DHCR AND Good Cause Eviction

CLE Presentation

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This CLE will cover updates to rent stabilization law under the jurisdiction of the Division of Housing and Community Renewal (DHCR), and the current status of the Good Cause Eviction law in Westchester.

Rent Stabilization vs. Rent Control: Key Differences Under New York Law

Understanding the distinction between rent-stabilized and rent-controlled apartments is critical for landlords navigating New York's housing regulations, especially under the jurisdiction of DHCR. These two regulatory frameworks share a similar goal—protecting tenants from sharp rent increases and unjust evictions—but they differ significantly in scope, requirements, and applicability.

Rent Control

What It Is:

- Rent control is the older of the two systems, governed primarily by the Emergency Housing Rent Control Law of 1946 and later by the Rent and Eviction Regulations.
- Only applies to residential buildings built before February 1, 1947, and applies only to tenants (or their lawful successors) who have occupied their unit continuously since before July 1, 1971.
- There are rent controlled buildings that have not declared an end to the postwar rental housing emergency. There are several counties and cities that still have rent control in effect. These include New York City, as week as Nassau and Westchester Counties.

Characteristics:

- Very rare today—only a few thousand rent-controlled units remain, mostly in NYC.
- No new rent-controlled tenancies are created; once a unit is vacated, it typically becomes rent-stabilized or deregulated.

Challenges for Owners:

- Extremely low rents—often far below market.
- Limited ability to increase rent, even after major improvements.
- Strict succession rules limit landlord flexibility on tenant changes.

Rent Stabilization

What It Is:

- Governed by the Rent Stabilization Law of 1969, administered by DHCR through the Emergency Tenant Protection Act (ETPA).
- With some exceptions, covers buildings with six or more units built before 1974, and buildings subject to regulatory agreements or tax benefits (e.g., 421-a, J-51).

Characteristics:

- Rent increases are governed by the Rent Guidelines Board (RGB).
- Tenants have the right to renew leases and are protected from eviction without cause.
- Rent-stabilized status is tied to the unit, not the tenant—unlike rent control.

Which Municipalities are Covered:

In Westchester County, the following municipalities have adopted the Emergency Tenant Protection Act (ETPA), subjecting certain residential buildings to rent stabilization under the oversight of the New York State Division of Housing and Community Renewal (DHCR):

Cities:

- Mount Vernon

- New Rochelle
- Rye
- White Plains
- Yonkers

Towns:

- Eastchester
- Greenburgh
- Harrison
- Mamaroneck

Villages:

- Croton-on-Hudson
- Dobbs Ferry
- Hastings-on-Hudson
- Irvington
- Larchmont
- Mamaroneck
- Mount Kisco
- Ossining
- Pleasantville
- Port Chester
- Sleepy Hollow

- Tarrytown

The ETPA generally applies to buildings constructed before January 1, 1974, with six or more residential units. However, some municipalities have set higher thresholds for the number of units required for a building to be subject to ETPA:

- Irvington: 20 units
- Mount Kisco: 16 units
- Pleasantville: 20 units
- Port Chester: 12 units
- Sleepy Hollow: 10 units

For example, in Yonkers, buildings with six or more units built before 1974 are subject to ETPA regulations. In contrast, Irvington requires buildings to have at least 20 units to fall under ETPA.

Municipalities Not Subject to ETPA:

- Cities: Peekskill
- Towns: Bedford, Cortlandt, Lewisboro, North Castle, North Salem, Ossining, Pound Ridge, Somers, Yorktown
- Villages: Ardsley, Briarcliff Manor, Bronxville, Buchanan, Elmsford, Pelham, Pelham Manor, Scarsdale, Tuckahoe

It's important to note that while these municipalities are not under ETPA, some may have rent-controlled apartments built before 1947, which are governed by different regulations. However, rent control is distinct from rent stabilization under ETPA

Building Registrations

Initial and Annual Filing Requirements

All rent-stabilized apartments in NYC and Westchester County must be registered annually with DHCR by July 31st each year. The filing must include:

- Status of occupancy as of April 1st of each year
- Legal registered rent
- Preferential rent (if applicable)
- Lease terms and vacancy status
- Tenant names and rental assistance information
- Initial registration when a unit first becomes subject to rent stabilization

Importance of Back Filing and Legal Rent Validation

Many landlords are unaware that even if rent was properly collected, it is not considered the legal rent until the corresponding DHCR registration is submitted. Without registration, that rent may be deemed unenforceable and can trigger overcharge penalties. However, once a landlord files missing registrations, the previously charged rent becomes validated and enforceable retroactively. This

is one of the key benefits of back-filing. It's especially critical in defense of overcharge claims.

Consequences of Non-Compliance

- $500/month per unit fine under Operational Bulletin 2024-1
- Loss of right to collect any increases (e.g., RGB, MCI, IAI, or even renewal lease increase)
- Tenants may legally refuse to pay increases
- Eviction cases may be dismissed in court for unregistered units
- Risk of TPU investigation if filing inconsistencies are detected

Registration and Property Sales

Before purchasing a property, buyers should confirm that annual registrations have been timely and accurately filed. Registration issues can have major implications on enforcement rights and liability.

Overcharge Complaints

A rent overcharge complaint is filed by a tenant who believes they have been charged rent in excess of the legal regulated amount under the ETPA. DHCR will investigate to determine whether an

overcharge has occurred and, if so, the amount of overcharge is owed to the tenant, often with treble damages.

Legal Framework and Recent Shifts

- Pre-2019 (Before HSTPA): DHCR could only request 4 years of rent records
- Post-2019 (After HSTPA): If the overcharge occurred after June 14, 2019, DHCR routinely demands documents going back to 2015, expanding the lookback period.

Important issue of Owner Liability and Risk

Current owner is liable for any DHCR violations committed by prior owners— if prior owner did no registration whatsoever there could be massive fines and it's the new owners problem.

Best Practices

- Conduct due diligence prior to purchasing a building—request full DHCR rent history from DHCR
- Obtain IAIs, leases, and registration records
- Ensure compliance is addressed in the sales contract if problems are identified
- Advise clients to conduct their own DHCR audit before purchasing a regulated building

The Tenant Protection Unit (TPU)

Understanding TPU's Role

The Tenant Protection Unit (TPU) is the enforcement arm of DHCR, created 2012 to proactively investigate violations of rent stabilization laws.

TPU does not need a tenant complaint to act.

It initiates investigations independently, often triggered by inconsistencies in online registrations, suspicious legal rent increases, or patterns in IAI filings.

Escalation of TPU Investigations

In recent years, especially post-HSTPA, the frequency and intensity of TPU investigations have increased dramatically across New York State.

According to DHCR's annual reports, the number of TPU investigations has risen notably in 2020, they commenced 294 investigations and in 2023 that number increased to 2,802.

With increased funding from the State, DHCR is prioritizing aggressive enforcement, and landlords should assume that any irregular filing could result in scrutiny. Even submitting updated registrations through DHCR's Owner Rent Regulation Application portal can alert the TPU to potential issues, especially if the legal rent changes appear unjustified or contradict historical rent histories. TPU is now using data analytics to detect inconsistencies, making proactive enforcement far more common than before.

Enforcement Powers and Risk to Owners

TPU audits can be building-wide and extend further than traditional rent overcharge timelines. If the overcharge occurred after June 14, 2019, DHCR applies a lookback period that starts from 2015 to the present. This expanded reach is significant and places added importance on historical recordkeeping. There are BIG Penalties for violations include rent rollbacks, refunds to tenants, and treble damages for willful overcharges.

Crucially, these penalties often fall on current owners—even when the violations originated with a prior owner. Many clients don't understand that when you buy a rent stabilized property from a seller all of the errors and incorrect filings of the past prior to the buyer's ownership, because the liability transfers to the buyer.

Best Practices for Avoidance for TPU Audits

- Maintain consistent and accurate rent registrations year-over-year.
- Document Individual Apartment Improvements (IAIs – which we will discuss a little later) thoroughly with paid invoices, receipts, permits, before-and-after photos, tenant consent, and payment records, contracts and contractor affidavits.
- Conduct periodic internal audits of rent histories and registration filings.
- Avoid sudden rent jumps without strong documentation and justification.
- Be cautious with how IAIs are presented in registrations—IAIs are a frequent trigger for audits.

Remember! The DHCR fines Run with the Land

New Owner Liability

DHCR issues run with the land. This means that the current owner is liable for any DHCR violations committed by prior owners—no matter the guarantees, sold “as is” or not. This is supported by multiple DHCR orders we’ve seen where new owners inherited overcharge liabilities. You may go after the previous landlord on your own but as far as DHCR is concerned, you owe the fine.

Why This Matters

We have represented clients who unknowingly inherited major DHCR liabilities, including:

- Overcharges exceeding $100,000
- Invalid deregulations of apartments or buildings
- Rent rollbacks to decades ago and registration penalties
- Treble damages

Due Diligence Recommendations for Purchases of Buildings

- Review DHCR registration history as part of pre-contract investigation
- Negotiate price adjustments or escrow to account for known issues
- Hire attorneys with DHCR experience to vet purchases

Practice Recommendation

When representing a buyer on the purchase of a rent stabilized property, if possible, add language to the buyer's rider that holds the seller (or if the seller is an LLC or corp, hold the individual owner of the LLC or corp) liable post-closing for any DHCR fines assessed against the buyer related to the time when the seller owned the property. Make sure you add language that states the clause survives closing of title.

Substantial Rehabilitation

As of 2025, destabilizing a rent-regulated apartment subject to the Emergency Tenant Protection Act (ETPA) in New York has become extremely limited due to sweeping reforms in tenant protection laws—especially following the Housing Stability and Tenant Protection Act (HSTPA) of 2019. These reforms were designed to curtail the permanent removal of units from rent stabilization. Below is a comprehensive overview of the current legal pathways—and limitations—for destabilization:

Destabilization Methods That Have Been Eliminated or Severely Restricted

1. High Rent Vacancy Deregulation — ABOLISHED

- Former Rule: Units could be deregulated if they became vacant and the legal rent exceeded a statutory threshold (e.g., $2,774.76).
- Current Rule: This method was eliminated by the HSTPA in 2019. No apartment can be deregulated based on rent level and vacancy alone.

2. High-Income Deregulation — ABOLISHED

- Former Rule: Units could be deregulated if the tenant's income exceeded $200,000 for two consecutive years and rent passed a set threshold.
- Current Rule: This method was also eliminated. Income is no longer a basis for deregulation.

Permissible Paths to Destabilization (Very Limited)

1. Substantial Rehabilitation of Entire Building

- Definition: Gut renovation of a building that replaces at least 75% of building-wide systems (e.g., plumbing, heating, electric, floors, walls).
- Criteria:
    - Building must be in substandard condition prior to rehab.
    - Rehab must be documented extensively.
    - An application must be submitted to DHCR for approval.
- Result: If approved, the entire building can be removed from rent stabilization.
- Caution: DHCR scrutiny is high; documentation, permits, and proof of uninhabitability pre-rehab are essential.

2. Demolition of the Building

- Requirement: Owner must apply to DHCR for permission to demolish a rent-stabilized building.
- Conditions:

- Must demonstrate intent to demolish and rebuild.
- Must provide relocation assistance and stipends to affected tenants.
- Approval by DHCR is required before taking any eviction action.

- Result: Units are deregulated only after demolition, not beforehand.

3. Condominium or Cooperative Conversion (with strict tenant protections)

- Limited Scope: While technically allowed, conversions under G.B.L. §352-eeee require:
  - 51% of existing tenants to agree to purchase (eviction plan is banned).
  - DHCR must approve the offering plan.
- Practical Reality: Almost impossible in today's regulatory climate, especially in ETPA jurisdictions.

Other Considerations and Misconceptions

- Owner Occupancy: While landlords may recover a unit for personal use, this does not deregulate the unit—it becomes vacant, and when re-rented, the unit remains rent-stabilized.

- IAIs and MCIs: Individual Apartment Improvements and Major Capital Improvements can increase the legal rent, but do not destabilize the unit.
- Voluntary Agreements: A tenant may agree to vacate and accept a buyout, but the unit remains rent-stabilized if it is re-rented.

Individual Apartment Improvements (IAIs)

Historical Context and Evolving Regulation

- Before 2019 (Pre-HSTPA): No strict documentation required. Landlords could report rent increases for IAIs with minimal oversight.
- Post-2019 (HSTPA): Introduced strict documentation rules. Landlords were required to keep detailed records and report IAI increases, obtain tenant consent (if occupied).
- After October 17, 2024 (Operational Bulletin 2024-2): Introduced a two-tier system with different limits and documentation requirements. Introduced an even stricter record-keeping requirements. And it is now required to file forms with DHCR within a certain period of time after completing the renovations.

Tiered IAI System

- Tier 1:
  - Up to $30,000 in IAI costs
  - Permitted for any unit (vacant or occupied)
  - Permanent rent increase: 1/168th (≤35 units) or 1/180th (>35 units)
- Tier 2:
  - Up to $50,000 in IAI costs
  - Unit must be:
    - Vacant and registered as such in 2022, 2023, and 2024, or
    - Occupied by the same tenant for 25+ years
  - Permanent rent increase: 1/144th (≤35 units) or 1/156th (>35 units)

Required Forms and Documentation

- RN-19N: IAI Notification Form
- RN-19C: Tenant Informed Consent (if occupied)
- Certification of Eligibility (for Tier 2)
- Before-and-after photographs
- Paid invoices, contracts, and itemized breakdowns

- Proof of payment (cancelled checks, bank statements)
- Permits and documentation on useful life of replaced items

Due to the complexity of DHCR's regulations and the stringent documentation and filing requirements, many landlords ultimately choose not to file IAIs with DHCR resulting in no legal way for the owner to recoup their investment into improvements made to apartments.

Good Cause Eviction

Overview

The Good Cause Eviction laws restrict a landlord's ability to remove tenants or raise rents without justification. It's already in effect in NYC and rapidly spreading throughout Westchester and beyond.

What many landlords don't understand is that Good Cause Eviction Law does not directly apply to rent-stabilized apartments, as those units are already protected under separate rent stabilization laws. Instead, this law is specifically intended for free-market buildings. While it automatically applies in New York City, other areas in the state can choose to opt-in.

Municipalities That Have Opted In and Adoption Dates

1. Albany – June 3, 2024
2. Beacon – August 19, 2024

3. Binghamton – February 12, 2025
4. Croton-on-Hudson – January 8 (Effective February 7, 2025)
5. Hudson – October 15, 2024
6. Ithaca – July 9, 2024
7. Kingston – July 2, 2024
8. Fishkill - November 20, 2024
9. Village of Catskill - November 13, 2024
10. Newburgh – September 9, 2024
11. New Paltz – July 2024
12. Nyack – September 27, 2024
13. Poughkeepsie – July 9, 2024
14. Rochester – December 17, 2024

Municipalities That Are Currently Reviewing GCE

1. City of White Plains
2. City of Yonkers

Landlord Risks

- Automatic lease renewals unless the tenant is at fault
- Rent increases above the inflation index threshold or 10% (whichever is lower) require strong justification

    - For New York City, the inflation index is defined as 5% plus the annual percentage change in the consumer price index for all urban consumers for all items, as published by the U.S. Bureau of Labor Statistics for New York-Newark-Jersey City
- Burden of proof lies with the landlord
- Increased exposure to legal action for failure to renew leases or improper rent increases

Exceptions where this law does not apply to you:

- Applies outside New York City only if local authorities adopt it.
- Small landlords (owning 10 units or fewer in NYS)
- Owner-occupied properties with fewer than 11 units
- Coop and condo apartments

Full list:

1. Outside of the City of New York, GCE only applies where local authorities have enacted it by local legislation. Inside New York City, GCE will be phasing in, but most of it applies immediately.

2. "Small landlords" as defined by the statute. Basically, this means a landlord who "owns" a maximum of ten apartments inside New York State. However the meaning of "owns" in this context is very

complicated and will clearly give rise to considerable litigation. Just for one example, anyone who has separate LLC's for separate buildings where the total number of apartments in those buildings is more than eleven will, for purposes of this law, be considered not to be a "small" landlord. Landlords claiming to be small will have to disclose a considerable amount of information about their business associates. We have a number of clients who manage various collections of investors going in together for a particular property. While it is too soon to see how the courts will be interpreting the law, we predict that in any collection of investors, if there is one investor whose holdings add up to eleven or more apartments spread through various collections of investors, the presence of that one investor will make every building invested in subject to the GCE, even if all the other investors in that building have interests in buildings containing ten or fewer apartments.

3. Buildings of fewer than eleven units where the landlord lives in one of those units.

4. Apartments where a tenant subletting the apartment is trying to get the apartment back for personal occupancy. Note the GCE law gives this privilege to a tenant who is subletting, not to the owner of the property.

5. A superintendent's apartment or that of any other employee who holds the apartment as part of a job and that employee has been fired.

6. A rent regulated apartment under any rent regulatory scheme.

7. Affordable housing units under an affordable housing law.

8. Coop and condo apartments.

9. Units that are newer than December 31, 2008. This exemption applies unit by unit, not to an entire building unless the entire building was built on or after January 1, 2009. The exemption lasts only for the first thirty years of the unit's existence after the c of o has been issued.

10. Seasonal occupancies.

11. Occupancies in hospitals, retirement homes, assisted living and various other kinds of senior housing.

12. Mobile homes.

13. Hotel rooms.

14. College dormitories and boarding schools.

15. Religious cells.

16. Luxury apartments. The law defines how to determine whether an apartment is luxury, but it is not a fixed number. The figures change annually, but can generally be found at the Good Cause Eviction Charts. These charts enable calculation of 245% of the HUD geographic Fair Market Rent, that threshold being necessary to win exemption on this ground from GCE coverage.

17. While the law does not say so on its face, but we predict that the courts will not apply the GCE to non-landlord/tenant relationships such as licensees, squatters, persons who have been foreclosed on, and various other reasons to evict a person who is not a tenant at all.