs and Benefits section, the alternatives of continuing the rule presently in place for all of these changes was considered and rejected.

## 9. FEDERAL STANDARDS

The proposed amendments do not exceed any known minimum Federal standards.

## 10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

## CONSOLIDATED - RURAL AREA FLEXIBILITY ANALYSIS

The proposed rules are not anticipated to impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

## CONSOLIDATED - REGULATORY FLEXIBILITY ANALYSIS (FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS)

### 1. EFFECT OF RULE

The State Rent and Eviction Regulations (SRER) apply only to housing units located in those communities outside New York City that are subject to the Emergency Housing Rent Control Law. The small businesses that would be affected by these proposed amendments are the owners of small numbers of regulated housing units, at least one of which is rent controlled.

### 2. COMPLIANCE REQUIREMENTS

The proposed amendments would not require small businesses that own regulated residential housing units to perform additional recordkeeping or reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes

### 3. PROFESSIONAL SERVICES

The proposed amendments will not require small businesses to obtain any new or additional professional services.

### 4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose any significant, initial costs upon small businesses. There are no additional direct costs imposed on these businesses by these amendments. Small business owners of regulated housing

accommodations will need to be initially more vigilant to assure their compliance with these changes. Compliance costs are already a generally-accepted expense of owning regulated housing. DHCR has made a significant effort to assure a safe harbor or alternatives from the more dire consequences for owners who are operating in good faith and in substantial compliance.

The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual, new or burdensome technological applications but ultimately encourages the use of “online” filings and use of DHCR forms, which are increasingly online, which will actually reduce costs.

#### 6. MINIMIZING ADVERSE IMPACT

The proposed regulations have no adverse impact on local government. They will have comparatively minimal costs to businesses considering that these changes are necessary to enforce a statute designed to protect the public health safety and welfare. The regulations being implemented do not create different regulatory standards for small businesses. Instead, DHCR in the administrative proceedings themselves, can, where appropriate, take equitable circumstances into consideration which may include the size of the business. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses. Outside of the proceedings themselves, it is difficult to ascertain the size of the business subject to these regulations as a single business

may own multiple properties often created as single asset corporations. To the extent the approaches suggested in SAPA section 202-b are appropriate, present procedures take these into account.

## 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DHCR personnel within its Office of Rent Administration (ORA) engages in close to one hundred forums and meetings on an annual basis with community groups, owner and tenant advocacy organizations and local officials where the administration and implementation of these provisions was under discussion. In the last year this information gathering process has been enhanced through several additional actions taken by DHCR.

DHCR created the Tenant Protection Unit (TPU) a unit designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent Laws. TPU itself has met with the various stakeholders in an effort to ascertain what issues and concerns impinge on the owner and tenant community affected by these regulations.

Further, DHCR held a public hearing on the implementation of regulations to conform to the changes in the rent laws enacted by the 2011 Law at which many of these provisions were raised by commenters as suggested changes and ORA subsequently sent outreach letters to stakeholders, specifically including small businesses and their advocates, seeking comments and suggestions on changes to the regulations.

## CONSOLIDATED - JOB IMPACT STATEMENT

It is apparent from the text of the rules, required by statutory amendment, that there will be no adverse impact on jobs and employment opportunities by the promulgation of these regulations.

# Executive Order No. 17 Local Government Mandate Evaluation Impact on Local Government and Property Taxpayers

**Submitting Agency:** DHCR

**NYCRR Citation:** 9 NYCRR 2100.3(c); 2102.4(h)(3); 2104.2(a); 2105.8; 2108.13; 2109.1; 2110.2

**Description of the Regulation:** The proposed regulations codify the addition of the Tenant Protection Unit; add enhanced DRIE and SCRIE protections; redefine harassment to include certain false filings intended to deprive tenants of continued rent stabilized protections; add five days for mailing of certain notices, exclude additional five days for mailing of other papers and notices not already specified, and clarify that Article 78 statute of limitations runs from date of mailing of DHCR order.

**Statutory Authority for the Regulation:** The Emergency Housing Rent control Law, Laws of 1946, Chap. 274, subdivision 4(a), as amended by the Laws of 1950, chap. 250, as amended, as transferred to DHCR by the Laws of 1964, Chap. 244 and Section 44 of Chapter 97, Part B of the Laws of 2011 enable DHCR to amend the State Rent and Eviction Regulations.

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**1. Does the regulation impose a mandate on a county, city, town, village, school district or special district that requires such entity to:**

**a. Provide or undertake any program, project or activity;**

Yes

No

**b. Increase spending for an existing program, project or activity (even if such program, project or activity is voluntarily undertaken by a local government unit);**

Yes

No

**c. Grant any new property tax exemption, or broaden the eligibility or increase the value of any existing property tax exemption; or**

Yes

No

**d. Carry out a legal requirement that would likely have the effect of raising property taxes.**

Yes

No

If the answer to all questions above are “no,” ensuring the regulation will not result in a mandate on local governments and property taxpayers, an accounting and the approval of the Office for Taxpayer Accountability are not required. If the answer to any question above is “yes,” and the regulation may have a fiscal impact on local governments and property taxpayers, please proceed to items 2 – 3.

**2. Is the mandate required by federal law or regulation or state law?**

Yes

No

- a. If yes, please cite the specific provision in the statute or federal regulation.
- b. If yes, please describe any elements of the regulation not specifically mandated by the statute or regulation.

**3. If any portion of the mandate is not required by federal or state law, please attach to this Checklist an Accounting for such portion containing:\***

- a. A description of the mandate in the regulation;
- b. An accounting of the impacts of such mandate that includes:
  - (i) A fiscal impact statement;
  - (ii) A cost-benefit analysis, which includes:
    - (x) a specific delineation of the costs and benefits to local governments and property taxpayers; and
    - (y) a quantification of the impact on local government revenue and expenditures, where such impact is quantifiable based on available information (please consult with the Governor’s Office of Regulatory Reform if further guidance is needed);
- c. A description of input sought and received from affected local governments;
- d. A description of the proposed revenue sources to fund such mandate; and
- e. An explanation as to why this regulation should be advanced with a mandate.

\*Note: The “Regulatory and Flexibility Analysis for Small Businesses and Local Governments” may be attached so long as the items set forth in 3 above are fully accounted for in the Analysis.