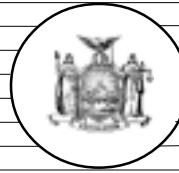


FACT SHEET



Andrew M. Cuomo, Governor

A PUBLICATION OF NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION

#18 Appealing a Rent Administrator's Order: Petition for Administrative Review

An owner, tenant, or other party to the proceeding who is aggrieved by a Rent Administrator's order may file a *Petition for Administrative Review (PAR)* with DHCR. The Petition must specify the alleged errors and list the issues upon which the order should be reviewed. The scope of review in the PAR proceeding is generally limited to the facts or evidence presented to the Rent Administrator, which must also be raised in the PAR.

A PAR must be filed within 35 days after the Rent Administrator's order was issued (not the date received by any party).

A PAR must be filed on a *Petition for Administrative Review* form (DHCR Form RAR-2) and be completed and signed by the petitioner or a duly designated representative. The form is available at Rent Offices, by mail upon telephone request to the Rent Information Line, and on the Web Site listed in this Fact Sheet. A copy of the order being appealed must be included.

The original petition and one copy must be filed in person or by mail. If the PAR is hand-delivered, it must be received within the 35 day filing period. If the PAR is mailed, it must be postmarked within the required filing period. If a private postage meter is used and the envelope does not have an official U.S. Postal Service postmark, the PAR must be received by DHCR within the required time period or must be accompanied by proof that it was mailed within the required time period. PARs received after the time limit will be dismissed.

When DHCR receives a completed PAR, the Office of Rent Administration will send a copy to all other affected parties with a form allowing each party to respond to DHCR within 20 days from the date of mailing of a copy of the PAR by DHCR. A copy of such response to the PAR will be served by DHCR upon the adverse party. DHCR will also send other submissions, with an opportunity to comment, to adversely affected parties, as warranted. DHCR will then review the PAR and the submissions, request additional information as necessary, and make a determination. DHCR will inform all parties to the PAR of the legal and factual basis for the determination.

A joint PAR, verified by each person joining therein, may be filed by two or more owners or tenants, where at least one ground is common to all persons so filing. At the Commissioner's discretion, the PAR may be treated as joint or several, and two or more PARs that have at least one ground in common may be consolidated.

DHCR may authorize an amendment to a PAR *at any time* for "good cause shown." An amendment "as of right," however, must be effectuated prior to the time within which an answer may be filed.

With regard to amendments as of right, the party filing a PAR may amend it or file supplementary material, within twenty (20) days from the date of mailing of a copy of the PAR to the adverse party. However, because such mailing is performed by DHCR, the 20 days are measured from the date DHCR mails an acknowledgement of the PAR filing (Form RAR-2) to the petitioner (which is on or very close to the date the

copy of the PAR is mailed to the adverse party). Where the respondent requests an extension of time within which to file an answer, an automatic extension of the time to amend will also be granted.

There is an exception to the rule that an amendment or supplementation of a PAR, as a matter of right, must occur within twenty (20) days from the date DHCR mails (Form RAR-2) to the petitioner where the petitioner's time to file a PAR is running, but preparation of the PAR cannot be completed because the petitioner is waiting for the agency to make the Rent Administrator's case file available for petitioner's inspection. In such instance, the procedure which must be followed by the petitioner is as follows: The PAR is to be filed within thirty-five (35) days of the issuance of the Rent Administrator's order. The party filing the PAR should note that it is awaiting an opportunity to review the Rent Administrator's file and will be submitting supplemental matter to the initial PAR. Amendments and Supplements to the PAR will be accepted as of right if made within thirty-five (35) days of the time access to the file is provided.

Also, as stated above, DHCR, for good cause shown, may permit the amendment or supplementation of a PAR at any time before the PAR opinion is issued. "Good cause" includes such circumstances as newly discovered evidence which could not reasonably have been offered or included at an earlier time, changes in the applicable law or regulations, retention of counsel subsequent to the initial filing of the PAR and correction of mistakes. It does not include the situation where the petitioner is awaiting access to review the Rent Administrator's file, as the petitioner must follow the procedure set forth above.

An application for permission to file amendments or supplements to a PAR for good cause shown must be made in writing to the PAR Director of the Bureau that will be processing the PAR, stating the reason for the filing of the amendment and annexing a copy of the amendment or supplementation.

In this regard, it should be noted that, because the time within which to file the PAR is limited to 35 days after the date the Rent Administrator's order is issued, with no extension of such period being permitted, caution must be exercised to assure that the intended amendment or supplementation, whether as of right or at the discretion of DHCR, does not result in the filing of the PAR after the 35 day filing period.

Authorized PAR amendments or supplements will be served upon the respondents by DHCR. When a PAR has been amended or supplemented after an answer has been filed, the respondents may file an amended answer within 20 days from the date of mailing of a copy of the amended or supplemented PAR by DHCR.

The DHCR may, in its discretion, and for good cause shown, extend the time within which to answer a PAR or other submission or notice. All requests made by an owner, tenant or representative of either party for an extension must be submitted in writing to the PAR Director. The written request should specify why the extension is being requested. If granted, the extension will be limited to 20 days.

If a party requires a subsequent extension, he or she must provide evidence to justify the request. A subsequent extension may be granted, upon good cause shown, for such time as is warranted by circumstances.

Where the agency has been directed, pursuant to a court order, to process a case by a date certain, no extension will be granted to the party who obtained the court order unless the legal representative of the party stipulates to extend the deadline ordered by the court.

Where a relevant statute or regulation is amended during the pendency of a PAR, the determination shall be in accordance with the amended law or regulation.

The proper filing of a PAR against a Rent Administrator's order, other than an order adjusting, fixing or establishing the legal regulated rent, stays (freezes) that order until the DHCR makes a final determination. Where an Administrator's order provides for an adjustment in rent, the collectibility of the **retroactive portion** of the adjustment, if any is generally suspended but not the **prospective portion** altering the future rent. However, the collectibility of the retroactive portion is not stayed by an owner's PAR against a partial denial of a major capital improvement (MCI) rent increase application, where no tenant's PAR against the order, with respect to the portion which was granted, is pending.

On application by an aggrieved party, the DHCR, may stay any order or vacate an automatic stay. The law also permits an Article 78 proceeding within 60 days after DHCR issues a final order. A remand to the Administrator is not a final order, and is not subject to an Article 78 proceeding.

In processing the PAR, DHCR may:

- (a) Reject a PAR which is timely filed if it is insufficient or defective, but may provide a specified period of time within which to perfect the PAR;
- (b) Investigate the facts, conduct inspections, hold conferences, and require the filing of reports, evidence, affidavits, or other material relevant to the proceeding;
- (c) Forward to the parties, or make available for inspection by the parties, any relevant evidence, and afford an opportunity to file rebuttal an thereto;
- (d) For good cause shown, accept for filing any papers, other than a PAR, even though not filed within the time required by rent regulations;
- (e) Require any person to appear or to produce documents, or both, pursuant to a subpoena issued by DHCR;
- (f) Grant or order a hearing;

(g) On its own initiative, or at the request of a court of competent jurisdiction, or for good cause shown upon application of any affected party, expedite the processing of the PAR.

DHCR, on such terms and conditions as it shall determine, may:

- (a) Dismiss the PAR if it fails substantially to comply with the provisions of the rent laws or regulations,
- (b) Grant or deny the PAR, in whole or in part, or remand the matter to the Rent Administrator for further action.

If the DHCR does not act finally within a period of ninety days after a PAR is filed, the PAR may be deemed to be denied by the petitioner for the purpose of seeking judicial review. Since DHCR will issue a PAR order, despite the passage of the 90 day "deemed denial" period (or extension), unless a proceeding for judicial review has been commenced, it may be advisable to wait for the order, which, as noted previously, will explain the basis for the PAR determination.

The filing and determination of a PAR is prerequisite to obtaining judicial review of any order or determination issued by District Rent Administrator. A proceeding for judicial review may be instituted under Article 78 of the Civil Practice Law and Rules provided the petition in the Supreme Court is filed within sixty days after the issuance date of the order of the Commissioner.

*For more information or assistance, call the DHCR
Rent InfoLine, or visit your Borough or County Rent
Office.*

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