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New Code Amendments/Summary

The New York State Division of Housing and Community Renewal (“DHCR”) adopted amendments to the Rent Stabilization Code (“RSC”), Tenant Protection Regulations (that affect Nassau, Westchester, and Rockland Counties) and Rent Control Regulations on January 8, 2014. The regulations took effect immediately, except that the DHCR delayed the implementation of the new rent stabilized rider for a period not to exceed one hundred eighty (180) days, May 8, 2014.

There are twenty seven (27) amendments which have a direct impact on your business practices, relating to leasing practices, rent increases, and document production. A brief summary of the amendments is listed below:

1. **The Tenant Protection Unit (“TPU”)**: TPU is designated to investigate and prosecute violations of the various rent laws. The TPU may invoke all of authority under the rent laws and regulations. This will allow the TPU to issue subpoenas to property owners and managing agents.

2. **Vacancy Deregulation Notice:**

(a) DHCR has created a vacancy deregulation notice that did not previously exist. This notice must be served on the first tenant of a deregulated unit. The new notice requires the owner to provide the basis for deregulation, reflect the rent computation, and the last legal regulated rent.

(b) The timing and method to serve the first deregulated tenant with a copy of an “exit registration” is established. First, the owner must send the new notice by certified mail within thirty (30) days after the tenancy commences or provide to the tenant after the signing of the lease by both parties, whichever occurs first. Second, the owner must serve an exit registration within thirty (30) days after the tenancy commences. In the alternative, the notice can be delivered to the tenant at the time the lease is executed by both parties.

3. **Housing Development Fund Companies:** A new procedure to set the rent for housing development fund companies (“HDFC”) is established where the property has been conveyed in a foreclosure or pursuant to a stipulation of settlement in a foreclosure action. The legal rent will be established at the highest of:

- (i) Maintenance or carrying charges, common charges, or rent in effect immediately prior to such conveyance;

- (ii) Any minimum standard rent established by either HPD or DHCR as the respective supervising agency of an HDFC that was in effect immediately prior to such conveyance, even if such minimum standard rents had not been implemented for the specific building or housing accommodation; or
- (iii) The rent specifically set by HPD or DHCR as the respective supervising agency of an HDFC where such HDFC or a successor HDFC continues to own the building.

4. Preferential Rents:

(a) Leases for preferential rent must state the legal regulated and preferential rent in every lease or renewal lease executed between the parties. In order to properly establish a preferential rent, it must also be reflected on annual registration statements. The failure to establish a preferential rent in both leases and annual registrations may prevent an owner from preserving a higher legal regulated rent.

(b) DHCR eliminated language that had permitted a preferential lease to be established solely in an annual registration prior to June 19, 2003.

(c) An owner must maintain and provide to DHCR or a court, a rent history of the apartment from immediately prior to the first preferential rent to the present, even if more than four years. As a result of this amendment, all records and leases establishing a legal rent must be preserved where there is a preferential rent in effect. This Amendment allows DHCR to examine a rent history beyond four (4) years solely because a preferential rent is in effect.

5. Major Capital Improvements:

(a) Rewiring: A rent increase for the cost of new electric lines from basement to each apartment remains an item eligible for a rent increase, however, the cost of individual meters associated with conversion from submetering is excluded as a rent increase.

(b) Immediately Hazardous Violations: The existence of an immediately hazardous violation in effect at the time an MCI application is filed will result in the rejection of the application. The application can be re-filed within sixty (60) days after violation has been cleared. The application will be rejected regardless of whether the violation relates to the improvement. It is imperative that an MCI application be filed shortly after the MCI is completed. If an owner waits to file an application as it approaches the two year filing deadline, the existence of an immediate hazardous violation may bar the owner from timely filing the MCI application. Under certain circumstances, owners may need to go to Court to force HPD to remove violations of record or toll DHCR's sixty (60) day violation clearance period.

6. Submetering: Recipients of a Disability Rent Increase Exemption (“DRIE”) are treated the same as a tenant receiving a Senior Citizen Rent Increase Exemption (“SCRIE”). These tenants are excluded from an electrical submetering conversion. The rent is not reduced and the cost of electricity remains included in the rent. Owner is permitted to install new wiring and to meter the individual apartment. When the SCRIE or DRIE tenant vacates, the owner, without making a new application, can reduce the rent and the new tenant becomes responsible to pay for their electric usage.

7. Rent Stabilization Rider:

(a) A new DHCR promulgated rent stabilization rider will be required to be served with each vacancy lease and each lease renewal that details the calculation of rent increases and Individual Apartment Improvements.

(b) A tenant will have the right within (60) sixty days of executing a vacancy lease to request that the owner provide the tenant with documentation in the form of contracts, invoices, and cancelled checks to support any Individual Apartment Improvements. The owner has thirty (30) days to provide the documentation.

(c) The failure to provide the lease rider, or after request, the documentation, suspends the collectability of the increase. The owner may not collect a rent increase until the documentation is provided. The failure to provide the lease rider or documentation is curable but not retroactive.

It would be a best practice to execute all documents prior to the commencement of the lease, otherwise, an owner may be unable to prove when the lease was provided to the tenant for signature. The sixty (60) day period runs from the date the owner signs the lease. The new Amendments delete previously existing language that reflected the four (4) year record retention and did not impose greater record keeping requirements with regard to record keeping. It is imperative to get the executed lease back to the tenant to start the clock running on the sixty (60) day period.

8. Service Complaints:

(a) A tenant is no longer required to provide notice of the defective conditions prior to filing a complaint with DHCR. Practical Pointer: A rider should be added to all vacancy leases that provide a clear procedure on how to submit a request for repairs or services. The lease or rider should require the tenant to provide notice.

(b) The issuance of a rent reduction order will preclude future MCI and statutory vacancy increases until DHCR issues an order restoring the rent.

(c) The owner’s time to respond to a service complaint is reduced to twenty days from sixty days if the tenant provided the owner with notice of the defective conditions or alleged condition prior to filing the complaint. If the tenant has been forced to vacate the premises, the owner has five (5) days to respond to a complaint.

9. Deemed leases: Tenants who fail to renew a timely and properly offered lease renewal may be treated as month-to-month tenants if rent is accepted after the lease expires. Tenants cannot

be held to a new full lease term and will not be responsible for any increase in rent if the lease is not executed. The owner may commence a proceeding to recover possession of the apartment. Collecting an increase for a lease that is not executed can be found to be a rent overcharge. Any lease renewal that is executed after the expiration of the lease, that retroactively provides for the increase, may be deemed an overcharge, unless it is part of a settlement of a court proceeding.

10. Notices to Cure:

(a) Owners must add an additional five (5) days for mailing to a ten (10) day notice to cure for a violation constituting a substantial obligation of the tenancy.

(b) Where a tenant has refused to provide access and the owner serves a five (5) days notice to inspect, the tenant gets an extra five (5) days if the notice is served by mail.

(c) Hotel tenants who refuse to move after receiving a twenty (20) days notice are given an extra five (5) days if the notice is served by mail.

11. Harassment: The definition of harassment is revised to include false filings and false statements. Since the new rent stabilization rider requires the owner to certify that the information contained in the rider pertaining to the calculation of rent and improvements, any false information contained in that rider, if inaccurate, can be a basis for a finding of the imposition of a civil penalty based upon harassment.

12. Rent Overcharge:

(a) Six (6) exceptions to the four (4) year look back for overcharges are created. Exceptions to the four (4) year look back period include: an allegation of fraud, an un-restored rent reduction, an apartment that was vacant or exempt on the base date, the existence of a preferential rent, the owner's request for a longevity increase for a long term prior tenant, and to determine whether an overcharge was willful.

(b) Where a housing accommodation was vacant or temporarily exempt on the base date, for example, when it is occupied by a superintendent, the new rent may be increased by increasing the rent by successive two-year guideline increases that would have been allowed during the period of time that the apartment was vacant or temporarily exempt.

13. Default Formula: Is to be used when the rent on the base date under the four (4) year look back period cannot be determined or when the rent set on the base date was determined to be part of a fraudulent scheme to deregulate the apartment. Under the default formula, the rent is established at the lowest rent for a comparable unit in the building. Under the formula, the rent will be punitively set forth at the lowest of:

- (a) the lowest rent registered for a comparable apartment in the building;
- (b) the complaining tenant's initial rent reduced by a guideline;

- (c) the last registered rent paid by the prior tenant (if within the four (4) year period of review); or
- (d) if the above documentation is not available or inappropriate, an amount will be determined by DHCR using sampling methods from regulated apartments in the area.

14. DHCR Notices: DHCR clarifies that no additional time is allowed to respond to DHCR notices or where the DHCR establishes a time period, i.e., lease renewals that are mailed. The time to respond to a DHCR notice commences from the date of mailing. Practical Pointer: Keep your postage marked envelopes of DHCR Notices and proof of service of leases.

15. Registrations:

(a) DHCR has provided in the RSC that it may change annual registration requirements by Operational Bulletin.

(b) Owners will not be able to amend a rent registration without first going through an administrative proceeding and notifying the tenant prior to the amendment.

(c) The failure to file a registration results in a complete rent freeze of an MCI rent increase issued after failure and any applicable statutory vacancy increase. Language that permitted an owner to cure was deleted.

16. High Rent High Income Proceedings: An Income Certification may not be served upon a tenant who is receiving a Senior Citizen Rent Increase Exemption ("SCRIE") or a Disability Rent Increase Exemption ("DRIE").

17. Stays: An MCI increase is stayed, when the tenant files a Petition for Administrative Review against the rent increase, until the expiration of the time period for the tenant to file an Article 78 challenge expires.

18. Judicial Review: Provides that the issuance date of a DHCR order is the date of mailing of the order, for purposes of determining the time frame for filing of an Article 78 petition.

For additional information regarding how these amendments affect your properties and business, please contact us at your earliest convenience.

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