SKHHeiberger
LLP

Residential Leases and Riders

1 credit hour

Offered by: RE CREDITS, LLC

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A. Must leases be in writing, less than one year, greater than one year: (5 minutes)

1. The lease may be written, oral, or implied. Depending on the circumstances. New York State requires a plain-English format for residential leases. The requirements for a valid lease are essentially the same as any other real estate contract.
2. In New York, the eight essentials of a valid lease

i- Capacity to contract: the parties must be sane adults.

ii- A demising clause: the lessor agrees to let and the lessee to take the premises.

iii- Description of premises.

iv- A clear statement of term of the lease

v- Specification of rent and how it is to be paid

vi- In writing if it is for more than one year.

vii- Signatures: A lease should be signed by both parties.

viii- Delivery: The lease must be delivered by landlord to tenant, with duplicate originals for each.

Statute of Frauds

Pursuant to the Statute of Frauds, agreements that, by their nature, must be completed for a year or more, require memorialization and a written, signed contract in order to be valid and enforceable.

Accordingly, leases under a year can be oral and still enforceable as they would not break the time aspect of the statute of frauds.

A. FREE MARKET LEASES

I -STANDARD REBNY RENTAL LEASE FORM

SEE ATTACHED

II-RENT STABILIZED LEASE FORM (ANNEXED)

A-STANDARD (ANNEXED)

B-RENT STABILIZED BECAUSE OF 421A OR OTHER TAX CREDITS/BENEFITS

REQUIRED RIDERS FOR ALL LEASES (10 minutes)

1-) **Lead Paint** – In 1996, federal law required that individuals receive a Lead Paint Pamphlet and Disclosure Form before renting, buying, or renovating pre-1978 housing. Many houses and apartments built before 1978 have paint that contains lead (called lead-based paint). Lead from paint, chips, and dust can pose serious health hazards if not taken care of properly, which is one of the reasons why the required documents must be given to residents.

2-) **Sprinklers-** As of December 3, 2014, all residential leases must contain a "conspicuous notice in bold face" representation as to the existence of a sprinkler system . If no sprinkler system exists must be disclosed. If a sprinkler system exists, the date of the last maintenance and inspection must be disclosed. The law applies to all residential properties including condominiums & cooperatives. Affects new leases and renewal leases as of the effective date of December 3, 2014. The statute is silent as to consequences for not including the rider in residential leases.

3- Window Guards

You are required by law to have window guards installed if a child 10 years of age or younger lives in your apartment.

The Owner is required by law to install window guards in your apartment: If you ask to put in window guards at any time (you need not give a reason)

4- Bed Bugs

As of August 31, 2010 new residential tenants in New York City be given a one-year bed bug infestation history." Disclosure of Bedbug Infestation History". nt/dbbn.pdf. Applicable to *all* State supervised rental and mutual housing companies, it is the responsibility of management to develop and implement procedures to prevent bed bug infestations and to take measures to eradicate infestations should they occur.

5- Carbon Monoxide and Smoke Detector

i. Rent control and rent stabilization are the two types of rent regulation in New York State. An apartment not subject to these regulations is considered "unregulated." An individual tenant's rights will depend, in part, upon which regulations apply, although some apartments may fall under more than one category.

ii. When a person rents a rent stabilized apartment for the first time, the owner and the tenant sign a **VACANCY LEASE.**

iii. This written lease is a **Contract** between the owner and the tenant which states the terms and conditions of the lease, including the length of the lease, and the rights and responsibilities of the tenant and the owner. The Rent Stabilization Law gives the new tenant (also called the vacancy lease tenant) the choice of a one- or two-year lease term.

iv. The rent the owner may charge for a vacancy lease cannot exceed the last legal regulated rent and the applicable Rent Guidelines Board increases authorized by law. With the lease, a tenant should receive a Rent Stabilization Lease Rider/Addenda that states how the rent was computed and asserts that any increases comply with the Rent Stabilization Law and Code.

v. Vacancy lease rent increases cannot be collected if a DHCR Order reducing rent for decreased services is in effect.

vi. In addition, the Vacancy Lease Rider/Addenda completed by the owner must contain details about Individual Apartment Improvement (IAI) rent increase calculations. The Rider/Addenda must also contain a notice informing vacancy lease tenants of their right to request from the owner documentation that clarifies and supports the IAI increase, either at the time the lease is executed or within 60 days of its execution.

vii. Pursuant to the Rent Act of 2011, effective June 24, 2011, owners can charge and collect no more than one vacancy increase per calendar year

vii. Vacancy lease rent increase in a calendar year (January 1st through December 31st).

ix. The Housing Stability and Tenant Protection of 2019 eliminated the vacancy allowance that an owner can add to the legal regulated rent. For rent controlled apartments, the maximum increase in rent is limited to the average of the last five Rent Guidelines Board orders.

REQUIRED FURNISHINGS (10 minutes)

Under a provision of state law called the 'Warranty of Habitability,' tenants are entitled to an apartment **fit for human habitation** without any conditions endangering or detrimental to their life, health, or safety.

A. Landlords are required to maintain electrical, plumbing, sanitary, heating, and ventilating systems and appliances landlords install, such as refrigerators and stoves, in good and safe working order.

B. Must **protect against lead paint**.

C. Must install high quality smoke and carbon monoxide detectors.

D. **Must provide locks** for front doors and individual doors. Must also provide a peephole.

E. Must protect against rodents and bed bugs.

Delivery of lease

The owner must give written notice of renewal by mail or personal delivery not more than 150 days and not less than 90 days before the existing lease expires. A failure of the tenant to respond within 60 days of the offering may lead to eviction proceedings.

If an owner fails to deliver the same, a rent increase **cannot** be deemed.

FORMAL ABOLITION OF DEEMED LEASES FROM THE RSC (BEST PRACTICES FOR ADDRESSING FAILURES TO RENEW)

The best practice for addressing the failure to renew is to serve upon the Respondent the most recent lease renewal and upon their failure to sign it, pursue a holdover action forthwith. There are few defenses to such a cause of action and the tenant will be faced with the potential to lose their rent stabilized apartment or sign to a new lease.

Subletting and assignment: (5 minutes)

An owner may not unreasonably deny a sublet if the tenant follows these procedures:

1) Inform the owner of an intent to sublease by mailing a notice of such intent by certified mail, return receipt requested, no less than 30 days prior to the proposed subletting with:

(a) term of sublease;
(b) name of proposed subtenant;
(c) business and home address of proposed subtenant;
(d) tenant's reason for subletting;
(e) tenant's address for term of sublease
(f) written consent of any co-tenant or guarantor of the lease;
(g) a copy of the tenant's lease, where available, attached to a copy of the proposed sublease, acknowledged by the tenant and subtenant as being a true copy of the sublease;

2) Within ten days after the mailing of the request, the owner may ask the tenant for additional information. Within 30 days after the mailing of the tenant's request to sublet, or of the additional information reasonably asked for by the owner (whichever is later), the owner must send a reply to the tenant consenting to the sublet or indicating the reasons for denial. Failure of the owner to reply to the tenant's request within the required 30 days will be considered consent.

3) If the owner unreasonably withholds consent, the tenant may sublet the apartment and may also recover court costs and attorney's fees spent on finding that the owner acted in bad faith by withholding consent. If the owner reasonably withholds consent, the tenant may not sublet the apartment.

Tenant Rights (30 minutes)

1. Lease Renewals

- Tenants are entitled to a lease renewal at their choice of one or two years, and the maximum rent that can be charged for a one- or two-year lease is set administratively by the Rent Guidelines Board ("RGB").
- The Mayor of the City of New York appoints the members of the New York City RGB.

2. Subletting the Apartment

- Rent-stabilized tenants have the right to sublet their apartments for two years out of any four-year period subject to the owner's consent, which cannot be unreasonably withheld.
- A tenant may sublet an apartment if the owner unreasonably withhold consent or fails to respond to a request to sublet. Then a tenant can proceed with the sublet.
  - "Reasonable" objections can include things such as the past rental history of the prospective subtenant, or information indicating a tenant's intention not to re-occupy the apartment.

3. Roommates

- Provided a tenant continues to occupy the apartment as their primary residence, a tenant named on a lease, or a statutory tenant has the right to have one unrelated roommate and that roommate's dependent children reside with them. Immediate family members of the named tenant do not count as roommates. When more than one person is named on the lease, however, the total number of roommates and named tenants may not exceed the number of tenants named on the lease.
- Tenants who take in a roommate are required to notify the owner or respond to a request from the owner about who is living in the apartment within 30 days of a formal request for such information. Under DHCR regulations, an owner can begin eviction proceedings against a tenant for charging a roommate more than a proportionate share of the rent, and the roommate may be able to collect treble damages from the prime tenant for any illegal overcharge.
- Roommates can be added to leases only with the owner's consent.

4. Pets

- If your lease specifically permits pets or is silent on the issue, you may have pets.
  - However, "no pet" clauses are void if owners do not act to enforce them within 90 days of the time the owner knew or has known that the tenant has a pet.

5. Succession Rights

- To claim "succession rights" a "family member" who has resided in the apartment with the statutory or lease-signing tenant as a primary resident for a period of either:
  1) two years immediately prior to the death or departure of the prime tenant; or
  2) If for less than such period, then since the inception of the tenancy or the commencement of the relationship, is entitled to remain in the apartment and/or to be offered a renewal lease.
  - "Senior citizens" and "disabled persons" who have resided in the apartment as primary residents for a period of either one year immediately prior to the death or departure of the named tenant or sworn the inception of the tenancy

- **"Family member"**

- includes the:

  1) Husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, daughter-in-law or son-in-law of the tenant; or,
  2) Any other person residing with the tenant who can prove emotional and financial commitment and interdependence.

Under the regulations, a tenant may at any time advise the owner, or the owner may request at the time a renewal lease is offered, the names of all persons residing in the apartment and whether they meet any of the standards and definitions listed above, or, with the passing of time, would be entitled to succession rights. A tenant's failure to provide such information places on any family member who subsequently seeks to exercise their right of succession the burden of proving that they are entitled to such right. A tenant has the right at any time to have a spouse added to a lease or a renewal lease.

○

A. **When can the owner refuse to renew the Tenants lease**

- **Owner's Must offer Tenants in rent stabilized apartments** a renewal lease 90-150 days before the current lease expires. When the owner does not offer the tenant a renewal lease, the owner must give the tenant written notice of non-renewal between 150 and 90 days prior to the expiration of your current lease and state a legal reason why they are not renewing the lease.

- **An owner can only refuse to renew a tenant's rent stabilized lease for a few reasons, some of which are**:

1) Owner's Use

An owner of a building may seek to use a single unit for owners personal use and the landlord may properly refuse to renew the lease and terminate the tenancy to recover possession of a rent-stabilized unit for the owner's personal use and occupancy as a primary residence. The owner must show a compelling necessity for possession. No certificate of eviction is required. At trial, the landlord will be required to demonstrate a "genuine" intention to occupy the apartment for personal or familial use, and, if recovered, must remain in occupancy thereof for at least three years. (Corporate landlords and partnerships are not permitted to recover units on this ground).

Note: These cases are historically difficult to win.

2) Non-Primary Residence

The apartment is not used as the tenant's primary residence.

- "Primary Residence" loosely means the place where one makes their "home". No hard and fast definition exists, but based upon past court cases and guidelines in DHCR regulations, courts will consider certain factors in determining primary residence challenges, including: the use of another residence for more than half the year; the use of another address on a tax return, motor vehicle registration, driver's license, voter registration, utility bills, bank statements, EZ Pass records, or other forms filed with public agencies; and the subletting of the apartment.

Primary residence is not something to trifle with. Tenants not maintaining their primary residence in an apartment are not protected by rent control or rent stabilization.

3) Demolition

One of the reasons upon which an owner may end a rent regulated tenancy is where the owner intends to demolish the building. However, in such situations, the owner must first obtain written DHCR approval.

The owner is required to file a Form RA-54, "Owner's Application for Order Granting Approval to Refuse Renewal of Lease and/or to Proceed for Eviction" with the DHCR.

In NYC, if the building contains rent controlled tenants, before filing Form RA-54, the owner must also file with DHCR and serve the rent controlled tenants with Form RC-50 "Report and Certification to Alter or Demolish Occupied Housing Accommodations." The RC-50 needs to be filed prior to the submission of plans to the DOB.

The RA-54 application must include: (1) plans that have been reviewed and approved by the DOB; (2) evidence of financial ability to complete the project, such as a Letter of Intent or a Commitment Letter from a financial institution, or other evidence the that DHCR determines to be appropriate.

Once the RA-54 application is accepted for filing, DHCR will: (1) serve each tenant with a copy of the application; (2) review all tenant responses; (3) conduct a hearing, if appropriate; (4) issue a written order granting or denying the application.

If the owner's RA-54 application is granted, the DHCR Order will contain terms relating to relocation stipends, moving expenses, and will give the tenant a reasonable amount of time to vacate the apartment. If the owner's application is denied or withdrawn, the DHCR Order will direct the owner to offer the tenants prospective lease renewals.

Other reasons to seek to remove a tenant

A) Illegal Sublet

Where the Tenant has rented the unit out without following the requirements under the lease and the RSC.

B) Nuisance

(a) damaging of property, noise, offensive odors, clutter, unsafe conditions, disturbing other tenants etc.

C) Illegal activity

Generally these cases are started because the Owner receives notices from the district Attorney that an occupant or tenant was arrested in or around the premises for illegal activity at the premises.

Preparation of leases:

Can agents write and or prepare a lease?

Duncan and Hill Realty Inc. v DOS, 405NYS 2nd 339 (4th Dept 1978) Section 478 of the Judiciary Law of the State of New York prohibits the practice of law by non-attorneys. This Section was enacted in 1965. It was subsequently determined by the Appellate Division in 1974 that the purpose of ¤478 is to "protect citizens against dangers of legal representation and advice given by persons not trained, examined and licensed for such work." (*Jemzura v. McCue (3rd Dept. 1974, 45 A.D.2d 797, 357 N.Y.S.2d 167, appeal dismissed 37 N.Y.2d 750, 374 N.Y.S.2d 624, 337 N.E.2d 135, appeal dismissed 37 N.Y.2d 786, 375 N.Y.S.2d 1031, 337 N.E.2d 621*).

Another section of the Judiciary Law, ¤484, provides in part that:

"No natural person shall ask or receive, directly or indirectly, compensation for...preparing deeds, mortgages, assignments, discharges, leases or any other instruments affecting real estate...unless he has been regularly admitted to practice, as an attorney or counselor..."

Many real estate licensees are under the misunderstanding that because they are licensed by the Department of State to act as a real estate broker they can prepare contracts, leases and related documents in connection with transactions. In general, this is not accurate. The exception is a very limited exception affirmed under the seminal case in the *Matter of Duncan & Hill Realty, Inc. v. Department of State of the State of New York, (62 AD2d 690, 405 NYS2d 339 (4th Dept. 1978), appeal dismissed 45 NY2d 821, 409 NYS2d 210*). In this decision, the Appellate Division set forth the conditions which a real estate licensee must follow in order to prepare contracts or leases in connection with transactions in which the real estate licensee has functioned as an agent. There are a number of caveats which must be observed in order to prepare a contract or a lease:

1.The real estate licensee shall not ask for or receive, directly or indirectly any compensation for preparing any legal instrument (including a contract or lease) affecting real estate.

2. The real estate licensee must have acted as an agent on behalf of one of the parties in the transaction in order to prepare the contract or lease.

3. The real estate licensee may not provide legal advice.

4. The contract or lease form must be a "fill in the blank" form requiring no legal expertise (i.e. the real estate licensee may not craft the legal language which is not already in the form contract, but rather is limited to filling in the blanks).

5. The form contract or lease must either:

i. be jointly approved by the Bar Association and the Board of Realtors in the county in which the real property is located; or
ii. must contain an attorney approval clause giving either buyer's attorney or seller's attorney, or landlord's attorney or tenant's attorney, as the case may be, the right to terminate the contract after review.

6. The forms examined by the Court were "designed with bold face print at the top of the forms, to protect both parties to a real estate transaction and to alert them to the fact that when signed, the instrument becomes a binding contract and cautioning them that it is desirable for them to consult their respective attorneys before signing."

CHANGES TO RENT STABILIZED FORMS

There have been several changes to the Rent Stabilized Forms, specifically a new lease rider and new renewal lease. Both raise questions as to how a property owner with rent stabilized units should go about successfully processing lease renewals.

-NEW RIDER PURSUANT TO 2014 RENT STABILIZATION CODE AMENDMENTS.

The form attached at Exhibit A must be included with all vacancy and renewal leases.

PRACTICAL STEPS FOR COMPLIANCE WITH SIGNATURE REQUIREMENT FROM TENANT

The July 2014 Revision includes two paragraphs, one for the tenant, and one for the owner, which specifically state the signing parties acknowledge the contemporaneous receipt of the lease rider.

The owner paragraph includes the phrase "Subject to penalties provided by law" (this sentence does not appear in the Tenant's paragraph) the owner of the housing accommodation hereby certifies that the above rider is hereby contemporaneously provided to the tenant with the signing of the lease and the information provided by the owner is true and accurate based on its records.

- ❑ How are the contemporaneous clauses enforced when tenants and landlords are serving leases by mail?

Generally, an owner sends a lease renewal form to the tenant, and the tenant chooses the term of the lease, signs it, and returns it to the owner.

The owner then signs it and sends it back to the tenant with a copy of the lease rider.

However, considering the contemporaneous clause, the owner cannot sign the certifying line without essentially perjuring herself.

Obviously these guidelines are very new and there is a dearth of trial and error and agency guidance. That being said, as attorneys, we always have to instruct our clients to err on the side of caution. This could be in the form of setting up appointments for rent stabilized tenants to come to the management office, or it could be more pro-active, and include a designated day where a manager will appear at a Subject Premises for a few hours and encourage tenants of the building to sign their renewal leases in person.

A less cautious alternative is to send two copies of a lease with rider, so imagine Lease A with Rider A for a one year lease, and Lease B with Rider B for a two year lease, both sent be certified mail, in the same parcel. A manager could mail this to a tenant with instructions to sign Lease A and Rider A if the tenants wants a one year lease or Lease B and Rider B with a two year lease.

Of course, if the tenant gets confused and sends back a lease without a rider, or lease with the wrong rider, or if the tenant fails to sign in all places required and acknowledging contemporaneous service of the documents, things can obviously get convoluted quickly.

DO I NEED TO COMPLETE IAI SECTION WHEN CONVERTING FROM RENT CONTROLLED APARTMENT TO RENT STABILIZED APARTMENT?

First, a review of what exactly it means to be rent stabilized and rent controlled.

Rent Control: The rent control program generally applies to residential buildings constructed before February 1947 in municipalities that have not declared an end to the postwar rental housing emergency. A total of 51 municipalities have rent control, including New York City, Albany, Buffalo and various cities, towns, and villages in Albany, Erie, Nassau, Rensselaer, Schenectady and Westchester counties. For an apartment to be under rent control, the tenant (or their lawful successor such as a family member, spouse, or adult lifetime partner) must have been living in that apartment continuously since before July 1, 1971. When a rent controlled apartment becomes vacant, it either becomes rent stabilized, or, if it is in a building with fewer than six units, it is generally removed from regulation.
An apartment in a one- or two-family house must have a tenant in continuous occupancy since April 1, 1953 in order to be subject to rent control. Once it is vacated after that date, it is no longer subject to regulation. Previously controlled apartments may have been decontrolled on various other grounds. On rare occasions, a decontrolled apartment is ordered back under rent control as a penalty for certain violations of the rent laws.

Rent Stabilization:

In NYC, rent stabilized apartments are generally those apartments in buildings of six or more units built between February 1, 1947 and January 1, 1974.
Tenants in buildings of six or more units built before February 1, 1947 and who moved in after June 30, 1971 are also covered by rent stabilization.
A third category of rent stabilized apartments covers buildings with three or more apartments constructed or extensively renovated since 1974 with special tax benefits. Generally, these buildings are stabilized only while the tax benefits continue.

What is an Individual Apartment Improvement (IAI) and how can it be used to increase the rent?

An IAI is easily explained. Generally, where an owner installs a new appliance in or makes an improvement to an apartment, the owner can raise the rent by 1/168th or 1/180th of the costs. In an occupied apartment, the owner must first obtain the written consent of the tenant to the increase, in order to charge and collect it. In a vacant apartment, tenant consent is not required.

Pursuant to the Housing Stability and Tenant Protection of 2019, in buildings that contain more than 35 apartments, the owner can collect a rent increase equal to 1/180th of the cost of the Individual Apartment Improvement (IAI). In buildings that contain 35 apartments or less, the owner can collect a rent increase equal to 1/168th of the cost of the IAI. However, after 30 years, the landlord cannot continue to collect any such IAI rent increase.

The owner must keep all bills for improved services, new equipment, or improvements to prove their cost in the event a tenant challenges the rent increase.

Moreover, only the first $15,000 of an IAI can be used to increase a tenant's rent and that limit can only be reached based upon no more than 3 separate IAI's within a 15 year period. After 30 years the IAI increases can no longer be compounded.

WHEN CONVERTING FROM A RENT CONTROLLED APARTMENT TO A RENT STABILIZED APARTMENT, WHAT IS THE ROLE OF IAIS?

All rent controlled apartments are subject to decontrol upon vacancy unless the outgoing rent controlled tenant was forced out through harassment. However, MANY DECONTROLLED APARTMENTS WILL FALL UNDER RENT STABILIZATION. If the apartment is in a building with six or more units, the landlord can initially charge whatever the market will bear, subject to the tenant's right to file what is known as a "Fair Market Rent Appeal." However, if the apartment is in a building with fewer than six units, the apartment will most likely no longer be under any rent regulation.

Subject to the limitations noted above, renovations to the subject apartment in the form of IAIs will allow the apartment's fair market rent to be set higher.

- **Note the difference between an IAI and an MCI when filling out your IAI disclosure section.**

An owner may increase the rent for an improvement to an individual apartment (e.g. new stove, refrigerator, etc.) without approval from DHCR. However, the owner must have the written consent of the tenant in occupancy to collect the rent increase, and for a rent-controlled apartment, the owner must send a written notice of the rent increase to DHCR on form RN-79b, Owner's Notice Of A Rent Increase Based On Increased Services /New Furnishings /Equipment / Painting; And Tenant's Statement Of Consent. For improvements made while an apartment is vacant, the written consent of the new tenant is not required.

An owner must file an Owner's Application for Rent Increase Based on Major Capital Improvements (MCI) (form RA-79) with DHCR to increase the rent for a Major Capital Improvement which benefits the entire building. The consent of the tenants is not required. The owner, however, must first receive approval from DHCR prior to collecting this increase. The rent increase will be apportioned among the tenants on a per room per month basis.

- ❑ **Items listed as an IAI that may not be eligible – don't get tricked**

The Appellate Division, First Department, ruled that "Invoices for painting, plastering and floor polishing, among other things, were correctly disallowed because they were for ordinary maintenance and repair, rather than for improvements"425 3rd Ave. Realty Co. ex rel. Mayerhauser Realty v. New York State Div. of Hous. & Cmty. Renewal, 29 A.D.3d 332, 333, 816 N.Y.S.2d 411, 412 (App. Div. 2006)

In that situation the landlord was fined and received treble damages, which was confirmed on appeal.

The law is refreshingly clear on this issue. Essentially, if the improvements are made in the process of renovation or updating of major sections of the apartment, then they are to be considered Individual Apartment Improvements. The Court in Rockaway One Co., LLC v. Wiggins, 9 Misc. 3d 12, 13-14, 801 N.Y.S.2d 471, 472 (App. Term 2004) rev'd, 35 A.D.3d 36, 822 N.Y.S.2d 103 (App. Div. 2006) found renovations such as "installation of a new kitchen, which involved the demolition of the existing floor and subfloor, new plumbing, installing a new 'stand up' refrigerator, a sink, a '20–inch stove' and range hood, cabinets and countertops, additional alterations to facilitate the changeover from a gas to an electric stove, new floor tiles and moldings, and fluorescent lighting and its associated switches, outlets and covers," to be legitimate improvements and not merely repairs done in the regular course of maintenance to the building.

While the Court may get fact specific when evaluating such claims, a landlord can generally follow the following broad guideline:

REPAIR ≠ IAI
RENOVATION = IAI

Is itemization needed for complete gut renovations? Once again, the Court has relied on totality of the circumstances and facts, and the guidelines under 9 NYCRR 2522.4(a) are vague. We would have to recommend itemization for all items on rent regulated apartments, no matter the extent of the renovations.

❑ **What are the necessary items of proof showing an IAI?**
The items may vary but the base expectations of DHCR/courts will include, detailed supporting documentation including invoices, work contracts, cancelled checks, paid bills, etc.

PRACTICES FOR ADDRESSING FAILURES TO RENEW

The best practice for addressing the failure to renew is to serve upon the Respondent the most recent lease renewal and upon their failure to sign it, pursue a holdover action forthwith. There are few defenses to such a cause of action and the tenant will be faced with the potential to lose their rent stabilized apartment or sign to a new lease.

PRESERVING EFFECTIVE DATE OF LEASE RENEWALS

IMPACT OF ACCEPTING RENT FROM TENANT WHO FAILED TO SIGN LEASE

Generally the law does not favor a rewriting of a lease or contracts by waiver or estoppel. This is especially true with Rent Stabilized Leases as they almost invariably include a paragraph 28, which prescribes that a no modification of the lease by acceptance of rent can occur.

The impact of accepting rent from a tenant who failed to sign a lease is generally that you will have to deal with the problem later. If the tenant does not pay the increased amount that a landlord would be entitled to under the law had the tenant signed a new lease, the landlord would be unsuccessful in a non-payment proceeding because the tenant would only be obligated to pay the rent at the last monthly rate contracted.

DEREGULATION OF A RENT-STABILIZED APARTMENT

Under the Housing Stability and Tenant Protection Act of 2019, rent stabilized apartments may not be deregulated (which was typically done as a High Rent Deregulation or High Income Deregulation).

HOW DOES FAILURE TO COMPLY IMPACT REGULATORY STATUS OF APARTMENT? PENALTIES/CONSEQUENCES FOR FAILING TO PROVIDE RIDER (RENT STABILIZED RIDER, DEREGULATED RIDER)

A failure to include the deregulated rider or the revised rent stabilized rider may put a statutory rent increase in jeopardy or may provide a platform for a tenant to challenge the alleged deregulated status of an apartment.

If the owner does not return a copy of the fully executed Renewal Lease Form to the tenant within 30 days of receiving the signed lease from the tenant, the tenant should nevertheless pay the new rent, and may file the "Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease" [DHCR form RA-90]

Another major change came in the recent federal court decision which found that a Rent-Stabilized tenancy is considered to be a public benefit, and cannot be invaded by the trustee of a bankruptcy proceeding. The New York Times article which covers the Court's ruling is attached herein. What impact will this ruling will have on landlords is not known yet, but the Court will likely look to the way the Court has ruled on issues surrounding the receipt of public benefits.

NEW YORK TIMES ARTICLE

Rent-Stabilized Leases Shielded in Bankruptcy

In a decision with implications for millions of tenants, New York State's highest court ruled that a lease for a rent-regulated apartment is a public benefit and cannot be seized as an asset in a personal bankruptcy.

In a 5-to-2 vote, the Court of Appeals said that a rent-stabilized lease was exempted from a bankruptcy estate as a public assistance benefit, just like disability or unemployment benefits. Bankruptcy lawyers in New York who were closely monitoring the case said that not keeping the lease off limits would have made it easier for landlords to evict rent-stabilized tenants if they file for bankruptcy, even when they pay their rent.

The case involved Mary Veronica Santiago, an 80-year-old widow in the East Village of Manhattan whose landlord, who was not one of her creditors, offered to buy her rent-stabilized lease and produce the money to pay off her debt of about $23,000. The bankruptcy trustee in charge of marshaling her assets, John S. Pereira, accepted the offer but Mrs. Santiago's lawyers, fearing her eventual eviction despite an agreement to let her stay in the unit, challenged that decision.

After both a bankruptcy court and a Federal District Court sided with the bankruptcy trustee, Mrs. Santiago appealed to the United States Court of Appeals for the Second Circuit. The federal court deferred to the state court as the final authority on the question of whether the lease should be exempt under New York law.

Mrs. Santiago's case was the first time an appellate court in New York had ruled on whether the leases should be exempt.

"When the rent-stabilization regulatory scheme is considered against the backdrop of the crucial role that it plays in the lives of New York residents, and the purpose and effect of the program," Judge Sheila Abdus-Salam wrote for the majority, "it is evident that a tenant's rights under a rent-stabilized lease are a local public assistance benefit."

"Affordable housing," the majority said, "is an essential need."

Also voting with the majority were Chief Judge Jonathan Lippman and Judges Eugene F. Pigott Jr., Victoria A. Graffeo and Jenny Rivera.

Both the state and New York City regarded the case as posing a major risk to New Yorkers who seek bankruptcy protection and happen to live in rent-stabilized apartments, and threw their weight behind Mrs. Santiago. In a brief filed jointly in September, the New York attorney general's office and the city's Law Department argued that treating a lease like property that could be sold, like a car or a piece of land, would undermine the safeguards that both bankruptcy and rent laws are supposed to provide.

The case also drew the interest of lawyers who saw it as a threat to the housing stability of many low-income New Yorkers. Mrs. Santiago's case was argued before the state court by Ronald J. Mann, a law professor at Columbia University and experienced bankruptcy specialist.

“The decision finally restores the status quo that held for decades, protecting these tenants in bankruptcy so long as they pay their rent,” Mr. Mann said.

John P. Campo, a lawyer for the bankruptcy trustee, said “the general consensus” before the state court ruled on the matter Thursday was that a lease was not a public benefit.

“The trustee all along was simply following the law,” he said.

In a dissenting opinion, Judge Robert S. Smith argued that the majority “grossly misreads” the law by treating rent regulation as public assistance. He was joined by Judge Susan Phillips Read.

“I would like to try asking every rent-controlled or rent-stabilized tenant in New York: ’Do you receive public assistance?’ ” Judge Smith wrote. “I would be surprised to find even one (apart from those receiving government subsidies from other programs) who answered yes.”

But Linda B. Rosenthal, a member of the State Assembly who introduced a bill two years ago to prohibit the use of rent-regulated leases as assets in bankruptcy proceedings, said she had heard from tenants who needed bankruptcy protection but were afraid to seek it.

"I'm just delighted that the court got it right," said Ms. Rosenthal, a Manhattan Democrat who also submitted a brief in the case along with 17 other state legislators on behalf of

Mrs. Santiago. "People who are in the unfortunate circumstances of having to file for bankruptcy will no longer put it off for fear of losing their home."
Mrs. Santiago's lawyers said they expected her bankruptcy case to close quickly after the federal court adopts the state court's ruling and issues its opinion in a few months.

In the two-bedroom, $703-a-month apartment where she has lived for more than 50 years, Mrs. Santiago burst into tears when she heard about the decision from her bankruptcy lawyer, Kathleen G. Cully.

“It’s such a big relief,” she said in a phone interview. “I don’t have to worry about my landlord anymore.”

EXHIBIT A. REVISED JULY 2014 LEASE RIDER FOR RENT STABILIZED TENANTS
(Available electronically at http://www.nyshcr.org/Forms/Rent/ralr1.pdf**)**

EXHIBIT B. REVISED JULY 2014 LEASE RENEWAL FOR RENT STABILIZED TENANTS
(Available electronically at http://www.nyshcr.org/Forms/Rent/ralr1.pdf**)**