



New York APARTMENT LAW INSIDER.®

The How-to Resource for Owners, Managers & Real Estate Professionals

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Report Finds Manhattan Rents Reach Five-Year High

Over the past four months Manhattan market rental prices have continued to increase, reaching the highest peaks in more than five years, according to a recent Douglas Elliman report analyzing the rental market in Manhattan, Brooklyn, and Queens for June 2014. The market has tightened as a result of falling vacancy rates and limited use of concessions by owners. The median rent for Manhattan was \$3,300.

For Brooklyn, the report found an upward trend here as well, but not as steep as in Manhattan. In June, median rental prices increased 2.3 percent to \$2,800. The report also noted that 48.4 percent of the Queens rental market is new development. Median rental prices in Queens for June dropped year-over-year after four consecutive monthly increases. It dropped half a percent from Q2 2013 to \$2,830, according to the report. ♦

FEATURE

What Documents to Include with Leases to Avoid Penalties

If you're like most owners, you may be confused about what documents you're legally required to include with the vacancy and renewal leases you offer to tenants. Both the city and federal governments have passed laws requiring you to include various documents with leases in certain situations. If you don't include these documents, you run the risk of getting hit with costly penalties.

To help you avoid penalties and comply with all the laws, we've provided a seven-point checklist of documents you legally must include with vacancy and renewal leases. We'll tell you who must include the documents, exactly what's required, the penalty for not including them, and where you can get them.

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RENT INCREASES

Take 1% and 2.75% Rent Increases for Renewal Leases

On June 23, 2014, the New York City Rent Guidelines Board (RGB) issued an order—RGBO #46—setting the rent increases you may take for rent-stabilized tenants in New York City on leases beginning any-time on or after Oct. 1, 2014, through Sept. 30, 2015.

According to the order, you may take a 1 percent increase on a one-year renewal lease and a 2.75 percent increase on a two-year renewal lease. Despite pressure from Mayor de Blasio and city officials, the RGB voted 5 to 4 in favor of the rent increases. Up until the vote, a rent freeze seemed likely, considering the RGB had six members appointed by the mayor.

The increases are the lowest in the 46-year history of the RGB. Immediately following the vote, the mayor's office released a statement declaring that although a rent freeze was not approved, the lowest increases in city history were a step in the right direction for tenants.

In determining the rent increases, the RGB considers a number of statistical reports and written and oral testimony presented by own-

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Lease Documents (continued from p. 1)**□ Tenant's Rights Rider**

Who's affected? Owners of rent-stabilized apartments must give this rider to rent-stabilized tenants.

What's required? Section 2522.5(c) of the Rent Stabilization Code (RSC) says that all leases (vacancy and renewal) must contain a DHCR rider setting forth the tenant's rights under the rent-stabilization system. In July 2014, the Division of Housing and Community Renewal (DHCR) revised the rider to include provisions that are required by the Rent Code Amendments of 2014, which are embodied in the RSC and the Tenant Protection Regulations (TPR).

An owner must include a copy of a New York City Lease Rider or an ETPA Standard Lease Addenda with a tenant's vacancy lease and all renewal leases, personally or by mail, and they must contain the following elements:

- The identity of the subject address and apartment.
- The signature of the tenant and owner, to be affixed at the offering and execution of the lease, respectively.
- Information on the rent paid by the previous tenant and a detailed summary of Individual Apartment Improvements (IAI) and related costs and rent increases as well as vacancy and longevity allowances which enable a tenant to understand how the new legal regulated rent for the apartment was calculated. This section also includes a notification to the tenant of his or her right to request from the owner detailed IAI supporting documentation (such as invoices, cancelled checks, etc.) at the time the lease is being offered or within 60 days after it is executed, by certified mail. The owner must provide such documentation within 30 days of that request by certified mail or in person with a signed acknowledgement of receipt.
- A description of rights and duties of owners and tenants under the Rent Stabilization Law, RSC, TPR, and other laws, including information on preferential rents, air conditioner surcharges, high-rent vacancy deregulation, and IAI notification requirements.

Penalty. A tenant who is not served with a copy of the rider when signing a vacancy or renewal lease may file form RA-90, "Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease."

The failure to properly serve the rider/addenda or provide information as required by the rider/addenda may result in the complaint being treated as a specific overcharge complaint. The DHCR may issue an order directing a refund of any payment inappropriately made plus all penalties otherwise due in an overcharge proceeding.

Where to get rider. You can get the rider at www.nyshcr.org/Forms/rent/ralr1.pdf or www.nyshcr.org/Forms/Rent/ralr1-ETPA.pdf.

EDITOR'S NOTE: Active links to all the forms discussed here are available in the online version of this article at www.ApartmentLawInsider.com.

❑ Window Guard Rider

Who's affected? Owners of buildings with three or more apartments must give this rider to tenants.

What's required? Department of Health (DOH) regulations require owners to include with all vacancy and renewal leases a DOH form rider. The form is titled "Window Guards Required: Lease Notice to Tenant" and says "Appendix A" in the upper right-hand corner. The latest version of this form is marked "WF013 (Rev. 11/02)" in the lower left-hand corner. The rider tells tenants that they must have window guards if a child age 10 or younger lives in the apartment.

Penalty. You can get hit with a civil penalty of up to \$500 for each violation of the window guard law and regulations. Also, failure to comply with the law is a criminal misdemeanor. DOH will seek this penalty if there's a fall from a window that doesn't have a window guard. If convicted, you could face a \$500 fine and up to six months in jail.

Where to get rider. You can download the rider at www.nyc.gov/html/doh/downloads/pdf/win/wf013-appendixa.pdf.

❑ HPD Lead Paint Notice

Who's affected? Owners of buildings built before Jan. 1, 1960, that have three or more apartments.

What's required? Local Law 1 of 2004 and Department of Housing Preservation and Development (HPD) regulations require you to give an HPD lead paint notice when signing leases with new tenants or renewing leases with current tenants. The notice is

called "Lease/Commencement of Occupancy Notice for Prevention of Lead-Based Paint Hazards—Inquiry Regarding Child" and asks whether a child under age 6 lives or will live in the apartment with the tenant.

Owners must give the notice to renewing occupants when they send those occupants a renewal lease offer, even if they know that no children under age 6 are living in the apartment.

Penalty. If you don't give the notice, you can be hit with an HPD violation and fined up to \$1,500. Owners can also be charged with a criminal misdemeanor. If this happens, they can be fined up to \$500 and/or imprisoned for up to six months.

Where to get notice. You can download an English version at www.nyc.gov/html/hpd/downloads/pdf/lead-paint-lease-occu-comm-child-inq-En.pdf. For a Spanish version, go to www.nyc.gov/html/hpd/downloads/pdf/lead-paint-lease-occu-comm-child-inq-sp.pdf.

❑ DOH Lead Paints Pamphlet

Who's affected? Owners of buildings built before Jan. 1, 1960, that have three or more apartments.

What's required? Local Law 1 of 2004 and HPD regulations require you to give a DOH lead paint pamphlet at the same time that you give the HPD lead paint notice. The pamphlet is titled "Protect Your Child from Lead Poisoning." It explains lead-based paint hazards and describes the procedures that owners must follow to correct lead-based paint violations.

Penalty. If you don't give the DOH pamphlet, you can be hit with an HPD violation and fined up to \$1,500. Owners can also be charged with a criminal misdemeanor. If this happens, they can be fined up to \$500 and/or imprisoned for up to six months.

Where to get pamphlet. You can download the DOH pamphlet at www.nyc.gov/html/doh/downloads/pdf/public/dohmhnews6-03.pdf.

❑ HUD/EPA Lead Paint Pamphlet

Who's affected? Owners of buildings built before 1978 unless the building has been properly inspected and deemed lead-free by the Environmental Protection Agency (EPA) or an EPA-authorized state environmental enforcement agency.

What's required? The federal Residential Lead-Based Paint Hazard Reduction Act of 1992, better known as Title X, and the federal rules implementing that law require owners to give tenants signing new leases a pamphlet developed by the Department of Housing and Urban Development (HUD) and the EPA entitled "Protect Your Family from Lead in Your Home."

Although the city's DOH publishes its own lead paint pamphlet, this pamphlet doesn't meet the federal requirements and can't be used instead of the federal pamphlet.

Penalty. You could get hit with civil fines of up to \$10,000 for each violation as well as criminal fines up to \$10,000 for each violation.

Where to get pamphlet. Call the National Lead Information

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Lease Documents

(continued from p. 3)

Clearinghouse, 1-800-424-LEAD, or download the pamphlet from www2.epa.gov/lead/protect-your-family-lead-your-home-2.

☐ HUD/EPA Disclosure Form

Who's affected? Owners of buildings built before 1978 unless the building has been properly inspected and deemed lead-free by the EPA or an EPA-authorized state environmental enforcement agency.

What's required? Title X also requires you to give a HUD/EPA disclosure form to tenants signing new leases. This form is titled "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards" and tells tenants what you know about lead in your building. If the lease that will be signed is in a language other than

English, owners must give the tenant the form in the language of the lease.

Once an owner gives the disclosure form to a tenant, the owner doesn't have to give the form to that person again unless the information disclosed on the form has changed, such as a new inspection finds lead paint.

Penalty. You could get hit with civil fines of up to \$11,000 for each violation as well as criminal fines up to \$11,000 for each violation. In addition, tenants who win lawsuits against owners for harm caused by lead paint can collect triple their actual damages if the owner has knowingly violated the rules.

Where to get disclosure form. Call the National Lead Information Clearinghouse, 1-800-424-LEAD, or download the form at www.hud.gov/offices/lead/library/enforcement/selr_eng.pdf.

☐ Bedbug Infestation History Disclosure Form

Who's affected? All owners of residential buildings, regardless of size or number of apartments.

What's required? New York City Administrative Code §27-2018.1, which the governor signed into law on Aug. 31, 2010, mandates that new tenants in New York City be given a one-year bedbug infestation history. Owners provide to each tenant signing a vacancy lease a notice setting forth the bedbug infestation history for the previous year for the apartment being leased and the building in which it is located.

Penalty. Owners who fail to give bedbug infestation notice forms to new tenants can be directed to do so by the DHCR if a tenant complains.

Where to get disclosure form. You can download the form at www.nyshcr.org/forms/rent/dbbn.pdf. ♦

LANDLORD V. TENANT

Each month our sister publication, NEW YORK LANDLORD V. TENANT, summarizes approximately 60 decisions by the courts and the Division of Housing and Community Renewal (DHCR) involving owners and tenants. Here are three from the July 2014 issue.

Primary Residence: Tenant Must Submit to Independent Medical Exam

Landlord sued to evict rent-stabilized tenant based on nonprimary residence. Landlord claimed that tenant lived in New Jersey and sublet the apartment without landlord's permission. Tenant claimed that he was away from the apartment temporarily for medical reasons and that landlord was retaliating against him based on tenant's rent overcharge complaint. Landlord asked the court for permission to conduct an independent medical exam of tenant. The court ruled for landlord. Tenant had put his medical condition at issue in the case, and landlord therefore was entitled to information before trial that was related to tenant's defense.

- Windsor Plaza v. dePinies: Index No. 84063/13, NYLJ No. 1202649641023 (Civ. Ct. NY; 5/29/14)

Rent Overcharge: Tenant's Fraud Claim Insufficient to Thwart Four-Year Rule

Tenant complained to the DHCR of rent overcharge. Landlord claimed that the apartment was unregulated, but the DHCR found that tenant was rent stabilized because the building was receiving J-51 benefits. However, the DHCR found no overcharge. Tenant filed an Article 78 appeal, arguing that the DHCR should look back more than four years.

The court ruled against tenant, who appealed further and won. The appeals court ruled that tenant made a sufficient showing of fraud to require the DHCR to investigate the legality of the base date rent. A prior tenant paid \$572 per month when he moved out in July 2004. The next tenant paid \$1,750 per month starting

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IN THE NEWS

DEP Initiates High-Efficiency Toilet Replacement Program

The New York City Department of Environmental Protection (DEP) announced a new program to replace as many as 200,000 inefficient toilets in up to 10,000 buildings citywide. The first phase of the program will target between 7,000 and 10,000 owners who participate in DEP’s Multifamily Conservation Program (MCP). The MCP provides qualified multiple-family housing of four or more dwelling units with billing based on a fixed charge per unit in lieu of billing based on metered charges. The program objective is to promote water conservation in multiple-family housing, while giving owners control over their water and wastewater costs.

The toilet replacement program intends to replace older toilets with high-efficiency models that use 1.28 gallons or less per flush. It’s anticipated that this will save approximately 10 million gallons of water each day. The toilet

replacement program is part of DEP’s broader efforts to reduce demand for water by 5 percent citywide, ahead of the planned shutdown and repair of the Delaware Aqueduct, which currently supplies about half of the city’s drinking water. In addition to helping ensure the city has an adequate supply of healthy drinking water during the temporary shutdown of the Delaware Aqueduct, the 5 percent reduction in consumption will reduce electricity, chemicals, and other costs associated with operating the water system.

The residential toilet replacement program aims to build on the success of a similar program that ran from 1994 to 1997 and replaced 1.3 million toilets, reducing city-wide water consumption by 90 million gallons per day. Applicants cannot have participated in the original DEP Toilet Rebate Program (1994–97) or have existing water-saving toilets, and cannot be

in arrears with their water/sewer account without a valid payment agreement in place. Applicants must have a functioning water meter and AMR box, as their consumption will be monitored.

DEP will mail information to qualified customers on how to participate, which will include filling out an application on DEP’s My DEP Account website to receive a \$125 voucher that can be redeemed at a participating vendor for the purchase of a high-efficiency toilet. DEP has determined there are several toilet models certified as high efficiency by the U.S. Environmental Protection Agency that sell for \$125 or less. In the future DEP hopes to broaden the program to include smaller residential buildings that could replace an additional 550,000 toilets and save a total of 30 million gallons of water each day citywide by 2018. ♦

BUILDING MANAGEMENT CALENDAR		
<i>This calendar covers key dates in the period from Aug. 15 through Sept. 15, 2014.</i>		
DATE	TO DO	FOR MORE INFO
9/1 MON	<ul style="list-style-type: none"> <input type="checkbox"/> Use Labor Day building schedule. Labor Day is a Sanitation Department workers’ holiday, which means there’s no garbage pickup or street cleaning. <input type="checkbox"/> File building registration with HPD. If your building has three or more apartments, today is the last day to file your building registration form with HPD. 	
9/15 MON	<ul style="list-style-type: none"> <input type="checkbox"/> File J-51 application with HPD. The third filing period in 2014 for tax abatement and exemption applications with the Dept. of Housing Preservation and Development (HPD) ends today. If mailed, the applications must be postmarked no later than Sept. 15, 2014. 	Call HPD’s Office of Tax Incentive Programs at (212) 863-5517.

Rent Increases

(continued from p. 1)

ers and tenants. This year, owner groups focused on rising costs to maintain buildings to dissuade the RGB from implementing a rent freeze. The statistical reports issued by the RGB showed a 5.7 percent increase in total building operating costs.

When the rent increase process begins again in March 2015, we might see the mayor getting closer to achieving a rent freeze. This is because all nine members of the RGB will be his appointees next year.

Below, we'll tell you how to calculate rents for renewal leases under RGBO #46. An article in the next issue will explain how RGBO #46 affects vacancy leases.

To help you calculate the rent hike you may charge for each of your tenants when you renew a lease, we've included a rent increase calculation chart—*Apartment Law Insider's RGBO #46 Rent Computation Form for Renewal Leases*. Remember that for renewal leases, you calculate all rent hikes based on the rents charged on Sept. 30, 2014.

Here are details of the new rent guidelines order:

Rent Increase Permitted

The RGBO applies to renewal leases for rent-stabilized apartments, beginning anytime on or after Oct. 1, 2014, through Sept. 30, 2015. You can take 1 percent on a one-year lease and 2.75 percent on a two-year lease.

If Rent Cut in Effect

How do you calculate the rent increase for a renewal lease on an

apartment where a Division of Housing and Community Renewal (DHCR) order cutting the rent for reduced services was in effect on Sept. 30, 2014? Base the renewal increase under RGBO #46 on what the tenant's rent was before the DHCR-ordered rent cut. That's because a rent cut for a reduced service is temporary. When you fix the problem, you can apply to the DHCR to restore the rent. But don't collect the guidelines increase until after the DHCR restores the rent.

EXAMPLE: On July 1, 2014, a tenant's monthly rent is \$1,200. In August, the DHCR cuts the monthly rent by \$100, to \$1,100. The tenant's lease is up for renewal on Jan. 1, 2015. To calculate the guidelines increase, multiply \$1,200 (the rent the tenant was paying before the rent cut order) by the appropriate renewal increase. If you use our Rent Computation Form for Renewal Leases, you would enter \$1,200—not \$1,100—on line 1 (rent charged for apartment on Sept. 30, 2014). But remember: You may collect the guidelines increase only after you get a rent restoration order.

◆ **How to fill out DHCR renewal lease offer form.** In New York City, owners must give written notice of renewal by mail or personal delivery not more than 150 days and not less than 90 days before the existing lease expires on a DHCR Renewal Lease Form.

When a tenant signs the Renewal Lease Form and returns it to the owner, the owner must return the fully signed and dated copy to the tenant within 30 days. A renewal should go into effect on or after the date that it's signed and returned to the tenant, but no earlier than the expiration date of the current lease. In general, the

lease and any rent increase may not begin retroactively.

On the renewal lease offer form, fill out section 2 (which shows your calculation of the rent increase) as if no rent cut is in effect. In section 2, column b, enter the rent that you could have charged on Sept. 30, 2014, if no rent cut had been in effect. Base the rest of your section 2 calculations on the rent you entered in column b. Make sure you check the box at the top of column g, which indicates you'll be charging the tenant a lower rent than the amount you've entered.

Then fill out section 5. Enter the lower rent you'll be charging the tenant until you get a rent restoration order from the DHCR. Also, check the box that indicates that an agreement is attached to the renewal lease offer form. The agreement is the lease rider discussed in the next paragraph.

Once you get a rent restoration order, you may collect the higher rent listed in section 2, column g, of the renewal lease offer form. To head off tenant confusion and complaints, let the tenant know when and why you'll be collecting the higher rent. You can add a rider to the renewal lease offer form you send to the tenant. Here's a sample rider that attorney Karen Schwartz-Sidrane has drafted:

Model Language

A DHCR rent reduction order is currently in effect; therefore, the tenant will be obligated to pay only the reduced rental in effect pursuant to said order until such time as the DHCR issues an order restoring the rent based upon the restoration of services or upon other grounds. Upon the issuance of said order, the tenant will become obligated to pay the increased rental reserved in this lease, effective as of the date specified in the DHCR's order.

EDITOR'S NOTE: After the renewal offer is made, the tenant has 60 days to choose a lease term, sign the lease, and return it to the owner. If the tenant doesn't accept the renewal lease offer within this 60-day period, the owner may refuse to renew the lease and may also proceed in court after the expiration of the current lease, to have the tenant evicted.

If Rent Overcharge Order Issued

What if the DHCR has issued an order finding that you've collected a rent overcharge, and that order includes a finding that the rent you charged on Sept. 30, 2014, should have been lower? You must base the increase available to you under RGBO #46 on the lower

amount that the DHCR found was the legal rent you could charge on Sept. 30, 2014. If you use our Rent Computation Form for Renewal Leases, enter that lower amount on line 1 of the form. ♦

**APARTMENT LAW INSIDER'S
RGBO #46 RENT COMPUTATION FORM FOR RENEWAL LEASES**

For renewal leases beginning any time on or after Oct. 1, 2014, through Sept. 30, 2015

Tenant's Name _____ Apt. # _____

Building Address _____

PART A – BASE RENT

Enter rent charged for apartment on Sept. 30, 2014. _____ line 1

You may include these items in the line 1 amount:

- Hardship increase; and
- Major capital improvement rent hike effective on or before Sept. 30, 2014.

But do not include these items in the line 1 amount:

- Window guard charge;
- 421-a increase;
- Air-conditioner surcharge;
- Major capital improvement rent hike effective on or after Oct. 1, 2014; and
- Temporary retroactive major capital improvement rent increase.

Enter percentage rent increase allowed by RGBO #46 (see box below) _____ line 2

RGBO #46	
1-year lease	1% increase
2-year lease	2.75% increase

Multiply line 1 by line 2 (enter \$ amount) _____ line 3

PART B – MAXIMUM RENT COMPUTATION

Add lines 1 and line 3 (enter \$ amount). _____ line 4

Enter any monthly rent increases granted on or after Oct. 1, 2014, and not retroactive to Sept. 30, 2014, or before (e.g., new equipment, major capital improvements, appliance surcharge) _____ line 5

Add lines 4 and 5 (enter \$ amount) **MAXIMUM RENT** _____ line 6

In addition to the maximum rent on line 6, you may collect any surcharges to which you are entitled (e.g., window guard charge, 421-a increase, air-conditioner surcharge).

Open to Read Your Latest Issue

Landlord v. Tenant (continued from p. 4)

in October 2004, and landlord needed to spend \$39,000 on apartment renovations to justify an individual apartment improvement rent increase supporting the new rent. The complaining tenant moved into the apartment in 2007 and paid over \$2,000 per month. Tenant claimed that landlord couldn't possibly have spent \$39,000 based on the condition of the apartment in 2007. Two of the five judges disagreed with the appeals court's decision, so the DHCR appealed to New York's highest court.

The Court of Appeals ruled for the DHCR and reinstated the lower court's decision upholding the agency's decision. The DHCR's decision wasn't arbitrary or capricious. Tenant failed to show sufficient indications of fraud that would warrant consideration of the rent history predating the four-year look-back period in a rent overcharge proceeding.

- Boyd v. DHCR: 2014 NY Slip Op 04806, 2014 WL 2883894 (Ct. App.; 6/26/14)

Security Deposits: Landlord Must Refund Commingled Security Deposit

Landlord sued tenant for breach of lease. Tenant counterclaimed for return of his security deposit. Landlord and tenant had signed a one-year lease commencing on

Aug. 1, 2011, for a house. By letter dated Sept. 4, 2011, tenant advised landlord that he was moving out. Both sides asked the court to rule without a trial. The court ruled that a trial was needed to determine whether tenant had breached the lease but that tenant was entitled to immediate refund of his security deposit because landlord had commingled the security deposit with other funds.

Landlord appealed and lost. Commingling a security deposit with personal funds is a violation of General Obligations Law Section 7-103(1) and, by law, tenant is entitled to immediate refund even if he breached the lease. Landlord showed that tenant breached the lease by failing to pay rent for October 2011. But tenant showed that landlord accepted a return of the keys after tenant moved out in September and immediately put the house on the market for sale. Landlord also didn't demand rent payment from tenant until late November 2011. So there was a question of fact as to whether the landlord-tenant relationship ended and the lease was terminated by the time rent became due on Oct. 1, 2011. ♦

- Solomon v. Ness: 987 NYS2d 220, 2014 NY Slip Op 04185 (App. Div. 2 Dept.; 6/11/14)