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**GETTING TO \$2,000.00: HOW TO REACH DEREGULATION
OF RENT STABILIZED APARTMENTS**

New York enacted laws regulating rent to deal with rent increases that were believed to be “speculative, unwarranted and abnormal.” These laws are the Rent Stabilization Code in New York City and the Emergency Tenant Protection Act (ETPA) and regulations (ETPR) in Westchester, Nassau and Rockland counties.

Rent regulation laws provide tenants with greater rights than those residing in unregulated or deregulated apartments. In addition to the limitations on rent increases, rent regulation laws entitle tenants to receive required services, to have their leases renewed, and to face eviction only upon specific grounds.

The “\$2,000.00 threshold” concept (discussed throughout this newsletter) refers to the fact that once the legally regulated rent that an owner can charge in a rent regulated apartment reaches \$2,000.00 or more per month, such apartment qualifies for permanent destabilization, and therefore, for removal from all rent regulation. This will benefit owners because they will have the option not to renew leases and will not have restrictions as to the amount of rent that they can charge.

Deregulation is possible in the following situations:

High-Rent Vacancy Destabilization: When an owner charges a rent increase permitted upon vacancy or succession to a level of \$2,000.00 or more per month or the owner charges a rent increase due to the installation of new equipment or improvements done to the apartment, such apartment will qualify for destabilization upon vacancy. This is true whether or not the next tenant to occupy apartment actually pays or is charged \$2,000.00 per month.

High-Rent/High-Income Destabilization: When a tenant occupies an apartment, the process for obtaining destabilized status is more difficult. In these situations, not only does the legal regulated rent have to exceed \$2,000.00 or more per month, but the persons in occupancy must have a total annual federal adjusted gross income in excess of \$175,000.00 for each of the two preceding calendar years.

Specifically, there are four main ways in which the legal regulated rent can be increased that DHCR recognizes: (1) Vacancy Lease Rent Increases; (2) Renewal Lease Increases; (3) Major Capital Improvement Rent Increases; and (4) Individual Apartment Improvement Rent Increases.

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Vacancy Lease Rent Increases:

When a person rents a rent stabilized apartment for the first time, the owner and the tenant sign a vacancy lease.

In general, the owner may charge the new tenant the previous legal regulated rent plus the additional percentage increase. The additional percentage is based on whether the term of the vacancy lease is one year or two years and whether the property is located in New York City or Westchester County (or the other ETPA localities)

In Westchester County, for leases commencing between October 1, 2010 and September 30, 2011, the landlord may increase the prior rent by 20% for a one year vacancy lease term and 20% for a two year vacancy lease term. In New York City, the landlord may increase the prior rent by 17.75% for a one year vacancy lease term and 20% for a two year vacancy lease term.

Renewal Lease Increases:

When a tenant signs a renewal lease, the rent adjustment for the renewal lease will be the adjustment for a one or two year lease, and is different depending on whether the property is located in New York City or Westchester County.

In New York City, for leases starting between October 1, 2010 and September 30, 2011, the owner may charge a rent increase of 2.25% for a one year renewal whether the owner provides heat or whether the tenants pay for heat and 4.5% for a two year renewal whether the owner provides heat or whether the tenants pay for heat. In Westchester County, for leases starting between October 1, 2010 and September 30, 2011, the landlord is not able to charge any increase to the tenant due to the rent increase freeze imposed by the Westchester County Rent Guidelines Board. This rent freeze applies to one year and two year leases.

Major Capital Improvement (MCI) Rent Increase:

When owners make building improvements or installations, they can apply to DHCR for approval to raise the rents. These MCI's can include the installation of boilers, windows, electrical rewiring or roofs. To be eligible, the MCI must be a new installation and not a repair to old equipment.

After the owner or attorney for the owner files the application and files the relevant documentation, DHCR will issue an order either granting a rent increase for the total amount requested, a partial amount requested, or denying the request. The rent increase, if granted by DHCR, is a permanent addition to the rent.

Individual Apartment Improvement Rent Increase:

Where an owner installs a new appliance or makes an improvement to an individual apartment unit, the owner may be entitled to increase the rent of that apartment for the new appliance or improvement. It is important to note that if an apartment has a tenant in occupancy, the owner can only receive a rent increase for the individual improvement if the tenant consents in writing to pay an increase for the improvement. If the apartment is vacant, tenant consent is not required.

According to DHCR, the allowable increase to the tenant's rent is 1/40th of the total cost of the improvement, including installation. So for example, if the legally regulated rent is \$1,000.00 and the cost of the installation of a new appliance is \$500.00, the owner can charge 1,012.50 as the new legally regulated rent. (1/40th of \$500.00 is \$12.50 and \$1,000.00 plus \$12.50 is \$1,012.50).

If you are the owner or property manager of a rent stabilized apartment building and need further assistance in the law and process of removing your apartment from rent stabilization status, or have other landlord-tenant issues, please contact James G. Dibbini & Associates, P.C.

Our office also provides legal services in the areas of:

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