



New York State
Division of Housing and Community Renewal
Office of Rent Administration

*Tenant Protection Regulations
New York City Rent Stabilization Code*

Advisory Opinion 91-2 (September 5, 1991)

***Rent Registration with the State Division of Housing
and Community Renewal (“DHCR”) Upon the Termination of
Regulation Other Than Pursuant to the Rent Laws ¹***

This Advisory Opinion is issued pursuant to the Emergency Tenant Protection Regulations (“TPR”) adopted under ETPA Section 10, and Section 2527.11 of the New York City Rent Stabilization Code (“RSC”).

The purpose of this Advisory Opinion is to set forth the procedures for initial registration with the DHCR of rents, services and other building and housing accommodation information, by Housing Companies owning buildings which have been regulated pursuant to Federal, State or municipal laws other than the Rent Laws, where such Companies elect to terminate such regulation through dissolution (“buy-out”), or such regulation is otherwise terminated.

Generally, rental housing accommodations in buildings built before 1974, containing six or more units in municipalities subject to the ETPA or the RSL and which were previously regulated under the Private Housing Finance Law (“PHFL”), or any other Federal, State or municipal law, become subject to regulation by DHCR’s Office of Rent Administration (“ORA”) upon the termination of such previous regulation.

For the purpose of establishing the initial legal registered rent and required services under the Rent Laws, the date immediately preceding the date of the buy-out or other termination of such regulation shall be referred to as the “base date” for rents and services. Where the cause of such termination is a buy-out under the PHFL, the buy-out occurs on the date the Secretary of State accepts the Certificate of Dissolution for filing.

Registration Requirements

RSL Section 26-517 and ETPA Section 12-a, require that housing accommodations which become subject to the RSL or ETPA must be registered within ninety (90) days thereafter. This requirement applies to Housing Companies which are regulated by Federal, State or municipal agencies, and is in addition to any submission of pre-registration information which such agency may require of owners.

Emergency Housing Rent Control Law, Emergency Tenant Protection Act (“ETPA”), New York City Rent And Rehabilitation Law, Rent Stabilization Law (“RSL”).

This document is being reissued for informational purposes only.

The original document which contains signatures of authorization is on file at DHCR’s Office of Rent Administration.



For example, DHCR regulated Housing Companies dissolving after July 20, 1987 are subject to the Rules for Voluntary Dissolution (9 NYCRR Part 1750) which require that owners of buildings becoming subject to the RSL or ETPA must, on DHCR forms, submit to the Mitchell-Lama supervising unit together with the Notice of Intent, pre-registration information for all subject housing accommodations. Owners of Housing Companies regulated by New York City must, on DHCR forms, submit pre-registration information, as prescribed in New York City's Rules and Regulations Governing City-Aided Limited Profit Housing Companies, Section 11(g) to the City's Department of Housing Preservation and Development, Division of Housing Supervision.

The forms to be used for both the submission of pre-registration information and initial registration are:

- a) Initial Apartment Registration Form (RR-1).
- b) Initial Registration Summary Form (RR-2).
- c) Initial Building Services Registration Form (RR-3).

Detailed instructions are available with the forms. The information to be registered concerns rents, leases, services and number of rooms in each apartment.

Rents

- a) Apartments occupied on the Base Date

RSC section 2521.1(1) and TPR section 2501.1(b) require that the initial legal registered rent shall be the rent charged to and paid by the tenant in occupancy on the base date. Income-related surcharges which were collectible from a tenant on the base date will be included as part of the base rent for that tenant and subsequent tenants of the same apartment.

- b) Apartments vacant on the Base Date

For housing accommodations which are vacant on the base date, the initial legal registered rent shall be the rent charged to and paid by the most recent tenant, in addition to rental subsidies, but excluding surcharges, if any. Income related surcharges which may have been paid by the most recent tenant will not be included in the initial legal registered rent. Upon renting, the initial legal registered rent shall be subject to vacancy and guideline increases as well as any applicable adjustment pursuant to the RSL and ETPA.

- c) Rent subsidy on the Base Rent

For units subject to occupancy or rent restrictions (such as units required to be rented to qualified low, moderate or middle income tenants) on the base date:

- (1) where the tenant is participating in the Senior Citizen Rent Increase Exemption program the owner may register the full legal regulated rent charged; and
- (2) where the owner receives capital grant or Section 8 rental subsidies on behalf of the tenant, the owner may be permitted to register higher and lower initial legal registered rents (representing the full legal regulated rent and the full legal regulated rent minus the capital grant or other rental subsidy, respectively) pursuant to an agreement entered into between the prior regulating agency and the ORA, as set forth in an Order Permitting the Registration of Multi-Tier Initial Legal Rents. This Order will also set forth the conditions under which the owner may collect the higher and lower regulated rents as determined by the prior regulating agency.

Pursuant to Code Section 2521.1(1), when a rental subsidy is terminated either upon or after the buy-out, the owner is entitled to collect as rent from the tenant in occupancy on the base date an amount equivalent to that portion of the rent paid by such tenant, not including the subsidy.

d) Additional Charges

Additional charges for electricity for appliances such as air conditioners, washer/dryers and dishwashers will be included in the registered base rent at the rate charged and paid on the base date. For such appliances brought into an apartment subsequent to the base date, the owner may be permitted an additional charge which, in New York City, will not become part of the base rent. These permitted charges are promulgated in Operational Bulletins as may be issued by the ORA. In New York City, the rate allowable as an additional electrical charge for air conditioners is promulgated in the Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4. In the ETPA counties, for air conditioners brought into an apartment subsequent to the base date, the owner must apply to the District Rent Office for an Order permitting collection of the air conditioner charge, which charge becomes part of the base rent.

e) Ancillary Services - Separate Charge

Garage and other ancillary services for which there is a legal regulated separate permanent charge must be registered at the amount paid on the base date. Pursuant to RSC Section 2520.6(r)(4)(xi), any increase, other than the charge provided in the initial agreement with a tenant to lease such service subsequent to the base date, shall conform to the applicable rent guidelines rate.

Leases

a) Terms and Conditions of Replacement Leases

The leases in effect under the various Federal, State and municipal programs on the base date contain numerous provisions which may be inconsistent with the ETPA and RSL. Pursuant to TPR Section 2502.5(c)(7), and RSC Section 2520.12, the ORA directs that such leases shall remain in force pursuant to the provisions thereof, except that those provisions which are inconsistent with the ETPA, TPR, RSL or RSC shall be void and unenforceable.

However, where such leases are so inconsistent as to render them ineffective in defining the rights and duties of tenants and owners, then either the Federal, State or municipal supervising agency as a condition of the buy-out, or ORA after the buy-out, may order the provision of new leases, for the unexpired term and at the same rent as the lease to be replaced. The proffered lease shall be on the same terms and conditions as the replaced lease but shall eliminate those terms and conditions which are inconsistent with the ETPA or RSL and those which require adjudications by the prior Federal, State or municipal supervising agency.

b) Commencement Dates and Length of Term of Replacement Leases

Where the lease in effect prior to the termination of regulation other than pursuant to the Rent Laws did not commence upon the anniversary date of the tenancy, the tenant shall have the option of substituting the anniversary date of the tenancy as the commencement date of such lease. Where there was no lease in effect upon the termination of regulation other than pursuant to the Rent Laws, the owner shall offer and the tenant shall have the option of accepting a lease commencing either on the date following the expiration date of the last lease or on the anniversary date of the tenancy.

The term of a lease offered pursuant to this section shall be: for a three year term or such other term as was required prior to the termination of the regulation other than pursuant to the Rent Laws, commencing, at the tenant's option, either upon the anniversary date of the initial lease, or the renewal date of the most recent lease.

The tenant, within sixty (60) days after the owner's offer, must choose the term of the lease, sign the lease offer and return it to the owner, who must return a fully executed copy to the tenant within thirty (30) days. The new lease shall be at the same rental amount as the rent paid by the tenant on the base date.

c) Lease Rider

For buildings located in New York City, pursuant to RSL Section 26-5111d, the ORA has promulgated a lease rider which describes the rights and duties of owners and tenants as provided for under the RSL and other laws. A copy of this rider is to be served upon each tenant in occupancy of a housing accommodation prior to any public information meeting required by the prior supervisory agency and where no such meeting is required, no later than the base date, and pursuant to RSC Section 2522.5(c)(1), upon each tenant or subsequent tenant signing a vacancy or renewal lease.

d) Lease Renewals

Renewal of a lease which expires after the base date shall be pursuant to TPR Section 2503.5 in the ETPA counties, and RSC Section 2523.5 in New York City. These sections provide that, in the ETPA counties, an owner must offer a renewal lease no more than 120 days and no less than 90 days before the expiration of the prior lease, and in New York City, no more than 150 days and no less than 120 days prior thereto ("window periods"). Any renewal of a lease expiring after the base date but sooner than such time periods shall not commence until the tenant has received such window period notice.

For leases which are anticipated to expire less than 90 (ETPA) or 120 (RSL) days prior to the base date, owners shall be entitled to satisfy the time requirements of the previous paragraph by offering renewal leases within such window periods, even though the base date may occur during or after such window periods.

Where it cannot be determined whether the base date will occur before or after the expiration date of the lease, owners shall be permitted to offer a rent stabilized renewal lease within the appropriate window period, as well as a renewal of the current lease pursuant to the regulations of the prior supervising agency. Owners who offer both leases pursuant to this paragraph should include with such offer a notice to the tenant explaining the following:

- if the base date occurs prior to the lease expiration date, the rent stabilized renewal lease will take effect;
- if the base date occurs after the lease expiration date, the renewal of the current lease will take effect;
- Where the base date occurred prior to the effective date of this Advisory Opinion, the renewal lease procedure shall be as directed by the prior supervising agency.

Services

All building-wide and apartment services provided or required to have been provided to tenants on the base date must continue to be provided. Required building-wide services will be registered on the Initial Building Services Registration form (RR-3), and a copy of the form must be posted in the building's lobby. Required apartment services are registered on the Initial Apartment Registration form (RR-1).

Number of Rooms

Although the prior regulatory agency may have utilized a different definition of room, for Rent Stabilization purposes, going forward, and not for the purpose of adjusting the base rent as established by the prior regulatory agency, the following are counted as rooms:

- all rooms that have no windows and contain at least eighty (80) square feet;
- windowless kitchens measuring at least fifty-nine (59) square feet;
- all rooms which have windows and contain at least sixty (60) square feet;
- bathrooms, half-rooms, walk-in closets and balconies (whether or not enclosed) are not to be counted as rooms.

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