

Rent and Eviction Regulations

Subchapter B of Chapter VII of Subtitle S of Title 9 NYCRR

The State Rent and Eviction Regulations as promulgated and adopted by the Temporary State Housing Rent Commission, pursuant to the Emergency Housing Rent Control Law, Chap. 274 of the Laws of 1946, section 4, subdivision (4)(a), as amended by Chap. 250, Laws of 1950, as amended, and transferred to the Division of Housing and Community Renewal by Chap. 244, Laws of 1964, are amended to read as follows:

PART 2100 SCOPE

Section 1

Section 2100.3 of this Part is amended by adopting a new subdivision (i) to read as follows:

(i) Primary residence. Although no single factor shall be solely determinative, evidence which may be considered in determining whether a housing accommodation subject to this Subchapter is occupied as a primary residence shall include, without limitation, such factors as listed below:

(1) Specification by an occupant of an address other than such housing accommodation as a place of residence on any tax return, motor vehicle registration, driver's license or other document filed with a public agency;

(2) Use by an occupant of an address other than such housing accommodation as a voting address;

(3) Occupancy of the housing accommodation for an aggregate of less than 183 days in the most recent calendar year, except for temporary periods of relocation pursuant to section 2104.6(d)(1) of this Title;

(4) Subletting of the housing accommodation.

Section 2

Section 2100.9 of this Part is amended by adopting a new subdivision (v) to read as follows:

(v) Housing accommodations which:

(1) became or become vacant on or after July 7, 1993, where at any time between July 7, 1993 and October 1, 1993, inclusive, the maximum rent was two thousand dollars or more per month; or

(2) became or become vacant on or after June 19, 1997, with a maximum rent of two thousand dollars or more per month;

(3) exemption pursuant to this subdivision shall not apply to or become effective with respect to housing accommodations for which the Administrator determines or finds that the landlord or any person acting on his or her behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including, but not limited to, interruption or discontinuance of required services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his or her use or occupancy of the housing accommodations. In connection with such course of conduct, any other general enforcement provision of the Act and this Subchapter shall also apply;

(4) during the period of effectiveness of an order issued pursuant to section 2102.4 of this Title for failure to maintain essential services, which lowers the maximum rent below two thousand dollars per month during the time period specified in this subdivision, a vacancy shall not qualify the housing accommodation for exemption under this subdivision;

(5) housing accommodations which become exempt from this Subchapter pursuant to this subdivision shall not become subject to the provisions of the Emergency Tenant Protection Regulations upon being re-rented.

Section 3

Section 2100.9 of this Part is amended by adopting a new subdivision (w) to read as follows:

(w)(1) Upon the issuance of an order by the commission, pursuant to the procedures set forth in Part 2107-A of this Title, including orders resulting from default, housing accommodations which have a maximum rent of two thousand dollars or more per month as of October 1, 1993 or as of any date on or after January 1, 1998, and which are occupied by persons who had a total annual income in excess of two hundred fifty thousand dollars per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and in excess of one hundred seventy-five thousand dollars, when the first of such two preceding calendar years is 1996 or later, with total annual income being defined in and subject to the limitations and process set forth in Part 2107-A of this Title.

(2) In determining whether the maximum rent for a housing accommodation is two thousand dollars per month or more, the standards set forth in subdivision (v) of this section shall be applicable; to be eligible for exemption under this subdivision, the maximum rent must continuously be two thousand dollars or more per month from the landlord's service of the income certification form provided for in section 2107-A.2 of this Title upon the tenant to the issuance of an order deregulating the housing accommodation.

PART 2102 ADJUSTMENTS

Section 1

Section 2102.1 of this Part is amended to read as follows:

Section 2102.1 Maximum rents.

Maximum rents may be increased or decreased only by order of the Administrator except as hereinafter specified, or as otherwise provided by law.

Section 2

The opening paragraph of subdivision (b) of section 2102.3 of this Part is amended to read as follows:

(b) [Any] 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:

Section 3

Subparagraph (i) of paragraph (1) of subdivision (b) of section 2102.3 of this Part is amended to read as follows:

(i) (a) the landlord and tenant by mutual voluntary written agreement, subject to the approval of the Administrator, agree to a substantial increase in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodations; or the tenant has accepted and is obtaining the benefit of increased services, furniture, furnishings or equipment;

(b) On or after July 7, 1993, the landlord and tenant may, by mutual voluntary written agreement, agree to a substantial increase

in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodation; or the tenant has accepted and is obtaining the benefit of increased services, furniture, furnishings or equipment. In such case, an adjustment of the maximum rent shall be available without the approval of the Administrator, and shall be equal to 1/40th of the total cost incurred by the landlord in providing such modification or increase, including the cost of installation, but excluding finance charges. A landlord who is entitled to a rent adjustment pursuant to this paragraph, shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. The landlord shall give written notice to the Commission of any such adjustment; or

Section 4

Section 2102.4 of this Part is amended by adopting a new subdivision (g) to read as follows:

(g) The amount of the reduction in maximum rent ordered by the Administrator pursuant to subdivision (b) of this section shall be reduced by any credit, abatement or offset in rent which the tenant has received pursuant to section 235-b of the Real Property Law, that relates to one or more conditions covered by such order.

Section 5

A new section 2102.8 of this Part is adopted to read as follows:

Section 2102.8 Rent adjustments upon succession.

Where all tenants occupying a housing accommodation on June 19, 1997 have permanently vacated such housing accommodation, and a

primary-resident family member of such vacating tenant or tenants (first successor) is entitled to and continues to occupy the housing accommodation subject to the protection of this Subchapter, as provided in section 2104.6 of this Title, and thereafter permanently vacates the housing accommodation, if such accommodation continues to be subject to the Act and this Subchapter after such family member vacates, and a primary-resident family member (second successor) is entitled to and continues to occupy the housing accommodation subject to the protections of this Subchapter, as provided in section 2104.6 of this Title, the maximum collectible rent shall be increased by a sum equal to the allowance then in effect for vacancy leases for housing accommodations subject to the Rent Stabilization Law of Nineteen Hundred Sixty-nine, including the amount allowed by paragraph 5-a of subdivision c of section 26-511 of such Law. Such increase shall be in addition to any other increases provided for in this Subchapter, including adjustments pursuant to section 2102.3 of this Part, and shall be applicable in like manner to the maximum collectible rent that may be charged each second subsequent succeeding family member.

PART 2104 EVICTIONS

Section 1

Paragraph (1) of subdivision (a) of section 2104.5 of this Part is amended to read as follows:

(1) A certificate shall be issued where the landlord seeks in good faith to recover possession of housing accommodations because of immediate and compelling necessity for his own personal use and occupancy or for the use and occupancy of his immediate family. As used in this subdivision, the term "immediate family" includes only a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather,

stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, [or] mother-in-law, son-in-law or daughter-in-law of the landlord. Provided, however, that where the housing accommodations are located in a building containing 12 or less housing accommodations and the landlord does not reside in the building or is a housing accommodation located in a structure or premises owned by a cooperative corporation or association which is allocated to an individual proprietary lessee, and the landlord seeks to recover possession for his own personal use, an immediate and compelling necessity need not be established.

Section 2

The opening sentence of paragraph (2) of subdivision (d) of section 2104.6 of this Part is amended to read as follows:

On a form prescribed or a facsimile of such form approved by the commission, a tenant may, at any time, advise the landlord of, or a landlord may at any time, but no more often than once in any twelve months, request from the tenant, the names of all persons other than the tenant who are residing in the housing accommodation, and the following information pertaining to such persons:

Section 3

The opening sentence of subparagraph (i) of paragraph (3) of subdivision (d) of section 2104.6 of this Part is amended to read as follows:

(i) family member is defined as a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, [nephew, niece, uncle, aunt,] grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or

daughter-in-law of the tenant; or any other person residing with the tenant in the housing accommodation as a primary residence who can prove emotional and financial commitment, and interdependence between such person and the tenant. Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed, may include, without limitation, such factors as listed below. In no event would evidence of a sexual relationship between such persons be required or considered.

Section 4

Subdivision (d) of section 2104.6 of this Part is amended by adopting a new paragraph (4) to read as follows:

(4) For the purpose of determining whether a landlord may charge the increase in maximum collectable rent authorized pursuant to subdivision 9 of section 5 of the Act, such landlord shall periodically inform the commission, in a manner prescribed by the commission, whether the tenant occupying the housing accommodation at the time such notice is given is a family member, as defined in subparagraph (i) of paragraph (3) of this subdivision, who has established the right to protection from eviction pursuant to paragraph (1) of this subdivision. Information that may be required by the commission shall include, but is not limited to the commencement date of such family member's primary residence in the housing accommodation with the immediately preceding tenant of record.

Failure of a landlord to give such notice shall not deprive the landlord of the right to collect such sum, but shall place upon the landlord the affirmative obligation to establish that right in the event that entitlement thereto is challenged.

PART 2107 PROCEEDINGS BEFORE LOCAL RENT ADMINISTRATOR

Section 1

Subdivision (a) of section 2107.3 of this Part is amended to read as follows:

(a) (1) [Where] Except as provided by paragraph (2) of this subdivision, where the application is made by a landlord or tenant the local rent administrator shall forward, as soon as possible, a copy of such application [by mail] to [the person or persons] all parties adversely affected thereby.

(2) Where an application is filed, pursuant to section 2102.3(b)(1)(iii) or (iv) of this Title, to increase the maximum rent, the local rent administrator shall notify all parties adversely affected thereby, and shall afford such parties the opportunity to submit written responses thereto. The landlord shall maintain a copy of the application, with supporting documentation, on the premises so that tenants may examine it, or in the alternative, a copy of the application, with supporting documentation, shall be made available by the commission for tenant examination upon prior request. Tenants' written responses shall be considered by the commission prior to a final determination of the application.

PART 2107-A

Section 1

A new Part 2107-A of this Title is adopted to read as follows:

PART 2107-A PROCEDURES FOR HIGH INCOME RENT DECONTROL

Section 2107-A.1. Definitions.

(a) Annual Income. For the purposes of this section, annual income shall mean the federal adjusted gross income as reported on the New York state income tax return.

(b) Total annual income. For the purposes of this section, total annual income means the sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence other than on a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section 226-b of the Real Property Law. Where a housing accommodation is sublet, the annual income of the sublessor shall be considered.

Section 2107-A.2. Income Certification Forms (ICFs).

On or before the first day of May in each calendar year commencing with May 1, 1994, the landlord of each housing accommodation for which the maximum rent is two thousand dollars or more per month may provide the tenant or tenants residing therein with an income certification form (ICF) prepared by the commission on which such tenant or tenants shall identify all persons referred to in subdivision (b) of section 2207-A.1 of this Part, and shall certify whether the total annual income is in excess of two hundred fifty thousand dollars in each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and one hundred seventy-five thousand dollars where the first of such two preceding calendar years is 1996 or later. Such ICF shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded.

(a) Such ICF shall state that:

(1) the income level certified to by the tenant may be subject to verification by the Department of Taxation and Finance (DTF) pursuant to section 171-b of the Tax law;

(2) only tenants residing in housing accommodations which have a maximum rent of two thousand dollars or more per month are required to complete the certification form;

(3) tenants have protections available to them which are designed to prevent harassment;

(4) tenants are not required to provide any information regarding their income except that which is requested on the form.

(b) Such ICF form may:

(1) require tenants to state whether an occupant, such as a minor child, is not required to file a New York State income tax return;

(2) provide that the operative date for the determination of who is a tenant, co-tenant or occupant who must be identified on the ICF, and whose income, if any, will be included in total annual income, will be the date of service of the ICF upon the tenant;

(3) require the tenant to list all tenants, co-tenants, and other occupants whose incomes may be included in total annual income, and who vacated the housing accommodation within the calendar year in which the ICF is served, or within the two calendar years preceding the service of the ICF, and the dates on which such persons vacated the housing accommodation;

(4) require the tenant to include in total annual income the income of any such person who vacated the housing accommodation temporarily;

(5) request such other information as the commission deems appropriate.

(c) Section 2109.1(a) of this Title to the contrary notwithstanding, the landlord must serve the ICF by at least one of the following methods: personal delivery, certified mail, regular first class mail, or as otherwise provided in an Operational Bulletin issued pursuant to section 2109.8 of this Title. The landlord shall obtain and retain, the following proofs of service:

(1) for personal delivery, a copy of the ICF signed and dated by the tenant acknowledging receipt; or

(2) for certified mail, a United States Postal Service receipt stamped by the United States Postal Service; or

(3) for regular first class mail, a United States Postal Service Certificate of Mailing stamped by the United States Postal Service.

(d) The tenant or tenants shall return the completed certification to the landlord within 30 days after service upon the tenant or tenants.

Section 2107-A.3. Procedure where total annual income as certified on ICF exceeds threshold.

In the event that the total annual income as certified is in excess of two hundred fifty thousand dollars or one hundred seventy-five thousand dollars in each such year, whichever applies, as provided in section 2107-A.2 of this Part, the landlord may file an owner's petition

for deregulation (OPD), accompanied by the ICF, with the commission on or before June 30 of such year. The commission shall issue within 30 days after the filing of such OPD, an order providing that such housing accommodation shall not be subject to the provisions of the Act and this Subchapter as of the first day of March in the year next succeeding the filing of the OPD with the commission. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be mailed to the landlord. Service shall be deemed to be complete upon mailing by the commission.

Section 2107-A.4. Procedure where tenant fails to return ICF or landlord disputes certification.

(a) In the event that the tenant or tenants either fail to return the completed ICF to the landlord on or before the date required by subdivision (d) of section 2107-A.2 of this Part, or the landlord disputes the certification returned by the tenant or tenants, the landlord may, on or before June 30 of such year, file an owner's petition for deregulation (OPD) which petitions the commission to verify, pursuant to section 171-b of the Tax Law, whether the total annual income exceeds two hundred fifty thousand dollars or one hundred seventy-five thousand dollars in each of the two preceding calendar years, whichever applies, as provided in section 2107-A.2 of this Part.

(b) Within 20 days after the filing of such request with the commission, the commission shall notify the tenant or tenants that such tenant or tenants must provide the commission with such information as the commission and the DTF shall require to verify whether the total annual income exceeds two hundred fifty thousand dollars or one hundred seventy-five thousand dollars, whichever applies, in each such year.

(1) The tenant or tenants are required to submit a photocopy of either the preprinted mailing labels used on the New York State income tax returns for the applicable years or the first page of the New York State income tax returns for the applicable years for each tenant or occupant whose income is to be included in the total annual income pursuant to subdivision (b) of section 2107-A.1 of this Part, or in the event neither is available, a written explanation indicating why such income tax returns were not filed for the applicable years.

(2) The tenant or tenants shall delete all social security numbers and income figures from all preprinted mailing labels or tax returns submitted. For any tenant or occupant who the tenant reports did not file a New York State income tax return for any applicable year, the tenant or occupant's name and address must be supplied on an appropriate form prescribed by the commission as it would have appeared had that tenant or occupant filed such return.

(3) The tenant or tenants shall provide the information to the Commission within 60 days of service of the notice upon such tenant or tenants, which notice shall include a warning in bold faced type setting forth the requirement that failure to respond by not providing any information requested by the commission will result in an order being issued by the commission providing that such housing accommodation shall not be subject to the provisions of the Act and this Subchapter. Section 2109.1 of this Title to the contrary notwithstanding, the tenant or tenants shall be required to retain proof of the delivery of such information to the commission, which proof shall consist of either, where delivery is made personally, a copy of the response with a timely commission stamp acknowledging receipt, or where delivery is made by certified mail, a

United States Postal Service receipt stamped by the United States Postal Service, or where delivery is made by regular first class mail, a United States Postal Service Certificate of Mailing stamped by the United States Postal Service; or as otherwise provided in an Operational Bulletin issued pursuant to section 2109.8 of this Title. Service shall be deemed to be complete upon mailing in accordance with section 2107-A.7 of this Part.

Section 2107-A.5. Determination by Department of Taxation and Finance (DTF).

If the DTF determines that the total annual income is in excess of two hundred fifty thousand dollars or one hundred seventy-five thousand dollars in each of the two preceding calendar years, whichever applies as provided in section 2107-A.2 of this Part, the commission shall, on or before November 15 of the year in which DTF makes such determination, notify the landlord and tenants of the results of such verification. Both the landlord and the tenants shall have 30 days within which to comment on such verification results. Within 45 days after the expiration of the comment period, the commission shall, where appropriate, issue an order providing that such housing accommodation shall not be subject to the provisions of the Act and this Subchapter as of the first day of March in the year next succeeding the filing of the OPD with the commission. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the landlord. Where the DTF determines that the income threshold has not been met, the commission shall issue an order denying the OPD. If the DTF cannot ascertain whether the threshold has been met, the commission may issue an order denying the OPD, or request additional information.

Section 2107-A.6. Procedure where tenant fails to provide information for determination by Department of Taxation and Finance (DTF).

In the event the tenant or tenants fail to provide the information required pursuant to section 2107-A.4 of this Part, the commission shall, on or before the next December 1, issue an order providing that such housing accommodation shall not be subject to the provisions of the Act and this Subchapter as of the first day of March in the year next succeeding the last day on which the tenant or tenants were required to provide the information required by such section. A copy of such order of decontrol shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the landlord.

Section 2107-A.7. Mailing of submissions relating to high-income decontrol.

Where a deadline for submission is specified in this Part for submissions by landlord or tenant to the commission, such submission must be filed in person or by mail, or as otherwise provided in an Operational Bulletin issued pursuant to section 2109.8 of this Title, by such deadline. If the submission is filed by mail, it must be postmarked no later than such deadline. If the prepaid postage on the envelope in which the submission is mailed is by private postage meter, and the envelope does not have an official United States Postal Service postmark, then the submission will not be considered timely filed unless received by such deadline, or other adequate proof that the submission was mailed by the date specified, such as an official Postal Service receipt or certificate of mailing is submitted.

Section 2107-A.8. Jurisdictional authority.

The expiration of the time periods prescribed in this Part for action by the commission shall not divest the commission of its authority to process petitions filed pursuant to this Part in accordance with the above procedures, and to issue final determinations pursuant to this Part.

PART 2108 PROTESTS

Section 1

The title of Part 2108 is amended to read as follows:

PART 2108 [PROTESTS] ADMINISTRATIVE REVIEW

Section 2

Part 2108 is amended by adopting a new section 2108.1-A to read as follows:

Section 2108.1-A PARs; Time periods, address of office of rent administration.

(a) Wherever the term protest is used in this Part, such term shall be deemed to mean Petition For Administrative Review (PAR).

(b) Wherever reference is made in this Part to a period of time of 33 days, such period of time shall be deemed to be 35 days.

(c) Wherever reference is made in this Part to a period of time of 15 days, such period of time shall be deemed to be 20 days.

(d) Except as is otherwise provided in section 2108.13 of this Part, wherever reference is made in this Part to the Office of Rent Administration, the address of such office shall be 92-31 Union Hall Street, Jamaica, New York 11433.

Section 3

Section 2108.13 of this Part is amended to read as follows:

Section 2108.13 Judicial review.

The filing and determination of a [protest] PAR is a prerequisite to obtaining judicial review of any provision of this Subchapter or any order issued thereunder, except as provided by section 8 of the Act. A proceeding for review may be instituted under article 78 of the Civil Practice Law and Rules provided the petition is filed within [30] 60 days after the final determination of the [protest] PAR. Service of the petition upon the Division of Housing and Community Renewal shall be made by leaving a copy thereof with the [division's Office of Rent Administration at 393 Seventh Avenue, New York 1, New York] counsel's office at 25 Beaver Street, New York, New York 10004, or such other address as may be designated by the Administrator, and to an Assistant Attorney General at an office of the New York State Attorney General in the City of New York.

PART 2109 MISCELLANEOUS PROCEDURAL MATTERS

Section 1

Subdivision (a) of section 2109.1 of this Part is amended to read as follows:

(a) Notices, orders, [protests] petitions for administrative review, answers and other papers may be served personally [or], by mail, or electronically, as provided in an Operational Bulletin issued pursuant to section 2109.8 of this Title. [When] Except as otherwise provided by section 2108.2 or Part 2107-A of this Title, when service, other than by the commission, is made personally or by mail, [an] a contemporaneous affidavit providing dispositive facts by the person making the service or

mailing shall constitute sufficient proof of service. When service is by registered or certified mail the [return] stamped post office receipt shall constitute sufficient proof of service. Once sufficient proof of service has been submitted to the commission, the burden of proving non-receipt shall be on the party denying receipt.