

SUMMARY OF THE 2019 RENT LAW

I. Rent Regulation

Sunset: Since the inception of the rent laws, the legislation always provided that the laws were subject to a sunset provision which would compel the Legislature, at a minimum, to renew the laws; this would also, typically, result in various changes in the rent laws. The sunset provisions have been repealed and the rent laws have effectively been made permanent, subject to the determination of the housing emergency every three years by the City Council.

Vacancy Increases:

1. The statutory vacancy allowance and long-term occupancy bonus are repealed.
2. The rent guidelines boards are prohibited from (a) adopting vacancy increases and (b) establishing annual guidelines based upon the current rental cost of the units or the length of occupancy.

Deregulation: High-rent vacancy deregulation and high-income, high-rent deregulation have been a part of the rent regulatory system since the mid-1990's. Those deregulation mechanisms have been repealed and rent-stabilized and rent-controlled apartments may no longer be deregulated.

Preferential Rents: Approximately 30% of all stabilized apartments charge preferential rents. Since 2003, the law allowed owners who charged preferential rents to increase rents upon renewal by any amount up to the legal regulated rent. The new law provides that renewal lease increases are limited by the amount authorized by the applicable RGB guidelines. Upon vacancy, owners are allowed to return to the previously established legal regulated rent provided that the vacancy was not caused by the owner's failure to maintain the housing accommodation in compliance with the warranty of habitability.

IAs and MCIs

- Individual apartment improvements:
 1. The amortization schedule for IAs was previously 1/40th or 1/60th of the cost of the improvement, depending upon whether the building had 36 or more units. The legislation lengthens the amortization schedule to 14 years (1/168) or 15 years (1/180), depending upon whether building has more or less than 36 units.
 2. The total cost for IAs over a 15-year period is capped at \$15,000.
 3. The IA increases are made temporary and such increases "shall be removed from the legal regulated rent thirty years from the increase became effective inclusive of any increases granted by the applicable rent guidelines board."
 4. Increases are no longer allowed for increase in services.
 5. DHCR is required to promulgate a schedule of reasonable costs.
 6. Work is required to be done by licensed contractors.
 7. Common ownership between the owner and contractor is prohibited.
 8. The owner is limited to three IA increases over a fifteen-year period, totaling an aggregate of \$15,000.
 9. The owner is required to "resolve" all outstanding hazardous or immediately hazardous violations of housing maintenance, building and fire codes.
- Major capital improvements:

1. The amortization schedule for MCIs was previously eight years or nine years depending upon whether the building has 36 or more units. The legislation lengthened the amortization schedule to 12 and 12.5 years, again depending upon whether the building has 36 or more units.
2. Previously, the law imposed a 6% cap on rent increases attributable to MCI work; the cap has been reduced to 2%.
3. MCI increases are made temporary and an MCI increase is required to be removed from the legal regulated rent after thirty years “inclusive of any increases granted by the applicable rent guidelines board.” DHCR is required to issue a notice to the owner and tenants 60 days prior to the end of the temporary MCI and the total amount to be removed from the legal regulated rent.
4. Unlike the prior law, MCI increases can no longer be retroactive in effect.

DHCR Procedures and Regulations: DHCR is required to establish an annual inspection and audit process for 25% of MCI applications. In addition, DHCR is now required under the new law to promulgate rules relating to various aspects of MCI and IAIs, including but not limited to the following:

1. Providing that the collection of MCI increases “approved on or after June 16, 2012 and June 16, 2019 shall not exceed 2% in any year beginning on or after September 1, 2019 for any tenant in occupancy on the date the major capital improvement was approved.”
2. A schedule of reasonable costs for MCIs.
3. Criteria for eligibility of a temporary MCI increase, excluding operational costs or unnecessary cosmetic improvements.
4. Reduction of any increase by an amount equal to any governmental grant or any insurance payment.
5. Prohibiting MCI and IAI increases for buildings or apartments with outstanding hazardous or immediately hazardous housing maintenance, building or fire codes.
6. Prohibiting MCI increases for buildings with 35% or fewer rent regulated tenants.
7. Requiring that increases “be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the local rent guidelines board.
8. Establishing a notification and documentation procedure for IAIs, including the “centralized electronic retention of such documentation and other supporting documentation.”
9. Establishing a form to be used by landlords “to obtain written informed consent” for IAIs
10. Annual rent stabilization fee payable by the owner to the City Department of Finance (DOF) is increased from \$10 to \$20 per stabilized unit.

Rent-Controlled Apartment Increases: The new law amends the rent increase formula for rent control by providing that an owner can collect the lesser of 7.5% or the average of the previous five years of one-year RGB guidelines. In addition, the law prohibits fuel pass-along increases.

Rent Overcharges: The law applicable to rent overcharges was changed significantly in 1997, when a four-year statute of limitations and a four-year record-keeping requirement were enacted. The new law changes this area of the law dramatically, including but not limited to the following:

1. The four-year “look back” period is increased to six or more years prior to the most recent rent registration statement.
2. Despite the supposed six-year look back period, the new law provides that DHCR or the courts may consider all available rent history which is “reasonably necessary” to make such determination.
3. The four-year record-keeping requirement is increased to six years, but an owner’s election not to maintain records beyond that time period does not limit DHCR’s authority to examine the rental history prior to that time period. However, recovery of overcharge penalties limited to the six years preceding the complaint.
4. In addition, the new law also provides that the voluntary adjustment of rent or tender of a refund after the filing of an overcharge complaint is no longer a “safe harbor” on the issue of willfulness.
5. DHCR and the courts are given concurrent jurisdiction, subject to the tenant’s choice of forum.
6. The legislation applies to all pending claims and claims filed on or after the effective date

Owner-Occupancy: The new law significantly impairs the ability of an owner to refuse to renew a lease based upon their intention to use the premises for their personal use and occupancy. The law:

1. Limits an owner to one apartment for owner use and occupancy.
2. Reduces the length of the occupancy period for a tenant to establish protections as a “long-term” tenant from 20 years to 15 years.
3. Adds requirement that owner’s use is based upon immediate and compelling necessity.
4. Applies to all tenants in possession, including pending matters.
5. Owner-occupancy fraud is actionable and punishable by damages plus legal fees.

Leases with Non-Profits:

- Persons occupying apartments leased by not-for-profits to provide housing to homeless or other vulnerable individuals are deemed to be tenants

II. Statewide Housing Security and Tenant Protection Act of 2019 (HSTPA)

The HSTPA amends the Real Property Law (RPL), Real Property Actions and Proceedings Law (RPAPL), General Obligations Law (GOL) and the Judiciary Law (JL) to:

1. Increase protections against retaliation by owners against tenants (RPL).
2. Requires the building owner to provide written notice of renewal rent increase of greater than 5% or of intention not to renew; timing of notice dependent upon length of occupancy (RPL).
3. Codifies owner duty to mitigate damages when a tenant vacates prior to the end of the lease (RPL).
4. Prohibits the landlord from refusing to rent to a potential tenant based upon prior landlord-tenant litigation or tenant screening report (RPL).
5. Strengthens tenant rights to rent receipts and requires owners to retain records of all cash receipts for at least three years.
6. Owner required to send notice, by certified mail, advising tenant of the failure to receive rent within five days of the date required by the lease (RPL).
7. Prohibits the charging of a fee for an apartment application (RPL).

8. Allows charging of a fee for background checks and credit checks, but limits the amount to no more than \$20 unless the potential tenant can provide proof of such check and payment within the prior 30 days (RPL).
9. Caps fees for late rent payments at \$50 or 5% of the monthly rent, whichever is less (RPL).
10. Housing Court Proceedings (RPAPL):
 - a. Increases three-day rent demand notice to 14-day notice
 - b. Eliminates oral rent demands
 - c. "Rent" means the monthly amount charged, *excluding* fees, charges or penalties
 - d. Mandates building owner acceptance of rent at any time prior to the hearing on the petition
 - e. Notice of petition made returnable 10 days after service as opposed to the current five days
 - f. Time period for service of notice of petition for other than non-payments is increased from not less than five nor more than 12 days to not less than 10 nor more than 17 days
 - g. Changes deposit of rent provisions in numerous respects, including adjournments, defenses, and stays
 - h. Entitles tenant to restoration of possession prior to execution of warrant unless the owner establishes that the rent was withheld in bad faith
 - i. Extends three-day notice for execution of warrants to 14-day notice
 - j. Consolidates non-payment and holdover stay provisions
 - Increases maximum length of stay from six months to one year
 - Requires that Housing Court "shall" consider whether refusal to grant a stay would cause "extreme hardship," including the ability of the tenant "to relocate and maintain quality of life;" also requires that Housing Court "shall" consider any "substantial hardship" on the owner
11. Makes the unlawful eviction of a tenant punishable by criminal and civil penalties.
12. Limits security deposits to one month's rent and creates timetables and procedures for the return of the deposit to the tenant.
13. Prohibits OCA from selling landlord-tenant data to third parties.
14. Coop/Condo Conversions: The new law amends the General Business Law relating to coop/condo conversions by (1) repealing the statutory authority for eviction plans and (2) Increasing the purchasing percentage for non-eviction plans from 15% to 51% and by requiring the purchasers under such plans to be in-place tenants.