



*Policy Statement 93-1 (August 20, 1993)*

***Responsibility of a current owner of a rent-stabilized housing accommodation to refund excess rent determined pursuant to a fair market rent appeal***

This policy statement is being issued to publicize a recent change in DHCR's policy concerning the duty of a current owner of a housing accommodation subject to the New York City Rent Stabilization Law to refund excess rent determined by DHCR in an order resolving a tenant's Fair Market Rent Appeal ("FMRA") where one or more prior owners collected all or a portion of the excess rent. This change in policy was occasioned by the Appellate Division's decision in *Polanco v. Higgins*.

Section 2522.3(d) of the Rent Stabilization Code provides that where DHCR determines in an order resolving a FMRA that a tenant paid rent that exceeds the fair market rent, DHCR shall order the affected owner to refund the excess rent to the tenant and to the extent the current owner is liable for all or part of the refund, allow the current owner to credit against future rents any refund owed to the tenant. If the refund exceeds the total rent due for six months, the tenant, at his or her option, may continue to take a credit or request a refund of the balance outstanding.

Pursuant to the decision in *Polanco v. Higgins* and for the reasons stated therein, where a current owner is a party to a FMRA, DHCR shall order the current owner to refund to the tenant all excess rent paid by the tenant since April 1, 1984 or the commencement date of the tenant's initial lease, whichever is later, notwithstanding that all or a portion of the excess rent was collected by one or more prior owners.

This policy modifies DHCR's prior practice of ordering the current owner to refund only the excess rent that the current owner actually collected. Now, a current owner will be jointly liable with a prior owner for excess rent collected by a prior owner and each owner will remain severally liable for the excess rent collected by each owner. This policy statement is not intended to change the refund obligation of a current owner who purchases at a judicial sale in accordance with Section 2526.1(f) of the Rent Stabilization Code or any other rule that would require apportionment in a rent overcharge case.

DHCR shall consider a current owner to be a party to a FMRA if one of the following events occurs before the issuance of a Rent Administrator's order resolving the FMRA:

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



- 1) DHCR serves the current owner with a copy of the FMRA and affords the current owner an opportunity to file an answer; or
- 2) whether or not DHCR serves a copy of the FMRA on the current owner, the current owner files an answer to the FMRA; or
- 3) the current owner, after purchase of the building, fails to notify DHCR of the change of ownership as required by Section 2523.8 of the Code, and DHCR serves the prior owner with a copy of the FMRA at the address given in the last filed registration and at the address specified by the tenant in the FMRA, if the address specified by the tenant is different from the address specified by the prior owner on the last filed registration statement.

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