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Affordable Housing Alert

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How New York's rent stabilization laws will affect property owners

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Substantial changes to the rent stabilization laws may present compliance challenges for owners of rent stabilized buildings.

What's the impact?

- While amendments will reduce the scope of the original bill, some important changes remain in place.
- "Frankenstein apartment" provisions and new framework for defining and determining fraud will require many property owners to change their practices in order to maintain compliance.

Shortly before 2023 year-end, Governor Hochul acted on two key bills involving rent stabilization. This alert provides an overview of each bill, her action, and what is next.

Bill pertaining to rent calculations vetoed

First, Governor Hochul vetoed S2943B/A4047B, a bill that "relates to applying the Housing Stability and Tenant Protection Act of 2019 to rent calculations and rent records maintenance and

destruction." The bill would have permitted courts and the Division of Housing and Community Renewal (DHCR) to recalculate post-HSTPA legal rents for rent stabilized apartments, even if the legal rent had previously been determined by a court or DHCR prior to the passage of the HSTPA.

Hochul OKs rent regulation and tenant protection bill

Second, Governor Hochul signed into law S2980C/A6216B, a bill that "relates to rent regulation and tenant protection" (now Chapter 760), subject to negotiated chapter amendments (S8011/A8506), which were passed by the Senate and are pending with the Assembly Housing Committee.

Scope of the rent stabilization bill

S2980C/A6216B sought to make major changes to the New York rent stabilization scheme, specifically to (i) stop so-called "Frankenstein" combinations of apartments by which restrictions on rent increases are sidestepped, (ii) to impose additional requirements on owners claiming exemption from rent stabilization due to substantial rehabilitation, and (iii) to expand the definition of fraud in the context of rent challenges. Governor Hochul's chapter amendments, however, significantly reduced the scope of the bill.

RETROACTIVE EXEMPTION APPLICATION REMOVED

The initial bill would have required owners claiming exemption from rent stabilization due to substantial rehabilitation, going as far back as 1970s, to retroactively obtain approval from DHCR within six months of the effective date of the law, and for those buildings substantially rehabilitated after the effective date, owners would need to obtain DHCR approval within one year of completion of the substantial rehabilitation. As drafted, this retroactive application of the law would have unduly burdened property owners, requiring owners to locate old paperwork, possibly decades old and from prior ownership, and incur considerable expense to prove that buildings were substantially rehabilitated—all within six months. Without such proof, these buildings would return to rent stabilization. Buildings that were rehabilitated in the 1970s, 80s, and 90s pursuant to government programs would have been impacted by this proposed change, which is a significant portion of the affordable housing stock in New York, as thousands of these units remain affordable today as HUD-assisted project-based Section 9 properties.

The chapter amendment removed the retroactive application, and now the change in law only applies prospectively to buildings that were substantially rehabilitated after January 1, 2024, which will have to receive DHCR approval within a year of completion

FRAUD DEFINITION REVISED

In addition, the chapter amendment significantly revised the bill's broad definition of fraud related to the fraud exception to the pre-HSTPA four-year lookback rule for calculating legal rents. The bill had "clarified" that common law fraud is not applicable, and instead, the standard for fraud is whether an owner has merely "committed a material breach of any duty, arising under statutory, administrative or common law . . . for purposes of claiming an unlawful rent or claiming to have deregulated an apartment . . . whether or not a complaining tenant specifically relied on untruthful or misleading statements in registrations, leases, or other documents." The bill also established presumptions of fraud in instances of (i) unlawful deregulation, or (ii) failure to register any apartment in a building receiving J-51 or 421-a benefits after October 1, 2011.

Although the chapter amendments maintain the clarification that common law fraud does not apply, the chapter amendment removed the bill's definition of fraud. Instead, the chapter amendments require the courts and DHCR to consider the totality of circumstances, including all relevant facts and applicable statutory and regulatory law and controlling authorities when determining whether an owner knowingly engaged in a fraudulent scheme to deregulate a unit.

LIMITS ON RENT WHEN COMBINING OR EXPANDING UNITS

The chapter amendment left the provisions addressing "Frankenstein" apartments essentially untouched. These provisions limit the rent an owner can charge when combining or expanding rent stabilized units. Previously, when an owner combined two rent stabilized apartments the "first rent" could be set at any amount agreed to by the owner and tenant, allowing for rent increases otherwise unavailable under rent stabilization. However, under the new law, this rent will be limited to the combined legal rents of the two combined apartments.

What do these changes mean for property owners?

Although the chapter amendments have limited the scope of S2980C/A6216B, the law makes substantial changes to the rent stabilization laws and will require owners of rent stabilized buildings to change their practices in order to maintain compliance.

Nixon Peabody has seen a significant increase in the number of building and portfolio-wide investigations conducted by the Tenant Protection Unit of DHCR and the New York State Attorney General's Office's Housing Protection Unit. Nixon Peabody stands ready to assist clients in ensuring compliance and in managing inquiries from the relevant government investigatory bodies.

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