

NEW YORK HOUSING JOURNAL®

Brought to you by the Community Housing Improvement Program, Inc., an association of apartment building owners

JULY/AUGUST 2009

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CHIP® Continues Fighting for Owners' Rights in Albany

CHIP® has been particularly active this year in Albany on your behalf. We've been fighting to preserve the rent reforms of 1997 and 2000 and to ensure that our industry has a policy voice as the State legislature considers new and more stringent housing regulations. And of course, CHIP® has provided regular reports on the leadership struggles in the State Senate.

Both the Senate leadership structure and legislative considerations change frequently. Accordingly, we recommend you check the CHIP® Web site for updates. Be sure we have your email address for regular reports on Albany developments.

Here is the current situation. The State Assembly passed eleven bills which together would create a more rigid regulatory structure for rental housing. Most of these bills were introduced into the Senate. To date, the Senate has taken no action on any of them. CHIP® has been steadfast in writing to and meeting with senators to inform them why it is not in the public policy interest of the State or its residents to enact these bills.

However, the leadership struggles in the Senate have cast some uncertainty onto the future of rent regulation legislation. At least one bill, one which would end luxury decontrol and reregulate apartments which were decontrolled, features prominently on Democratic senators' list of priority bills. Luxury decontrol also figured in agendas for the Senate special sessions which Governor Paterson issued.

The leadership of the Senate has undergone major changes. At this writing, Democrats are back in control with a leadership triumvirate consisting of Senator Pedro Espada as majority leader, Senator Malcolm Smith as Senate President, and Senator John Sampson as Democratic conference leader. Committee assignments are pending.

CHIP®'s President Nicholas Petras and Executive Director Patrick Siconolfi have been in Albany repeatedly over the last six months educating senators and staff about our issues and urging their support. We will continue to represent you in Albany and keep you apprised. ♦

Rent Guideline Board Sets New Rent Increases for Renewal Leases

On June 23, 2009, the New York City Rent Guidelines Board (RGB) issued an order (RGOB #41), which sets the rent increases you may collect from your rent-stabilized tenants for renewal leases beginning on or after October 1, 2009, through September 30, 2010. The increase amounts depend on whether you or the tenant pays for heat. Also, for the second year in a row, the RGB authorized minimum rent increases for tenants from whom you haven't collected a vacancy increase in six or more years. Using the minimum increases instead of the renewal increase percentages will give owners bigger rent increases whenever monthly rents are less than \$1,000. CHIP® was instrumental in persuading the RGB that owners needed a low-rent supplement. CHIP®'s Executive Director, using research that CHIP® and

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RSA commissioned, showed how taxes affected owners and how low-rent apartments affect a building's ability to meet tax and other financial obligations.

Here are the rent increase amounts for renewal leases and other increases set out in the RBG order.

Renewal Leases for Apartments

If you pay for heat.

Renewal percentages. You may collect an increase of 3 percent for a one-year lease and 6 percent for a two-year lease.

Minimum increases. As an alternative to the renewal percentages, RGBO #41 permits you to collect a minimum \$30 increase for a one-year lease and a minimum \$60 increase for a two-year lease if you haven't collected a vacancy increase from the tenant in six or more years. If a tenant's monthly rent is less than \$1,000 and you qualify for the minimum increase, it makes sense to collect that amount.

Example: A tenant pays a monthly rent of \$850. You last collected a vacancy increase from this tenant pursuant to a vacancy lease starting on November 1, 2003. You renew the tenant's lease on November 1, 2009. The 6 percent increase on a two-year renewal would be only \$51 a month (6% x \$850). But since you haven't collected a vacancy increase in six or more years, you're entitled to collect the \$60 minimum increase.

If tenant pays for heat.

Renewal percentages. You can collect an increase of 2.5 percent for a one-year lease and 5 percent for a two-year lease.

Minimum increases. As an alternative to the renewal percentages, RGBO #41 permits you to collect a minimum \$25 increase for a one-year lease and a minimum \$50 increase for a two-year lease if you haven't collected a vacancy increase in six or more years. If a tenant's monthly rent is less than \$1,000 and you qualify for the minimum increase, it makes sense to collect that amount.

TIP: If you are collecting a minimum rent increase, the current renewal lease form (RTP-8) advises you to put "N/A" inside the parentheses in column "C". You can then enter the dollar amount of the minimum rent increase on the lines provided in that column.

Sublet Allowance

RGBO #41 allows you to collect a sublet allowance of 10 percent when you give permission to a tenant to sublet an apartment.

Special Guideline

RGBO #41 includes a special guideline that covers apartments that were rent-controlled on September 30, 2009, and become rent-stabilized on or after October 1, 2009, through September 30, 2010. The special guideline increase is the greater of:

- 50 percent above the maximum base rent (MBR), or
- The fair market rents set by the U.S. Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area and taking effect on October 1, 2009.

Renewal Leases for Lofts

RGBO #41 also sets the renewal lease increases for lofts. Those increases are 3 percent for a one-year lease and 6 percent for a two-year lease, regardless of who pays for heat.

Vacancy Leases

RGBO #41 doesn't directly cover rent increases for vacancy leases, which are set by law, but it indirectly affects one-year vacancy leases beginning on or after October 1, 2009, through September 30, 2010. As a result, owners who pay for heat can collect a rent increase of 17 percent for a one-year vacancy lease; owners who don't pay for heat are entitled to 17.5 percent. Both of these amounts are higher than last year's increase of 16 percent.

The Rent Stabilization Law authorizes owners to collect a 20-percent increase for all two-year vacancy leases and an increase of 20 percent minus the difference between the applicable renewal percentages for a one-year renewal lease. In RGBO #41, the difference between the allowable increases for one-year and two-year renewal leases is 3% if the owner pays for heat (6% - 3%) and 2.5% if the tenant pays for heat (5%-2.5%). ♦

RGB Reports Show Changes to Rent-Stabilized Housing Stock and Housing Supply

In setting the new rent increases for renewal leases described on p. 1 of this issue (see "Rent Guideline Board Sets New Rent Increase for Renewal Leases"), the Rent Guidelines Board considered two reports—"Changes to the Rent Stabilized Housing Stock in New York City in 2008" and "2009 Housing Supply Report." Those reports contained some interesting findings, which we'll summarize briefly below. You can download copies of both reports from the Resources section of the CHIP® Web site, www.chipnyc.org.

Changes to Housing Stock Report

A total of 8,566 units were added to the rent-stabilized housing stock in 2008;

A total of 16,833 units were subtracted from the rent-stabilized housing stock

in 2008 (resulting in a net loss of 8,267 units); and

12,800 units were deregulated in 2008 under high rent/vacancy decontrol provisions of the Rent Regulation Reform Act.

2009 Housing Supply Report

New York City issued permits for 33,911 new dwelling units in 2008;

The number of new housing units completed in 2008 decreased 7.7 percent over the prior year, to 24,381; and

The number of housing units newly receiving J-51 abatements and exemptions increased 15.8 percent, to 64,478. ♦

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FROM OUR MEMBERS

Anti-Scald Devices Required in Some Buildings

In the May 2009 issue of our newsletter, we told you about a recent court ruling in which the court found that an owner wasn't liable to the estate of a tenant who had been fatally scalded in the bathtub (see "Housing Court Round-Up: Owner Not Liable for Fatal Scalding," p.5). The court noted that City law doesn't set maximum water temperatures in buildings. But, warns Scott Silberman of SMS Engineering, PC, this may not be true depending on your building's age and/or when you performed work on it. Local Law 86 of 1996 amended Section 27-2031 of the City Administrative Code to require owners who renovate bathrooms in existing buildings or install bathrooms in new buildings on or after May 1, 1997, to install anti-scald devices in the faucets supplying water to tubs and showers. Those devices must prevent the water temperature from exceeding 120 degrees Fahrenheit. ♦

City Passes Three Asbestos Abatement Laws

On June 29 2009, the Mayor signed into law three bills regulating asbestos abatement.

Here's a brief summary of those laws.

Smoking ban at abatement sites (Local Law 35 of 2009). This law, which took effect on June 29, bans smoking on any floor of a building where asbestos abatement activities are taking place. The law also bars tobacco, lighters, and matches from the asbestos abatement workplace.

Future egress rules (Local Law 38 of 2009). This law, which took effect on June 29, requires the Department of Environmental Protection (DEP), in consultation with the Fire Department and Department of Buildings, to promulgate rules that give contractors guidance on how to maintain egress at asbestos projects. According to the Committee Memo on the bill, this provision is meant to prevent a tragedy like the fire at 130 Liberty Street that resulted in the death of two firefighters. Two stairwells in that building were sealed because of ongoing asbestos abatement, blocking the firefighters' escape from the building.

Stricter standards for abatement projects (Local Law 37 of 2009). This law requires DEP to establish a permit requirement for asbestos projects by August 28, 2009. The criteria for a permit should include the project's effect on the maintenance of egress in the building, the effect of the project on the fire protection systems in the building, and whether the project includes work that may also require a permit from the DOB. The DEP has the authority to revoke any abatement permit if the holder doesn't follow the rules or if the DEP finds any false statement or misrepresentation on the permit documents. The bill also authorizes DEP inspectors to enforce provisions of the Fire and Building Codes at abatement sites. Owners who violate the asbestos permit rules can be fined up to \$15,000.

The law also sets an additional requirement for owners of buildings built on or before April 1, 1987, who are applying to the DOB for a demolition or alteration permit. It requires those owners to submit an asbestos certification to DOB before getting the permit. ♦

Semi-Annual Index Available

We've prepared an index of articles that appeared in the New York Housing Journal from January through June 2009. The index is available on the CHIP® Web site, www.chipnyc.org. You can also request that we email the index to you by sending an email to slipp@chipnyc.org. Put "Request Index" in the subject line. ♦

DHCR ROUND-UP

Tenants Can't Challenge MCI Increase in Court Without Including DHCR

After the Division of Housing and Community Renewal (DHCR) issued an order granting an owner's major capital improvements (MCI) rent increase, tenants challenged the increase in court. The DHCR and the owner asked the court to dismiss the case because the tenants hadn't named the DHCR as a party in the court case. The court dismissed the tenants' case. Although the tenants had tried to amend the court papers to add the DHCR as a party to the case, they were unsuccessful because the 60-day time period for filing a court challenge had expired. The case couldn't go forward without the DHCR, the court said. The DHCR would be prejudiced if a case challenging its determination went forward without it, and an effective judgment couldn't be rendered in the absence of the DHCR as a party [910 West End Avenue Realty, LLC v. Various Tenants: Index No. 107396/08 (Sup. Ct. NY 4/15/09)].

Submitted by Karen Schwartz Sidrane of the Hewlett law firm of Sidrane & Schwartz Sidrane, LLP, attorneys for the owner, 516-569-9539.

Owner Didn't Waive Right to Collect Washing Machine/Air Conditioner Surcharges

A District Rent Administrator (DRA) issued an order finding that an owner had collected a rent overcharge by improperly imposing a surcharge for the use of a tenant-installed washing machine and three air conditioners. The DRA found that the owner had waived its right to collect the surcharges. The owner appealed, claiming that the tenant had never raised the waiver issue in his overcharge complaint and had argued only that he was being billed a monthly surcharge of \$25 for the washing machine rather than the \$13.62 monthly surcharge permitted by DHCR Operational Bulletin 2005-1. The DHCR agreed with the owner and dismissed the tenant's rent overcharge complaint. The tenant hadn't raised the waiver issue in his complaint. Also, evidence showed that the tenant never paid more than \$13.62 per month for the washing machine, despite being billed for \$35 per month. The tenant's complaint also didn't raise the air conditioner surcharge issue. And the tenant didn't dispute that he had installed three air conditioners in his apartment and begun paying the allowable \$15 surcharge for them, without objection [Loran LP: DHCR Adm. Rev. Dckt. No. WI610011RO (12/4/08)].

DHCR Inspector Shouldn't Have Cited Defects Unrelated to MCI Work

An owner applied for an MCI rent increase for various improvements. The DRA granted an increase for new hallway windows, but disallowed an increase for repiping and bathroom/kitchen modernization after finding that this work wasn't done in a workmanlike manner. The owner appealed, pointing out that the defects cited in the DHCR inspection report weren't related to the MCI work and, in any event, were minor. The DHCR agreed with the owner and granted the MCI rent increase. It noted that the conditions described in the inspection report (for example, missing shower doors) weren't included in the scope of the MCI work and weren't cited by the tenants in their complaint. Also, except for a problem in one apartment, the owner had corrected the defects cited by the tenants that were related to the MCI work [111 East 167th St.: DHCR Adm. Rev. Dckt. No. XB610004RP (4/2/09)].

DHCR Won't Investigate Owner's Claim that Tenant Fraudulently Concealed Income

An owner applied to the DHCR to deregulate an apartment based on the tenant's high rent and high income. The DRA denied the owner application because the State Department of Taxation and Finance (DTF) reported that the tenant's income for the years in question was below the threshold amount required for deregulation. The owner appealed, claiming that the tenant had fraudulently concealed significant amounts of income from the DHCR, DTF, and the US Department of Treasury to keep his income under the threshold amount. The owner claimed that evidence of the tenant's fraud existed, including documents from the IRS and a court order. The DHCR ruled that it didn't have the authority to investigate the owner's claim of fraud. It noted that it's required by law to rely on the DTF findings in determining whether a tenant meets the income threshold for deregulation. It would create an unreasonable administrative hardship if it had to independently investigate and determine the tenant's income before issuing an order. It would also require the DHCR to conduct inquiries and make income and tax determinations that it's not qualified to make [Ram I LLC: DHCR Adm. Rev. Dckt. No. WI4200047RP (4/28/09)]. ♦

Make Sure Master Antenna Provides Enhanced Television Service



On June 12, television stations stopped broadcasting in analog and switched to a digital format. If you provide a master antenna on your building that has become a required service to your rent-regulated tenants, you're responsible for updating the master antenna so that rent-regulated tenants who rely on it can continue to have their present or enhanced television service, according to the Division of Housing and Community Renewal (DHCR). The master antenna must now be capable of transmitting digital broadcasting to rent-regulated tenants in your building who still use the antenna for television reception, rather than cable or satellite TV, or a similar service.

For more information about the transition to digital TV's effects on rent regulated tenants, see "DHCR Clarifies Owner's/Rent Regulated Tenant's Duties in Digital Television Transition," in the March issue of the [New York Housing Journal](#), p. 1. ♦



HOUSING COURT ROUND-UP

Court Refuses to Give Nuisance Tenant More Time to Clean Apartment

An owner sued to evict a tenant for nuisance, claiming the tenant maintained his rent-stabilized apartment in an unsanitary and unhealthy condition. At the trial, several of the tenant's neighbors testified to the deplorable condition of the tenant's apartment. They described vermin and debris (including dirty dishes and pots in the kitchen, food on the kitchen floor, dirty clothes, bags, boxes and suitcases on the bed, and dirty and exposed wires in the living room). They also testified about a foul and unbearable smell that emanated from the apartment. The tenant admitted that his apartment was as the witnesses described, but claimed that he had subsequently cleaned it. The court conducted its own inspection of the apartment. It found the apartment to be extremely filthy, with an old and musty smell, dirt, dust, and grime throughout, pieces of paper and filth covering the floor and carpet, and dirty belongings everywhere. The court ruled that the tenant hadn't corrected the nuisance and refused to give him any more time to do so. It said that the tenant had been given ample time to correct the nuisance and had failed to do so. His behavior showed no signs of abating, and the nuisance continued despite his alleged cleanup [Cabrini Terrace Joint Terrace v. O'Brien: Index No. 55438/07 (Civ. Ct. NY (3/7/08))].

Submitted by Adam Leitman Bailey of the Manhattan law firm of Adam Leitman Bailey PC, attorneys for the owner, 212-825-0365.

Noneviction Plan Doesn't Bar Rent-Stabilized Tenant's Eviction for Nonprimary Residence

An owner sued to evict a tenant of a rent-stabilized apartment based on nonprimary residence. The apartment was in a building that had been converted to a condominium form of ownership using a noneviction offering plan and the tenant had elected not to purchase. The tenant asked the court to dismiss the case, claiming that the Martin Act [General Business Law Section 352-eeee(2)(c)(ii-iii)] bars eviction based on nonprimary residence of tenants in buildings that were converted to a condominium. The owner argued that the Martin Act doesn't bar evictions based on nonprimary residence. The court agreed with the owner. It ruled that the Martin Act protects nonpurchasing rent-stabilized tenants by exempting them from eviction based on owner occupancy. It doesn't bar nonprimary residence evictions. "To hold otherwise would allow tenants to reap the benefits of the Rent Stabilization Law, (i.e., minimal rent increases) while ignoring their responsibilities and obligations (i.e., using the premises as a primary residence)" [177 East 77th St., LLC

v. McLeod: L & T Index No. 90494/08 Civ. Ct. NY 4/27/09)].

Submitted by Gerald Shapiro of the Manhattan law firm of Mitofsky Shapiro Neville & Hazen, LLP attorneys for the owner, 212-736-0500.

Owner Can Revoke Tenants' Right to Use Roof Space

An owner asked the court to declare that tenants' right to use the roof space adjacent to their 22nd floor duplex apartment was merely a license that the owner could revoke, and not a right that they had under their lease. An appeals court ruled that the owner could revoke the license to use the roof. The lease didn't include the roof space in the description of the apartment. Although the owner allowed the tenants to use the roof space, this didn't create an irrevocable right for them to continue to do so. The trial established that the tenants' use of the roof hadn't been exclusive. The owner had access to the roof through the years to perform routine maintenance, roof repairs, and other work. The evidence showed that the parties didn't intend to make the roof space part of the tenant's apartment [Prospect Owners Corp. v. Sandmeyer: NYLJ 5/28/09, p. 39, col. 2 (App. Div. 2nd Dept.)].

Tenant's Life Partner Gets Succession Rights to Rent-Controlled Apartment

An owner sued to evict the roommate of a rent-controlled tenant after the tenant died. The roommate claimed she was entitled to succession rights as the tenant's life partner. She testified that she and the tenant lived in the apartment together as their primary residence from 1986 until his death in 2006. She testified about their long-term committed relationship during this period. For example, she and the tenant vacationed together and spent leisure time with both family and friends as a couple. Also, she and the tenant jointly cared for the tenant's son from a prior marriage. The neighbors in the building testified that she and the tenant held themselves out as a married couple. The owner argued that the life partner wasn't entitled to succession rights because she and the tenant didn't intermingle their finances and weren't dependent on each other financially. The court ruled that the life partner was entitled to succession rights. It noted that the law's definition of a family member entitled to succession rights includes a person who can prove an emotional and financial commitment with the tenant. Although the two did in large part maintain separate finances, they shared some expenses and a credit card. Given the totality of the circumstances, the life partner met the definition of a nontraditional family member under rent regulation [Barnard College v. Ribowsky: NYLJ 5/13/09, p. 26, col. 1 (Civ. Ct. NY)]. ♦

Remind Tenants of Proper Air Conditioner Installation Methods



If tenants in your building are installing air conditioners in their windows this summer, remind them about the proper installation methods. The Department of Buildings has a handout called "Window Air Conditioner Installation Tips," which you can download from the Resources section of the CHIP[®] Web site, www.chipnyc.org, and distribute to tenants. If tenants follow these tips, they're less likely to install air conditioners improperly, reducing the chances that an air conditioner will fall out of the window and injure, or even kill, a pedestrian below. ♦



THE INQUIRING MIND

Advising DHCR of Incorrect Room Count on MCI Application

Q. We filed an application for a major capital improvement rent increase (MCI) with the Division of Housing and Community Renewal (DHCR), then later realized that the room count listed on the application was incorrect. What's the best way to correct this mistake?

A. If the District Rent Administrator (DRA) hasn't yet issued an order on your MCI application, immediately send a letter to the DRA explaining that you discovered the room count provided on the application was incorrect and giving the corrected room count, says Martin Heistein of Belkin Burden Wenig & Goldman, LLP. Make sure to include the docket number assigned to your application on the letter. Also, attach a new rent roll schedule (called the "Supplement 2" form) showing the correct room counts and a new RA-79 form (the cover sheet to the application) showing the proposed MCI room count change based on the total number of rooms in the buildings, suggests Heistein. If the DRA has already issued an order granting the application based on the incorrect room count, it gets much trickier. You would have to file what's known as a "Request for Reconsideration" with the DHCR. DHCR Policy Statement 91-5 says that you must file the request within 95 days of the date of the DRA's order. You would most likely state that the request is made based on an "irregularity in a vital matter" and then explain that the room count originally provided was incorrect. You can ask the DRA to reissue the order based on the correct room count. ♦

CHIP® Holds 11th Annual Golf and Tennis Outing

On Monday June 15th, the Community Housing Improvement Program (CHIP®) held its 11th annual Golf and Tennis outing. The event was held at the prestigious Seawane Golf Course in Hewlett Harbor, Long Island. Reflecting CHIP's growing membership and involvement in the real estate market, a large number of participants turned out for this year's event.

Members enjoyed an elaborate breakfast overlooking the course, followed by a full day of golf and tennis. Afterwards, the players relaxed with a cocktail party and dinner on the club's scenic terrace. The day ended with the presentation of awards conducted over dessert.

As one of a number of social events on CHIP's annual calendar, the Golf and Tennis outing provides members with opportunities to net-

work, enjoy the club's course and hospitality, and make new contacts in a relaxed setting.

Besides being an enjoyable day in the sun, the event's main purpose is to raise funds to support the advocacy services CHIP® provides on behalf of owners of residential property in New York.

CHIP® expresses its appreciation to the sponsors of the event, who helped make the day such a success. Major sponsors included BWD Group, LLC, Castle Oil Corporation, GCP Capital Group LLC, Heiberger & Associates, P.C., Hercules Corporation, Hess Corporation, Meridian Capital Group, Michael and Zachary Kerr, Real Deal Decoration, LLC, Signature Bank and U.S. Energy Group. ♦



*Rubin Pikus, Andrea Hirsch
& Richard Berger*



*Jeff Farkas, Jordan Platt,
Nicholas Petras & Barry Rudofsky*



*Robert Rosenberg, Joseph Rosenberg,
David Diamond & Frank Gabriel*



*John Stewart, Jeff Herman,
Barry Fishman & Herb Donner*



*Bruce Azus, Mark Engel,
Scott Silberman & Matt Engel*



2009 Tennis Tournament Participants

DOHMH Revises Water Tank Rules

The Department of Health and Mental Hygiene (DOHMH) has adopted revised rules regarding the inspection, maintenance, and cleaning of building water tanks that store water for drinking. The revised rules, which took effect on July 30, 2009, reiterate the requirements for annual water tank inspections, but provide more details on the inspection and related record keeping, sign posting, and corrective action. At CHIP®'s explicit request, DOHMH dropped a requirement that would have added a schedule of DOHMH inspections to the existing annual inspections. The revised rules also contain more stringent standards for maintenance and cleaning of building water tanks, including additional sampling and record-keeping requirements. Here's a brief rundown of the revised rules. A complete copy is available for download from the Resources section of the CHIP® Web site, www.chipnyc.org. Look under "Department of Health and Mental Hygiene" as the agency or "Water Tanks" as the topic.

Inspections

As before, the revised rules require owners to have their water tanks inspected once a year.

What to examine. The revised rules give more detail about the inspection. They require the inspector to examine:

The condition of overflow pipes, access ladders, air vents, roof access hatches, and screens;

The interior and exterior of the water tank and its sealed edges and seams for evidence of pitting, scaling, blistering, chalking, rusting, corrosion, or leakage; and

Sanitary conditions, including the presence of sediment, biological growth, floatable debris and insects in the tank, and rodent or bird activity in and around the tank.

The inspector must also take a sampling of the water in the water tank to verify the bacteriological quality of the water supply in compliance with the New York State Sanitary Code. A state-certified laboratory equipped to analyze drinking water must report the sample results.

Record keeping. As before, the revised rules require the owner to maintain a written report of the inspection results for at least five years from the date of the inspection. The revised rules now say that this report must be made available to the DOHMH within five business days if requested. The revised rules also now require the report to contain a statement of whether or not all applicable requirements were met at the time of inspection and a description of any noncompliance with the requirements.

Sign posting. The revised rules now require you to post a notice at an "easily accessible location" to tell tenants that water tank inspection results are available upon request. The notice must include the name, address, and phone number of the person who can provide the results. You must place the notice in a frame with a transparent cover. If you get a request for the inspection results, you must provide them within five business days.

Corrective action. As before, the revised rules say that if the inspection reveals an unsanitary condition, you must take steps to correct it. There are now detailed requirements for how to do this cleaning (see

Maintenance and Cleaning, below). Also, the revised rules now require you to notify the DOHMH within 24 hours if a water sample shows noncompliance with the bacteriological quality standards of the State Sanitary Code.

Maintenance and Cleaning

The revised rules include detailed requirements for maintenance and cleaning of water tanks. You would clean a tank if required to do so because an inspector found corrective action necessary or if the DOHMH directs you to correct an unsanitary condition.

Who can clean. The revised rules say that the following people or entities are qualified to clean a water tank:

Someone holding a valid permit issued by the DOHMH;

A licensed master plumber; or

An entity (corporation or partnership) in which one of the officers or partners has one of the above two qualifications.

How to clean. The person doing the cleaning must comply with the provisions of City's Administrative Code and the State's Sanitation Code, as well as applicable industry standards and recommendations. They must use products that are certified by the American National Standards Institute (ANSI). Also, no paint containing lead in any form may be used inside a water tank. As before, the water tank must be completely drained and flushed with potable water before refilling for use.

Sampling. The revised rules contain a new sampling requirement. After painting or treating the interior of the tank, the inspector must take a water sample to ensure that volatile organic chemicals don't exceed the levels allowed by the State Sanitary Code. A State-certified laboratory equipped to analyze drinking water must report the sample results.

Record keeping. The revised rules contain a new record-keeping requirement with regard to maintenance and cleaning. They require you to keep a record of the date, address, and work performed including a list of the cleaning, paints, coating, and disinfection products used. You must keep this record for at least five years from the date of the completed work. Also, if the DOHMH asks to see the record, you must provide it within five business days of the request. ♦

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DEP Amends Water Use and Supply Rules

The Department of Environmental Protection (DEP) recently amended its rules on the use and supply of water. The amended rules, which took effect on June 22, 2009, change various requirements, including those relating to the maintenance and placement of water meters, service pipe connections, backflow prevention device testing, automatic meter reading (AMR) transmitters, and sidewalk flushing. Here's a brief rundown of some of the changes.

Water Meters

Installation of water meters in unmetered buildings. The amended rules confirm that if your building doesn't currently have a water meter, you must get one installed whenever you install, replace, repair, or relay a domestic or combined service pipe.

Installation of more than one meter. The rules require one meter per building. But the amended rules provide that the DEP may issue a variance allowing two or more separate meters to serve residential and nonresidential occupants on the same lot.

Protection of Service Pipes and House Control Valves

As the owner, the new rules make you responsible for preventing physical deterioration of the service pipe, curb valve, house control valve, or distribution pipe, where that deterioration may damage a meter or prevent its maintenance or replacement. You're also responsible for maintaining the service and distribution pipe and its associated fittings and equipment. The DEP is responsible for maintaining the water meter.

This allocation of responsibilities has always been DEP policy, but the new rules spell it out in further detail, notes Alan Rothschild of Vantage Group Inc.

Testing of Backflow Prevention Devices

These devices include reduced pressure zone devices (RPZs) and check valve assemblies. Owners of buildings with potential cross-connection hazards are required to install the devices to prevent possible backflow from a commercial property or apartment into the City water main. The amended rules now require the testing of these devices whenever they're repaired (in addition to the already required testing upon installation and annually). The amended rules also require the testing to be done by a backflow preventer tester who is certified by the New York State Department of Health and employed by a licensed master plumber.

Transition to AMR Transmitters

The amended rules set out more specifications for the DEP's planned transition to a radio-based AMR system to determine the amount of water use, in place of the current system of on-location meter reading. In an AMR system, a meter transmission unit (MTU) is installed at a building. The MTU, which is a small, low-power radio transmitter connected to an individual meter, sends daily readings to a network of rooftop receivers throughout the city. The DEP plans to use the AMR system to get an accurate reading of water use and to accurately bill owners.

When the DEP starts installing transmitters Citywide, any meter installation will have to include the approved AMR transmitter. The City will mount the AMR transmitter for domestic meters on the outside of an exterior building wall, above ground level. Owners can't relocate the AMR transmitter without first getting a DEP permit to do so. (For more information about the AMR system, see "DEP to Start Implementation of Automatic Meter Reading System," in our September 2008 issue, p. 7).

The rules also make the owner responsible for protecting the AMR transmitter and wiring and for any break or disconnection of the wire inside the building.

Sidewalk Flushing

Exception to bar on sidewalk flushing. As before, the rules bar sidewalk flushing between 11:00 AM and 7:00 PM from April 1 to October 31 and at any time between November 1 and March 31. But the amended rules contain an exception to this prohibition. They allow owners to wash surfaces (particularly the exterior of the building) during prohibited periods when it's done as part of City-required repairs or to protect the health and safety of the public.

Special requirements for hose. There's a new requirement that any hose used to supply City water for sidewalk cleaning must be equipped with a nozzle limiting flow to no more than five gallons of water per minute per square inch. The hose must also have an automatic shutoff mechanism to turn off the water flow if the user isn't holding or compressing a handle or trigger. ♦

ECB Issues New Rules on Hearing Adjournments and Appeals

The City's Environmental Control Board (ECB) has issued new hearing rules that should be helpful for owners. The ECB, which hears disputes concerning certain violations, such as those issued by the Department of Buildings and Fire Department, holds a hearing if an owner receiving a notice of violation contests it or if the violation is classified as hazardous. The new rules, which took effect on June 15, 2009, limit when the hearing officer (HO) can grant adjournments that delay a hearing. They also expand the owner's ability to appeal adverse decisions if the ECB doesn't act in a timely manner. The new rules are part of a series of changes implemented by the Office of Administrative Trials and Hearings (OATH), which recently took control of the ECB, explains Bill Eberight of the Manhattan law firm of Borah, Goldstein, Altschuler, Nahins & Goidel, P.C. OATH has attempted to make the hearing process fairer to owners and others who are challenging violations, he says.

Here's a brief rundown on the changes and how you may benefit from them. You can download a copy of the new rules from the Resources section of the CHIP® Web site, www.chipnyc.org. Look under "Environmental Control Board" as the agency or "Violations" as the topic.

Limits on Adjournments

The rules give the HO a general right to adjourn a hearing if it would allow one party to present its side of the dispute more effectively and wouldn't be "unreasonably inconvenient or unfair to the other party." However, they impose more certain limits on this right. (Note that in the case of violations, the person getting the violation—for example, the owner or manager—is considered the "respondent.")

1) No routine adjournments once respondent has appeared. The rules say that if the respondent appears at the hearing on time (defined as within two hours of the scheduling hearing time), the HO may adjourn the hearing only if:

The respondent consents to the adjournment; or

A representative of the agency that issued the violation appears at the hearing, unless the failure of a representative to appear was due to "extraordinary circumstances." This is defined as circumstances that the agency couldn't have foreseen. The rules specifically say that it doesn't include the fact that the parties disagree about the notice of violation or the charges it contains.

Good cause needed for further adjournments. The rules say that if a hearing has been adjourned for the convenience of a party, the HO shouldn't routinely adjourn the hearing again to accommodate the same party unless there's good cause for a further adjournment to afford the party a reasonable opportunity to present relevant testimony or evidence that would contribute to a full and fair hearing.

No further adjournments to enable officer who issued violations to attend. The rules say that unless there are extraordinary circumstances, the HO shouldn't adjourn the hearing for the sole purpose of allowing the officer who issued the violation notice (the issuing officer) to attend the hearing if:

The hearing has already been adjourned once for the sole purpose of enabling the issuing officer to attend;

The respondent appeared on time at the adjourned date; and

The issuing officer doesn't "timely" appear on the adjourned date—that is, doesn't appear within two hours of the scheduled hearing time or within one hour after the HO has announced that he or she is available to call the notice of violation for a hearing.

Steps to confirm issuing officer's availability for adjourned date. Whenever a hearing is adjourned, the HO is supposed to take additional steps to confirm with the agency issuing the violation that the issuing officer will be available on the new date set for the hearing.

Exception for issuing agency's adjournment request based on extraordinary circumstances. The rules give the agency issuing the violation the right to ask for an adjournment that wouldn't ordinarily be permitted based on extraordinary circumstances. The agency must make a written request and send a copy to the respondent. The respondent will have a chance to submit a statement opposing the adjournment.

How New Adjournment Limits Should Help

The new limits on adjournments should help you avoid wasting time due to long delays at hearing dates and may even help you successfully challenge a violation at the ECB, notes Eberight.

Fewer, shorter delays. In the past, agencies frequently requested adjournments of hearings so that the issuing officer could appear. Even on the rescheduled hearing date, owners often had to wait for hours for the issuing officer to show up. And then, after the owner had waited so long, it wasn't unusual for the issuing officer to cancel (for example, claiming to be needed for an emergency). The new rules should help prevent this situation.

Help with challenges. If the HO refuses to postpone a hearing to give the issuing officer a chance to appear, you may have a better chance of winning a challenge, points out Eberight. Even if the issuing officer hasn't shown up, he or she has sworn on the violation notice to the allegations. So, there's still a legal basis for the violation to stand if you don't challenge it. However, if you do appear at the hearing and rebut the allegations on the violation notice, the issuing officer won't be there to argue against your rebuttal. If the HO finds your rebuttal sufficient, you should win.

Appeals of ECB Ruling in Court

As before, you have the right to challenge an HO ruling by first filing an appeal with the ECB. You then have the right to appeal the ECB ruling in court by bringing what's known legally as an "Article 78" proceeding. The new rules give you a new right to appeal if the ECB doesn't issue a ruling on your appeal to it within 180 days after you filed the

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*ECB Issues New Rules on Hearing Adjournments and Appeals
continued from page 9*

appeal. In this case, you have the right to file an appeal with the court without waiting for the ECB ruling. Your appeal will be based on the HO's decision. You can take advantage of this right if the following three conditions are met:

You give ECB written notice of your intent to appeal to the court at least 45 days before you start the court case;

The ECB hasn't ruled on your appeal by the time you start the court case; and

You deliver a copy of the court papers starting the case to the ECB.

How New Appeals Procedure Should Help

It can take the ECB years to decide an appeal, Eberight notes. The new rules give you another option to move the appeal along, he says. This is important because you've already had to pay the fine for the violation as a condition to filing an appeal. Prior payment is required unless you can prove that it's a financial hardship. Now, with this new option, you don't have to just sit back and wait for the ECB's ruling and the opportunity to get your money back, Eberight explains. ♦

Creating Objective Criteria for Evaluating Rent Concession Requests

By Jamie Heiberger-Jacobsen, Esq.

With so many employers cutting jobs and taking other steps to weather the financial crisis, it is no surprise that New York City owners are receiving requests from many of their tenants seeking rent concessions or other help. No owner can grant every one of these requests and each request is not the same. To properly evaluate these rent concession requests, owners should set up a lawful and objective process that will let them determine which tenants to help.

To avoid discrimination claims, any policy should obviously avoid distinguishing among tenants by race, religion, gender and the like. This may seem all too elementary but, in formalizing guidelines for dealing with concession requests, owners should ensure that their employees know not to engage in any conduct that might give rise to a claim of discrimination. In addition, New York law prohibits owners from discriminating on the basis of lawful sources of income, which the law defines as income drawn from social security or any form of public assistance, whether federal or local. However, the discrimination law would not prohibit owners from implementing a system that elicits certain financial information from those tenants requesting help because of financial hardship. In other words, when tenants ask for rent breaks or seek to otherwise renegotiate their leases, owners can require proof of the tenants' dire financial straits without running afoul of the anti-discrimination laws.

With all this in mind, a good system for evaluating concession requests should focus on objective, clearly defined standards and should employ a consistent process. Creating objective standards is a matter of discretion for each owner; however, a few factors can be common in the evaluation criteria. For instance, owners may be inclined to grant requests of tenants who can demonstrate that their employment was terminated because of a layoff or that their salary has been considerably reduced without fault. To avoid running afoul of the anti-discrimination laws, don't use any standard that focuses on whether the applicant is receiving governmental assistance following a layoff. To ensure meeting restrictions like this, seek the advice of an attorney in setting up these in-house standards.

Once an owner has delineated its criteria for what constitutes hardship, the owner should then approach each request with a consistent step-by-step process. To protect against discrimination claims that may arise regardless of the precautions in place, an owner should probably set out its process in a manual or office memorandum so that the propriety of the process cannot genuinely come into question. Once documented, a formal processing policy could require that the owner's agent handling the hardship request issue a form letter seeking certain documentation to establish the tenant's level of need. This documentation could include such things as a letter from the tenant's current or former employer detailing the circumstances of the tenant's hardship. After receiving what proof the tenant offers, it's decision-making time and this decision should involve the application of an objective formula that leaves no room to doubt the owner's intentions.

Once an owner decides who to help, the next question is how to help. Every case is different because each tenant's need for help and each owner's ability to help differ. The common theme is that the financial crisis has affected everyone and this common plight has created more room for sympathy than under ordinary circumstances. For owners, sympathy may be a business decision and, like any business decision, should be careful and objective. ♦

Jamie Heiberger-Jacobsen is a partner at the Manhattan law firm of Heiberger & Associates, P.C.

Include Four Statements in Consent Agreement for Improvements/New Equipment Rent Increase

If you make improvements to a rent-stabilized apartment, or install new equipment there, you can qualify for a rent increase equal to 1/40th of the cost of the improvements/equipment. But if the apartment is occupied, you must get the tenant's written consent to the rent increase. If you don't and the tenant challenges the rent increase by filing a rent overcharge complaint at the Division of Housing and Community Renewal (DHCR), that agency could rule that you weren't entitled to collect the rent increase and order you to refund the rent overcharge, plus triple damages.

To avoid losing out on the rent increase this way, make sure that the written consent statement you get the tenant to sign includes four important statements. If it does, you should be able to successfully defend against a tenant's challenge to your right to collect the rent increase (assuming you've met all the other requirements for an improvements/new equipment rent increase, such as including only improvements/new equipment that qualifies for the increase and having adequate proof of the cost).

Four Statements to Include

Your consent agreement should include the following four statements, says Alan Kucker of Kucker & Bruh, LLP.

- (1) Tenant's request for specific improvements/equipment.** The agreement should state that the tenant requests improvements/new equipment and then should list each improvement or new equipment item. Keep in mind that the items listed must qualify for the rent increase. If you list items that the DHCR considers ordinary maintenance and repair (for example, painting), you won't be entitled to the rent increase even though you've gotten the tenant's written consent.
- (2) Cost of improvements/equipment.** The agreement must state the cost of each improvement/equipment item.
- (3) Tenant's agreement to pay rent increase.** The agreement must state that the tenant agrees to pay the rent increase.
- (4) Amount of rent increase.** The agreement must state the amount of the monthly increase the tenant must pay. This amount will be equal to 1/40th of the cost of the improvements/new equipment listed.

Example: In one case, an owner lost the right to collect a rent increase for new appliances and a new kitchen installed in an occupied rent-stabilized apartment. The DHCR noted that the written consent agreement signed by the tenant didn't state the cost of the installations and the monthly rent increase [Argus Realty 1545 LLC: DHCR Adm. Rev. Dckt. No. UL610034RO (3/22/07)].

Example of Agreement

To cover these four statements in your consent agreement Kucker suggests that your agreement say something like this:

AGREEMENT between [insert owner's name], as owner, and [insert tenant's name], as tenant, concerning the rent for the premises known as Apartment [insert apartment #] at [insert building address]:

1. The tenant hereby requests that the owner install the following new equipment or perform the following improvements in the apartment and acknowledges that the cost of each item listed is as follows:

Improvements/Equipment	Cost
<i>[insert list of all improvements you plan to make and/or new equipment that you plan to install in the apartment. Next to each item, state its cost, including installation.]</i>	
2. Tenant further agrees that he/she will pay a rent increase based upon 1/40 th the total cost of the new equipment/improvements, for a total rent increase of <i>[insert monthly rent increase]</i> per month. Pursuant to §2522.4 of the Rent Stabilization Code, this amount will be added to, and become a permanent part of, the base rent for the apartment, beginning the first rent payment date following completion of the improvements or the installation of the equipment.	
<i>[Insert Date and Signatures of Owner and Tenant]</i> ♦	

8 Ways to Make Building More Attractive to Insurance Company

When you get new insurance for your building or renew an existing policy, a representative from the insurance company will come to your building to evaluate it before setting your insurance rates. To get the lowest possible rates, it's important to present your building in the best light, says Stuart Cohen of City Building Owners Insurance Program, a company that provides insurance to New York City building owners. Here are eight items that the insurance company is sure to consider when evaluating your building and setting the cost of insurance, according to Cohen. By making sure these items are satisfactory, you should be able to lower your insurance rates.

(1) Hard-Wired Smoke Detectors

Where possible, use hard-wired smoke detectors (with battery backups) for the apartments in your buildings. Hard-wired smoke detectors are wired directly into the building's electrical system. This setup prevents tenants from disabling the smoke detectors by removing the batteries.

(2) Proper Handrails and Fire Escapes

Make sure all handrails and fire escapes are secure.

(3) Child-Safe Window Hardware

Window guards should be installed on all windows of apartments in which children under age 11 reside.

(4) No Major Cracks on Sidewalk

Check your building's sidewalk for any major cracks. A major crack is anything that can be a tripping hazard, says Cohen. If it looks like the heel of a high-heeled shoe could get caught in the crack, fix the crack before

the insurance company's inspection.

(5) Fire Doors Closed; Proper Panic Hardware Installed

The building's fire doors (for example, the door leading to the roof) should be closed and equipped with panic hardware, which allows tenants to exit easily in an emergency by pushing a bar.

(6) Well-Lit Hallways and Walkways

Make sure the building's hallways and walkways are well lit so that stairs or obstacles in these areas are clearly visible. Replace any burnt out light-bulbs.

(7) Code-Compliant Elevators

Check that your building is up to date on all required elevator inspections. Also, see that elevators are running properly and don't violate any building-code requirements. It may pay to have your elevator service company inspect the elevators before the insurance company inspection.

(8) Maintenance Issues Under Control

Make sure that all maintenance issues are under control. For example, before the inspection, be sure to repair any mold conditions and any defects to the building's façade.

TIP: If you upgrade any of your building's systems (for example, heating, electric or plumbing), make sure to let your insurance company know, says Cohen. Upon renewal of your policy, you should get credit for these upgrades in the form of lower rates. ♦

DHCR Issues New Rent Restoration Form

The Division of Housing and Community Renewal (DHCR) recently issued a new "Owner's Application to Restore Rent" form—RTP-19 (5/09). Owners use this form to apply to the DHCR to restore the rent after it's been reduced based on a finding of reduced services. The new form is similar to the prior version, but it does contain a few new items. For example, in Part A, the owner now has a specific box to check if the rent had been reduced to \$1 due to a fire but the tenant has been restored to occupancy. Also in Part A, there's a box for the owner to check if the tenant has signed the statement of consent in Part D. The DHCR has said starting August 1, it will no longer accept rent restoration applications filed on the prior version of the form. We've posted the new form on the CHIP® Web site, www.chip-nyc.org. ♦

DCP Passes Bicycle Storage Regulations

The Department of City Planning (DCP) recently passed an amendment to the Zoning Resolution regarding the provision of bicycle storage areas. The regulations, which are now in effect, require the provision of indoor, secure, long-term parking for bicycles in new apartment buildings, buildings that are enlarged by 50 percent or more, and buildings that are converted from commercial to residential use. Here's a brief look at the requirements. For more information, see the DCP's Web site, www.nyc.gov/html/dcp/html/bicycle_parking/index.shtml.

Bicycle Storage Requirements

The regulations require:

The provision of 15 square feet for each bicycle parking space, though it's possible to reduce this to six square feet by submitting a more efficient layout to the Department of Buildings;

One parking space for every two apartments in the building;

Enclosed parking spaces that are accessible to designated users (for example, tenants);

Spaces that are secured by a locked door or include a securely anchored rack to which the bicycle frame and one wheel can be locked; and

Location of the spaces on the building's ground floor, in its cellar, or in its parking garage at the building owner's option. ♦

City Transfers Administration of SCRIE from DFTA to Finance

If you have tenants applying for or renewing senior citizen rent increase exemption (SCRIE) benefits, you'll soon be dealing with a different City agency during the application and eligibility process. A new City law, Local Law 44 of 2009, will transfer the administration of the SCRIE program from the Department for the Aging (DFTA) to the Department of Finance (Finance) as of August 28, 2009. In the past, both DFTA and Finance administered SCRIE. DFTA oversaw the application and eligibility requirements, established a tenant's eligibility, and calculated the SCRIE benefits to the eligible tenant and the tax abatement due to the owner for that tenant. DFTA then would notify Finance, which would grant the tax abatement to the owner.

According to the Committee Report in support of the new law, the change is expected to simplify the application and eligibility process.

The report also noted that Finance has the "technological capacity to streamline the SCRIE process by cross-checking databases to make determinations with respect to initial eligibility and renewal applications."

As the transfer is being implemented over the next few months, CHIP® will monitor the transition process and work with Finance to make sure it goes smoothly for owners. We'll keep you posted on any changes that Finance makes to the program's administration.

In related news, the annual income limit for tenants applying for or renewing SCRIE benefits increased to \$29,000 as of July 1, 2009. This increase was set in 2005 by Local Law 75, which raised the income limit by \$1,000 in each of the next five years. ♦

Itemized Account Not Required for Rent Increase Based on Extensive Renovations, Says Appeals Court

A recent appeals court ruling should make it easier to get a rent increase for extensive renovations made to an individual apartment. The court ruled that an owner isn't required to submit an itemized account of the improvements that qualify for an individual apartment rent increase when they're made during extensive renovations to an apartment [Jemrock Realty Co. LLC v. Krugman: NYLJ 5/20/09, p. 30, col. 1 (App. Div. 1st Dept.)].

In the case that led to the ruling, an owner had sued to evict a tenant for nonpayment of rent. The owner asserted that the apartment was no longer subject to rent stabilization because it had been vacated and the owner was able to charge the tenant a legal rent of \$2,000 or more per month. The tenant claimed that the apartment was subject to rent stabilization because the owner had illegally increased the monthly rent to \$3,600 before he moved in. The owner argued that it was entitled to collect an improvements rent increase for extensive renovations it made to the apartment before the tenant moved in. The owner spent over \$77,000 on work in the apartment, including renovations of the kitchen and bathroom, plastering and painting, refinishing the hardwood floors, replacing wall and baseboard moldings, replumbing and rewiring, installing ceramic floor tiling in the kitchen, installing a new sink and toilet in both bathrooms, and replacing all shower and sink fixtures. To support its claim, the owner submitted the contractor's invoices and punch list and canceled checks. The lower court ruled that the owner wasn't entitled to the rent increase because the owner didn't submit an itemized account of all the improvements. It said that this itemization was needed so the court could distinguish the cost of the qualifying improvements from the cost of repair and maintenance items that didn't qualify for the increase. The owner appealed and a lower appeals court ruled in its favor. The tenant then appealed.

The appeals court ruled that the owner wasn't required to submit an

itemized account of the renovations to qualify for the improvements rent increase. The owner submitted the documentation required by Division of Housing and Community Renewal (DHCR) Policy Statement 90-10 (that is, invoices and canceled checks). And the DHCR has determined that an owner isn't required to submit a cost breakdown for each item in an extensive renovation of an apartment. Two judges issued dissenting opinions.

The tenant is expected to ask the court for permission to appeal to the Court of Appeals, the State's top court, says Jeffrey Bodoff of the Abramson Law Group, who represented the owner in the case. The court's permission is required before the tenant can appeal, he notes. We'll keep you posted on any new developments.

TIP: To avoid a tenant challenge, ask your contractor to provide an itemized invoice whenever you do renovations in an apartment. It's also a good idea to take before and after photographs so you have even more proof of the work done. ♦

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DHCR Increases Surcharges for Tenant-Installed Appliances

On July 14, 2009, the Division of Housing and Community Renewal (DHCR) issued Amended Supplement No. 1 to Operational Bulletin 2005-1, which sets the monthly surcharges you can collect from rent-controlled and rent-stabilized tenants who buy and install their own appliances (that is, portable or permanent washing machines, dryers, or dishwashers). The updated surcharge amounts, which take effect immediately, increased for all categories of appliances. Also, the DHCR added a new category of appliance—gas-powered dryers. You can download the complete, updated Operational Bulletin from the CHIP® Web site.

Updated Surcharge Amounts

The surcharge amounts vary depending on the type of appliance installed and whether your building is electrical/gas exclusion (the tenant pays for electricity/gas) or inclusion (you pay for electricity/gas). Here's a chart showing the amounts.

Appliance	Electrical Exclusion/Inclusion	Monthly Surcharge Amount
Washing Machine	Exclusion	\$16.82
Washing Machine	Inclusion	\$18.60
Dryer	Exclusion	\$0.00
Dryer	Inclusion	\$15.00
Dishwasher	Exclusion	\$4.74
Dishwasher	Inclusion	\$7.12
Appliance	Gas Exclusion/Inclusion	Monthly Surcharge Amount
Dryer (gas-powered)	Exclusion	\$0.00
Dryer (gas powered)	Inclusion	\$8.68

When to Increase Surcharge

If you've already been collecting a surcharge for a tenant-installed appliance, you can now increase it to the amount listed on the chart above. The DHCR recommends that you increase it on the first rent payment date after July 7, 2009. For most owners, this will be August 1, 2009.

You may want to include a letter with your next rent bill, advising the tenant that you're increasing the surcharge and explaining that you're authorized to do so by Amended Supplement 1 to Operational Bulletin 2005-1. Your letter could say something like this:

As of [insert effective date of surcharge increase, e.g., August 1, 2009], the surcharge for the [insert type of appliance, e.g., washing machine] in your apartment is increased from [insert prior surcharge amount] per month to [insert new surcharge amount] per month. This increase is permitted based on Amended Supplement 1 to Operational Bulletin 2005-1, which the Division of Housing and Community Renewal issued on July 14, 2009.

Don't Include Surcharge in Legal Regulated Rent

As before, the Operational Bulletin makes clear that the surcharge doesn't become part of the legal regulated rent or the maximum collectible rent for the purpose of calculating future rent increases.


Don't Waive Right to Collect Surcharge

Both the Operational Bulletin and the Supplement say that if an owner becomes aware that a tenant has previously installed an appliance and the owner consents to its continued use, the owner can start collecting the surcharges from the tenant prospectively. However, the DHCR has a rule that could prevent an owner from collecting a surcharge in these circumstances: The DHCR bars an owner from collecting a surcharge if it finds that the owner didn't start collecting the surcharge within a "reasonable time" of learning about the tenant's installation of the appliance.

For example, in one case, an owner notified the tenant two years after it bought a building that it would start charging a surcharge for the washing machine the tenant had installed. The DHCR ruled that the owner had waived the right to collect the surcharge because it hadn't begun charging the surcharge within a reasonable time. According to the DHCR, the owner knew or should have known about the existence of the washing machine in the two years since it bought the building [188 St. Nick Associates: DHCR Adm. Rev. Dckt. No.VE410038RO (7/13/07)].

The DHCR has applied this rule even if the tenant installed the appliance when the building belonged to a prior owner. If the prior owner failed to collect the surcharge, the current owner can't now start to collect it.

For example, a rent-stabilized tenant challenged an owner's right to collect a surcharge for a washing machine she had installed in her apartment. The tenant claimed that the washing machine had been in her apartment since 1976 with the knowledge and consent of past and current owners. In response, the owner submitted a 2006 letter from the prior owner (which had owned the building since 2002) advising the tenant that it was imposing a surcharge for the use of the washing machine in her apartment. The tenant signed and returned the letter acknowledging that she had a washing machine in her apartment. The DHCR ruled that the owner had waived the right to collect the surcharge. According to the DHCR, the current owner steps into the shoes of the prior owner. The DHCR found it unlikely that the prior owner hadn't known about the tenant's washing machine in the four years it owned the building before imposing the surcharge. So the prior owner didn't start charging the surcharge within a reasonable time after learning about the tenant's washing machine. If the prior owner imposed the surcharge too late, the current owner can't begin imposing the surcharge [3694 Broadway Holdings: DHCR Adm. Rev. Dckt. No. WH410007RO (9/25/08)]. ♦



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When: Wednesday, September 16, 8:30 AM to 9:00 AM (Registration), 9:00 AM to 11:30 AM (Seminar)

Where: Hotel Pennsylvania, 7th Ave at 33rd St, New York, NY

Cost: Free for CHIP® and NYARM members, \$50 for nonmembers

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SEMINAR—DEFENDING AGAINST VIOLATIONS AT THE ECB—Our legal experts will present an overview of new Environmental Control Board (ECB) hearing rules and Department of Buildings façade regulations, and outline the common procedural and substantive defenses you can use at the ECB when challenging City-issued violations (for example, for elevator and boiler defects, dirty sidewalks, improper recycling, and work without a permit). This seminar will be co-sponsored with the New York County Lawyers' Association (NYCLA). Attorneys can earn CLE credits for attending.

When: Wednesday, October 14, 8:30 to 9:00 AM (Registration), 9:00 AM to 12 noon (Seminar)

Where: NYCLA, 14 Vesey St., New York, NY

Cost: \$35 for CHIP® members and nonmembers who are NOT getting CLE credits, \$75 for CHIP® members getting CLE credits, \$100 for nonmembers getting CLE credits

RSVP: Register online at www.nycla.org or by calling NYCLA at 212-267-4466, ext. 215. But note that to pay the \$75 discount price, CHIP® members getting CLE credits must call NYCLA to register.

WORKSHOP—MCI RENT INCREASES—This workshop will take you step by step through the process of applying for and getting a major capital improvement (MCI) rent increase from the Division of Housing and Community Renewal. Our legal experts will give you an overview of the application process, as well as tips on applying for various types of work, including new windows, roofs, pointing and waterproofing, and heating systems. We'll also tell you how to calculate the MCI rent increase for each tenant.

When: Wednesday, September 16, 8:30 AM to 9:00 AM (Registration), 9:00 AM to 11:00 AM (Seminar)

Where: CUNY Graduate Center, 365 Fifth Ave (at 34th St.), New York, NY

Cost: Free for CHIP® members, \$50 for nonmembers

RSVP: Call CHIP® at 212-838-7442, e-mail rsvp@chipnyc.org, or register online at www.chipnyc.org.

ANNUAL CHIP® COCKTAIL PARTY— Invitations will be mailed soon.

When: Thursday, November 5, 5:30 PM

Where: Bryant Park Grill.

MONTHLY JOURNAL REMINDERS

- ◆ **INCOME AND EXPENSE STATEMENTS DUE TO FINANCE BY SEPT. 1**—This is the last day to file your 2008 Real Property Income and Expense statement electronically with the Department of Finance (Finance). The online filing form is now available at Finance's Web site, at www.nyc.gov/finance, by clicking on the "File your RPIE" link in the right column under E-Services.
- ◆ **APPLICATIONS FOR J-51 TAX ABATEMENT DUE SEPT. 15**—This is the last day in the third filing period in 2009 to file J-51 tax abatement and exemption applications with the Department of Housing Preservation and Development's Office of Tax Incentive Programs.
- ◆ **HEATING SEASON BEGINS OCT. 1**—This is the first day of heating season, which runs from October 1 to May 31. Administrative Code section 27-2029 requires that owners of buildings with centrally supplied heat maintain "between the hours of six a.m. and ten p.m., a temperature of at least 68 degrees Fahrenheit whenever the outside temperature falls below 55 degrees" and "between the hours of ten p.m. and six a.m., a temperature of at least 55 degrees Fahrenheit when the outside temperature falls below 40 degrees."
- ◆ **PROPERTY REGISTRATIONS DUE OCT. 1**—If your building has between three and five apartments, this is the last day to file your property registration form with Department of Housing Preservation and Development (HPD). You may file this form by mail or online by going to HPD's Web site, www.nyc.gov.hpd. (Note that owners of one- and two-family dwellings must file registrations only if they live outside of New York City.)
- ◆ **RGBO #41 TAKES EFFECT ON OCT. 1**—The rent increases permitted by Rent Guidelines Board Order #41 apply to leases that start on or after October 1, 2009, through September 30, 2010.



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