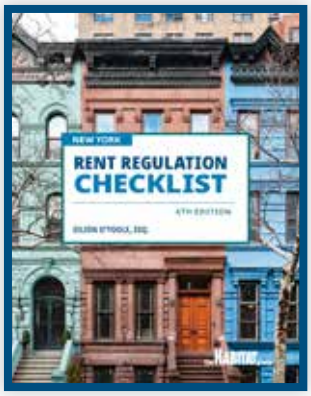

CHAPTER 30

Substantial Rehabilitation

Substantial Rehabilitation

EDITOR'S NOTE: On Aug. 31, 2022, the DHCR announced proposed amendments to the Rent Stabilization Code, Emergency Tenant Protection Regulations, and rent control regulations. Following a public comment period, public hearings to review the proposed regs will be held on Nov. 11, 2022. For further information, see the DHCR's website: *https://hcr.ny.gov/regulatory-information*

WHO IS AFFECTED

Rent-stabilized buildings that are substantially rehabilitated after Jan. 1, 1974, are exempt from rent regulation. Exceptions: Prior rent-controlled or rent-stabilized tenants who remain in occupancy after a substantial rehab is completed remain rent regulated. And the building remains rent regulated, at least temporarily, if the owner obtains J-51 tax benefits for the work performed.

EDITOR'S NOTE: At press time, pending NYS Senate Bill 7213-A proposes to require owners to apply to the DHCR for an exemption from rent stabilization within one year of the completion of a substantial rehabilitation project. The bill also would make owners of previously substantially rehabbed buildings go through a formal approval process.

WHAT LAW REQUIRES

As stated in DHCR Operational Bulletin 95-2, the substantial rehabilitation exemption from rent regulation "is intended to encourage the creation of new or rehabilitated housing," and the DHCR therefore "will consider all facts that support this policy." A building need not be totally reconstructed to qualify as "substantially" rehabilitated.

The DHCR will determine that a building has been substantially rehabilitated and is therefore exempt from rent stabilization if:

1. At least 75 percent of building-wide and individual housing accommodation systems have been replaced;
2. The rehabilitation commenced in a building that was in a substandard or seriously deteriorated condition; and
3. All building systems comply with applicable building codes and requirements.

Percentage of systems that must be replaced. DHCR Operational Bulletin 95-2 states that 75 percent of the following building-wide and apartment systems should be replaced to qualify for substantial rehabilitation: plumbing; heating; gas supply; electrical wiring; intercoms; windows;

roof; elevators; incinerators or waste compactors; fire escapes; interior stairways; kitchens; bathrooms; floors; ceilings and wall surfaces; pointing or exterior surface repair as needed; and all doors and frames including replacement of non-fire-rated items with fire-rated ones.

If a building does not contain any of the listed systems (such as elevators), the DHCR will look at whether 75 percent of the number of actual systems has been replaced. In addition, all ceilings, flooring, and plasterboard or wall surfaces in common areas must have been replaced. Ceiling, wall, and floor surfaces in apartments, if not replaced, must have been made as new as determined by the DHCR.

For good cause shown, on a case-by-case basis, limited exceptions to the DHCR's stated criteria may be applied where the owner shows that a particular component of the building or system had recently been installed or upgraded, or is structurally sound and didn't require replacement, or that the preservation of a particular component was desirable or required by law due to its aesthetic or historic merit.

Building in substandard or seriously deteriorated condition. Evidence of whether a building was in substandard or seriously deteriorated condition includes the extent to which the building was vacant when the rehabilitation began. If the building was at least 80 percent vacant when the rehabilitation work started, the DHCR presumes that the building was substandard or seriously deteriorated. Space converted from non-residential use to residential need not have been in substandard or seriously deteriorated condition to qualify.

The DHCR will not find that a building was in substandard or seriously deteriorated condition if it can show that the owner has attempted to secure a vacancy by an act or arson resulting in criminal conviction of the owner or the owner's agent, or if the DHCR has made a finding of harassment.

All building systems comply with applicable building codes and requirements. To qualify as a substantial rehabilitation, all building systems must comply with applicable building codes and requirements.

Substantial rehab won't exempt occupied units until those tenants vacate. A building need not be completely vacant at the time that work is performed to qualify for the substantial rehabilitation exemption. However, if occupied rent-regulated units have not been rehabilitated, these units will remain rent regulated until vacated, notwithstanding a finding that the rest of the building has been substantially rehabilitated.

- **Constructive occupancy.** If a tenant is ordered by a government agency to vacate an apartment and a court or the DHCR issues an order requiring the tenant to pay a nominal rent amount while a vacate order is in effect and permits the tenant to resume occupancy without interruption of the unit's rent-regulated status upon restoration of the unit to a habitable condition, such unit will be excepted from any finding of substantial rehabilitation otherwise applicable to the building. Even if a vacate order isn't issued, if an owner asks a tenant to temporarily vacate to facilitate the rehabilitation and the tenant does so for the owner's convenience, without surrendering possession, the unit remains rent regulated until that tenant permanently vacates. The exemption from rent regulation based on substantial rehabilitation will apply to a housing accommodation that is subject to a right of re-occupancy if the returning tenant subsequently moves out or if the tenant who is entitled to return pursuant to a court or DHCR order chooses not to do so.

If work doesn't qualify for substantial rehab exemption. Here are some options to consider if the work doesn't qualify for the substantial rehab exemption.

- **Work may qualify alternatively as MCIs or IAIs.** If work performed fails to qualify as a substantial rehabilitation exemption, the owner may still qualify for rent increases based on work performed on building-wide systems or in individual apartments. For example, installation of a new roof, windows, or other

building-wide improvements may qualify as major capital improvements, subject to separate DHCR approval requirements. Kitchen or bathroom replacement or other work may qualify as individual apartment improvements (IAIs) for which rent increases can be added for new rent-stabilized tenants.

➤ **Work may qualify alternatively as newly created apartment.** If an owner significantly changes the perimeter and dimensions of an existing housing accommodation, or creates a housing accommodation in space previously used for non-residential purposes, the DHCR may find that the resulting housing accommodation was not in existence on the applicable base date. The first rent of a newly created apartment may be deregulated if a rent was lawfully set before June 14, 2019, at a level above applicable deregulation thresholds. Otherwise, the first rent is subject to rent stabilization. [Editor's Note: At press time, pending NYS Senate Bill 7212-A proposes to regulate how much can be charged for initial rents of newly created apartments.]

No substantial rehab exemption if tax benefits obtained. An owner who seeks and obtains J-51 tax benefits for substantial rehabilitation work will not be entitled to exemption from rent stabilization during the tax benefit period.

Pending legislation may change requirements. At press time, pending NYS Senate Bill 7213-A, introduced in June 2021, proposes to amend the ETPA so that owners must apply to the DHCR for an exemption from rent stabilization within one year of the completion of a substantial rehabilitation project. The bill would also make owners of previously substantially rehabbed buildings go through a formal approval process. To date, no such application is required and the issue of whether a building has been "sub rehabbed" more often comes up if tenants make a claim that they are rent stabilized.

The bill also would require owners of any building previously alleged to have been substantially rehabbed to seek approval of the exemption from the DHCR within six months after the bill's enactment into law.

Under the proposed law, exemption applications based on substantial rehabilitation would be denied on one or more of four grounds:

- The owner or owner's predecessors engaged in harassment of the building's tenants within the five years preceding completion of the substantial rehab project;
- The building wasn't in a seriously deteriorated condition requiring substantial rehab;
- The owner or its predecessors failed to maintain the building and this materially contributed to its deteriorated condition prior to rehab; or
- The substantial rehab work was performed in a piecemeal fashion rather than within a reasonable amount of time while the building was at least 80 percent vacant.

HOW TO COMPLY

Owners should maintain records relating to substantial rehabilitation of a rent-regulated building. Owners seeking a DHCR determination that a building is exempt from rent regulation based on substantial rehabilitation should file DHCR Form RS-3, along with supporting documentation required by the DHCR to demonstrate the scope of the work performed.

This documentation may include: the building deed; Certificate of Occupancy or DOB Letter of Completion; building profile; an itemized description of replacements and installations by the owner and/or architect, engineer, or contractor who performed or reviewed the work; copies of approved building plans; contracts for work performed; appropriate government approvals; photographs of conditions before, during, and after the work was performed; and proof of the cost of work performed.

Owners should submit the application to the DHCR with a list of names of all building tenants and copies of the application for each tenant. Once the DHCR issues a final order determining that a building is exempt from rent regulation

based on substantial rehabilitation, that order is a binding determination on a building-wide basis. Subsequent tenants cannot challenge the exemption unless it is shown that the determination was obtained as a result of fraud.

Prior opinion. An owner may, but is not required to, apply to the DHCR for an advisory prior opinion that the building will qualify for exemption from rent regulation on the basis of substantial rehabilitation, based on the owner's rehabilitation plan. The request should include a rehabilitation plan, with contracts, applications for building permits, blueprints, etc. Although an owner may seek a prior opinion at any time, the DHCR encourages owners to apply for an advisory prior opinion at or about the time that they commence work.

DEADLINE

Exemption from rent stabilization based on substantial rehabilitation after Jan. 1, 1974, is a matter of law. So, while there is no deadline for filing an application with the DHCR for a determination on that issue, earlier rather than later filing may more easily resolve potential questions about rent regulatory status.

EDITOR'S NOTE: At press time, pending NYS Senate Bill 7213-A proposes to require owners to apply for exemption from rent stabilization within one year after completion of any new sub rehab project. For substantially rehabilitated buildings in existence at the time the proposed bill is enacted into law, an application would be due within six months.

PENALTY FOR FAILURE TO COMPLY

The law does not require that a DHCR determination be made as a prerequisite to treating a substantially rehabilitated building as exempt from rent stabilization. However, without a DHCR determination that a building is exempt, uncertainty remains and owners may eventually have to either file a DHCR application or prove the substantial rehabilitation in a court proceeding where tenants may oppose a claim that they are exempt from rent regulation on this basis.

FORMS REQUIRED

Owners seeking a DHCR determination must file

- **DHCR Form RS-3:** Application by Owner to Determine Whether Building/Apartment Is Exempt from the ETPA or the Rent Stabilization Law (1/10), see p. 30B-1.
- *Online: https://hcr.ny.gov/system/files/documents/2018/10/formrs3owner determineapartmentexemptfrometpa.pdf*

FOR FURTHER INFORMATION

1. Checklist Chapters to Review

- **Chapter 3: DHCR Powers & Procedures,** for general discussion of how to appeal a DHCR decision.
- **Chapter 11: Individual Apartment Improvements,** for discussion of applicable rent increases for IAI work performed in rent-stabilized or rent-controlled apartments.
- **Chapter 13: Major Capital Improvements,** for discussion of how to apply to the DHCR for MCI rent increases based on building-wide improvements that don't qualify as substantial rehabilitation.
- **Chapter 32: Tax Benefit Programs,** for discussion of tax benefits that create exceptions to exemption from rent regulation.

2. Publications

- **DHCR Fact Sheet #38:** Substantial Rehabilitation (6/19); online: *https://hcr.ny.gov/system/files/documents/2020/11/fact-sheet-38-06-2019.pdf*
- **DHCR Operational Bulletin 95-2:** Substantial Rehabilitation (Rev. 9/97); online: *https://hcr.ny.gov/system/files/documents/2018/09/operationalbulletin952substantialrehabilitation.pdf*

❖ **New York Apartment Law Insider:** "Rent Regulation Exit Strategy: Changes to Substantial Rehab Law in the Works," December 2021, The Habitat Group; online: *www.apartmentlawinsider.com*

3. Court Rulings & DHCR Decisions

◆ **SH Harman LLC v. DHCR:** 2021 NY Slip Op 32205(U), LVT #31758 (Sup. Ct. Kings 2021)

Landlord applied to the DHCR in 2018 for a determination that its building had been substantially rehabilitated and therefore was exempt from rent stabilization. The DHCR ruled against landlord, who then filed an Article 78 court appeal and lost. Even if there is no question that landlord performed sufficient rehabilitation work to building systems to qualify as a sub rehab, RSC §22520.11(e)(3) and DHCR Operational Bulletin 95-2 also require that, as a threshold matter, landlord must prove that the rehab was commenced in a building that was in substandard or seriously deteriorated condition. The DHCR rationally determined that landlord didn't meet this requirement since DOB violation records indicated that two or three of the building's six apartments were occupied during the renovations. The DHCR's finding that landlord failed to submit sufficient proof that the building was in poor condition when work began was rationally based.

◆ **884 Madison Street LLC v. Aurello:** Index No. L&T 70844/2017, LVT #28300 (Civ. Ct. NY 2017)

Tenant who moved into an apartment after the building was substantially rehabilitated in 2014 was unregulated since the building was exempt from rent stabilization.

◆ **Matter of Monmar Plaza LP:** DHCR Adm. Rev. Docket Nos. IU210003RP, IU210005RP, IU210006RP, LVT #32084 (5/9/22)

Prior landlord applied to the DHCR in 2004 for a ruling that the building was exempt from rent stabilization due to substantial rehabilitation. The DRA dismissed the case, but the DHCR ruled that landlord could refile again if it obtained a Certificate of Occupancy (C of O) from DOB. New landlord later advised the DHCR that a new C of O had been issued in 2013 and the building therefore should be deemed deregulated. But the DHCR ruled against landlord because a new RS-3 application hadn't been filed. Landlord filed an Article 78 court proceeding, claiming that the DHCR's decision was arbitrary and unreasonable. On remand, the DHCR ruled for landlord, finding that the building was exempt.

◆ **Matter of Stolpiec:** DHCR Adm. Rev. Docket No. JT210044RT, LVT #31880 (2/10/22)

Landlord asked the DHCR for a ruling that its building was exempt from rent regulation based on substantial rehabilitation. The DRA ruled for landlord. DOB approved landlord's application and renovation plans under a job filed in 2014. DOB's Letter of Completion stated that the work related to the application had been completed and signed off on in January 2016. The scope of work described in a sworn statement by landlord's architect indicated that at least 75 percent of all building-wide and apartment systems, including the common areas, had been replaced. There was no indication that landlord received any government financing or tax abatements. Landlord showed that it spent over $493,000 on the rehabilitation. One tenant appealed and won. The DRA had overlooked his response, showing that he had lived in the building since 1982 and therefore qualified to remain rent stabilized.

◆ **Matter of Gates Residence LLC:** DHCR Adm. Rev. Docket No. JT210001RP, LVT #31739 (11/17/21)

Landlord asked the DHCR in 2016 to determine that its building was exempt from regulation due to substantial rehabilitation. Landlord stated that the building interior was demolished and rebuilt between June 2008 and February 2009, and that 100 percent of the building's systems were replaced. Landlord submitted plans, DOB permit and application detail, along with construction photos, cancelled checks, and an engineer's affidavit. The DHCR ruled against landlord, finding that the building's heat distribution system, fire escapes, interior stairways, and roof weren't replaced. Since five of the building's 15 systems weren't replaced, landlord didn't replace 75 percent of the building systems and its work therefore didn't qualify as a substantial rehab.

Landlord filed an Article 78 court appeal, the DHCR against landlord again on remand, and landlord then filed another court appeal. On the second remand, the DHCR again denied landlord's PAR. Landlord's DOB filings contradicted its claims concerning the

extent of work done and indicated that replacement or renovation work was done in 50 percent or less of the building. And the Letter of Completion that landlord obtained in 2019 didn't encompass the extent of work needed to prove a substantial rehabilitation exemption from rent stabilization.

- **Matter of Zhu Young Corp.:** DHCR Adm. Rev. Docket No. JS210019RO, LVT #31690 (10/27/21)

  The DHCR denied landlord's application for a ruling that its building was exempt from rent regulation due to substantial rehabilitation. Landlord bought the building in 2014 and claimed that the prior landlord had performed the work involved between October 2004 and January 2007 after the building became vacant. But landlord didn't prove that 75 percent of building-wide and individual apartments systems had been replaced. Landlord didn't submit a full-scale copy of architectural plans approved by DOB, proof of payments, or a DOB cost affidavit (Form PW3) detailing the work approved by DOB.

  The DHCR wouldn't consider an architect's affidavit submitted for the first time with landlord's PAR. And, even if considered, the opinion of an architect, engineer, or contractor stating that the work was completed was insufficient, standing alone, to prove a substantial rehab. Landlord failed to adequately define the scope of the claimed work.

  Landlord submitted a statement by prior landlord that the work cost about $1 million. But combined DOB records indicated that the estimated job cost was only $729,000. So it was reasonable for the DRA to request invoices and cancelled checks as additional proof, which were not submitted.

  Photographs submitted also lacked evidentiary value since there was no accompanying statement as to who took the photos, when they were taken, or to otherwise authenticate them. And the photos didn't substitute for actual construction records, contractor invoices, and proof of payment.

- **Matter of 219 Troutman LLC:** DHCR Adm. Rev. Docket No. IX210029RO, LVT #31451 (5/4/21)

  Landlord applied to the DHCR for a rent stabilization exemption order based on claimed substantial rehabilitation of landlord's building. Landlord bought the building in March 2014, performed renovation work that was completed in 2015, and said it spent almost $400,000. The DRA ruled against landlord, who appealed and lost. Noting that, "The genesis of a substantial rehabilitation is in the DOB filings," the filings landlord made at DOB contradicted its sub rehab claim.

  For example, for the DOB form questions concerning whether landlord was performing work in 50 percent or more of the building's area and whether landlord was demolishing 50 percent or more of the building's area, landlord answered "no." The DOB PW3 Cost Affidavit submitted by landlord contained a description of the work as interior renovation for an existing three-story building, with a total cost of $62,500, and relocating plumbing fixtures for $3,000. This total claimed job cost of $65,500 was $333,072 less than the cost for the claimed sub rehab before the DHCR. Landlord's PW3 "grossly underestimated" the job cost and was devoid of work descriptions.

  The DRA also reasonably relied on DOB's Letter of Completion showing that the work DOB signed off on in 2015 under a particular DOB job number didn't encompass the extent of work needed for substantial rehabilitation under RSC §2520.11(e) and DHCR Operational Bulletin 95-2. And the sworn statement of landlord's architect, simply stating that work was completed, didn't prove that a substantial rehabilitation was performed.

- **Matter of Jefferson Estates LLC:** DHCR Adm. Rev. Docket No. HX210012RO, LVT #31230 (12/16/20)

  The DHCR ruled against landlord who sought a declaration that its substantial rehabilitation exemption was effective in September 2012. But the DHCR determined that the effective date of the exemption was in June 2016, when the DOB Letter of Completion was issued. Until then, work and related activity such as inspections and approvals continued.

- **Matter of 643 Madison LLC:** DHCR Adm. Rev. Docket No. IU210002RO (11/18/20)

  Although landlord claimed that it substantially rehabilitated its building in 2014–2015, landlord's DOB job filing was revoked. So landlord couldn't prove that the building systems in question complied with all applicable building codes and requirements under DHCR Operational Bulletin 95-2. Landlord

couldn't rely on its revoked DOB application to support completion of a sub rehab.

- **Matter of 1046 Realty LLC:** DHCR Adm. Rev. Docket No. IO210055RO, LVT #31089 (10/6/20)

  The DHCR denied landlord's application for a ruling that its building was exempt from rent stabilization due to substantial rehabilitation. The DOB work permit stated that landlord wasn't performing work in 50 percent or more of the building's area or demolishing 50 percent or more of the building's area. Landlord's before-and-after photos and DOB Letter of Completion also failed to encompass an extent of work needed for sub rehab. And landlord didn't submit a requested "PW3" Cost Affidavit, DOB Letter of Completion, and/or new Certificate of Occupancy to the Rent Administrator.

- **Matter of 1509 Pacific Residences, LLC:** DHCR Adm. Rev. Docket No. IO210016RO, LVT #30964 (8/12/20)

  The DHCR denied landlord's application for a ruling that its building was substantially rehabilitated because landlord never submitted a DOB Letter of Completion, which signifies that the work and new building systems comply with applicable building codes. While landlord claimed that issuance was delayed due to a DOB audit, the DHCR ruled that landlord could reapply in the future if it obtained the DOB document.

- **Matter of Wilson Gardens, LLC:** DHCR Adm. Rev. Docket No. HP210015RO (2/19/20)

  The DHCR denied landlord's substantial rehab application where DOB revoked landlord's work permit. Other documentation didn't that the work had been completed or done legally.

- **Matter of Gates Residence LLC:** DHCR Adm. Rev. Docket No. GV210036RO, LVT #30284 (6/7/19)

  The DHCR denied landlord's application for ruling that its building had been substantially rehabilitated. Landlord produced neither a new Certificate of Occupancy nor Letter of Completion from DOB. And only 10 of the building's 15 building systems were completely replaced. Landlord's architect admitted that the heating distribution system, fire escapes, interior stairways, and roof weren't replaced. The building remained rent stabilized.

- **Matter of 28-208 Para Realty Corp.:** DHCR Adm. Rev. Docket No. FQ210005RO, LVT #30107 (3/20/19)

  Tenant asked the DHCR to determine her rent-regulatory status. Landlord claimed that it substantially rehabilitated the building after it bought it in 1989. The DRA issued an interim order in 2017, stating that tenant must be considered rent stabilized until landlord filed an RS-3 application form and the DHCR ruled on the building's status. Landlord appealed and won. While it's PAR was pending, the DHCR ruled in a separate proceeding that landlord had substantially rehabilitated the building. So, the prior, interim order was moot.

- **Matter of Kic:** DHCR Adm. Rev. Docket No. GP210019RT, LVT #30003 (1/25/19)

  The DHCR ruled that the building was substantially rehabilitated where landlord submitted DOB records, including an Altered Building Plan, approval, work permit, sign-off, new C of O, architect and contractor affidavits, and cost affidavits. The work increased the number of apartments from six to 10 after 1989. Fifteen out of 17 building systems checked by the DHCR had been replaced. The building didn't have an elevator or incinerator. Some existing walls and ceilings remained, but landlord replaced 75 percent of the building and apartment systems.

- **Matter of Rodriguez:** DHCR Adm. Rev. Docket No. GM210010RT, LVT #30004 (1/4/19)

  Tenant who moved into a building in 2010 was unregulated because the building was substantially rehabilitated in 1984 and a 20-year J-51 tax abatement expired in 2003 and applied rent stabilization status only to tenants who lived in the building before that date.

- **Matter of 270–274 East 2nd Residences LLC:** DHCR Adm. Rev. Docket No. FT210004RO, LVT #28416 (3/26/18)

  No substantial rehabilitation proved where construction work was confined to certain apartment interiors, didn't involve interruption of heating, water, and electrical service, and $10,000 cost estimate was disproportionate to the actual cost of the substantial rehab.

- **Matter of Ip:** DHCR Adm. Rev. Docket No. FS210062RO, LVT #28376 (3/16/18)

  Substantial rehabilitation was completed in 2013 after a building fire resulted in exemption from rent stabilization, except that all prior rent-stabilized tenants who returned to their apartments after HPD and DOB vacate orders remained rent-stabilized tenants; these tenants also obtained rent reduction orders from the DHCR pending re-occupancy.

- **Matter of Williams:** DHCR Adm. Rev. Docket No. FM210038RT, LVT #28307 (1/19/18)

  Landlord proved substantial rehabilitation completed in 2007 where HPD issued a vacate order in 2006 after a fire rendered the building uninhabitable, the building was at least 80 percent vacant when work commenced, the building contained 15 of the 17 systems listed in DHCR Operational Bulletin 95-2, and landlord replaced 75 percent of those 15 systems.

- **Matter of Perez:** DHCR Adm. Rev. Docket No. FP410011RT, LVT #28272 (1/18/18)

  A building was exempt from rent stabilization based on substantial rehabilitation completed in 1993 following a building fire where building was vacant and in substandard and seriously deteriorated condition after that, landlord replaced at least 75 percent of building and apartment systems, the only system not replaced was the fire escape, and the number of apartments increased from 10 to 18.

- **Matter of 435 Jefferson Avenue Corp.:** DHCR Adm. Rev. Docket No. FM210027RO, LVT #28020 (9/20/17)

  Although buildings substantially rehabilitated after Jan. 1, 1974, are removed from rent stabilization as a matter of law, landlord must apply to the DHCR for exemption to confirm the building's deregulated status.

- **Matter of SME Capital Ventures LLC:** DHCR Adm. Rev. Docket No. EV410065RT, LVT #27766 (4/10/17)

  The DHCR Rent Administrator ruled in September 2016 that the building was substantially rehabilitated by July 2011 and therefore subsequent tenant was exempt from rent stabilization; the DHCR dismissed tenant's claim that the ruling shouldn't be retroactive since the building became exempt when the work was completed even if landlord files an application with the DHCR years later or the DHCR otherwise doesn't rule on whether the building was substantially rehabilitated until months or years later.

- **Matter of Reno Capital LLC:** DHCR Adm. Rev. Docket No. EO210022RO, LVT #27632 (2/27/17)

  A building substantially rehabilitated in 2012 would remain rent stabilized until J-51 tax benefits granted in 2014 expired, rents charged to new tenants under 2014 leases were the legal regulated rents, and tenant who lived in the building before substantial rehabilitation would remain rent stabilized until he moved out.

- **Matter of Fisher:** DHCR Adm. Rev. Docket No. DT210040RT, LVT #27091 (5/18/16)

  The DHCR found that the building was substantially rehabilitation where DOB issued a letter of completion rather than a new certificate of occupancy.

- **Matter of Ribas:** DHCR Adm. Rev. Docket No. DW410014RT, LVT #26980 (3/22/16)

  There was no time limit for filing an application for rent regulation exemption due to substantial rehabilitation; landlord proved that the building was substantially rehabbed in 1987 where two adjacent buildings were vacant, in substantially deteriorated condition, combined into one building that received C of O, and more than 75 percent of building and apartment systems were replaced, landlord filed DOB Altered Building Application, work cost $1,500,000, and the building received J-51 tax benefits from 1989 to 2006. Any tenants living in building when J-51 benefits expired on June 30, 2007, remained rent stabilized unless each of their leases and renewal leases contained a J-51 rider.

30: Substantial Rehabilitation

APPENDIX A: TEXT OF LAW

The following laws and regulations apply:

- SRER §2102.3(b)(1)(ii)
- CRER §2202.4; ETPA §§5(a)(5), 6(d)(2)
- ETPR §§2500.9(e), 2502.4(a)(1), (2)
- RSC §§2520.11(e), 2527.11

SRER §2102.3: Grounds for increase of maximum rent

(b) Except with regard to an adjustment pursuant to clause (b) of subparagraph (i) of paragraph (1) of this subdivision, for which the approval of the Administrator shall not be required, any landlord may file an application to increase the maximum rent otherwise allowable, on forms prescribed by the Administrator, only on one or more of the following grounds:

(1) Increased service or facilities, substantial rehabilitation, major capital or other improvements. The Administrator may grant an appropriate adjustment of a maximum rent where he finds that:

* * * *

(ii) there has been since March 1, 1950 an increase in the rental value of the housing accommodations as a result of a substantial rehabilitation of the building or housing accommodations therein which materially adds to the value of the property or appreciably prolongs its life, excluding ordinary repairs, maintenance and replacements[.]

CRER §2202.4: Increased services or facilities, substantial rehabilitation, major capital or other improvements

Except with regard to an adjustment pursuant to paragraph (2) of subdivision (a) of this section, for which the approval of the administrator shall not be required, the administrator may grant an appropriate adjustment of a maximum rent where he finds that:

* * * *

(b) there has been, since March 1, 1959, an increase in the rental value of the housing accommodations as a result of a substantial rehabilitation of the building or housing accommodations therein which materially adds to the value of the property or appreciably prolongs its life, excluding ordinary repairs, maintenance and replacements[.]

ETPA §5: Housing accommodations subject to regulation

a. A declaration of emergency may be made pursuant to section three as to all or any class or classes of housing accommodations in a municipality, except:

* * * *

(5) housing accommodations in buildings completed or buildings substantially rehabilitated as family units on or after January first, nineteen hundred seventy-four[.]

ETPA §6: Regulation of rents

d. Provision shall be made pursuant to regulations under this act for individual adjustment of rents where:

* * * *

(2) there has been since January first, nineteen hundred seventy-four an increase in the rental value of the housing accommodations as a result of a substantial rehabilitation of the building or the housing accommodation therein which materially adds to the value of the property or appreciably prolongs its life, excluding ordinary repairs, maintenance, and replacements[.]

ETPR §2500.9: Housing accommodations subject to regulation

This Chapter shall apply to all or any class or classes of housing accommodations in a city, town or village for which a declaration of emergency has been made except the following:

* * * *

(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 Subchapter by provision of the act or any other statute that meet the following criteria, which at the division's discretion, may be effectuated by Operational Bulletin;

(1) a specified percentage, not to exceed 75% of listed building-wide and apartment systems, must have been replaced;

(2) for good cause shown, exceptions to the criteria stated herein or effectuated by Operational Bulletin, regarding the extent of the rehabilitation work required to be effectuated building-wide or as to individual housing accommodations, may be granted where the owner demonstrates that a particular component of the building or system has recently been installed or upgraded, or is structurally sound and does not require replacement, or that the preservation of a particular component is desirable or required by law due to its aesthetic or historic merit;

(3) the rehabilitation must have been commenced in a building that was in a substandard or seriously deteriorated condition. The extent to which the building was vacant of residential tenants when the rehabilitation was commenced shall constitute evidence of whether the building was in fact in such condition. Where the rehabilitation was commenced in a building in which at least 80% of the housing accommodations were vacant of residential tenants, there shall be a presumption that the building was substandard or seriously deteriorated at that time. Space converted from non-residential use to residential use shall not be required to have been in substandard or seriously deteriorated condition for there to be a finding that the building has been substantially rehabilitated;

(4) except in the case of extenuating circumstances, the division will not find the building to have been in a substandard or seriously deteriorated condition where it can be established that the owner has attempted to secure a vacancy by an act of arson resulting in criminal conviction of the owner or the owner's agent, or the division has made a finding of harassment, as defined pursuant to any applicable rent regulatory law, code or regulation;

(5) in order for there to be a finding of substantial rehabilitation, all building systems must comply with all applicable building codes and requirements, and the owner must submit copies of the building's certificate of occupancy, if such certificate is required by law, before and after the rehabilitation;

(6) where occupied rent regulated housing accommodations have not been rehabilitated, such housing accommodations shall remain regulated until vacated, notwithstanding a finding that the remainder of the building has been substantially rehabilitated, and therefore qualifies for exemption from regulation;

(7) where, because of the existence of hazardous conditions in his or her housing accommodation, a tenant has been ordered by a governmental agency to vacate such housing accommodation, and the tenant has received a court order or an order of the division that provides for payment by the tenant of a nominal rental amount while the vacate order is in effect, and permits the tenant to resume occupancy without interruption of the rent stabilized status of the housing accommodation upon restoration of the housing accommodation to a habitable condition, such housing accommodation will be excepted from any finding of substantial rehabilitation otherwise applicable to the building. However, the exemption from rent regulation based upon substantial rehabilitation will apply to a housing accommodation that is subject to a right of reoccupancy, if the returning tenant subsequently vacates, or if the tenant who is entitled to return pursuant to court or division order chooses not to do so;

(8) an owner may apply to the division for an advisory prior opinion that the building will qualify for exemption from rent regulation on the basis of substantial rehabilitation, based upon the owner's rehabilitation plan;

(9) specified documentation will be required from an owner in support of a claim of substantial rehabilitation[.]

ETPR §2502.4: Adjustment of legal regulated rent

(a) (1) An owner may file an application to increase the legal regulated rents of the building or building complex, on forms prescribed by the division, on one or more of the following grounds: Substantial rehabilitation, major capital improvements and other adjustments.

(2) Upon application by the owner, the division may grant an appropriate adjustment of a legal regulated rent where it finds that:

(i) There has been since January 1, 1974 an increase in the rental value of the housing accommodations as a result of a substantial rehabilitation of the building or housing accommodations therein which materially adds to the value of the property or appreciably prolongs its life, excluding ordinary repairs, maintenance and replacements and that the legal regulated rent has not been adjusted prior to the application based in whole or part upon the grounds set forth in the application[.]

RSC §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:

* * * *

(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 that meet the following criteria, which, at the DHCR's discretion, may be effectuated by operational bulletin:

(1) a specified percentage, not to exceed 75 percent, of listed building-wide and individual housing accommodation systems, must have been replaced;

(2) for good cause shown, exceptions to the criteria stated herein or effectuated by operational bulletin, regarding the extent of the rehabilitation work required to be effectuated building-wide or as to individual housing accommodations, may be granted where the owner demonstrates that a particular component of the building or system has recently been installed or upgraded, or is structurally sound and does not require replacement, or that the preservation of a particular component is desirable or required by law due to its aesthetic or historic merit;

(3) the rehabilitation must have been commenced in a building that was in a substandard or seriously deteriorated condition. The extent to which the building was vacant of residential tenants when the rehabilitation was commenced shall constitute evidence of whether the building was in fact in such condition. Where the rehabilitation was commenced in a building in which at least 80 percent of the housing accommodations were vacant of residential tenants, there shall be a presumption that the building was substandard or seriously deteriorated at that time. Space converted from nonresidential use to residential use shall not be required to have been in substandard or seriously deteriorated condition for there to be a finding that the building has been substantially rehabilitated;

(4) except in the case of extenuating circumstances, the DHCR will not find the building to have been in a substandard or seriously deteriorated condition where it can be established that the owner has attempted to secure a vacancy by an act of arson resulting in criminal conviction of the owner or the owner's agent, or the DHCR has made a finding of harassment, as defined pursuant to any applicable rent regulatory law, code or regulation;

(5) in order for there to be a finding of substantial rehabilitation, all building systems must comply with all applicable building codes and requirements, and the owner must submit copies of the building's certificate of occupancy, if such certificate is required by law, before and after the rehabilitation;

(6) where occupied rent regulated housing accommodations have not been rehabilitated, such housing accommodations shall remain rent regulated until vacated, notwithstanding a finding that the remainder of the building has been substantially rehabilitated, and therefore qualifies for exemption from regulation;

(7) where, because of the existence of hazardous conditions in his or her housing accommodation, a tenant has been ordered by a governmental agency to vacate such housing accommodation, and the tenant has received a court order or an

order of the DHCR that provides for payment by the tenant of a nominal rental amount while the vacate order is in effect, and permits the tenant to resume occupancy without interruption of the rent stabilized status of the housing accommodation upon restoration of the housing accommodation to a habitable condition, such housing accommodation will be excepted from any finding of substantial rehabilitation otherwise applicable to the building. However, the exemption from rent regulation based upon substantial rehabilitation will apply to a housing accommodation that is subject to a right of reoccupancy, if the returning tenant subsequently vacates, or if the tenant who is entitled to return pursuant to court or DHCR order chooses not to do so;

(8) an owner may apply to the DHCR for an advisory prior opinion that the building will qualify for exemption from rent regulation on the basis of substantial rehabilitation, based upon the owner's rehabilitation plan;

(9) specified documentation will be required from an owner in support of a claim of substantial rehabilitation;

RSC §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.

Application by Owner to Determine Whether Building/Apartment Is Exempt from the ETPA or the Rent Stabilization Law

DHCR Form RS-3 (1/10) [p. 1 of 2]

Note: To ensure that you have the most current version of this form, or to download it, go to the DHCR's website, https://hcr.ny.gov/system/files/documents/2018/10/formrs3ownerdetermineapartmentexemptfrometpa.pdf

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Web Site: www.nysdhcr.gov

Gertz Plaza
92-31 Union Hall Street
Jamaica, N.Y. 11433

Docket No.
(For office use only)

Application by Owner To Determine Whether Building/Apartment Is Exempt From The Emergency Tenant Protection Act Or The Rent Stabilization Law

1. Mailing Address Of Tenant:

Name: _____
Number and
Street: _____ Apt. No. _____
City,
State, Zip Code: _____

2. Mailing Address Of Owner:

Name: _____
Number and
Street: _____
City,
State, Zip Code: _____

3. Subject Building: _____
(Number and Street) (Apt. No.) (City, State, Zip Code)

Instructions to Owner:

If only one tenant in the building is affected, complete the entire application.

If more than one tenant is affected complete as follows:

— Prepare Master application in duplicate
— Insert "various" in boxes 1 and 3 where the name of the tenant or the apartment number is required
— Prepare a schedule (list) of names and apartment numbers of affected tenants
— Prepare an additional copy of application for each affected tenant, inserting appropriate information in boxes 1 and 3

In all cases file this Master Application (in duplicate), together with a copy of the completed application for each affected tenant plus one copy of all attachments with the office listed at the top of this page.

PART I

Grounds for exemption from the Rent Stabilization Law and the Emergency Tenant Protection Act
(Sections 26.504 and 26-506 of the NYC Rent Stabilization Law and Section 5 of Emergency Tenant Protection Act)

The owner of the building/apartment listed in Item 3 above requests an order of exemption from rent regulation claiming that the building/apartment is covered by one or more of the following grounds for such exemption. (Check item(s) which apply.)

☐ Apartments owned as a cooperative or a condominium except as provided in sections 352eee and 352eeee of the General Business Law.

☐ Hotel accommodations in cities having a population of less than one million.

☐ In cities having a population of one million or more, hotel accommodations built after July 1, 1969, or where on May 31, 1968 the rent was more than $350 per month or more than $88 per week.

☐ Apartments in buildings owned or operated by the United States, State of New York, any political subdivision, agency or instrumentality thereof, any municipality or any public housing authority.

☐ Apartments in buildings supervised by, or rents fixed by, DHCR under other provisions of law, or HPD, or UDC; or, to the extent that local rent regulations are inconsistent with the National Housing Act.

☐ Apartments in buildings with fewer than 6 apartments.

Application by Owner to Determine Whether Building/Apartment Is Exempt from the ETPA or the Rent Stabilization Law

DHCR Form RS-3 (1/10) [p. 2 of 2]

Note: To ensure that you have the most current version of this form, or to download it, go to the DHCR's website, https://hcr.ny.gov/system/files/documents/2018/10/formrs3ownerdetermineapartmentexemptfrometpa.pdf

- ☐ Apartments in buildings completed or substantially rehabilitated as family units, on or after January 1, 1974.
- ☐ In cities having a population of one million or more, hotel rooms occupied on a transient basis.
- ☐ A motor court, trailer, trailer space, or tourist home used for transients.
- ☐ Apartments in buildings used exclusively for charitable purposes on a non-profit basis.
- ☐ Apartments owned or operated by a hospital, college or any institution operated exclusively for charitable or educational purposes on a non-profit basis, occupied by affiliated personnel.
- ☐ Apartments subject to the emergency housing rent control law or the local emergency housing rent control act.
- ☐ Other: (State specific grounds.) _____

_____

PART II

The facts necessary to support my claim are as follows:

I have read the foregoing application and hereby affirm that the contents are true of my own knowledge.

Date: _____ _____
Signature

_____
Print name and title

RS-3 (1/10) -2 -