

RENT STABILIZATION CODE

[19 NYCRR PARTS 2520-2530I]*

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* Statutory authority: N.Y.C. Admin. Code, 26-511(b), 26-518(a).

PART 2520--SCOPE

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§ 2520.1. Statutory authority.

This Subchapter is promulgated and adopted pursuant to the powers granted to the Division of Housing and Community Renewal by chapter 888 of the Laws of New York for the year 1985.

§ 2520.2. Amendment of codes.

Sections I through 66, inclusive, of the code of the Rent Stabilization Association of New York City, Inc., and sections I through 64, inclusive, of the code of the Metropolitan Hotel Industry Stabilization Association, Inc., as last amended, are hereby further amended by deleting such sections in their entirety and sections 2520.1 through 2530.1 of this Subchapter, inclusive, are hereby adopted, and this Code shall hereafter be known as the Rent Stabilization Code. Chapter VIII of this Subtitle is hereby redesignated to be known as Rent Stabilization Regulations and divided into Subchapter A--Emergency Tenant Protection Regulations, consisting of existing Parts 2500-2510; and Subchapter B--Rent Stabilization Code, consisting of new Parts 2520-2530.

§ 2520.3. Construction and implementation.

This Code shall be construed so as to carry out the intent of the Rent Stabilization Law to ensure that such statute shall not be subverted or rendered ineffective, directly or indirectly, and

to prevent the exaction of unjust, unreasonable and oppressive rents and rental agreements, and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare; and that the policy herein expressed shall be implemented with due regard for the preservation of regulated rental housing.

§ 2520.4. Delegation of authority.

The Commissioner of Housing and Community Renewal may delegate to a deputy commissioner, an assistant commissioner, a rent administrator or any other person or persons, the authority to carry out any of the duties and powers granted to him by the New York City Rent Stabilization Law or this Code, and the Emergency Tenant Protection Act of Nineteen Seventy-four as amended.

§ 2520.5. Designations.

When used in this Code, unless a different meaning clearly appears from the context, the following terms shall mean and include:

- (a) RSL. Title 26 of the Administrative Code of the City of New York, sections 26-501 through 26-520, as recodified by chapter 907 of the Laws of New York for the year 1985, constituting the New York City Rent Stabilization Law.
- (b) ETPA. The Emergency Tenant Protection Act of Nineteen Seventy-four.
- (c) State Rent Law. The New York State Emergency Housing Rent Control Law, commonly referred to as the State Rent Control Law.
- (d) City Rent Law. Title 26 of the Administrative Code of the City of New York, sections 26-401 through 26-415, as recodified by chapter 907 of the Laws of New York for the year 1985, constituting the New York City Rent and Rehabilitation Law, commonly referred to as the City Rent Control Law.
- (e) PHFL. The Private Housing Finance Law.
- (f) MDL. The Multiple Dwelling Law.
- (g) City Rent and Eviction Regulations. Regulations adopted and promulgated by the State Division of Housing and Community Renewal pursuant to the City Rent Law, Parts 2200-2210 of Title 9 NYCRR, officially known as the Official Compilation of Codes, Rules and Regulations of the State of New York.
- (h) DHCR. State Division of Housing and Community Renewal in the Executive Department.
- (i) Commissioner. Commissioner of the DHCR.
- (j) City Rent Agency. DHCR as defined in the City Rent Law.
- (k) HPD. New York City Department of Housing Preservation and Development.
- (l) Loft Board. The board created in the City of New York pursuant to article 7-C of the MDL, to resolve complaints of owners of interim multiple dwellings and of residential occupants of such buildings qualified for the protection of MDL article 7-C, and to act upon hardship applications made pursuant to such article.

- (m) Rent Guidelines Board. The board created in the City of New York pursuant to the RSL to establish guidelines annually for rent adjustments for leases or other rental agreements.
- (n) Office of Rent Administration. The office of the DHCR designated by the commissioner to administer the ETPA, the RSL and the City and State Rent Laws.
- (o) District Rent Office. The local rent administration office of the DHCR for a particular rent area in the City of New York.
- (p) Rent Administrator. The person designated by the commissioner to issue orders based on complaints or applications made to the DHCR.

§ 2520.6. Definitions.

- (a) Housing accommodation. That part of any building or structure, occupied or intended to be occupied by one or more individuals as a residence, home, dwelling unit or apartment, and all services, privileges, furnishings, furniture and facilities supplied in connection with the occupation thereof. The term housing accommodation Will also apply to any plot or parcel of land which had been regulated pursuant to the City Rent Law prior to July 1, 1971 and which became subject to the RSL after June 30, 1974.
- (b) Hotel. Any Class A- or Class B multiple dwelling which provides all of the services included in the rent as set forth in section 2521.3 of this Title.
- (c) Rent. Consideration, charge, fee or other thing of value, including any bonus, benefit or gratuity demanded or received for, or in connection with, the use or occupation of housing accommodations or the transfer of a lease for such housing accommodations.
- (d) Tenant. Any person or persons named on a lease as lessee or lessees, or who is or are a party or parties to a rental agreement and obligated to pay rent for the use or occupancy of a housing accommodation.
- (e) Initial legal registered rent. The lawful rent for the use and occupancy of housing accommodations under the RSL or the ETPA, as first registered with the DHCR in accordance with the RSL, ETPA and this Code, which has not been challenged pursuant to Part 2526 of this Title, or if challenged, has been determined by the DHCR.
- (f) Legal regulated rent. The initial legal registered rent as adjusted in accordance with this Code or the rent shown in the annual registration statement filed four years prior to the most recent registration statement (or if more recently filed, the initial registration statement), plus in each case, any subsequent lawful increases and adjustments.
- (g) Vacancy lease. The first lease or rental agreement for a housing accommodation that is entered into between an owner and a tenant.
- (h) Renewal lease. Any extension of a tenant's lawful occupancy of a housing accommodation pursuant to section 2523.5 of this Title.
- (i) Owner. A fee owner, lessor, sublessor assignee, net lessee, or a proprietary lessee of a housing accommodation in a structure or premises owned by a cooperative corporation or association, or an owner of a condominium unit or the sponsor of such cooperative corporation or association or condominium development, or any other person or entity receiving or entitled to receive rent for the use or occupation of any housing

accommodation, or an agent of any of the foregoing, but such agent shall only commence a proceeding pursuant to section 2524.5 of this Title, in the name of such foregoing principals.

- (j) Permanent tenant. For housing accommodations located in hotels, an individual or such individual's family members residing with such individual, who have continuously resided in the same building as a principal residence for a period of at least six months. In addition, a hotel occupant who requests a lease of six months or more pursuant to section 2522.5(a)(2) of this Title, or who is in occupancy pursuant to a lease of six months or more shall be a permanent tenant even if actual occupancy is less than six months. Unless otherwise specified, reference in this Code to "tenant" shall include permanent tenant with respect to hotels.
- (k) Subtenant or sublessee. Any person lawfully occupying the housing accommodation pursuant to an agreement with the tenant by authority of the lease or by virtue of rights afforded pursuant to section 226-b of the Real Property Law. Such person shall be entitled to all of the benefits of and be subject to all of the obligations of this Code except the right to renew, and the right to purchase upon conversion to cooperative or condominium ownership.
- (l) Occupant. Any person occupying a housing accommodation as defined in and pursuant to section 235-f of the Real Property Law. Such person shall not be considered a tenant for the purposes of this Code.
- (m) Hotel occupant. Any person residing in a housing accommodation in a hotel who is not a permanent tenant. Such person shall not be considered a tenant for the purposes of this Code, but shall be entitled to become a permanent tenant as defined in subdivision (j) of this section, upon compliance with the procedure set forth in such subdivision.
- (n) Immediate family. A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson or granddaughter of the owner.
- (o) Family member.
 - (1) A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant; or
 - (2) Any other person residing with the tenant or permanent tenant in the housing accommodation as a primary or principal residence, respectively, who can prove emotional and financial commitment, and interdependence between such person and the tenant or permanent tenant. Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed, may include without limitation, such factors as listed below. In no event would evidence of a sexual relationship between such persons be required or considered.
 - (i) longevity of the relationship;

- (ii) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;
 - (iii) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;
 - (iv) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;
 - (v) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.;
 - (vi) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;
 - (vii) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;
 - (viii) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship.
- (p) Senior citizen. A person who is 62 years of age or older.
- (q) Disabled person. Except as provided pursuant to paragraph (4) of subdivision (b) of section 2523.5 of this Title (Renewal of Lease), a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled sub-stance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent such person from engaging in any substantial gainful employment.
- (r) Required services.
- (1) That space and those services which the owner was maintaining or was required to maintain on the applicable base dates set forth below, and any additional space or services provided or required to be provided thereafter by applicable law. These may include, but are not limited to, the following: repairs, decorating and maintenance, the furnishing of light, heat, hot and cold water, elevator services, janitorial services and removal of refuse.
 - (2) For housing accommodations located in hotels in addition to the definition set forth in paragraph (1) of this subdivision, required services shall also include the services set forth in section 2521.3 of this Title, and any other services provided, or required to be provided by applicable law on the applicable base dates set forth below, including but not limited to telephone switchboard, bellhop, secretarial, and front desk services.

- (3) Ancillary services. That space and those required services not contained within the individual housing accommodation which the owner was providing on the applicable base dates set forth below, and any additional space and services provided or required to be provided thereafter by applicable law. These may include, but are not limited to, garage facilities, laundry facilities, recreational facilities, and security. Such ancillary services are subject to the following provisions:
- (i) No owner shall require a tenant or prospective tenant to lease, rent or pay for an ancillary service, other than security, as a condition of renting a housing accommodation.
 - (ii) Where an ancillary service is provided to a tenant pursuant to a lease or rental agreement separate and apart from the lease or rental agreement for the housing accommodation occupied by the tenant, the tenant shall not be required to renew such lease, or rental agreement, for the ancillary service upon the expiration of such lease or rental agreement.
 - (iii) Where an ancillary service is provided to a tenant pursuant to a lease or rental agreement for a housing accommodation, whether at a charge separate and apart from the rental of the housing accommodation, or included in the legal regulated rent, the tenant may be required to renew the rental term for the ancillary service upon the renewal of the lease for the housing accommodation. However, where the owner requires a tenant to continue such ancillary service, the owner may not unreasonably withhold consent to the tenant to sublet for the term of each renewal lease, the space or other facility constituting the ancillary service.
 - (iv) For housing accommodations located in hotels, where telephone switchboard service is not provided or required to be provided pursuant to paragraph (2) of this subdivision, an owner shall not deny a permanent tenant permission to install a private telephone, provided that such installation shall not cause undue economic hardship to the owner, nor shall an owner cause the removal of a pay telephone from the premises.
- (4) The base dates for required services shall be:
- (i) for housing accommodations subject to the RSL on June 30, 1974, for building-wide and individual dwelling unit services: May 31, 1968;
 - (ii) for housing accommodations subject to the RSL pursuant to section 421-a of the Real Property Tax Law, for building wide and individual dwelling unit services: the date of issuance of the initial Certificate of Occupancy;
 - (iii) for housing accommodations subject to the RSL on June 30, 1971, and exempted thereafter as a result of a vacancy prior to June 30, 1974, for building-wide services: May 31, 1968; for individual dwelling unit services: May 29, 1974;
 - (iv) for dwelling units which became subject to the RSL on July 1, 1974, pursuant to section 423 of the Real Property Tax Law, for building-wide and individual unit services: May 29, 1974, except that for housing accommodations in the Riverton Apartments at East 138th Street, Manhattan, which became subject to the RSL

on July 1, 1974, pursuant to an initial legal regulated rent date of June 30, 1973, for building-wide and individual dwelling unit services: June 30, 1973;

- (v) for housing accommodations which are subject to this Code solely as a condition of receiving or continuing to receive benefits pursuant to section 11-243 (formerly J51-2.5) or 11-244 (formerly J51-5.0) of the Administrative Code of the City of New York, as amended, for building-wide and individual unit services: January 1, 1976, or the date of the issuance of a Certificate of Reasonable Cost, whichever is later;
- (vi) for housing accommodations for which rents are established by governmental agencies pursuant to the PHFL, or which are first made subject to this Code pursuant to the PHFL, the building-wide and individual unit services which were required for approval in connection with the establishment of initial rents pursuant to the PHFL: the effective date of the initial rents;
- (vii) for housing accommodations whose rentals were previously regulated under the PHFL or any other State or Federal law, other than the RSL or the City Rent Law: the date such regulation ends;
- (viii) for housing accommodations contained in Class B multiple dwelling units, including single room occupancy facilities, rooming houses or rooming units made subject to the ETPA on June 4, 1981, for building-wide and individual dwelling unit services: June 4, 1981;
- (ix) for housing accommodations which are first made subject to this Code pursuant to article 7-C of the MDL, for building-wide and individual dwelling unit services: the effective date of the initial rents established by the Loft Board;
- (x) for all other housing accommodations not subject to the RSL on June 30, 1974, which become subject to the RSL on or after July 1, 1974 pursuant to the ETPA, for building-wide and individual dwelling unit services: May 29, 1974.

A service as defined in paragraph (3) of this subdivision for which there is or was a separate charge, shall not be subject to the provisions of this Code where no common ownership between the operator of such service and the owner exists or existed on the applicable base date, or at any time subsequent thereto, and such service is or was provided on the applicable base date and at all times thereafter by an independent contractor pursuant to a contract or agreement with the owner. Where, however, on the applicable base date or at any time subsequent thereto, there is or was a separate charge, and there is or was common ownership, directly or indirectly, between the operator of such service and the owner, or the service was provided by the owner, any increase, other than the charge provided in the initial agreement with a tenant to lease, rent or pay for such service, shall conform to the applicable rent guidelines rate. However, notwithstanding such common ownership, where such service was not provided primarily for the use of tenants in the building or building complex on the applicable base date or at any time subsequent thereto, such increases shall not be subject to any guidelines limitations.

- (5) Each housing accommodation must be painted at least once every three years in compliance with title 27 of the Administrative Code of the City of New York (the

Housing Maintenance Code). In no event shall a tenant be required to pay a painting deposit or to contribute to the cost of the painting except to the extent the owner agrees to provide services in connection with the painting which are not required, and the tenant consents in writing to pay therefor. Any painting deposit previously required shall be returned to the tenant on renewal of his or her lease.

- (s) Documents. Records, books, accounts, correspondence, memoranda and other documents, and copies, including microphotographic copies, of any of the foregoing.
- (t) Final order. A final order shall be an order of a rent administrator not appealed to the commissioner within the period authorized pursuant to section 2529.2 of this Title, or an order of the commissioner.

§ 2520.7. Effective date.

In accordance with the provisions of the State Administrative Procedure Act, this Code shall be effective May 1, 1987, and all amendments to this Code shall become effective in accordance with the State Administrative Procedure Act. Where implementation of a provision would require new or significantly revised filing procedures or notice requirements, the DHCR may postpone implementation of such provision, as required, for up to 180 days after the effective date of this Code, by an advisory opinion issued pursuant to section 2527.11 of this Title, which shall be available to the public on such effective date. Where such postponement is deemed necessary, current filing procedures, notice requirements, or forms, if any, may be utilized until revision thereof.

§ 2520.8. Amendment or revocation.

Any provision of this Code may be amended or revoked at any time in accordance with the procedure set forth in chapter 888 of the Laws of New York for the year 1985, or as otherwise provided by the State Administrative Procedure Act.

§ 2520.9. Filing of amendments.

Such amendment or revocation shall be filed with the Secretary of State and shall take effect upon the date of filing unless otherwise specified therein or as otherwise provided by the State Administrative Procedure Act.

§ 2520.10. Separability.

If any provision of this Code or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of this Code and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§ 2520.11. Applicability.

This Code shall apply to all or any class or classes of housing accommodations made subject to regulation pursuant to the RSL or any other provision of law, except the following housing accommodations for so long as they maintain the status indicated below:

- (a) housing accommodations subject to the City Rent Law;

- (b) housing accommodations owned, operated or leased by the United States, the State of New York, any political subdivision, agency or instrumentality thereof, any municipality or any public housing authority;
- (c) housing accommodations for which rentals are fixed by the DHCR or HPD, unless, after the establishment of initial rents, the housing accommodations are made subject to the RSL pursuant to applicable law, or housing accommodations subject to the supervision of the DHCR or HPD under other provisions of law or the New York State Urban Development Corporation, or buildings aided by government insurance under any provision of the National Housing Act to the extent the RSL or any regulation or order issued thereunder is inconsistent with such act. However, housing accommodations in buildings completed or substantially rehabilitated prior to January 1, 1974, and whose rentals were previously regulated under the PHFL or any other State or Federal law, other than the RSL or the City Rent Law, shall become subject to the ETPA, the RSL and this Code, upon the termination of such regulation. An owner of such housing accommodations shall not be eligible for a rent adjustment pursuant to section 2522.4(b) or (c) of this Title, for a period of three years, where such owner would not qualify for such rent adjustment in the absence of a voluntary dissolution, termination, or reconstitution pursuant to the PHFL or other State or Federal laws;
- (d) buildings containing fewer than six housing accommodations on the date the building first became subject to the RSL, unless such buildings are otherwise subject to this Code pursuant to the RSL or other statutes and regulations; for the purposes of this subdivision, a building shall be deemed to contain six or more housing accommodations if it was part of a multiple family garden-type maisonette dwelling complex containing six or more housing accommodations having common facilities such as a sewer line, water main or heating plant and was operated as a unit under common ownership on the date the building or complex first became subject to the RSL, notwithstanding that Certificates of Occupancy were issued for portions thereof as one- or two-family dwellings;
- (e) housing accommodations in buildings completed or buildings substantially rehabilitated as family units on or after January 1, 1974, except such buildings which are made subject to this Code by provision of the RSL or any other statute;
- (f) housing accommodations owned, operated, or leased or rented pursuant to governmental funding, by a hospital, convent, monastery, asylum, public institution, or college or school dormitory or any institution operated exclusively for charitable or educational purposes on a nonprofit basis, and occupied by a tenant whose initial occupancy is contingent upon an affiliation with such institution; however, a housing accommodation occupied by a nonaffiliated tenant shall be subject to the RSL and this Code;
- (g) rooms or other housing accommodations in hotels where such housing accommodations (1) are used for transient occupancy; (2) were rented on May 31, 1968 for more than \$350 per month or \$88 per week; or (3) are contained in a hotel which was constructed after July 1, 1969;
- (h) any motor court, or any part thereof, any trailer, or trailer space used exclusively for transient occupancy or any part thereof; or any tourist home serving transient guests

exclusively, or any part thereof. The term "tourist home" shall mean a rooming house which caters primarily to transient guests and is known in the community as a tourist home;

- (i) nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house, but only if:
 - (1) no more than two tenants for whom rent is paid (husband and wife being considered one tenant for this purpose), who are not members of the owner's immediate family, live in such dwelling unit; and
 - (2) the remaining portion of such dwelling unit is occupied by the owner or his or her immediate family; provided that this exemption shall not apply where the tenancy commenced prior to July 1, 1971;
- (j) housing accommodations in buildings operated exclusively for charitable purposes on a nonprofit basis;
- (k) housing accommodations which are not occupied by the tenant, not including subtenants or occupants, as his or her primary residence as determined by a court of competent jurisdiction;
- (l) housing accommodations contained in buildings owned as cooperatives or condominiums on or before June 30, 1974; or thereafter, as provided in section 352-eeee of the General Business Law in accordance with section 2522.5(h) of this Title;
- (m) housing accommodations occupied by domestic servants, superintendents, caretakers, managers or other employees to whom the space is provided as part or all of their compensation without payment of rent and who are employed for the purpose of rendering services in connection with the premises of which the housing accommodation is a part;
- (n) housing accommodations used exclusively for professional, commercial, or other nonresidential purposes;
- (o) housing accommodations in buildings completed or substantially rehabilitated as family units on or after January 1, 1974, or located in a building containing less than six housing accommodations, and which were originally made subject to regulation solely as a condition of receiving tax benefits pursuant to section 11-243 (formerly J51-2.5) or section 11-244 (formerly J51-5.0) of the Administrative Code of the City of New York, as amended, or article XVIII of the PHFL; and thereafter receipt of such tax benefits has concluded pursuant to these sections or article XVIII, and:
 - (1) for housing accommodations which were subject to the RSL pursuant to section 11-243(formerly J51-2.5) or section 11-244 (formerly J51-5.0) or PHFL article XVIII became vacant; or
 - (2) for housing accommodations which received benefits pursuant to section 11-243 (formerly J51-2.5) or section 11-244 (formerly J51-5.0) or article XVIII of the PHFL, each lease and each renewal thereof of the tenant in residence at the time of the expiration of the tax benefit period includes a notice, in at least 12-point type informing such tenant that the housing accommodation shall become deregulated upon the expiration of the last lease or rental agreement entered into during the tax benefit

period, and states the approximate date on which such tax benefit period is scheduled to expire;

- (p) housing accommodations in buildings completed or substantially rehabilitated as family units on or after January 1, 1974 or located in a building containing less than six housing accommodations, and which were originally made subject to regulation solely as a condition of receiving tax benefits pursuant to section 421-a of the Real Property Tax Law, as amended, and:
 - (1) the housing accommodations which were subject to the RSL pursuant to section 421-a became vacant; or
 - (2) for housing accommodations which first became subject to the rent stabilization requirements of section 42 I-a after July 3, 1984, where each lease and each renewal thereof of the tenant in occupancy at the time the period of tax exemption pursuant to section 421-a expires, contains a notice in at least 12-point type informing such tenant that the housing accommodation shall become deregulated upon the expiration of the last lease or rental agreement entered into during the tax benefit period and states the approximate date on which such tax benefit period is scheduled to expire;
- (q) housing accommodations which would otherwise be subject to rent regulation solely by reason of the provisions of article 7-C of the MDL requiring rent regulation, but which are exempted from such provisions pursuant to section 286(6) and 286(12) of the MDL;
- (r) housing accommodations exempted pursuant to any other provision of law.

§ 2520.12. Effect of this Code on leases and other rental agreements.

The provisions of any lease or other rental agreement shall remain in force pursuant to the terms thereof, except insofar as those provisions are inconsistent with the ETPA, the RSL or this Code, and in such event such provisions shall be void and unenforceable. For housing accommodations made subject to the RSL and this Code pursuant to section 2520.11 (c) of this Part, where such leases or rental agreements are so inconsistent as to render them ineffective in defining the rights and duties of tenants and owners, the DHCR may order the provision of new leases consistent with the ETPA, the RSL and this Code. No renewal lease or vacancy lease offered to a tenant shall contain any right of cancellation or eviction by the owner during the term thereof except as provided for by the ETPA, the RSL or this Code

§ 2520.13. Waiver of benefit void.

An agreement by the tenant to waive the benefit of any provision of the RSL or this Code is void; provided, however, that based upon a negotiated settlement between the parties and with the approval of the DHCR, or a court of competent jurisdiction where a tenant is represented by counsel, a tenant may withdraw, with prejudice, any complaint pending before the DHCR. Such settlement shall not be binding upon any subsequent tenant, except to the extent that the complaint being settled is subject to the time limitations set forth in the RSL and this Code.

PART 2521--LEGAL REGISTERED AND REGULATED RENTS

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§ 2521.1. Initial legal registered rents for housing accommodations.

- (a) (1) For housing accommodations which on March 31, 1984 were subject to the City Rent Law, and became vacant after that date, and which are no longer subject to the City Rent Law, and are rented thereafter subject to the RSL, the initial legal registered rent shall be the rent agreed to by the owner and the tenant and reserved in a lease or provided for in a rental agreement subject to the provisions of this Code, provided that such rent is registered with the DHCR pursuant to Part 2528 of this Title, and subject to a tenant's right to a Fair Market Rent Appeal to adjust such rent pursuant to section 2522.3 of this Title.
 - (2) For housing accommodations which on March 31, 1984 were subject to the penalties provided in former section YY51-4.0 of the Administrative Code of the City of New York, and which become vacant thereafter, the initial legal registered rent for the first rent stabilized tenant shall be the rent established by the DHCR for the prior tenant, increased by the guidelines rate of rent adjustments applicable to the new lease plus such other rent increases as are authorized pursuant to section 2522.4 of this Title, and shall not be subject to a Fair Market Rent Appeal pursuant to section 2522.3 of this Title.
- (b) For those housing accommodations for which the tenant files a timely challenge in accordance with section 2526.1(a)(3)(ii) of this Title to the initial legal registered rent, such rent shall be determined by the DHCR as follows:
 - (1) For housing accommodations other than in hotels, the rent charged paid on April 1, 1980, plus the lawful increases charged and paid up to March 31, 1984; for housing accommodations not required to be registered by June 30, 1984, the rent charged and paid four years prior to the date the housing accommodation was first required to be registered plus such lawful increases and adjustments charged and paid up to the date immediately prior to the registration date as determined by the DHCR.
 - (2) For housing accommodations located in hotels, the rent charged and paid on April 1, 1980 plus the lawful increases charged and paid up to March 31, 1984; or for housing accommodations not required to be registered by June 30, 1984, the rent charged and paid four years prior to the date the housing accommodation was first required to be registered plus such lawful increases and adjustments charged and paid up to the date

immediately prior to the registration date as determined by the DHCR; provided, however, that with respect to any vacancy lease or vacancy rental agreement entered into prior to August 15, 1983, following a voluntary vacancy, the initial legal registered rent shall be the rent charged and paid upon such renting, plus subsequent lawful increases and adjustments charged and paid from April 1, 1980 up to March 31, 1984. If any vacant housing accommodation is rented on or after August 15, 1983, the initial legal registered rent shall be the lawful rent paid by the most recent prior tenant plus any subsequent lawful increases and adjustments, or if there has never been a prior tenant, the initial legal registered rent shall be the rent paid by the most recent hotel occupant, plus any subsequent lawful increases and adjustments.

- (c) For all other housing accommodations subject to the RSL where a timely challenge was not made as provided for in subdivision (b) of this section, the initial legal registered rent shall be:
 - (1) for those housing accommodations required to be registered by June 30, 1984, the rent charged and paid as of April 1, 1984; or
 - (2) for those housing accommodations not required to be registered by June 30, 1984, the rent charged and paid on the date the housing accommodation became subject to the registration requirements of the DHCR.
- (d)
 - (1) Notwithstanding the provisions of subdivision (c) of this section, the initial legal registered rent for a housing accommodation for which an overcharge complaint or a Fair Market Rent Appeal was filed by a tenant prior to April 1, 1984, and not finally determined prior thereto, shall be the April 1, 1984 rent as subsequently determined by the DHCR. Such determination will be based upon the law or code provision in effect on March 31, 1984.
 - (2) Upon determination of the initial legal registered rent in paragraph (1) of this subdivision, legal regulated rents subsequent to April 1, 1984 shall be determined in accordance with section 2521.2(a) of this Part.
- (e) The initial legal registered rent for a housing accommodation first made subject to the RSL and this Code pursuant to article 7-C of the MDL shall be the rent established by the Loft Board under section 286(4) of the MDL applicable to a lease offered pursuant to MDL section 286(3). Such rent shall not be subject to the proceedings described in section 2522.3 of this Title. Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal registered rent, the owner may request that the next lease rental be the initial legal registered rent plus the allowable increase established by the Rent Guidelines Board, and such other rent increases as are authorized pursuant to section 2522.4 of this Title.
- (f) Notwithstanding the provisions of any outstanding lease or other rental agreement, the initial legal registered rent for a housing accommodation in a multiple dwelling for which a loan is made under the PHFL shall be the initial rent established pursuant to such law. Such rent, whether or not the housing accommodation was previously subject to the RSL, shall not be subject to the proceeding described in section 2522.3 of this Title. Such rent for housing accommodations occupied prior to the granting of the loan made pursuant to the PHFL shall take effect on the date specified in the order establishing the rent.

Notwithstanding any other provision of the RSL or this Code, the owner of such housing accommodation shall offer any tenant in occupancy on such effective date or upon initial occupancy a one- or two-year lease at the tenant's option at such rent, which offer shall be made as soon as practicable after such rent is established, whether or not the rent has taken or is then permitted to take effect; and refusal of such tenant to sign such lease, at such rent, and otherwise upon the same terms and conditions as the expiring lease, if any, shall constitute grounds for an action or proceeding to evict and recover possession of the housing accommodation; provided, however, that following the tenant's receipt of the offer of such lease at such rent as lawfully established, a tenant in occupancy on such date shall be allowed 30 days to sign such lease and, if during such 30-day period, such tenant gives the owner written notice of an intention to terminate such tenancy and pays the rent established pursuant to law for such month and for any extended period, the tenant shall not be required to surrender the housing accommodation until 60 days after receipt of such offer. Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal registered rent, the owner may request that the next lease rental be the initial legal registered rent plus the allowable increase established by the Rent Guidelines Board.

- (g) Notwithstanding any other provision of this Code, the initial legal registered rent for a housing accommodation first made subject to the RSL and this Code pursuant to article XIV of the PHFL or section 2429 of article 8 of the Public Authorities Law shall be the rent established pursuant to law which reflects the improvements or rehabilitation and shall be subject to subsequent adjustment by the DHCR. Such rent shall not be subject to the proceedings described in section 2522.3 of this Title. Notwithstanding any other provision of the RSL or this Code: the owner of such housing accommodation shall offer a tenant in occupancy who first became subject to the RSL and this Code on the effective date of such rent a one- or two-year lease at the tenant's option at such rent, which offer shall be made as soon as practicable after such rent is effective; and refusal of such tenant to sign such lease at such rent, and otherwise upon the same terms and conditions as the expiring lease, if any, shall constitute grounds for an action or proceeding to evict and recover possession of the housing accommodation; provided, however, that following tenant's receipt of the offer of such lease at such rent, a tenant in occupancy on such effective date shall be allowed 30 days to sign such lease and, if during such 30-day period, such tenant gives the owner written notice of an intention to terminate such tenancy and pays the rent established pursuant to law while in occupancy, the tenant shall not be required to surrender the housing accommodation until 60 days after receipt of such offer. Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal registered rent, the owner may request that the next lease rental be the initial legal registered rent plus the allowable increase established by the Rent Guidelines Board.
- (h) If a housing accommodation is rehabilitated pursuant to either article XIV of the PHFL or section 2429 of article 8 of the Public Authorities Law, and article XV of the PHFL, the provisions in subdivision (f) of this section shall apply, rather than the provisions of subdivision (g), if HPD elects to establish rents for the housing accommodation pursuant to article XV of the PHFL.
- (i) The initial legal registered rent for a housing accommodation constructed pursuant to section 421-a of the Real Property Tax Law shall be the initial adjusted monthly rent

charged and paid but not higher than the rent approved by HPD pursuant to such section for the housing accommodation or the lawful rent charged and paid on April 1, 1984, whichever is later.

- (j) The initial legal registered rent for housing accommodations subject this Code solely as a condition of receiving or continuing to receive benefits pursuant to section 11-243 (formerly J51-2.5) or 11-244 (formerly J51-5.0) of the Administrative Code, as amended, shall be the rent charged the initial rent-stabilized tenant or the lawful rent charged and paid on April 1, 1984, whichever is later, and shall not be subject to a Fair Market Rent Appeal pursuant to section 2522.3 of this Title. However, as to any housing accommodation which previously received tax benefits pursuant to section 11-243 (formerly J51-2.5) or 11-244 (formerly J51-5.0), was not covered by the provisions of the RSL on June 18, 1985, and was made subject to such law by the provisions of chapters 288 and 289 of the Laws of New York for the year 1985 (as amended), the initial legal registered rent shall be the rent charged and paid on May 30, 1985, or the maximum rent which could have been charged if the housing accommodation had been continuously subject to the RSL for the entire tenancy of the tenant in occupancy on May 30, 1985, whichever is greater.
- (k) Notwithstanding the provisions of the RSL or any other provision of this Code, the initial legal registered rent upon completion of the rehabilitation of a Class B multiple dwelling, Class A multiple dwelling used for single-room occupancy purposes, lodging house or a substantially vacant building intended to be used after rehabilitation for single-room occupancy purposes for which a loan is made for such rehabilitation on or after September 1, 1985, under article VIII or VIII-A of the PHFL, shall be the initial rent established by HPD pursuant to such law. Such rent, whether or not the housing accommodation was previously subject to the RSL, shall not be subject to the proceeding described in section 2522.3 of this Title. Such rent shall take effect on the date specified in the order establishing the rent. Notwithstanding the provisions of the RSL or any other provision of this Code, the owner of such housing accommodation shall offer any tenant in occupancy on such effective date a one or two-year lease, at the tenant's option, at such rent, which offer shall be made as soon as practicable after such rent is established. Refusal of such tenant to sign such lease at such rent, and otherwise upon the same terms and conditions as the expiring lease, if any, shall constitute grounds for an action or proceeding to evict and recover possession of the housing accommodation; provided, however, that following the tenant's receipt of the offer of such lease at such rent as lawfully established, a tenant in occupancy on such date shall be allowed 30 days to sign such lease and, if during such 30-day period, such tenant gives the owner written notice of an intention to terminate such tenancy and pay the rent established pursuant to law for such month and for any extended period, the tenant shall not be required to surrender the housing accommodation until 60 days after receipt of such lease offer. Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal registered rent, the owner may request that the next lease rental be the initial legal registered rent plus the allowable increase established by the Rent Guidelines Board, and such other rent increases as are authorized pursuant to section 2522.4 of this Title.
- (l) For housing accommodations whose rentals were previously regulated under the PHFL, or any other State or Federal law, other than the RSL or the City Rent Law, upon the termination of such regulation, the initial legal registered rent shall be the rent charged to

and paid by the tenant in occupancy on the date such regulation ends. For housing accommodations which are vacant on the date the building first became subject to the RSL and this Code, such rent shall be the rent charged and paid by the most recent tenant, in addition to rental subsidies, if any, which shall be subject to vacancy guidelines increases, and shall not be subject to a Fair Market Rent Appeal pursuant to section 2522.3 of this Title.

- (m) Notwithstanding any other provision of this Code, except as provided in paragraph (2) of this subdivision, governmental agencies or public benefit corporations may enter into an agreement with the DHCR, which shall be incorporated into an order of the DHCR, setting forth the conditions under which:
- (1) projects receiving assistance or financing from such agencies may register higher and lower initial legal rents for units subject to occupancy and rent restrictions by such agencies, which rents may then be adjusted pursuant to the RSL and this Code, and shall not be subject to the proceedings described in section 2522.3 of this Title; or
 - (2) projects whose rentals were previously regulated under the PHFL or any other State or Federal law, other than the RSL or the City Rent Law, upon the date when such regulation ends, may register higher and lower initial legal rents for units which have been subject to occupancy and rent restrictions pursuant to such laws, which rents may then be adjusted pursuant to the RSL and this Code, and shall not be subject to the proceedings described in section 2522.3 of this Title. Where the DHCR was the agency regulating rentals pursuant to the PHFL, such terms and conditions shall be incorporated into an order of the DHCR.

Such agreement or order shall also set forth the conditions under which the higher and lower legal regulated rents may be charged, with due consideration of equities as set forth in section 2522.7 of this Title.

§ 2521.2. Legal regulated rents for housing accommodations.

- (a) The legal regulated rent shall be the initial legal registered rent first established pursuant to section 2521.1 of this Part, and thereafter shall be the initial legal registered rent as it may be adjusted pursuant to the RSL and this Code, or the rent stated in the annual registration statement filed four years prior to the most recent registration statement as adjusted pursuant to the RSL and this Code, whichever is later.
- (b) Where the legal regulated rent is established and a rent lower than the legal regulated rent is charged and paid by the tenant, upon vacancy of such tenant, the legal regulated rent previously established plus the most recent applicable guidelines increases, plus such other rent increases as are authorized pursuant to section 2522.4 of this Title, may be charged a new tenant.

§ 2521.3. Classification of buildings.

- (a) Upon application by a tenant or owner, the DHCR shall issue an order determining a building's classification based upon the services provided and other relevant factors. Except as provided in subdivisions (c) and (d) of this section, if it is determined that such building is not a hotel, the DHCR shall classify the building as an apartment building unless the

owner restores sufficient services to maintain a hotel classification in accordance with subdivision (b) of this section. If the building is reclassified, then the housing accommodations therein shall thereafter be subject to the provisions of this Code applicable to apartment buildings, at the legal regulated rent for each housing accommodation as determined by the order of the DHCR, plus lawful increases and adjustments allowed pursuant to this Code. In order for an owner to retain or continue the building's classification as a hotel, he or she must provide, in addition to any other services he or she is or was providing pursuant to section 2520.6(r) of this Title, all four of the following services:

- (1) maid service, consisting of general housecleaning at a frequency of at least once a week;
 - (2) linen service, consisting of providing clean linens at a frequency of at least once a week;
 - (3) furniture and furnishings, including at a minimum a bed, lamps, storage facilities for clothing, chair and mirror in a bedroom; such furniture to be maintained by the hotel owner in reasonable condition; and
 - (4) lobby staffed 24 hours a day, seven days a week by at least one employee.
- (b) A building's classification as a hotel will not be retained or continued where the DHCR determines that 51 percent of the permanent tenants are not receiving maid and linen service, except that all tenants receiving such services shall be entitled to receive the services for the duration of their occupancy. Where an owner is providing maid and linen service to 51 percent of the permanent tenants and the owner wishes to maintain the building's classification as a hotel, the owner shall be afforded 90 days to restore all four hotel services described above, without any additional rent increase for such services, to all of the buildings permanent tenants, except that those tenants whose housing accommodations were rented to them as apartment (not hotel) housing accommodations shall have the option of rejecting restoration of hotel services and be subject to the RSL, pursuant to the provisions of this Code applicable to apartment buildings, until they vacate, at which time the owner shall be required to restore hotel services to the housing accommodations.
- (c) Notwithstanding the provisions of subdivision (a) of this section, single-room occupancy facilities such as single-room occupancy hotels or rooming houses, as defined in the MDL, shall not be subject to reclassification pursuant to this section. However, such housing accommodations shall be included in the definition of hotel as set forth in section 2520.6(b) of this Title for all other purposes of this Code, except that the four minimum services enumerated in such section shall not be required to be provided unless such services were provided on the applicable base dates pursuant to section 2520.6(r)(4) of this Title.
- (d) Notwithstanding the provisions of subdivision (a) of this section, the DHCR may decline to reclassify a hotel to apartment building status if it finds that the owner has reduced any of the four hotel services listed in such subdivision (a) for the purpose of reclassification of the building.

PART 2522--RENT ADJUSTMENTS

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§ 2522.1. Legal regulated rent adjustments.

Legal regulated rents may be increased or decreased only as hereinafter specified.

§ 2522.2. Effective date of adjustment of legal regulated rents.

The legal regulated rent shall be adjusted effective the first rent payment date occurring 30 days after the filing of the application, unless otherwise set forth in the order, or as set forth in a Notice of Eligibility pursuant to section 2522.4(a)(3)(ii) of this Part, or on the effective date of a lease or other rental agreement providing for the Rent Guidelines Board annual rate of adjustments. No rent adjustment may take place during a lease term unless a clause in the lease authorizes such increase.

§ 2522.3. Fair Market Rent Appeal.

- (a) Except as provided in section 2521.1(a)(2) of this Title, an appeal of the initial legal registered rent on the ground that it exceeds the fair market rent for the housing accommodation may be filed with the DHCR by the tenant of a housing accommodation which was subject to the City Rent Law on December 31, 1973. If the housing accommodation was registered in accordance with Part 2528 of this Title, this right is limited to the first tenant taking occupancy on or after April 1, 1984, except where such tenant had vacated the housing accommodation prior to the service by the owner of the Notice of initial Legal Registered Rent as required by section 2523.1 of this Title. In such event, any subsequent tenant in occupancy shall also have a right to file a Fair Market Rent Appeal until the owner mails the required notice and 90 days shall have elapsed without the filing of an appeal by a tenant continuing in occupancy during said 90-day period. Once a Fair Market Rent Appeal is filed, no subsequent tenant may file such appeal. Notwithstanding the above, where the first tenant taking occupancy after December 31, 1973, of a housing accommodation previously subject to the City Rent Law, was served

with the notice required by section 26 of the former code of the Rent Stabilization Association of New York City, Inc., the time within which such tenant may file a Fair Market Rent Appeal is limited to 90 days after such notice was mailed to the tenant by the owner by certified mail.

- (b) The tenant need only allege in such appeal:
 - (1) that the initial legal registered rent is in excess of the fair market rent; and
 - (2) such facts which, to the best of his or her information and belief, support such allegation.
- (c) Such appeal shall be dismissed where:
 - (1) the housing accommodation was subject to the City Rent Law prior to July 1, 1971, and the initial legal registered rent does not exceed the maximum rent as calculated pursuant to the City Rent Law for the period commencing January 1, 1974 and ending December 31, 1975, whether or not the housing accommodation was subject to the City Rent Law on that date, plus the appropriate guidelines allowance permissible for renewal leases pursuant to Guidelines Board Order No. 6 issued June 28, 1974 and effective July 1, 1974, and Order No. 6C issued February 7, 1975 and effective July 1, 1974, for any lease or other rental agreement commencing on or after January 1, 1974; or
 - (2) the appeal is filed more than 90 days after the certified mailing to the tenant of the initial apartment registration, together with the notice pursuant to section 2523.1 of this Title.
- (d) The order shall direct the affected owner to make the refund of any excess rent to the tenant in cash, check or money order, and to the extent the present owner is liable for all or any part of the refund, such present owner may credit such refund against future rents over a period not in excess of six months. If the refund exceeds the total rent due for six months, the tenant at his or her option may continue to abate his or her rent until the refund is fully credited, or request the present owner to refund any balance outstanding at the end of such six-month period.
- (e) In determining Fair Market Rent Appeals, consideration shall be given to the applicable guidelines promulgated for such purposes by the Rent Guidelines Board and to rents generally prevailing for substantially similar housing accommodations in buildings located in the same area as the housing accommodation involved. The rents for these comparable housing accommodations may be considered where such rents are:
 - (1) legal regulated rents, for which the time to file a Fair Market Rent Appeal has expired and no Fair Market Rent Appeal is then pending, or the Fair Market Rent Appeal has been finally determined, charged pursuant to a lease commencing within a four-year period prior to, or a one-year period subsequent to, the commencement date of the initial lease for the housing accommodation involved; and
 - (2) at the owner's option, market rents in effect for other comparable housing accommodations on the date of the initial lease for the housing accommodation involved as submitted by the owner.

- (f) Where the rents of the comparable housing accommodations being considered are legal regulated rents, for which the time to file a Fair Market Rent Appeal has expired, and such rents are charged pursuant to a lease ending more than one year prior to the commencement date of the initial lease for the subject housing accommodation, such rents shall be updated by guidelines increases for one-year renewal leases, commencing with the expiration of the initial lease for the comparable housing accommodation to a date within 12 months prior to the renting of the housing accommodation involved

§ 2522.4. Adjustment of legal regulated rent.

- (a) Increased space and services, new equipment, new furniture or furnishings; major capital improvements; other adjustments.
 - (1) An owner is entitled to a rent increase where there has been a substantial increase, other than an increase for which an adjustment may be claimed pursuant to paragraph (2) of this subdivision, of dwelling space or an increase in the services, or installation of new equipment or improvements, or new furniture or furnishings, provided in or to the tenant's housing accommodation, on written tenant consent to the rent increase. In the case of vacant housing accommodations, tenant consent shall not be required.
 - (2) An owner may file an application to increase the legal regulated rents of the building or building complex on forms prescribed by the DHCR, which the DHCR shall serve upon all affected tenants, on one or more of the following grounds:
 - (i) There has been a major capital improvement, including an installation, which must meet all of the following criteria:
 - (a) deemed depreciable under the Internal Revenue Code, other than for ordinary repairs;
 - (b) is for the operation, preservation and maintenance of the structure;
 - (c) is an improvement to the building or to the building complex which inures directly or indirectly to the benefit of all tenants, and which includes the same work performed in all similar components of the building or building complex, unless the owner can satisfactorily demonstrate to the DHCR that certain of such similar components did not require improvement; and
 - (d) the item being replaced meets the requirements set forth in the useful life schedule, except with DHCR approval of a waiver. Pursuant to section 2527.11 of this Title, the DHCR shall issue a useful life schedule in accordance with manufacturing industry standards, which shall also set forth the conditions under which a useful life requirement may be waived.
 - (ii) There has been other necessary work performed in connection with, and directly related to a major capital improvement, which may be included in the computation of an increase in the legal regulated rent only if such other necessary work was completed within a reasonable time after the completion of the major capital improvement to which it relates. Such other necessary work must:
 - (a) improve, restore or preserve the quality of the structure; and

- (b) have been completed subsequent to, or contemporaneously with, the completion of the work for the major capital improvement.
 - (iii) With approval by the DHCR, there has been an increase in services or improvement, other than repairs, on a building-wide basis, which the owner can demonstrate are necessary in order to comply with a specific requirement of law.
 - (iv) With approval by the DHCR, there have been other improvements made or services provided to the building or building complex, other than those specified in subparagraphs (i)-(iii) of this paragraph, with the express consent of the tenants in occupancy of at least 75 percent of the housing accommodations.
- (3) An owner who files a complete application with the DHCR for an increase authorized pursuant to subparagraph (2)(i) of this subdivision which meets the requirements of such subparagraph may begin to collect such increase in the legal regulated rent prior to the issuance of an order granting the increase, provided that:
- (i) to be complete, such application must:
 - (a) contain an itemized list of the work performed;
 - (b) contain a certification of the cost of such work from the contractors, architect, certified public accountant, engineer or governmental agency; and that the item meets the requirements set forth in the useful life schedule, or a copy of a DHCR approval of a waiver of such useful life requirement is attached;
 - (c) contain proof of payment for such work the cost of which is certified pursuant to clause (b) of this subparagraph;
 - (d) contain the owner's sworn affidavit as to the completion of the installation or improvement in accordance with the itemization list and the certified costs, that all applicable governmental codes and regulations have been complied with, the installation or improvement has been properly performed in a workmanlike manner, and the truthfulness of all information submitted with the application;
 - (e) contain copies of all necessary governmental agency approvals or self-certification by a duly licensed architect or engineer as may be permitted by such governmental agency; and
 - (f) be for an improvement or installation of an item which is included on the following schedule, or such other improvement or installation to the building or building complex for the operation, preservation and maintenance of the structure as may be deemed necessary by the DHCR for the continued viability of the building as specified in an operational bulletin issued pursuant to section 2527.11 of this Title.

SCHEDULE OF MAJOR CAPITAL IMPROVEMENTS

1. Air conditioner--new central system; or individual units set in sleeves in the exterior wall of every housing accommodation; or, air conditioning circuits and outlets in each living room and/or bedroom (see Rewiring).
2. Aluminum siding--installed in a uniform manner on all exposed sides of the building (see Resurfacing).
3. Bathroom modernization--complete renovation, including new sinks, toilets, bathtubs and/or showers and all required trims in every housing accommodation.
4. Boiler and/or burner--new unit(s) including electrical work and additional components needed for the installation.
5. Boiler room--new room where none existed before; or enlargement of existing one to accommodate new boiler.
6. Catwalk--complete replacement.
7. Chimney--complete replacement, or new one where none existed before, including additional components needed for the installation.
8. Courtyard and walkways--concrete resurfacing of entire original area within the property lines of the premises.
9. Doors--new lobby front entrance and/or vestibule doors; or entrance to every housing accommodation, or fireproof doors for public hallways, basement, boiler room and roof bulkhead.
10. Elevator upgrading--including new controllers and selectors; or new electronic dispatch overlay system; or new elevator where none existed before, including additional components needed for the installation.
11. Fire escapes--complete new replacement, including new landings.
12. Gas heating units--new individual units with connecting pipes to every housing accommodation.
13. Hot water heater--new unit for central heating system.
14. Incinerator upgrading--including a new scrubber.
15. Intercom system--new replacement; or one where one existed before, with automatic door locks and push-button speaker boxes and/or telephone communication, including security locks on all entrances to the building.
16. Kitchen modernization--complete renovation, including new sinks, counter tops and cabinets in every housing accommodation.
17. Mailboxes--new replacements and relocated from outer vestibule to an area behind locked doors to increase security.
18. Painting and waterproofing--as necessary on exposed sides of the building.
19. Parapet--complete replacement.

20. Repiping--new hot and/or cold water risers, returns, and branches to fixtures in every housing accommodation, including shower bodies, and/or new hot and/or new cold water overhead mains, with all necessary valves in basement.
21. Resurfacing of exterior walls--consisting of brick or masonry facing on entire area of all exposed sides of the building.
22. Rewiring--new copper risers and feeders extending from property box in basement to every housing accommodation; must be of sufficient capacity (220 volts) to accommodate the installation of air conditioner circuits in living room and/or bedroom.
23. Roof--complete replacement or roof cap on existing roof installed after thorough scraping and leveling as necessary.
24. Solar heating system--new central system, including additional components needed for the system.
25. Structural steel--complete new replacement of all beams including footing and foundation.
26. Television system--new security monitoring system, including additional components needed for the system.
27. Waste compactor--new installation(s) serving entire building.
28. Waste compactor room--new room where none existed before.
29. Water tank--new installation(s) serving entire building.
30. Windows--new aluminum framed windows. Wood framed windows allowed only for landmark buildings.

- (ii) The owner or his or her representative has personally filed the completed application with the DHCR, the DHCR has served such application upon all affected tenants, the owner has thereafter received a Notice of Eligibility from the DHCR stating that the application is complete, and the DHCR has served such Notice of Eligibility upon such tenants. For the purposes of an application filed pursuant to this paragraph, the DHCR shall, within 90 days of such filing, fully review such application to insure completion pursuant to subparagraph (i) of this paragraph and shall conduct inspections where appropriate, and thereafter shall provide an owner with a Notice of Eligibility stating that the application is complete, and the effective date of the notice for the purposes of collecting the increase, or a notice of deficiency determining that the application is incomplete, and setting forth the grounds for such determination. A Notice of Eligibility shall be subject to a tenant challenge and subsequent audit by the DHCR. A tenant may file a challenge to the owner's eligibility to collect the rent increase within 60 days after the DHCR has served the tenant with a copy of the Notice of Eligibility by setting forth the grounds of his or her challenge in an answer filed with the DHCR.
- (iii) An owner, who on the effective date of this Code, has an application pending before the DHCR for an increase pursuant to subparagraph (2)(i) of this

subdivision, may begin to collect such increase upon compliance with the procedure set forth in subparagraphs (i) and (ii) of this paragraph, provided that the retroactive collectibility of the increase shall be no earlier than the first rent payment date one year prior to the filing of an application completed pursuant to such subparagraphs (i) and (ii), and shall not be collected until the DHCR has issued an order granting the increase.

- (iv) An owner who is found by the DHCR to have knowingly filed a false affidavit pursuant to clause (i)(d) of this paragraph shall not be entitled to file any future application under this paragraph, and shall be denied the increase for which the owner submitted the application. Any increased rent shall be returned to the tenant and, in addition to any penalty contained in any other provision of law, the DHCR may also impose treble damages for the rent increase collected pursuant to the Notice of Eligibility described in subparagraph (ii) of this paragraph.
- (4) The increase in the monthly stabilization rent for the affected housing accommodations when authorized pursuant to paragraph (1) of the subdivision shall be 1/40th of the total cost, including installation but excluding finance charges; and any increase pursuant to paragraphs (2) and (3) shall be 1/60th of the total cost, including installation but excluding finance charges as allocated in accordance with paragraph (12) of this subdivision. For increases pursuant to subparagraphs (2)(iii) and (iv) of this subdivision, in the discretion of the DHCR, an appropriate charge may be imposed in lieu of an amortization charge when an amortization charge is insignificant or inappropriate.
- (5) Such increases shall not be collectible during the term of a lease then in effect, unless a specific provision in the tenant's lease authorizes an increase during its term pursuant to an order issued by the DHCR, except that increases pursuant to paragraph (1) of this subdivision may be collected upon installation.
- (6) The determination of the appropriate adjustment of a legal regulated rent shall take into consideration all factors bearing on the equities involved, subject to the general limitation that the adjustment can be put into effect without dislocation and hardship inconsistent with the purposes of the RSL, and including as a factor a return of the actual cost to the owner, exclusive of interest or other carrying charges, and the increase in the rental value of the housing accommodations.
- (7) Except for applications made pursuant to paragraph (3) of this subdivision, an owner may apply for the DHCR's advisory prior opinion pursuant to section 2527.11 of this Title, as to whether the proposed work qualifies for an increase in the legal regulated rent.
- (8) No increase pursuant to paragraphs (2) and (3) of this subdivision shall be granted by the DHCR, unless an application is filed no later than two years after the completion of the installation or improvement unless the applicant can demonstrate that the application could not be made within two years due to delay, beyond the applicant's control, in obtaining required governmental approvals for which the applicant has applied within such two-year period. No increase pursuant to paragraphs (2) and (3) of

this subdivision shall be granted within the useful life of an improvement or installation for which an increase was previously granted except with prior DHCR approval for required improvements. In addition, an increase pursuant to paragraphs (2) and (3) shall not be collectible from a tenant to whom there has been issued a currently valid senior citizen rent increase exemption pursuant to section 26-509 of the Administrative Code of the City of New York, to the extent such increase causes the legal regulated rent of the housing accommodation to exceed one third of the aggregate disposable income of all members of the household residing in the housing accommodation. The collection of any increase in the legal regulated rent for any housing accommodation pursuant to paragraphs (2) and (3) shall not exceed six percent in any year from the effective date of the Notice of Eligibility or of the order granting the increase over the rent set forth in the schedule of gross rents with collectibility of any dollar excess above said sum to be spread forward in similar increments and added to the legal regulated rent as established or set in future years. In no event shall more than one six-percent increase in the legal regulated rent pursuant to paragraphs (2) and (3) be collected in the same year for the permanent, prospective rent increase, and no more than an additional six-percent increase for the temporary retroactive portion of such rent increase.

- (9) An increase for an improvement made pursuant to paragraphs (2) and (3) of this subdivision shall not be granted by the DHCR to the extent that, after a plan for the conversion of a building to cooperative or condominium ownership is declared effective, such improvement is paid for out of the cash reserve fund of the cooperative corporation or condominium association. Nothing in this paragraph shall prevent an owner from applying for, and the DHCR from granting, an increase for such improvement to the extent that the cost thereof is otherwise paid for by an owner.
- (10) The DHCR shall not grant an application pursuant to this subdivision for an increase for any improvement made pursuant to paragraphs (2) and (3) of this subdivision to the extent that the cost of such improvement is paid for by an owner with funds received pursuant to a grant from any governmental agency or entity. A low interest loan or subsidy shall not be considered a grant for the purposes of this paragraph. Nothing in this paragraph shall prevent an owner from applying for, and the DHCR from granting, an increase for such improvement to the extent that the cost thereof is otherwise paid for by an owner.
- (11) An owner who is entitled to a rent increase based upon the installation of new equipment, or new furniture or furnishings pursuant to paragraph (1) of this subdivision shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings.
- (12) Rent adjustments pursuant to paragraphs (2) and (3) of this subdivision and subdivisions (b) and (c) of this section shall be allocated as follows: The DHCR shall determine the dollar amount of the monthly rent adjustment. Such dollar amount shall be divided by the total number of rooms in the building. The amount so derived shall then be added to the rent chargeable to each housing accommodation in accordance with the number of rooms contained in such housing accommodation.

- (13) The DHCR shall not grant an owner's application for a rental adjustment pursuant to this subdivision, in whole or in part, if it is determined by the DHCR prior to the granting of approval to collect such adjustment that the owner is not maintaining all required services, or that there are current immediately hazardous violations of any municipal, county, State or Federal law which relate to the maintenance of such services. However, as determined by the DHCR, such application may be granted upon condition that such services will be restored within a reasonable time, and certain tenant-caused violations may be excepted.
- (14) In the case of an improvement constituting a moderate rehabilitation as defined in subdivision 2.1(6) of the Rules and Regulations Governing Tax Exemption and Tax Abatement pursuant to title 11 of the Administrative Code of the City of New York, an owner may elect that the total cost for such improvement be deemed to be the amount certified by the Tax Abatement/Tax Exemption Unit of HPD in the certificate of eligibility issued by such office with respect to such improvement. Such election shall be binding on the DHCR and shall waive any claim for a rent increase by reason of any difference between the total cash paid by the owner and such lesser certified amount.

(b) Comparative hardship.

- (1) An owner may file an application on forms prescribed by the DHCR, and the DHCR shall grant, on the application of an owner, appropriate rent adjustments as hereinafter provided, where the gross rental income is insufficient to yield to the owner an average annual net income (which shall be computed without regard to debt service, financing costs or management fees), for the three-year period ending on or within six months of the date of the filing of the owner's application, equal to the annual average net income of the property for:
- (i) the period 1968-1970; or
 - (ii) the first three years of operation, if the building was completed after 1968; or
 - (iii) the first three fiscal years after a transfer of title to a new owner who acquired title to the building as a result of a bona fide sale of the entire building, and who has been unable to obtain requisite records for the fiscal years between 1968 through 1970, despite diligent efforts to obtain the same from predecessors in title, provided that such new owner submits financial data for not less than six years of continuous and uninterrupted operation of the property under his or her ownership.
- (2) Notwithstanding anything to the contrary herein, no increase granted pursuant to this subdivision shall, when added to the annual gross rents as determined by the DHCR, exceed the sum of:
- (i) the annual operating expenses;
 - (ii) an allowance for management services as determined by the DHCR;
 - (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund under the supervision of the banking or insurance laws of the State of New York or the United States; and (iv) 8 1/2 percent of that portion of

the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for this subparagraph shall be six times the annual gross rent.

(3) Restrictions.

- (i) The collection of any increase in the legal regulated rent for any housing accommodation pursuant to this subdivision shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectibility of any dollar excess above said sum to be spread forward in similar increments and added to the legal regulated rent as established or set in future years.
- (ii) If the building was previously granted a hardship increase, such increase must have become effective more than 36 months prior to the filing date of the application .
- (iii) The owner has resolved all legal objections to any real estate taxes and water and sewer charges for the test period. However, if there is a pending certiorari proceeding relating to the real estate tax expense for the test period, an owner may be permitted to file a hardship application. In such cases, the amount of real estate tax expense that will be recognized for purposes of the test period will be based upon the amount of proposed assessed value set forth by the owner in the certiorari petition; provided, however, that the owner submits proof of actual payment of all taxes due on the owner's proposed assessed value, in accordance with applicable law. If after such tax objection is resolved, the owner's actual and reasonable tax expense allocable to the test period exceeds the amount the DHCR used in determining the hardship application, an additional increase may be granted prospectively by the DHCR in its discretion. The DHCR may also, in its discretion, accept reasonable alternatives as to unresolved water and sewer charges.
- (iv) The DHCR shall not grant an owner an increase as provided, in whole or in part, if it is determined prior to the granting of approval to collect an increase pursuant to this subdivision that the owner is not maintaining all required services or there are current immediately hazardous violations of any municipal, county, State or Federal law which relate to the maintenance of such services. However, as determined by the DHCR, where the DHCR determines that insufficient income is the cause of such failure to maintain required services, hardship increases may be granted upon condition that such services will be restored within a reasonable time, and certain tenant-caused violations may be excepted.
- (v) In buildings that also contain housing accommodations subject to the City Rent Law, appropriate adjustments for both income and expenses will be made by the DHCR in order to calculate the pro rata share for those housing accommodations subject to this application.
- (vi) The DHCR shall set a rental value for any housing accommodation occupied by the owner or managing agent, a person related to, or an employee of the owner

or managing agent, or unoccupied at the owner's choice for more than one month at the last legal regulated rent plus the minimum number of guidelines increases. If no such legal regulated rent existed or is known, the DHCR shall impute a rent equal to the average of rents for similar or comparable housing accommodations subject to this Code in the building during the test period.

- (vii) Each owner who files an application for a hardship rent increase shall be required to maintain all records as submitted with the subject application, and further be required to retain same for a period of three years after the effective date of the order.
 - (viii) Each application under this subdivision shall be certified by the owner or his or her duly authorized agent as to its accuracy and compliance with this subdivision under the penalties of perjury.
 - (ix) The maximum amount of hardship increase to which an owner shall be entitled shall be the difference between the average annual net income for the three-year base period and the average annual net income for the three-year current period.
- (4) Right of tenant to cancel lease where rent increase based upon hardship is granted. In the event that an order is issued increasing the legal regulated rent because of owner hardship, the tenant may within 30 days of his or her receipt of a copy of the DHCR order, cancel his or her lease on 60 days' written notice to the owner. Until such tenant vacates, he or she continues in occupancy at the approved increase in rent.
- (c) Alternative hardship. As an alternative to the hardship application provided under subdivision (b) of this section, owners of buildings, not owned as cooperatives or condominiums, acquired by the same owner or a related entity owned by the same principals three years prior to the date of application, may apply to the DHCR, on forms prescribed by the DHCR, for increases in excess of the level of applicable guidelines increases established under the RSL, based on a finding by the DHCR that such guidelines increases are not sufficient to enable the owner to maintain an annual gross rent income collectible for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such annual gross rent income collectible, subject to the definitions and restrictions provided for herein.
- (1) Definitions. The following terms shall mean:

- (i) Annual gross rental income collectible shall consist of the actual income receivable per annum arising out of the operation and ownership of the property, including but not limited to rental from housing accommodations, stores, professional or business use, garages, parking spaces, and income from easements or air rights, washing machines, vending machines and signs, plus the rent calculated under subparagraph (2)(vi) of this subdivision.

In ascertaining income receivable, the DHCR shall determine what efforts, if any, the owner has followed in collecting unpaid rent.

- (ii) Operating expenses shall consist of the actual, reasonable costs of fuel, labor, utilities, taxes (other than income or corporate franchise taxes), fees (not including attorney's fees related to refinancing of the mortgage), permits,

necessary contracted services and non capital repairs for which an owner is not eligible for an increase pursuant to this Part, insurance, parts and supplies, reasonable management fees, mortgage interest, and other reasonable and necessary administrative costs applicable to the operation and maintenance of the property.

- (iii) Mortgage interest shall be deemed to mean interest on that portion of the principal of an institutional or a bona fide mortgage, including an allocable portion of the charges related to the refinancing of the balance of an existing mortgage or a purchase-money mortgage. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include, but shall not be limited to, the following: the condition of the property, the location of the property, the existing mortgage market at the time the mortgage is placed, the principal amount of the mortgage, the term of the mortgage, the amortization rate, security and other terms and conditions of the mortgage.
- (iv) Institutional mortgage shall include a mortgage given to any insurance company, licensed by the State of New York or authorized to do business in the State of New York, or any commercial bank, trust company, savings bank or savings and loan association (which must be licensed under the laws of any jurisdiction within the United States and authorized to do business in the State of New York). The DHCR may determine in its discretion that any other mortgage issued by a duly licensed lending institution is an institutional mortgage.
- (v) Owner's equity shall mean the sum of:
 - (a) the purchase price of the property less the principal of any mortgage or loan used to finance the purchase of the property;
 - (b) the cost of any capital improvement for which the owner has not collected an increase in rent less the principal of any mortgage or loan used to finance said improvement;
 - (c) any repayment of the principal of any mortgage or loan used to finance the purchase of the property or any capital improvement for which the owner has not collected an increase 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.
- (vi) Threshold income shall mean that annual gross rental income collectible for such building which exceeds the annual operating expense for such building by a sum equal to five percent of such annual gross rental income collectible.
- (vii) Test year shall mean any one of the following:
 - (a) the most recent calendar year (January 1st to December 31st); or

- (b) the most recent fiscal year (one year ending on the last day of a month other than December 31st, provided that books of account are maintained and closed accordingly; or
 - (c) any 12 consecutive months ending within 90 days prior to the date of filing of the hardship application. Such period must end on the last day of a month. Nothing herein shall prevent the DHCR from comparing and adjusting expenses and income during the test year with expenses and income occurring during the three years prior to the date of application in order to determine the reasonableness of such expenses and income.
- (2) Restrictions. No owner may file an application, nor may an owner be granted an increase in excess of the level of applicable guidelines increases, unless:
- (i) the collection of any increase in the legal regulated rent for any housing accommodation pursuant to this subdivision shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectibility of any dollar excess above said sum to be spread forward in similar increments and added to the legal regulated rent as established or set in future years;
 - (ii) if the building was previously granted a hardship increase, such increase must have become effective more than 36 months prior to the filing date of the application;
 - (iii) the owner has resolved all legal objections to any real estate taxes and water and sewer charges for the test year. However, if there is a pending certiorari proceeding relating to the real estate tax expense for the test year, an owner may be permitted to file a hardship application. In such cases, the amount of real estate tax expense that will be recognized for purposes of the test year will be based upon the amount of proposed assessed value set forth by the owner in the certiorari petition; provided, however, that the owner submits proof of actual payment of all taxes due on the proposed assessed value, in accordance with applicable law. If after such tax objection is resolved, the owner's actual and reasonable tax expense allocable to the test year exceeds the amount the DHCR used in determining the hardship application, an additional increase may be granted prospectively by the DHCR in its discretion. The DHCR may also, in its discretion, accept reasonable alternatives as to unresolved water and sewer charges;
 - (iv) the DHCR shall not grant an owner an increase as provided, in whole or in part, if it is determined prior to the granting of approval to collect an increase pursuant to this subdivision that the owner is not maintaining all required services or there are current immediately hazardous violations of any municipal, county, State or Federal law which relate to the maintenance of such services. However, as determined by the DHCR, where the DHCR determines that insufficient income is the cause of such failure to maintain required services, hardship increases may be granted upon condition that such services will be

restored within a reasonable time, and certain tenant-caused violations may be excepted;

- (v) in buildings that also contain housing accommodations subject to the City Rent Law, appropriate adjustments for both income and expenses will be made by the DHCR in order to calculate the pro rata share for those housing accommodations subject to this application;
- (vi) the DHCR shall set a rental value for any housing accommodation occupied by the owner or managing agent, or a person related to, or an employee of the owner or managing agent, or unoccupied at the owner's choice for more than one month at the last regulated rent plus the minimum number of guidelines increases or, if no such regulated rent existed or is known, the DHCR shall impute a rent equal to the average of rents for similar or comparable housing accommodations subject to this Code in the building during the test year;
- (vii) each owner who files an application for a hardship rent increase shall be required to maintain all records as submitted with the subject application, and further be required to retain same for a period of three years after the effective date of the order;
- (viii) each application under this subdivision shall be certified by the owner or his or her duly authorized agent as to its accuracy and compliance with this subdivision, under the penalty of perjury;
- (ix) the annual gross rent income collectible for the test year does not exceed the annual operating expenses of such building by a sum equal to at least five percent of such annual gross rental income collectible;
- (x) the owner or a related entity owned by the same principals acquired the building at least 36 months prior to the date of application. A cooperative corporation or the board of managers of a condominium association shall not be considered the owner of the building, nor are individual shareholders or unit owners building owners for the purpose of eligibility for the alternative hardship, and as such are not permitted to file alternative hardship applications;
- (xi) the owner's equity in the building exceeds five percent of the sum of:
 - (a) the arm's-length purchase price of the property;
 - (b) the cost of any capital improvements for which the owner has not collected an increase in rent pursuant to paragraph (a)(2) of this section;
 - (c) any repayment of principal of any mortgage or loan used to finance the purchase of the property or any capital improvements for which the owner has not obtained an adjustment in rent pursuant to paragraph (a)(2) of this section; 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; and

- (xii) the maximum amount of hardship increase to which an owner shall be entitled shall be the difference between the threshold income and the annual gross rent income collectible for the test year.
- (3) Right of tenant to cancel lease where rent increase based upon hardship is granted. In the event that an order is issued increasing the legal regulated rent because of owner hardship, the tenant may within 30 days of his or her receipt of a copy of the DHCR order, cancel his or her lease on 60 days' written notice to the owner. Until such tenant vacates, he or she continues in occupancy at the approved increase in rent.
- (d) An owner may file an application to decrease required services for a reduction of the legal regulated rent on forms prescribed by the DHCR on the grounds that:
 - (1) the owner and tenant, by mutual voluntary written agreement, consent to a decrease in dwelling space, or a decrease in the services, furniture, furnishings or equipment provided in the housing accommodation; or
 - (2) such decrease is required for the operation of the building in accordance with the specific requirements of law; or
 - (3) such decrease is not inconsistent with the RSL or this Code.

No such reduction in rent or decrease in services shall take place prior to the approval by the DHCR of the owner's application, except that a service decrease pursuant to paragraph (2) of this subdivision may take place prior to such approval.

- (e) An owner may file an application to modify or substitute required services, at no change in the legal regulated rent, on forms prescribed by the DHCR on the grounds that:
 - (1) the owner and tenant, by mutual voluntary written agreement, consent to a modification or substitution of the required services provided in the housing accommodation;
 - (2) such modification or substitution is required for the operation of the building in accordance with the specific requirements of law; or
 - (3) such modification or substitution is not inconsistent with the RSL or this Code.

No such modification or substitution of required services shall take place prior to the approval of the owner's application by the DHCR, except that a service modification or substitution pursuant to paragraph (2) of this subdivision may take place prior to such approval.

- (f) Pursuant to section 452(7) of the PHFL, as an alternative to the rental adjustments for which an owner may file an application under subdivision (a) of this section, upon the completion of the rehabilitation of a multiple dwelling which is aided by a loan made pursuant to article VIII-A of the PHFL, HPD may adjust the rent for each housing accommodation within the multiple dwelling pursuant to such law.

Any work required pursuant to or as a condition of an article VIII-A loan for which a rent adjustment is granted under section 452(7) of the PHFL is not eligible for an increase pursuant to paragraph (a)(2) or (3) of this section.

§ 2522.5. Lease agreements.

(a) Vacancy lease or rental.

- (1) For housing accommodations other than hotels, upon the renting of a vacant housing accommodation, the owner shall provide to the tenant a copy of the fully executed lease for a one- or two-year term, at the tenant's option (except where a mortgage or mortgage commitment existing as of April 1, 1969 prohibits the granting of one-year lease terms), bearing the signature of the owner and tenant and the beginning and ending dates of the lease term, within 30 days from the owner's receipt of the vacancy lease signed by the tenant. Such lease shall conform to the intent of section 5-702 of the General Obligations Law (plain English). The rent provided therein may not exceed the last legal regulated rent in addition to all increases authorized by this Code. For a housing accommodation subject to the City Rent Law which becomes vacant after March 31, 1984, the owner may not increase the rent charged in the initial lease or other rental agreement pursuant to annual guidelines for a period of one year or until the expiration date of the initial lease or rental agreement, whichever is later.
- (2) For housing accommodations in hotels rented to an occupant who has never had a lease, such occupant may at any time during his or her occupancy request a lease and the owner must, within 15 days after such request, grant a lease commencing on the date such request was made at a rent which does not exceed the legal regulated rent, for a term of at least six months. The hotel occupant who requests such a lease becomes a permanent tenant but the lease need not be renewed. Notwithstanding the above, an owner shall not refuse to grant a lease or to extend or continue a tenancy in order to prevent the hotel occupant from becoming a permanent tenant, except to the extent that the owner may be permitted to do so by law pursuant to a warrant of eviction, or other order of a court of competent jurisdiction, or a governmental vacate order.
- (3) In addition, where a hotel occupant has not requested a lease, an owner shall not refuse to extend or continue a tenancy solely in order to prevent the hotel occupant from becoming a permanent tenant.

(b) Renewal lease

- (1) For housing accommodations other than hotels, upon such notice as is required by section 2523.5 of this Title, the tenant shall have the right of selecting at his or her option a renewal of his or her lease for a one- or two-year term; except that where a mortgage or a mortgage commitment existing as of April 1, 1969 prohibits the granting of one-year lease terms or the tenant is the recipient of a Senior Citizen Rent Increase Exemption pursuant to section 26-509 of the Administrative Code of the City of New York, the tenant may not select a one-year lease. The owner shall furnish to the tenant signing a renewal lease form, pursuant to section 2523.5 of this Title, a copy of the fully executed renewal lease form, bearing the signatures of the owner and tenant, and the beginning and ending dates of the lease term, within 30 days from the owner's receipt of the renewal lease form signed by the tenant. Such renewal lease form shall conform to the intent of section 5-702 of the General Obligations Law.
- (2) Upon complaint by the tenant that he or she was not served with a copy of the fully executed vacancy lease or renewal lease form pursuant to paragraph (1) of subdivision

(a) or paragraph (1) of this subdivision, the DHCR shall order the owner to furnish the copy of the vacancy lease or renewal lease form. In addition to any other penalties provided under this Code, noncompliance by the owner within 20 days of such order shall result in the denial of any rent guideline increases for vacancy or renewal leases until the fully executed copy of the vacancy lease or renewal lease form is furnished by the owner to the tenant.

(c) Lease rider and notice of rights.

- (1) For housing accommodations subject to this Code, an owner shall furnish to each tenant signing a vacancy or renewal lease, a rider in a form promulgated or approved by the DHCR, in larger type than the lease, describing the rights and duties of owners and tenants as provided for under the RSL. Such rider shall conform to the plain English requirements of section 5-702 of the General Obligations Law, shall also be available in Spanish, and shall be attached as an addendum to the lease. Upon the face of each lease, in bold print, shall appear the following: "ATTACHED RIDER SETS FORTH RIGHTS AND OBLIGATIONS OF TENANTS AND LANDLORDS UNDER THE RENT STABILIZATION LAW." ("LOS DERECHOS Y RESPONSABILIDADES DE INQUILINOS Y CASEROS ESTAN DISPONIBLE EN ESPANOL").
 - (i) For vacancy leases, such rider shall in addition also include a notice of the prior legal regulated rent, if any, which was in effect immediately prior to the vacancy, an explanation of how the rental amount provided for in the vacancy lease has been computed above the amount shown in the most recent annual registration statement, and a statement that any increase above the amount set forth in such registration statement is in accordance with the adjustments permitted by the Rent Guidelines Board and this Code.
 - (ii) For renewal leases, such rider shall be attached to the form sent to the tenant pursuant to section 2523.5 of this Title.
- (2) For housing accommodations in hotels, each owner shall furnish to each person, at the time of registration, a Notice of Rights in a form promulgated or approved by the DHCR, describing the rights and duties of hotel owners, occupants and tenants as provided for under the RSL and this Code and a hotel occupant's right to become a permanent tenant at a legal regulated rent by requesting a lease for a term of at least six months at any time during his or her occupancy. Such notice, which shall conform to the "plain English" requirements of section 5-702 of the General Obligations Law, shall also be available in Spanish. Such notice shall be provided to each hotel occupant in residence on the effective date of this Code no later than 90 days from such effective date. An owner who violates the RSL and this Code by failing to furnish this Notice of Rights, and/or by engaging in any conduct which compels a person to rent as a hotel occupant, prevents a hotel occupant from becoming a permanent tenant, or results in a hotel occupant vacating a housing accommodation, shall be subject to a loss of a guidelines adjustment pursuant to paragraph (3) of this subdivision as well as penalties pursuant to section 2526.2(b) and (c)(1) of this Title, and may be subject to a penalty pursuant to section 2526.2(c)(2) of this Title, in an amount no less than \$1,000.

- (3) Upon complaint by the tenant, permanent tenant or hotel occupant that he or she was not furnished with a copy of the lease rider pursuant to paragraph (1) or the notice pursuant to paragraph (2) of this subdivision, the DHCR shall order the owner to furnish the rider or notice. In addition to such other penalties provided for pursuant to section 2526.2 of this Title, if the owner fails to comply within 20 days of such order, the owner shall not be entitled to collect any guidelines lease adjustment authorized for any current lease from the commencement date of such lease. The furnishing of the rider or notice by the owner to the tenant or hotel occupant shall result in the elimination, prospectively, of such penalty. With respect to housing accommodations in hotels, noncompliance by the owner shall not prevent the hotel occupant from becoming a permanent tenant.
- (d) Limitations. No provision may be made in any vacancy or renewal lease for adjustment of the legal regulated rent reserved in the lease except as follows:
 - (1) if the applicable rent guidelines rate has not been fixed by the execution date of the vacancy lease or the renewal offer, the lease may make provision for the rent increase, if any, pursuant to the said rate when filed, to become effective as of the commencement date of the lease term, unless the Rent Guidelines Board shall have fixed a later effective date for the said rate, in which event the adjustment may only be effective as of the later date;
 - (2) where such lease provides that the rental reserved therein may be increased pursuant to an order issued by the DHCR; or
 - (3) where such lease provides that a rent increase shall be in the amount, if any, authorized by the DHCR in the event an application is filed to establish a hardship pursuant to section 2522.4(b) or (c) of this Part; and
 - (4) in the case of a vacancy lease, where an application for a rent adjustment pursuant to section 2522.4(a)(2) or (3), (b) or (c) of this Part is pending before the DHCR, such lease also recites that such application is pending before the DHCR and the basis for the adjustment, and that the increase which is the subject of such application, if granted, may be effective during the term of the lease.
- (e) Escalator clauses.
 - (1) Regardless of whether an escalator clause was contained in the last effective lease or other rental agreement prior to April 1, 1984, no renewal lease or vacancy lease commencing on or after April 1, 1984 shall provide for any escalator clause, except that nothing herein shall prohibit the use of escalator clauses otherwise required by any other statute or regulation affecting the housing accommodation.
 - (2) For buildings receiving benefits pursuant to section 421-a of the Real Property Tax Law and the regulations promulgated pursuant thereto, such clauses may provide for an annual or other periodic rent increase over the initial rent at an average rate of not more than 2.2 percent of the amount of such initial rent per annum not to exceed the maximum cumulative amount, if any, permitted under the 421-a program rules and regulations. After the tax benefits end, such additional 2.2 percent charges shall no longer be added but the owner may continue to collect the cumulative 2.2 percent increases charged prior to the termination of said tax benefits. Any lease containing the

aforementioned provision shall also include a rider with an endorsement signed by the tenant acknowledging the owner's right to include such provision and to collect such rent increase for the tax benefit period. Such rider shall state the approximate date of the expiration of such tax benefits.

- (3) Nothing in paragraph (2) of this subdivision shall prohibit the inclusion of a lease provision for an annual or other periodic rent increase over the legal regulated rent at such rate of rental increase as is provided for and authorized by section 423 of the Real Property Tax Law. Such additional charges pursuant to such section 423 shall no longer be added after the tax benefits end. Any lease containing the aforementioned provision shall also include a rider with an endorsement signed by the tenant acknowledging the owner's right to include such provision and to collect such rent increase for the tax benefit period. Such rider shall state the approximate date of the expiration of such tax benefits.
- (4) No additional charge which became effective on or after November 19, 1982, pursuant to paragraph (2) of this subdivision, shall become part of the legal regulated rent.
- (f) Vacancy prior to expiration of lease term. Where the tenant vacates prior to the expiration of the term of the lease, and the housing accommodation is rented to a new tenant pursuant to a lease commencing during the same guidelines period as the prior lease, the rental provided in the new lease shall:
 - (1) be in accordance with and at the guidelines rate of rent adjustment applicable to the new lease;
 - (2) shall be computed upon the legal regulated rent charged and paid on the last day of the immediately preceding guidelines year; and
 - (3) may include such other rent increases as are authorized pursuant to section 2522.4 of this Part.
- (g) Same terms and conditions. The lease provided to the tenant by the owner pursuant to subdivision (b) of this section shall be on the same terms and conditions as the expired lease, except where the owner can demonstrate that the change is necessary in order to comply with a specific requirement of law or regulation applicable to the building or to leases for housing accommodations subject to the RSL, or with the approval of the DHCR. Nothing herein may limit the inclusion of authorized clauses otherwise permitted by this Code or by order of the DHCR not contained in the expiring lease. Notwithstanding the foregoing, the tenant shall have the right to have his or her spouse, whether husband or wife, added to the lease or any renewal thereof as an additional tenant where said spouse resides in the housing accommodation as his or her primary residence.
- (h) Leases for housing accommodations in cooperative- or condominium-owned buildings, or in a building for which the Attorney General has accepted for filing a plan to convert the building to cooperative or condominium ownership.
 - (1) An owner of one or more housing accommodations subject to this Code may evict the tenant of such housing accommodation and/or refuse to renew a lease therefor, if such housing accommodation is in a building, group of buildings or development which is the subject of an Eviction Plan for conversion to cooperative or condominium

ownership under General Business Law, section 352-eeee (hereinafter "section 352-eeee"), provided:

- (i) the Attorney General has accepted for filing a plan to convert the building, group of buildings or development to cooperative or condominium ownership and an amendment declaring the plan effective as an Eviction Plan has been accepted for filing and a closing has been held thereunder; and
 - (ii) three years have elapsed from the date on which the Attorney General has accepted for filing an amendment declaring the plan effective as an Eviction Plan, and at such time or thereafter the tenant's lease has expired or has been cancelled pursuant to paragraph (2) of this subdivision.
- (2) Until the conditions set forth in paragraph (1) of this subdivision have been met, a tenant in occupancy of a housing accommodation subject to this Code shall have the right to a renewal lease or in the case of a permanent tenant, to continue his or her tenancy on the terms and conditions and at the rent and adjustments thereto as otherwise provided for in this Code. Notwithstanding the foregoing, any vacancy or renewal lease, entered into after the plan is accepted for filing by the Attorney General and such plan has been presented to the tenants in occupancy, may contain a provision authorizing the owner to cancel the lease as of a date not less than three years after the date an Eviction Plan has been declared effective (providing that title has passed to the cooperative corporation or condominium unit owners) on 90 days' notice to the tenant. In order to cancel a lease pursuant to such provision, the owner must give the tenant written notice of such election by certified mail no less than 90 days prior to the date upon which the cancellation is to become effective.
- (3) For the purposes of this section, "filing date" shall mean the date on which a letter was issued by the Attorney General accepting a plan for filing.
- (4) After the filing date, and prior to the plan being declared effective, if a housing accommodation subject to this Code is vacated, such housing accommodation may only be rented at a rent and upon such terms and conditions as are authorized under this Code for a vacancy lease. Notwithstanding the foregoing, if a vacancy lease herein called an interim lease for such housing accommodation is executed in connection with an agreement to purchase such housing accommodation or the shares allocated thereto, pursuant to any Eviction Plan or Non- Eviction Plan, as defined by section 352-eeee, such interim lease:
 - (i) may provide that once the plan has been declared effective, if the tenant fails to purchase his or her housing accommodation or the shares allocated thereto on the terms set forth in the subscription or purchase agreement, or otherwise terminates or defaults on the subscription or purchase agreement, such tenant may be evicted; and
 - (ii) may provide for a rental below the legal regulated rent which may, upon the abandonment or withdrawal of the plan, be increased to the legal regulated rent, provided the interim lease or other agreement clearly notifies the tenant of what that higher rental will be; If the plan is abandoned or withdrawn, such

- (5) If a housing accommodation which was subject to this Code is vacated or is rented to a new tenant after any plan which affects such housing accommodation has been declared effective, and a closing thereunder has occurred, such housing accommodation shall not be subject to this Code.
- (6) If a building, group of buildings or development containing units to which this Code applies is converted to cooperative or condominium ownership, whether or not such conversion is pursuant to an Eviction Plan or a Non- Eviction Plan as defined by section 352-eeee, the services which shall be required to be maintained under this Code with respect to housing accommodations which remain subject to this Code shall not be diminished or modified without the approval of the DHCR as provided for in section 2522.4(d) or (e) of this Part.
- (7) The provisions of paragraph (h)(1) of this section, and the right to include a cancellation clause as provided by paragraph (h)(2), shall not apply to a housing accommodation of which the tenant is a senior citizen or disabled person on the filing date. Until such time as the appropriate agency determines that such tenant is not eligible for such status, such tenant shall continue to be subject to the provisions of this Code.

§ 2522.6. Orders where the legal regulated rent or other facts are in dispute, in doubt, or not known, or where the legal regulated rent must be fixed.

- (a) Where the legal regulated rent or any fact necessary to the determination of the legal regulated rent, or the dwelling space, required services or equipment required to be provided with the housing accommodation is in dispute between the owner and the tenant, or is in doubt, or is not known, the DHCR at any time upon written request of either party, or on its own initiative, may issue an order in accordance with the applicable provisions of this Code determining the facts, including the legal regulated rent, the dwelling space, required services, and equipment required to be provided with the housing accommodations.
- (b) Such order shall determine such facts or establish the legal regulated rent in accordance with section 2521.2 of this Title. Where such order establishes the legal regulated rent, it shall contain a directive that all rent collected by the owner in excess of the legal regulated rent established under this section for such period as is provided in section 2526.1(a) of this Title, or the date of the commencement of the tenancy, if later, either be refunded to the tenant, or be enforced in the same manner as prescribed in section 2526.1(e) and (f) of this Title. Orders issued pursuant to this section shall be based upon the law and Code provisions in effect on March 31, 1984, if the complaint was filed prior to April 1, 1984. However, in the absence of collusion or any relationship between an owner and any prior owner, where such owner purchases the housing accommodations upon a judicial sale and no records sufficient to establish the legal regulated rent were made available to such purchaser, such orders shall establish the legal regulated rent with due consideration of equities pursuant to section 2522.7 of this Part.

§ 2522.7. Consideration of equities.

In issuing any order adjusting or establishing any legal regulated rent, or in determining any applications by tenants pursuant to section 2523.5(f) of this Title, or in determining when a

higher or lower legal regulated rent shall be charged pursuant to an agreement between the DHCR and governmental agencies or public benefit corporations, the DHCR shall take into consideration all factors bearing upon the equities involved, subject to the general limitation that such adjustment, establishment or determination can be put into effect with due regard for protecting tenants and the public interest against unreasonably high rent increases inconsistent with the purposes of the RSL, for preventing imposition upon the industry of any industry-wide schedule of rents or minimum rents, and for preserving the regulated rental housing stock.

PART 2523--NOTICES AND RECORDS

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§ 2523.1. Notice of initial legal registered rent.

Every owner of housing accommodations previously subject to the City Rent Law and thereafter rented to a tenant on or after April 1, 1984, shall within 90 days after the housing accommodations become subject to the RSL, give notice in writing by certified mail to the tenant of each such housing accommodation on a form prescribed by the DHCR for that purpose, reciting the initial legal registered rent for the housing accommodation and the tenant's right to file an application for adjustment of the initial legal registered rent within 90 days of the certified mailing to the tenant of the notice pursuant to section 2522.3 of this Title.

§ 2523.2. Certification of services.

Every owner of housing accommodations subject to this Code shall annually file with the DHCR, on a form which the DHCR shall prescribe for that purpose, a written certification that he or she is maintaining and will continue to maintain all services as required by section 2520.6(r) of this Title, or required to be furnished by any law, or regulation applicable to the housing accommodation. Compliance with section 2528.3 of this Title, shall also be in compliance with this section.

§ 2523.3. Failure to file a certification of services.

No owner shall be entitled to collect a rent adjustment pursuant to a Rent Guidelines Board Order as authorized under section 2522.5 of this Title, until the owner has filed a proper certification as required by section 2523.2 of this Part, nor shall any owner be entitled to a rent restoration based upon a restoration of services unless such certification is filed together with his or her application for rent restoration. Such restoration shall take effect in accordance with section 2522.2 of this Title.

§ 2523.4. Failure to maintain services.

- (a) A tenant may apply to the DHCR for a reduction of the legal regulated rent to the level in effect prior to the most recent guidelines adjustment, and the DHCR shall so reduce the rent for the period for which it is found that the owner has failed to maintain required services. The Order reducing the rent shall further bar the owner from applying for or collecting any further increases in rent until such services are restored. If the DHCR further finds that the owner has knowingly filed a false certification, it may, in addition to abating the rent, assess the owner with the reasonable costs of the proceeding, including reasonable attorney's fees, and impose a penalty not in excess of \$250 for each false certification.
- (b) Proceedings pending on the effective date of this Code (May 1, 1987) involving tenant complaints of owners' failure to provide hotel services shall be determined in accordance with the RSL and Hotel Industry Code in effect immediately prior to such effective date of this Code.

§ 2523.5. Notice for renewal of lease and renewal procedure.

- (a) On a form prescribed or a facsimile of such form approved by the DHCR, dated by the owner, every owner, other than an owner of hotel accommodations, shall notify the tenant named in the expiring lease not more than 150 days and not less than 120 days prior to the end of the tenant's lease term, by mail or personal delivery, of the expiration of the lease term, and offer to renew the lease or rental agreement at the legal regulated rent permitted for such renewal lease and otherwise on the same terms and conditions as the expiring lease. The owner shall give such tenant a period of 60 days from the date of service of such notice to accept the offer and renew such lease. The tenant's acceptance of such offer shall be entered on the designated part of the prescribed form, or facsimile thereof, and returned to the owner by mail or personal delivery. Pursuant to the provisions of section 2522.5(b)(1) of this Title, the owner shall furnish to such tenant a copy of the fully executed renewal lease form bearing the signatures of the owner and tenant within 30 days of the owner's receipt of the renewal lease form signed by the tenant. Upon execution by the owner and delivery to the tenant, such form shall constitute a binding renewal lease. Upon failure of the owner to deliver a copy of the fully executed renewal lease form to the tenant within 30 days from the owner's receipt of such form signed by the tenant, such tenant shall not be deprived of any of his or her rights under the RSL and this Code and the owner shall be barred from commencing any action or proceeding against the tenant based upon nonrenewal of lease, pursuant to section 2524.3(f) of this Title. In the event that such notice is given to the tenant after the expiration of the lease, the provisions of subdivision (c) of this section shall govern.
- (b) (1) Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if an offer is made to the tenant pursuant to the provisions of subdivision (a) and such person has permanently vacated the housing accommodation, any member of such tenant's family, as defined in subdivision (o) of section 2520.6 of this Title, who has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two (2) years, or where such person is a "senior citizen," or a "disabled person" as defined in paragraph (4) of this subdivision, for a

period of no less than one (1) year, immediately prior to the permanent vacating of the housing accommodation by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods, shall be entitled to be named as a tenant on the renewal lease.

- (2) The minimum periods of required residency set forth in this subdivision shall not be deemed to be interrupted by any period during which the "family member" temporarily relocates because he or she:
 - (i) is engaged in active military duty;
 - (ii) is enrolled as a full time student;
 - (iii) is not in residence at the housing accommodation pursuant to a court order not involving any term or provision of the lease, and not involving any grounds specified in the Real Property Actions and Proceedings Law;
 - (iv) is engaged in employment requiring temporary relocation from the housing accommodation;
 - (v) is hospitalized for medical treatment; or
 - (vi) has such other reasonable grounds that shall be determined by the DHCR upon application by such person.
 - (3) The 60 day period from the date of service of the Notice for Renewal of Lease for acceptance and renewal provided to the tenant in subdivision (a) of this section, shall also apply to the tenant's "family member."
 - (4) For the purposes of this subdivision (b), "disabled person" is defined as a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which substantially limit one or more of such person's major life activities.
- (c) Where the owner fails to timely offer a renewal lease or rental agreement in accordance with subdivision (a) of this section, the one/ or two-year lease term selected by the tenant shall commence at the tenant's option, either (1) on the date a renewal lease would have commenced had a timely offer been made, or (2) on the first rent payment date occurring no less than 120 days after the date that the owner does offer the lease to the tenant. In either event, the effective date of the increased rent under the renewal lease shall commence on the first rent payment date occurring no less than 120 days after such offer is made by the owner, and the guidelines rate applicable shall be no greater than the rate in effect on the commencement date of the lease for which a timely offer should have been made.
 - (d) Except as provided in Part 2524 of this Title, the failure to offer a renewal lease pursuant to this section shall not deprive the tenant of any protections or rights provided by the RSL and this Code and the tenant shall continue to have the same rights as if the expiring lease were still in effect.
 - (e) On a form prescribed or a facsimile of such form approved by the DHCR, a tenant may, at any time, advise the owner, or an owner may request from the tenant, at the time a renewal

lease is offered pursuant to subdivision (a) of this section, the names of all persons other than the tenant who are residing in the housing accommodation, and the following information pertaining to such persons:

- (1) if the person is a "family member" as defined in subdivision (o) of section 2520.6 of this Title; and
- (2) if the person is, or upon the passage of the applicable minimum period of required residency, may become a person entitled to be named as a tenant on a renewal lease pursuant to paragraph (1) of subdivision (b) of this section, and the date of the commencement of such person's primary residence with the tenant; and
- (3) if the person is a "senior citizen" or a "disabled person" as defined in subdivision (p) of section 2520.6 of this Title, and paragraph (4) of subdivision (b) of this section.

Failure of the tenant to provide such information to the owner, regardless of whether the owner requests the information, shall place upon all such persons not so made known to the owner, who seek to exercise the right to be named as a tenant on a renewal lease as provided for in subdivision (b) of this section, the affirmative obligation to establish such right.

- (f) For any family member who is made known to the owner pursuant to subdivision (e) of this section, the DHCR may, upon application by such family member, who is not entitled to a renewal lease as provided for in subdivision (b) of this section, determine with due consideration of equities as set forth in section 2522.7 of this Title, that there are other reasonable grounds pursuant to which such family member shall be entitled to a renewal lease.

§ 2523.6. Notices of appearance by attorney or other authorized representative.

- (a) Whenever an attorney or other authorized representative appears for a party who is involved in a proceeding before the DHCR, such person must file a notice of appearance which shall be on a form prescribed by the DHCR, unless the application which instituted the proceeding before the DHCR stated the representation of such person and his or her mailing address in the space allotted for the mailing address of the represented party. An attorney who appears for such party may instead use the letterhead stationery of his or her office as a notice of appearance if the information contained therein substantially conforms to the information required by the form. All subsequent written communications or notices to such party (other than subpoenas) shall be sent to such attorney or other authorized representative at the address designated in such notice of appearance. The service of written communications and notices upon such attorney or other authorized representative shall be deemed full and proper service upon the party or parties so represented. If an authorized representative appears, such notice of appearance must be accompanied by a written authorization, duly verified or affirmed, by the party represented.
- (b) Whenever an attorney or other authorized representative shall represent the same party or parties in more than one proceeding before the DHCR, separate notices of appearance and authorizations shall be filed in each proceeding.
- (c) Any submission signed by an attorney or other authorized representative must state that such person has personal knowledge of the facts contained in such submission, or if he or she does not have such personal knowledge, the basis for such person's information.

§ 2523.7. Records and recordkeeping.

- (a) Every owner shall keep, preserve, and make available for examination, records from the date immediately prior to the date the housing accommodation became subject to the RSL, of the same kind as he or she has customarily kept relating to the rents received for housing accommodations, and individual housing accommodation and building-wide services provided or required to be provided on the applicable base date.
- (b) Except as provided in subdivision (c) of this section, every owner subject to this Code shall also keep, preserve, and make available for examination, records from the date immediately prior to the date the housing accommodation became subject to the RSL, showing the rents received for each housing accommodation, the particular term and number of tenants for which such rents were charged, and the name of each tenant, and the individual housing accommodation and building-wide services provided or required to be provided on the applicable base date.
- (c) Any owner who has duly registered a housing accommodation pursuant to Part 2528 of this Title shall not be required to maintain or produce any records relating to rentals of such accommodation more than four years prior to the initial or most recent annual registration for such accommodation. Notwithstanding the above, such owner shall continue to maintain records for all housing accommodations for which a complaint of overcharge or a Fair Market Rent Appeal was filed by a tenant prior to April 1, 1984, or a challenge to an initial registration is filed, until a final order of the DHCR is issued.
- (d) In the absence of collusion or any relationship between a prior owner and an owner who purchases upon a judicial sale, such purchaser shall not be required to comply with the provisions of subdivisions (a) and (b) of this section for the period prior to such sale, except where records sufficient to establish the legal regulated rent are available to such purchaser. This subdivision shall not be construed to waive the purchaser's obligation to register pursuant to Part 2528 of this Title.

§ 2523.8. Notice of change of ownership.

Within 30 days after a change in ownership, the new owner shall notify the DHCR of such change on a form prescribed by the DHCR. Such form shall be signed by the new owner, listing the address of the building or complex, the name, address and telephone number of the new owner, and the date of the transfer of ownership.

PART 2524--EVICCTIONS

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§ 2524.1. Restrictions on removal of tenant.

- (a) As long as the tenant continues to pay the rent to which the owner is entitled, no tenant shall be denied a renewal lease or be removed from any housing accommodation by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, except on one or more of the grounds specified in this Code.
- (b) It shall be unlawful for any person to remove or attempt to remove any tenant from any housing accommodation or to refuse to renew the lease or rental agreement for the use of such housing accommodation, because such tenant has taken, or proposes to take any action authorized or required by the RSL or this Code, or any order of the DHCR.
- (c) No tenant of any housing accommodation shall be removed or evicted unless and until such removal or eviction has been authorized by a court of competent jurisdiction on a ground authorized in this Part or under the Real Property Actions and Proceedings Law.

§ 2524.2. Termination notices.

- (a) Except where the ground for removal or eviction of a tenant is nonpayment of rent, no tenant shall be removed or evicted from a housing accommodation by court process, and no action or proceeding shall be commenced for such purpose upon any of the grounds permitted in section 2524.3 or 2524.4 of this Part, unless and until the owner shall have given written notice to such tenant as hereinafter provided.
- (b) Every notice to a tenant to vacate or surrender possession of a housing accommodation shall state the ground under section 2524.3 or 2524.4 of this Part, upon which the owner relies for removal or eviction of the tenant, the facts necessary to establish the existence of such ground, and the date when the tenant is required to surrender possession.
- (c) Every such notice shall be served upon the tenant:

- (1) in the case of a notice based upon subdivision (f) of section 2524.3 of this Part, at least 15 days prior to the date specified therein for the surrender of possession; or
 - (2) in the case of a notice on any other ground pursuant to section 2524.3, at least seven calendar days prior to the date specified therein for the surrender of possession, or in the case of a notice pursuant to subdivision (c) of section 2524.4 of this Part, at least 120 and not more than 150 days prior to the expiration of the lease term; or
 - (3) in the case of a notice pursuant to subdivision (a) of sections 2524.4 and 2524.5 of this Part, at least 120 and not more than 150 days prior to the expiration of the lease term, or in the case of a hotel permanent tenant without a lease, at least 120 and not more than 150 days prior to the commencement of a court proceeding; or
 - (4) in the case of a notice pursuant to subdivision (b) of section 2524.4 of this Part, at least 120 and not more than 150 days prior to the expiration of the lease term, or within 120 days of the expiration of the tenant's lease term provided no summary proceeding can be commenced until the expiration of 120 days from the service of such notice, accompanied by a form prescribed by the DHCR advising the tenant of the penalties set forth in section 2524.4(b) of this Part for failure to use the housing accommodation for the charitable or educational purposes for which recovery is sought.
- (d) All notices served pursuant to subdivision (c) of this section shall be in lieu of any notice in any lease or rental agreement providing for a lesser time for termination of tenancy.

§ 2524.3. Proceedings for eviction--wrongful acts of tenant.

Without the approval of the DHCR, an action or proceeding to recover possession of any housing accommodation may only be commenced after service of the notice required by section 2524.2 of this Part, upon one or more of the following grounds, wherein wrongful acts of the tenant are established as follows:

- (a) The tenant is violating a substantial obligation of his or her tenancy other than the obligation to surrender possession of such housing accommodation, and has failed to cure such violation after written notice by the owner that the violations cease within 10 days; or the tenant has willfully violated such an obligation inflicting serious and substantial injury upon the owner within the three-month period immediately prior to the commencement of the proceeding.
- (b) The tenant is committing or permitting a nuisance in such housing accommodation or the building containing such housing accommodation; or is maliciously, or by reason of gross negligence, substantially damaging the housing accommodation; or the tenant engages in a course of conduct, the primary purpose of which is intended to harass the owner or other tenants or occupants of the same or an adjacent building or structure by interfering substantially with their comfort or safety. The exercise by a tenant of any rights pursuant to any law or regulation relating to occupancy of a housing accommodation, including the RSL or this Code, shall not be deemed a ground for eviction pursuant to this subdivision.
- (c) Occupancy of the housing accommodation by the tenant is illegal because of the requirements of law and the owner is subject to civil or criminal penalties therefor, or such occupancy is in violation of contracts with governmental agencies.

- (d) The tenant is using or permitting such housing accommodation to be used for immoral or illegal purpose.
- (e) The tenant has unreasonably refused the owner access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or authorized by the DHCR, or for the purpose of inspection or showing the housing accommodation to a prospective purchaser, mortgagee or prospective mortgagee, or other person having a legitimate interest therein; provided, however, that in the latter event such refusal shall not be a ground for removal or eviction unless the tenant shall have been given at least five days' notice of the inspection or showing, to be arranged at the mutual convenience of the tenant and owner so as to enable the tenant to be present at the inspection or showing, and that such inspection or showing of the housing accommodation is not contrary to the provisions of the tenant's lease or rental agreement.
- (f) The tenant has refused, following notice pursuant to section 2523.5 of this Title, to renew an expiring lease in the manner prescribed in such notice at the legal regulated rent authorized under this Code and the RSL, and otherwise upon the same terms and conditions as the expiring lease. This subdivision does not apply to permanent hotel tenants, nor may a proceeding be commenced based on this ground prior to the expiration of the existing lease term.
- (g) For housing accommodations in hotels, the tenant has refused, after at least 20 days' written notice, to move to a substantially similar housing accommodation in the same building at the same legal regulated rent where there is a rehabilitation as set forth in section 2524.5(a)(3) of this Part, provided:
 - (1) that the owner has an approved plan to reconstruct, renovate or improve said housing accommodation or the building in which it is located;
 - (2) that the move is reasonably necessary to permit such reconstruction, renovation or improvement;
 - (3) that the owner moves the tenant's belongings to the other housing accommodation at the owner's cost and expense; and
 - (4) that the owner offers the tenant the right of reoccupancy of the reconstructed, renovated or improved housing accommodation at the same legal regulated rent unless such rent is otherwise provided for pursuant to section 2524.5(a)(3) of this Part.
- (h) In the event of a sublet, an owner may terminate the tenancy of the tenant if the tenant is found to have violated the provisions of section 2525.6 of this Title.

§ 2524.4. Grounds for refusal to renew lease, or in hotels, discontinuing a hotel tenancy, without order of the DHCR.

The owner shall not be required to offer a renewal lease to a tenant, or in hotels, to continue a hotel tenancy, and may commence an action or proceeding to recover possession in a court of competent jurisdiction, upon the expiration of the existing lease term, if any, after serving the tenant with a notice as required pursuant to section 2524.2 of this Part, only on one or more of the following grounds:

- (a) Occupancy by owner or member of owner's immediate family.

- (1) An owner who seeks to recover possession of a housing accommodation for such owner's personal use and occupancy as his or her primary residence in the City of New York and/or for the use and occupancy of a member of his or her immediate family as his or her primary residence in the City of New York, except that tenants in a noneviction conversion plan pursuant to section 352-eeee of the General Business Law may not be evicted on this ground on or after the date the conversion plan is declared effective.
 - (2) The provisions of this subdivision shall not apply where a tenant or the spouse of a tenant lawfully occupying the housing accommodation is a senior citizen or disabled person, as previously defined herein, unless the owner offers to provide and, if requested, provides an equivalent or superior housing accommodation at the same or lower regulated rent in a closely proximate area.
 - (3) The provisions of this subdivision shall only permit one of the individual owners of any building, whether such ownership is by joint tenancy, tenancy in common, or tenancy by the entirety to recover possession of one or more dwelling units for personal use and occupancy.
 - (4) No action or proceeding to recover possession pursuant to this subdivision shall be commenced in a court of competent jurisdiction unless the owner shall have served the tenant with a termination notice in accordance with subdivisions (a), (b) and (c)(3) of section 2524.2 of this Part.
 - (5) The failure of the owner to utilize the housing accommodation for the purpose intended after the tenant vacates, or to continue in occupancy for a period of three years, may result in a forfeiture of the right to any increases in the legal regulated rent in the building in which such housing accommodation is contained for a period of three years, unless the owner offers and the tenant accepts reoccupancy of such housing accommodation on the same terms and conditions as existed at the time the tenant vacated, or the owner establishes to the satisfaction of the DHCR that circumstances changed after the tenant vacated which prevented the owner from utilizing the housing accommodation for the purpose intended, and in such event, the housing accommodation may be rented at the appropriate guidelines without a vacancy allowance. This paragraph shall not eliminate or create any claim that the former tenant of the housing accommodation may or may not have against the owner.
- (b) Recovery by a not-for-profit institution.
- (1) The owner is a hospital, convent, monastery, asylum, public institution, college, school dormitory, or any institution operated exclusively for charitable or educational purposes on a nonprofit basis, and the owner, upon notice to the tenant in accordance with section 2524.2(c)(4) of this Part, requires the housing accommodation for its own use in connection with its charitable or educational purposes, and either:
 - (i) the tenant's initial tenancy commenced after the owner acquired the property, and the owner requires the housing accommodation in connection with its charitable or educational purposes, including but not limited to housing for affiliated persons; provided that the owner may not refuse to renew the lease of a tenant whose right to occupancy commenced prior to July 1, 1978 pursuant to

a written lease or written rental agreement, and who did not receive notice at the time of the execution of the lease that the tenancy was subject to nonrenewal; provided further that a tenant who was affiliated with the owning institution at the commencement of his or her tenancy and whose affiliation terminates during such tenancy shall not have the right to a renewal lease; or

- (ii) the owner requires the housing accommodation for a nonresidential use in connection with its charitable or educational purposes.
- (2) In addition to such penalty provided in section 2526.2 of this Title, the failure of the owner without good cause to utilize or to continue to use the housing accommodation for the purpose intended after the tenant vacates, and for four years thereafter, shall result in a forfeiture of the right to any increases in the legal regulated rent for the housing accommodation involved for a four-year period following the recovery of the housing accommodation from the tenant.
- (3) If an owner who recovers a housing accommodation pursuant to this subdivision, or any successor in interest, within four years after recovery of the housing accommodation from the tenant, utilizes such housing accommodation for purposes other than those permitted hereunder without good cause, then such owner or successor shall be liable to the removed tenant for three times the damages sustained on account of such removal, plus reasonable attorney's fees and costs as determined by a court of competent jurisdiction, provided that such tenant commences an action to recover such damages within three years from the date of recovery of the housing accommodation. The damages sustained by such tenant shall be the difference between the rent paid by such tenant for the recovered housing accommodation, and the rental value of a comparable rent-regulated housing accommodation, plus the reasonable costs of the removal of the tenant's property.
- (c) Primary residence. The housing accommodation is not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction; provided, however, that no action or proceeding shall be commenced seeking to recover possession on the ground that the housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given 30 days' notice to the tenant of his or her intention to commence such action or proceeding on such grounds. Such notice may be combined with the notice required by section 2524.2(c)(2) of this Title. For the purposes of this subdivision, where a housing accommodation is rented to a not-for-profit hospital for residential use, affiliated subtenants authorized to use such accommodations by such hospital shall be deemed to be tenants for primary residence purposes.

§ 2524.5. Grounds for refusal to renew lease or discontinue hotel tenancy and evict which require approval of the DHCR

- (a) The owner shall not be required to offer a renewal lease to a tenant or continue a hotel tenancy, and shall file on the prescribed form an application with the DHCR for authorization to commence an action or proceeding to recover possession in a court of competent jurisdiction after the expiration of the existing lease term, upon any one of the following grounds:

- (1) Withdrawal from the rental market. The owner has established to the satisfaction of the DHCR after a hearing, that he or she seeks in good faith to withdraw any or all housing accommodations from both the housing and nonhousing rental market without any intent to rent or sell all or any part of the land or structure and:
 - (i) that he or she requires all or part of the housing accommodations or the land for his or her own use in connection with a business which he or she owns and operates; or
 - (ii) that substantial violations which constitute fire hazards or conditions dangerous or detrimental to the life or health of the tenants have been filed against the structure containing the housing accommodations by governmental agencies having jurisdiction over such matters, and that the cost of removing such violations would substantially equal or exceed the assessed valuation of the structure.
 - (2) Demolition. The owner has established to the satisfaction to the DHCR after a hearing that he or she seeks in good faith to recover possession of the housing accommodations for the purpose of demolishing them and constructing a new building, provided that either he or she has obtained approved plans for a new building or the DHCR has determined that plans have been submitted to the city agency having jurisdiction over the demolition and new construction. However, a hearing shall not be conducted until the owner has submitted to the DHCR proof of his or financial ability to complete the undertaking, together with copies of the plans that have been submitted to such city agency. No order shall be issued approving the owner's application until said plans have been approved by such city agency, and an order approving the owner's application shall not be granted unless the owner proves that all necessary funding for the proposed construction has been secured.
 - (3) Other grounds. The owner will eliminate inadequate, unsafe or unsanitary conditions and demolish or rehabilitate the dwelling unit pursuant to the provisions of article VIII, VIII-A, XIV, XV or XVIII of the PHFL, the Housing New York Program Act, or sections 8 and 17 of the U.S. Housing Act of 1937 (National Housing Act), on the condition that the owner:
 - (i) proves that it has a commitment for the required financing;
 - (ii) proves that any rehabilitation requires the temporary removal of the tenant; and
 - (iii) agrees to offer and will offer the tenants the right of first occupancy following any rehabilitation at an initial rent as determined pursuant to the applicable law and subject to any terms and conditions established pursuant to applicable law and regulations.
- (b) Election not to renew. Once an application is filed under this section, with notification to all affected tenants pursuant to section 2524.2 of this Part, the owner may refuse to renew the affected tenant's lease until a determination of the owner's application is made by the DHCR. In such event, the owner may not increase the rent charged in excess of the rent provided in the expiring lease. If such application is denied, or withdrawn, prospective renewal leases must be offered to all affected tenants within such time and at such guidelines rates as directed in the DHCR order of denial or withdrawal.

- (c) Terms and conditions upon which orders authorizing refusal to offer renewal leases may be based. The DHCR shall require an owner to pay all reasonable moving expenses and shall further condition the order upon the payment of a reasonable stipend and/or the relocation of the tenant by the owner to a suitable housing accommodation at the same or lower regulated rent in a closely proximate area. If no such housing accommodation is available at the same or lower regulated rent, the owner may be required to pay the difference in rent between the subject housing accommodation and the new housing accommodation to which the tenant is relocated for such period as the DHCR determines, commencing with the occupancy of the new housing accommodation by the tenant.
- (d) Any order granting an application pursuant to this section shall not provide for a stay of eviction which exceeds one year. In addition, where the order of the DHCR is conditioned upon the owner's compliance with specified terms and conditions, if such terms and conditions have not been complied with, the order may be modified or revoked.

PART 2525--PROHIBITIONS

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§ 2525.1. General prohibitions.

It shall be unlawful, regardless of any contract, lease or other obligation heretofore or hereafter entered into, for any person to demand or receive any rent for any housing accommodation in excess of the legal regulated rent, or otherwise to do or omit to do any act, in violation of any regulation, order or requirement under the RSL or this Code, or to offer, solicit, attempt or agree to do any of the foregoing. In addition to the definition contained in section 2520.6(c) of this Title, the term rent, as herein before defined, shall also include the payment by a tenant of a fee or rental commission to an owner or to any person or real estate broker where such person or real estate broker is an agent or employee of the owner employed by the owner in connection with the operation or management of the building in which the housing accommodation is located, or where the owner or his or her employee refers the tenant to such person or such real estate broker employed by the owner in connection with the operation or management of the building, for the purpose of renting the housing accommodation, or where there is common ownership, directly or indirectly, or a financial interest between the owner and such person or real estate broker.

§ 2525.2. Evasion.

- (a) The legal regulated rents and other requirements provided in this Code shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease for housing accommodations by requiring the tenant to pay, or obligate himself or herself for membership or other fees, or by modification of the practices relating to payment of commissions or other charges, or by modification of the services furnished or required to be furnished with the housing accommodations, or otherwise.
- (b) (1) Upon the receipt of rent in the form of cash or any instrument other than the personal check of the tenant, it shall be the duty of the owner to provide the tenant with a written receipt containing the following:
 - (i) the date;

- (ii) the amount;
 - (iii) the identity of the premises and period for which paid; and
 - (iv) the signature and title of the person receiving the rent.
- (2) Where a tenant, in writing, requests that an owner provide a receipt for rent paid by personal check, it shall be the duty of the owner to provide the tenant with the receipt described in paragraph (1) of this subdivision for each such request made in writing. (3) The receipt provided pursuant to this subdivision shall state the name and New York City address of the managing agent or designee thereof, as required by section 27-2105 of the Administrative Code of the City of New York. A failure to comply with the provisions of this subdivision shall constitute an evasatory practice.

§ 2525.3. Conditional rental.

- (a) No owner or other person shall require a tenant or prospective tenant to purchase or lease, or agree to purchase or lease, furniture or any other personal property, including but not limited to shares to an apartment, prior to the acceptance for filing by the Attorney General of a plan of cooperative conversion, as a condition of renting housing accommodations.
- (b) No owner or other person shall require a tenant, prospective tenant or a prospective permanent tenant to represent or agree as a condition of renting a housing accommodation that the housing accommodation shall not be used as the tenant's or prospective tenant's primary residence, or the prospective permanent tenant's principal residence.
- (c) No owner or other person shall require a tenant or prospective tenant to sign a lease or other rental agreement in the name of a corporation or for professional or commercial use as a condition of renting a housing accommodation when the housing accommodation is to be used as the primary residence of the prospective tenant for residential purposes.
- (d) No owner or other person shall engage in any practice, including but not limited to illusory or collusive rental practices which deprive a tenant in possession of his or her rights under this Code.
- (e) The term "other person" as used in this section shall include an agent, or any other employee of an owner, or any other entity, acting with or without the authority of the owner.

§ 2525.4. Security deposits.

Regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no owner, in addition to the authorized collection of rent, shall demand, receive or retain a security deposit or advance payment for or in connection with the use or occupancy of a housing accommodation which exceeds the rent for one month; provided, however, that where a greater security deposit was paid by the tenant in continuous occupancy since the date the housing accommodation became subject to the RSL, such deposit may continue in effect during the term of such lease and any renewals thereof with the same tenant. Such security deposit shall be subject to the following conditions:

- (a) the security deposit shall be deposited in an interest-bearing account in a banking organization in New York State;

- (b) the person depositing such security money shall be entitled to receive, as administrative expenses, a sum equivalent to one percent per annum upon the security money so deposited;
- (c) at the tenant's option, the balance of the interest paid by the banking organization shall be applied for the rental of the housing accommodation, or held in trust until repaid, or annually paid to the tenant; and
- (d) the owner otherwise complies with the provisions of article 7 of the General Obligations Law.

§ 2525.5. Harassment.

It shall be unlawful for any owner or any person acting on his or her behalf, directly or indirectly, to engage in any course of conduct (including but not limited to interruption or discontinuance of required services, or unwarranted or base less court proceedings) which interferes with, or disturbs, or is intended to interfere with or disturb, the privacy, comfort, peace, repose or quiet enjoyment of the tenant in his or her use or occupancy of the housing accommodation, or is intended to cause the tenant to vacate such housing accommodation or waive any right afforded under this Code.

§ 2525.6. Subletting; assignment.

- (a) Housing accommodations subject to this Code rented by a tenant pursuant to an existing lease may be sublet in accordance with the provisions, and subject to the limitations, of section 226-b of the Real Property Law, provided that the additional provisions of this section are complied with and provided further that the tenant can establish that at all times he or she has maintained the housing accommodation as his or her primary residence and intends to occupy it as such at the expiration of the sublease.
- (b) The rental charged to the subtenant by the tenant shall not exceed the legal regulated rent plus no more than a 10-percent surcharge payable to the tenant if the housing accommodation is sublet fully furnished. Where a tenant violates the provisions of this subdivision, the subtenant shall be entitled to treble damages.
- (c) The tenant may not sublet a housing accommodation for more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease. The term of proposed sublease may, if lawful under this section, extend beyond the term of the tenant's lease, and an owner may not refuse consent to a sublease solely because it extends beyond such term. A sublease which so extends shall be subject to the tenant's right to a renewal lease.
- (d) The tenant, rather than the subtenant, retains:
 - (1) the right to a renewal lease, whether or not the term of the sublease extends beyond the term of the tenant's lease; and
 - (2) the rights and status of a tenant in occupancy with respect to conversion to condominium or cooperative ownership.
- (e) Upon the consent of the owner to a sublet or an assignment of any lease, the legal regulated rent payable to the owner effective upon the date of subletting or assignment may be increased by the vacancy allowance, if any, provided in the Rent Guidelines Board Order in

effect at the time of the commencement date of the lease, provided the lease is a renewal lease. Such increase in the case of an assignment shall remain part of the legal regulated rent for any subsequent renewal lease; however, in the case of a subletting, upon termination of the sublease, the legal regulated rent shall revert to the legal regulated rent without the sublet vacancy allowance.

- (f) An owner may terminate the tenancy of a tenant who sublets contrary to the terms of this section, or assigns without written consent of the owner, but no action or proceeding to terminate tenancy based upon the nonprimary residence of a tenant may be commenced prior to the expiration date of his or her lease.
- (g) (1) Notwithstanding the provisions of section 226-b of the Real Property Law, a not-for-profit hospital shall have the right to sublet any housing accommodation leased by it to its affiliated personnel without requiring the owner's consent to any such sublease and without being bound by the provisions of subdivisions (a), (c), (e) and (f) of this section. For the purposes of this section, where a housing accommodation is rented to a not-for-profit hospital for residential use, affiliated subtenants authorized to use such accommodations by such hospital shall be deemed to be tenants.

(2) Whenever a not-for-profit hospital executes a renewal lease for a housing accommodation, the legal regulated rent shall be increased by a sum equal to 15 percent of the previous lease rental for such housing accommodation, hereinafter referred to as a vacancy surcharge, unless the owner shall have received within the seven-year period prior to the commencement date of such renewal lease any vacancy increases or vacancy surcharges allocable to the said housing accommodation. In the event the owner shall have received any such vacancy increases or vacancy surcharges during such seven-year period, the vacancy surcharge shall be reduced by the amount received by any such vacancy increase or vacancy surcharges.
- (h) For housing accommodations which are first made subject to this Code solely by reason of article 7-C of the MDL, nothing herein shall be deemed to prevent or limit the rights of tenants to sell improvements pursuant to MDL section 286(6).

PART 2526--ENFORCEMENT

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§ 2526.1. Overcharge penalties; fines; assessment of costs; attorney's fees; rent credits.

- (a) (1) Any owner who is found by the DHCR, after a reasonable opportunity to be heard, to have collected any rent or other consideration in excess of the legal regulated rent shall be ordered to pay to the tenant a penalty equal to three times the amount of such excess, except as provided under subdivision (f) of this section. If the owner establishes by a preponderance of the evidence that the overcharge was not willful, the DHCR shall establish the penalty as the amount of the overcharge plus interest from the date of the first overcharge on or after April 1, 1984, at the rate of interest payable on a judgment pursuant to section 5004 of the Civil Practice Law and Rules, and the order shall direct such a payment to be made to the tenant.
- (2) A complaint pursuant to this section must be filed with the DHCR within four years of the first overcharge alleged, and no award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed, provided that:
- (i) a penalty of three times the overcharge may not be based upon an overcharge having occurred more than two years before the complaint is filed or upon an overcharge which occurred prior to April 1, 1984; and
 - (ii) any complaint based upon overcharges occurring prior to the date of filing of the initial rent registration for a housing accommodation pursuant to Part 2528 of this Title shall be filed within 90 days of the mailing of notice to the tenant of such registration.
- (3) (i) Except as to complaints filed pursuant to subparagraph (ii) of this paragraph, the legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent shown in the annual registration statement filed four years prior to the most recent registration statement (or, if more recently filed, the initial

registration statement), plus in each case any subsequent lawful increases and adjustments.

- (ii) As to complaints filed within 90 days of the initial registration of a housing accommodation, the legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent charged and paid on April 1, 1980, or for a housing accommodation not required to be registered by June 30, 1984, four years prior to the date the housing accommodation was first required to be registered (or if the housing accommodation was subject to the RSL and this Code for less than four years prior to such initial registration, the initial legal regulated rent) plus in each case, any lawful increases and adjustments. Where the rent charged on such dates cannot be established, such rent shall be determined by the DHCR in accordance with section 2522.6 of this Title.
- (4) Complaints filed prior to April 1, 1984 shall be determined in accordance with the RSL and Code provisions in effect on March 31, 1984, except that an overcharge collected on or after April 1, 1984 may be subject to treble damages pursuant to this section.
- (b) The DHCR shall determine the owner's liability between or among two or more tenants found to have been overcharged during their particular occupancy of a housing accommodation, and at its discretion, may require the owner to make diligent efforts to locate prior tenants who are not parties to the proceeding, and to make refunds to such tenants or pay the amount of such penalty as a fine.
- (c) (1) Any affected tenant shall be given notice of and an opportunity to join in any proceeding commenced by the DHCR pursuant to this section.
(2) Where a complainant pursuant to this section vacates the housing accommodation, and the DHCR continues the proceeding, the DHCR shall give any affected tenant notice of and an opportunity to join in such proceeding.
- (d) An owner who is found to have overcharged by the DHCR may be assessed and ordered to pay to the tenant as an additional penalty the reasonable costs and attorney's fees of the proceeding, and except where treble damages are awarded, interest from the date of the overcharge occurring on or after April 1, 1984, at the rate of interest payable on a judgment pursuant to section 5004 of the Civil Practice Law and Rules.
- (e) A tenant may recover any overcharge penalty established by the DHCR by deducting it from the rent due to the present owner at a rate not in excess of 20 percent of the amount of the penalty for any one month's rent. If no such rent credit has been taken, the order of the DHCR awarding penalties may be entered, filed and enforced by a tenant in the same manner as a judgment of the Supreme Court, on a form prescribed by the DHCR, provided that the amount of the penalty exceeds \$1,000 or the tenant is no longer in possession. Neither of these remedies is available until the expiration of the period in which the owner may institute a proceeding pursuant to Part 2530 of this Title.
- (f) Responsibility for overcharges.
 - (1) For overcharges collected prior to April 1, 1984, an owner will be held responsible only for his or her portion of the overcharges, in the absence of collusion or any relationship between such owner and any prior owners.

- (2) For overcharge complaints filed or overcharges collected on or after April 1, 1984, a current owner shall be responsible for all overcharge penalties, including penalties based upon overcharges collected by any prior owner. However, in the absence of collusion or any relationship between such owner and any prior owner, where no records sufficient to establish the legal regulated rent were provided at a judicial sale, a current owner who purchases upon such judicial sale shall be liable only for his or her portion of the overcharges, and shall not be liable for treble damages upon such portion resulting from overcharges caused by any prior owner. Such penalties shall be subject to the time limitations set forth in paragraph (a)(2) of this section.
 - (3) This subdivision shall not be construed to entitle a tenant to more than one refund for the same overcharge.
- (g) The provisions of this section shall not apply to a proceeding pursuant to section 2522.3 of this Title.

§ 2526.2. Orders to enforce the RSL and this Code.

- (a) Upon notice and reasonable opportunity to be heard, the DHCR may issue orders it deems appropriate to enforce the RSL and this Code.
- (b) In addition to any other penalties provided for in this Code, if the DHCR finds that any owner has knowingly violated any provision of the RSL or this Code, it may assess a penalty of up to \$250 for each such violation against the owner.
- (c) If the owner is found by the DHCR:
 - (1) to have violated an order of the DHCR, the DHCR may impose, by administrative order after holding a hearing, a penalty in the amount of \$250 for the first such offense and \$1,000 for each subsequent offense; or
 - (2) to have harassed a tenant to obtain a vacancy of a housing accommodation, the DHCR may impose, by administrative order after holding a hearing, a penalty in the amount of up to \$1,000 for a first such offense and up to \$2,500 for each subsequent offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation. Such order shall be deemed a final determination for the purposes of judicial review pursuant to Part 2530 of this Title. Such penalty may, upon the expiration of the period for seeking review pursuant to article 78 of the Civil Practice Law and Rules, be docketed and enforced in the manner of a judgment of the Supreme Court; or
 - (3) not have utilized a housing accommodation for the purpose intended under section 2524.4(b)(2) of this Title, the DHCR shall impose, by administrative order after hearing, a penalty in the amount of up to \$1,000 for each such offense.
- (d) Any owner who has been found by the DHCR to have refused to comply with an order of the DHCR or to have harassed a tenant shall, in addition to being subject to any other penalties or remedies permitted by law or by this Code, be barred thereafter from applying for or collecting any further rent increase for the affected housing accommodation. The finding by the DHCR that the owner has complied with such order or that the conduct which

resulted in the finding of harassment has ceased, shall result in the prospective elimination of the sanctions provided for in this section.

- (e) The failure of any owner to pay any fine, penalty or assessment authorized by the RSL or this Code shall, until such fine, penalty or assessment is paid, bar an owner from applying for or collecting any further rent increases for such housing accommodation. The late payment of any fine, penalty or assessment shall result in the prospective elimination of such sanction.

§ 2526.3. Injunctions by Supreme Court.

The DHCR may commence proceedings in the Supreme Court to enjoin violations of the RSL, this Code, or orders issued pursuant thereto. In any such proceedings, the DHCR shall not be required to post bond.

§ 2526.4. Oaths, subpoenas, hearing officers.

The DHCR may administer oaths, issue subpoenas, conduct investigations, make inspections and designate officers to hear and report.

§ 2526.5. Confidentiality of information.

The DHCR shall safeguard the confidentiality of information furnished to it at the request of the person furnishing such information, unless such information must be made public or available to a governmental agency in the interest of establishing a record for the future guidance of persons subject to the RSL.

§ 2526.6. Inspection and records.

- (a) An owner shall, as the DHCR may from time to time require, furnish information under oath or affirmation or otherwise, permit inspection and copying of records and other documents and permit inspection of any housing accommodations.
- (b) An owner shall, as the DHCR may from time to time require, make and keep records and other documents and make reports.

PART 2527--PROCEEDINGS BEFORE THE DHCR

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§ 2527.1. Proceedings instituted by owner or tenant.

A proceeding is instituted by an owner or a tenant with the filing of an application or complaint for adjustment of rent, or for other relief provided by the RSL or this Code. Such application or complaint shall be verified or affirmed by the applicant or complainant and filed upon the appropriate form prescribed by the DHCR.

§ 2527.2. Proceedings instituted by the DHCR.

The DHCR may institute a proceeding on its own initiative whenever the DHCR deems it necessary or appropriate pursuant to the RSL or this Code.

§ 2527.3. Notice to the parties affected.

- (a) Where the application or complaint or any answer or reply thereto is made by an owner or tenant, the DHCR shall serve all parties adversely affected thereby with a copy of such application, complaint, answer or reply.
- (b) Where the proceeding is instituted by the DHCR, it shall forward to all parties affected thereby a notice setting forth the proposed action.
- (c) Except where an attorney or other authorized representative appears for the owner, any notice, order or other process or paper, directed to the person named in the last filed registration statement as the owner at the address given therein, or where a notice of change in identity has been filed, to the person named as owner and at the address given in the most recent such notice, shall constitute notice to the person who is then the owner. In addition

thereto, the DHCR shall also serve all parties at the address specified on the application or complaint.

§ 2527.4. Answer.

A person who has been served with a notice of a proceeding accompanied by an application or complaint shall have no less than 20 days from the date of mailing in which to answer or reply, except that in exceptional circumstances, the DHCR may require a shorter period. Every answer or reply shall be verified or affirmed, and an original and one copy shall be filed with the DHCR.

§ 2527.5. Preliminary action by the DHCR.

At any stage of a proceeding the DHCR may:

- (a) reject the application or complaint if it is insufficient or defective;
- (b) make investigations of the facts, conduct inspections, hold conferences, and require the filing of reports, evidence, affidavits, or other material relevant to the proceeding;
- (c) forward to or make available for inspection by either party any relevant evidence, and afford an opportunity to file a rebuttal thereto;
- (d) for good cause shown, except where prohibited by the RSL, accept for filing any papers, even though not filed within the time required by this Code;
- (e) require any person to appear or produce documents or both pursuant to subpoena issued by the DHCR;
- (f) consolidate two or more applications, complaints, or proceedings which have at least one ground in common;
- (g) forward to any party a notice of action proposed to be taken;
- (h) grant or order a hearing;
- (i) on its own initiative or upon application of any affected owner or tenant, consolidate proceedings applicable to the same building or group of buildings or development, notwithstanding that the housing accommodations affected may be subject to different regulations; in any such consolidated proceedings the determination with respect to any housing accommodation shall be made in accordance with the appropriate law or regulation applicable to such accommodations. Proceedings once consolidated may be severed for good cause shown;
- (j) On its own initiative, or at the request of a court of competent jurisdiction, or for good cause shown upon application of any affected party, expedite the processing of a matter; or
- (k) sever issues within a proceeding for purposes of issuing an Order and Determination with respect to certain issues while reserving other issues for subsequent determination.

§ 2527.6. Determination.

The DHCR, on such terms and conditions as it shall determine, may:

- (a) dismiss the application or complaint if it fails to substantially comply with the provisions of the RSL or this Code;
- (b) grant or deny the application or complaint in whole or in part;
- (c) issue an appropriate order in a proceeding instituted on DHCR's own initiative;
- (d) issue conditional or provisional orders as may be deemed appropriate under the circumstances. A copy of any order issued shall be forwarded to all parties to the proceeding by the DHCR as the DHCR directs.

Notwithstanding any other provision of this Code, no order shall be deemed final and binding for purposes of judicial review except in accordance with Part 2529 of this Title.

§ 2527.7. Pending proceedings.

Except as otherwise provided herein, unless undue hardship or prejudice results therefrom, this Code shall apply to any proceeding pending before the DHCR, which proceeding commenced on or after April 1, 1984, or where a provision of this Code is amended, or an applicable statute is enacted or amended during the tendency of a proceeding, the determination shall be made in accordance with the changed provision.

§ 2527.8. Modification or revocation of orders.

The DHCR, on application of either party, or on its own initiative, and upon notice to all parties affected, may issue a superseding order modifying or revoking any order issued by it under this or any previous Code where the DHCR finds that such order was the result of illegality, irregularity in vital matters or fraud

§ 2527.9. When a notice or paper shall be deemed served.

- (a) Except as otherwise provided by section 2529.2 of this Title, notices, orders, answers and other papers may be served personally or by mail. When service, other than by the DHCR, is made personally or by mail, an affidavit by the person making the service or mailing shall constitute sufficient proof of service. When service is by registered or certified mail, the stamped post-office receipt shall constitute sufficient proof of service. Once sufficient proof of service has been submitted to the DHCR, the burden of proving nonreceipt shall be on the party denying receipt.
- (b) Where a notice of appearance has been filed by an attorney, in accordance with section 2523.6 of this Title, service on the attorney shall be deemed proper service as if made on the party or parties represented.

§ 2527.10. Amendments to complaint or application.

- (a) Right to amend. The DHCR may authorize an amendment to a complaint or application at any time on good cause shown, except that an applicant or complainant shall have the right to amend the application or complaint in writing prior to the time within which an answer may be filed.
- (b) Service. Any amendment to an application or complaint shall be served upon all affected parties in the same manner as the original application or complaint.

- (c) Amended answer or reply. When an application or complaint is amended after an answer has been filed, all affected parties may file an amended answer or reply within the time provided for the answer or reply.

§ 2527.11. Advisory opinions and Operational Bulletins.

- (a) The DHCR may render advisory opinions as to the DHCR's interpretation of the RSL, this Code or procedures, on the DHCR's own initiative or at the request of a party.
- (b) In addition to the advisory opinion issued under subdivision (a) of this section, the DHCR may take such other required and appropriate action as it deems necessary for the timely implementation of the RSL and this Code, and for the preservation of regulated rental housing in accordance with section 2520.3 of this Title. Such other action may include the issuance and updating of schedules, forms, instructions, and the official interpretative opinions and explanatory statements of general policy of the commissioner, including Operational Bulletins, with respect to the RSL and this Code.

PART 2528--REGISTRATION OF HOUSING ACCOMMODATIONS

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§ 2528.1. Initial registration.

Each housing accommodation subject to the RSL on April 1, 1984, or thereafter, and not exempted from registration by the DHCR, shall be registered by the owner thereof with the DHCR within 90 days after such date.

§ 2528.2. Initial registration requirements.

- (a) The initial registration shall be made on forms prescribed or approved by the DHCR, and shall include:
- (1) the address of the building or group of buildings or development in which such housing accommodation is located and the name of the tenant residing therein;
 - (2) the number of housing accommodations in the building or group of buildings or development;
 - (3) the number of housing accommodations in the building or group of buildings or development subject to the RSL and the number of such housing accommodations subject to the City Rent Law;
 - (4) the rent charged on April 1, 1984, or the rent charged on the date the housing accommodation became subject to the requirements of this Part, and any changes in such rent between such date and the date of registration;
 - (5) the number of rooms in such housing accommodation; and
 - (6) all services provided for in the last lease or rental agreement, provided or required to be provided on the applicable base date, or thereafter.
- (b) Registration of housing accommodations subject to the City Rent Law immediately prior to the date of filing the initial registration statement shall include, in addition to the items set forth in subdivision (a) of this section, where existing, the maximum rent immediately prior

to the date that such housing accommodations became subject to the RSL or the requirements of this Part.

- (c) Copies of the registration shall be filed in such manner and in such place or places as the DHCR may designate. In addition, a copy of the Building Services Registration form shall be posted in a public area of the building as prescribed in the DHCR's Instructions for Rent Registration.
- (d) One copy of the Initial Apartment Registration form which pertains to the tenant's housing accommodation shall be sent by the owner to the tenant by certified mail. Service of such form pursuant to this subdivision together with the Notice of Initial Legal Registered Rent shall constitute proper service of such Notice of Initial Legal Registered Rent under section 2523.1 of this Title. Provided, however, that for registrations served prior to the effective date of this subdivision, any method of service permitted by the DHCR at the time of service shall be deemed to have the same effect as service by certified mailing.

§ 2528.3. Annual registration requirements.

In such manner and at such time as shall be determined by the DHCR pursuant to section 2527.11 of this Title:

- (a) An annual registration shall be filed containing the current rent for each housing accommodation not otherwise exempt, a certification of services, and such other information as may be required by the DHCR pursuant to the RSL.
- (b) Upon filing an annual registration, the owner shall provide each tenant then in occupancy with a copy of that portion of such annual registration applicable to the tenant's housing accommodation.

§ 2528.4. Penalty for failure to register.

The failure to properly and timely comply with the initial or annual rent registration as required by this Part shall, until such time as such registration is completed, bar an owner from applying for or collecting any rent in excess of:

- (a) if no initial registration has taken place, the legal regulated rent in effect on the date that the housing accommodation became subject to the registration requirements of this Part; or
- (b) the legal regulated rent in effect on April first of the year for which an annual registration was required to be filed, or such other date of that year as may be determined by the DHCR pursuant to section 2528.3 of this Part.

The late filing of a registration shall result in the elimination, prospectively of such penalty.

§ 2528.5. Confidentiality.

Registration information filed with the DHCR pursuant to this Part shall not be subject to the Freedom of Information Law, provided that such information relative to a tenant, owner, lessor or subtenant shall be made available to such party or his or her authorized representative.

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§ 2529.1. Persons who may file.

- (a) A petition for administrative review (PAR) of an order issued by a rent administrator may be filed by a party to the proceeding, or other necessary party, in the manner provided in this Part, where such petition alleges the errors upon which such order is based.
- (b) (1) A joint PAR, verified or affirmed by each person joining therein, may be filed by two or more owners or tenants, where at least one ground is common to all persons so filing. The commissioner, in his discretion, may treat such PAR as joint or several.
(2) A PAR may also be filed by a representative of a party, including an attorney at law, provided that said representative duly verifies or affirms the PAR and provided that such representative includes, at the time of the filing of the PAR, written evidence of authorization to act in such representative capacity for the purpose of filing the PAR.
- (c) The commissioner may, in his discretion, consolidate two or more PAR's which have at least one ground in common

§ 2529.2. Time for filing a PAR.

A PAR against an order of a rent administrator must be filed in person or by mail with the DHCR within 35 days after the date such order is issued. A PAR served by mail must be postmarked not more than 35 days after the date of such order, to be deemed timely filed. If the

prepaid postage on the envelope in which the PAR is mailed is by private postage meter, and the envelope does not have an official U.S. Postal Service postmark, then the PAR will not be considered timely filed unless received within the aforementioned 35 days or the petitioner submits other adequate proof of mailing within said 35 days, such as an official Postal Service receipt or certificate of mailing.

§ 2529.3. Form and content of a PAR.

A PAR may be filed only on a form prescribed by the DHCR, which shall be verified or affirmed by the party filing same, or his or her duly designated representative, and which shall have attached thereto a complete copy of the order to be reviewed.

§ 2529.4. Service and filing of a PAR.

- (a) Each PAR shall be filed in an original and one copy at the Division of Housing and Community Renewal, Office of Rent Administration, 92-31 Union Hall Street, Jamaica, NY 11433, unless otherwise provided on the form prescribed by the commissioner for such PAR.
- (b) A copy of the PAR shall be served by the DHCR upon the adverse party.
- (c) A PAR will not be accepted for filing unless accompanied by a complete copy of the order to be reviewed.

§ 2529.5. Time of filing an answer to a PAR.

Any person served with a PAR as provided in section 2529.4(b) of this Part may, within 20 days from the date of mailing of a copy of the PAR by the DHCR pursuant to section 2529.4(b), file a verified or affirmed answer thereto, by filing the same with the DHCR. A copy of such answer to the PAR shall be served by the DHCR upon the adverse party. The commissioner may, in his discretion, and for good cause shown, extend the time within which to answer.

§ 2529.6. Scope of review.

Review pursuant to this Part shall be limited to facts or evidence before a rent administrator as raised in the petition.

Where the petitioner submits with the petition certain facts or evidence which he or she establishes could not reasonably have been offered or included in the proceeding prior to the issuance of the order being appealed, the proceeding may be remanded for redetermination to the rent administrator to consider such facts and evidence.

§ 2529.7. Action by commissioner.

Within a reasonable time after the filing of the PAR and the answers, if any, the commissioner may:

- (a) Reject a par which is timely filed if it is insufficient or defective, but may provide a specified period of time within which to perfect the PAR.

- (b) Make such investigation of the facts, hold such conferences, and require the filing of such reports, evidence, affidavits, or other material relevant to the proceeding as he may deem necessary or appropriate.
- (c) Forward to, or make available for inspection by either party, any relevant evidence, and afford an opportunity to file rebuttal thereto.
- (d) For good cause shown, accept for filing any papers, other than a PAR, even though not filed within the time required by this Part.
- (e) Require any person to appear or produce documents, or both, pursuant to a subpoena issued by the commissioner.
- (f) Grant or order a hearing.

§ 2529.8. Final determination by the commissioner.

The commissioner, on such terms and conditions as he determines, shall:

- (a) dismiss the PAR if it fails substantially to comply with the provisions of the RSL or this Code; or
- (b) grant or deny the PAR, in whole or in part, or remand the proceeding to the rent administrator for further action;

The commissioner shall inform all parties to the PAR of the grounds upon which such decision is based.

§ 2529.9. Modification or revocation of orders by the commissioner.

The commissioner, on application of either party or on his own initiative, and upon notice to all parties affected, may, prior to the date that a proceeding for judicial review has been commenced in the Supreme Court pursuant to article 78 of the Civil Practice Law and Rules, issue a superseding order modifying or revoking any order issued by him under this or any previous Code where he finds that such order was the result of illegality, irregularity in vital matters or fraud

§ 2529.10. Pending PAR proceedings.

Unless undue hardship or prejudice would result therefrom, this Code shall apply to any PAR proceeding pending before the DHCR commenced on or after April 1, 1984; or where a provision of this Code is amended, or an applicable statute is enacted or amended during the tendency of a PAR, the determination shall be in accordance with the changed provision.

§ 2529.11. Time within which the commissioner shall take final action.

If the commissioner does not act finally within a period of 90 days after a PAR is filed, or within such extended period as provided for herein, the PAR may be "deemed denied" by the petitioner for the purpose of commencing a proceeding pursuant to section 2530.1 of this Title. The commissioner may, however, grant one such extension, not to exceed 30 days, with the consent of the party filing the PAR; any further extension may only be granted with the consent of all parties to the PAR. Unless a proceeding for judicial review pursuant to article 78 of the

Civil Practice Law and Rules has been commenced, the commissioner shall determine a PAR notwithstanding that such 90-day or extended period has elapsed.

§ 2529.12. Stays.

The filing of a PAR against an order, other than an order adjusting, fixing or establishing the legal regulated rent, shall stay such order until the final determination of the PAR by the commissioner. Notwithstanding the above, that portion of an order fixing a penalty pursuant to section 2526.1(a) of this Title, that portion of an order resulting in a retroactive rent abatement pursuant to section 2523.4 of this Title, that portion of an order resulting in a retroactive rent decrease pursuant to section 2522.3 of this Title, and that portion of an order resulting in a retroactive rent increase pursuant to section 2522.4(a)(2), (3), (b) and (c) of this Title, shall also be stayed by the timely filing of a PAR against such orders until 60 days have elapsed after the determination of the PAR by the commissioner. However, nothing herein contained shall limit the commissioner from granting or vacating a stay under appropriate circumstances, on such terms and conditions as the commissioner may deem appropriate.

PART 2530--JUDICIAL REVIEW

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Section 2530.1. Commencement of proceeding.



§ 2530.1. Commencement of proceeding.

A proceeding for judicial review pursuant to article 78 of the Civil Practice Law and Rules may be instituted only to review a final order of the DHCR pursuant to section 2526.2(c)(2) of this Title; or to review a final order of the commissioner pursuant to section 2529.8 of this Title; or after the expiration of the 90-day or extended period within which the commissioner may determine a PAR pursuant to section 2529.11 of this Title, and which, therefore, may be "deemed denied" by the petitioner. The petition for judicial review shall be brought in the Supreme Court in the county in which the subject housing accommodation is located and shall be served upon the DHCR and the Attorney General. A proceeding for judicial review of an order issued pursuant to section 2526.2(c)(2) or section 2529.8 of this Title shall be brought within 60 days after the issuance of such order. A party aggrieved by a PAR order issued after the 90-day or extended period of time within which the petitioner could deem his or her petition "denied" pursuant to section 2529.11 of this Title, shall have 60 days from the date of such order to commence a proceeding for judicial review, notwithstanding that 60 days have elapsed after such 90-day or extended 'deemed denial' period has expired. Service of the petition upon the DHCR shall be made by personal delivery of a copy thereof to Counsel's Office at the DHCR's principal office, One Fordham Plaza, Bronx, NY 10458, or such other address as may be designated by the commissioner, and to an Assistant Attorney General at an office of the New York State Attorney General in the City of New York.