

FACT SHEET



Andrew M. Cuomo, Governor

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

36 High-Rent Vacancy Deregulation and High-Rent High-Income Deregulation

Pursuant to the Rent Act of 2011, the thresholds for deregulation have been changed to \$2,500 in rent and \$200,000 in annual income. Prior to this, the thresholds had been \$2,000 in rent and \$175,000 in annual income.

For High-Rent Vacancy Deregulation, the effective date for the threshold changes is June 24, 2011.

For High-Rent High-Income Deregulation, the effective date is July 1, 2011, which means that it will begin to apply to applications filed in the 2012 cycle, not to applications filed prior to July 1, 2011.

Deregulation of a high-rent apartment may occur as follows:

A. High-Rent Vacancy Deregulation

If an apartment is vacated with a legal regulated rent (Rent Stabilization) or maximum rent (Rent Control) of \$2,500 or more per month, such apartment qualifies for permanent deregulation, and therefore for removal from all rent regulation.

Specific Situations Relating to High-Rent Vacancy Deregulation

With regard to rent stabilized apartments, where an owner installs new equipment or makes improvements to the individual apartment qualifying for an individual apartment improvement rent increase, while such apartment is vacant, and the legal regulated rent is raised on the basis of such rent increase, or as a result of any rent increase permitted upon vacancy or succession, or by a combination of rent increases, as applicable, to a level of \$2,500 or more per month, whether or not the next tenant in occupancy actually is charged or pays \$2,500 or more per month, such apartment will qualify for deregulation.

An apartment also qualifies for deregulation if, while it is vacant, the owner substantially alters its outer dimensions, creating a “new” apartment and the rent paid by the first tenant after the alteration is \$2,500 or more per month. An apartment will also qualify for deregulation upon vacancy by the tenant, where a preferential rent of less than \$2,500 per month is charged and paid and a higher legal regulated rent has been established.

Exceptions to Vacancy Deregulation

Apartments in buildings that are receiving certain real estate tax benefits (e.g. "421-a" or "J-51") are not eligible for High-Rent Vacancy Deregulation at least for as long as such benefits continue.

High-rent vacancy deregulation does not apply to apartments for which DHCR determines that the owner, or any person acting on such owner's behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including, but not limited to, interruption or discontinuance of required services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his or her use or occupancy of the apartment.

Where the tenant of record dies or otherwise permanently vacates the apartment, and the tenant's family member, whether "traditional" or "nontraditional", is entitled to be named on a renewal lease [for rent control, has the right to continue in occupancy as a statutory tenant] through "succession," the housing accommodation will not be considered as having become vacant for the purposes of high-rent vacancy deregulation.

B. High-Rent High-Income Deregulation

Upon the issuance of an order by the DHCR, apartments which have a legal regulated or maximum rent of \$2,500 or more per month and which are occupied by persons whose total annual federal adjusted gross incomes, as reported on their New York State Income Tax returns, have been in excess of \$200,000 for each of the two preceding calendar years, may be permanently deregulated under the procedures set forth below. The standards for determining whether the \$2,500 rent threshold has been met are essentially the same as those for high-rent vacancy deregulation stated above.

To be eligible for High-Rent High-Income Deregulation, the legal regulated or maximum rent must have continuously been \$2,500 or more per month from the time of the owner's service of the income certification form upon the tenant (see discussion below) to the issuance of an order deregulating the subject apartment.

Procedures for High-Rent High-Income Deregulation

"Annual income" means the federal adjusted gross income as reported on the New York State Income Tax return, and "total annual income" as the sum of the annual incomes of all persons who occupy the apartment as their primary residence on other than a temporary basis. The annual incomes of bona fide employees of such occupants, as well as the annual incomes of bona fide subtenants are not included. However, even where an apartment is sublet, the annual income of the prime tenant will be considered. Where the tenant on the lease is a corporation, the annual income of the corporation is not considered in determining whether the threshold total annual income level has been met.

On or before May 1 of each year, the owner of any rent regulated apartment having a legal regulated or maximum rent of \$2,500 or more per month may serve the tenant(s) residing therein with an Income Certification Form (ICF) as prescribed by the DHCR, on which such tenant(s) must identify the individuals referred to in the preceding paragraph (and provide such other information as the form requires, including information relating to occupants who may have recently vacated). The tenant(s) must certify whether the household's total annual income was in excess of \$200,000 in each of the two preceding calendar years. The ICF does not require disclosure of any income information other than whether the threshold for each of the two preceding years has been met. The ICF must also inform the tenant(s) of the protections against harassment, that disclosure of income information is limited to the manner required by the ICF, and that only the tenants of apartments having a \$2,500 rent level as described above may be served with and asked to complete an ICF. Where the monthly legal regulated or maximum rent is less than \$2,500, an owner is not authorized to serve an ICF. In all cases, the operative date for determining the nature of any person's status or occupancy is the date on which the ICF is served.

The owner must serve the ICF by at least one of the following methods: personal delivery, certified mail or regular first class mail, and must also obtain and retain proofs of service. With regard to personal service, such proof would be a copy of the ICF signed (not initialed) and dated by the tenant acknowledging receipt; with regard to certified mail, it would be a U.S. Postal Service receipt stamped by the U.S. Postal Service; and with regard to regular first class mail, it would be a U.S. Postal Service Certificate of Mailing stamped by the U.S. Postal Service. The tenant(s) must return the ICF to the owner within 30 days after service.

If the tenant(s) returns the ICF and the “total annual income,” as certified, exceeded the threshold amount for each of the two preceding years, the owner may, no later than June 30, file an Owner’s Petition for Deregulation (OPD) with DHCR, and an order will be issued providing that the apartment will no longer be subject to rent regulation upon expiration of the existing lease (rent stabilized apartment), or as of March 1 in the year next succeeding the filing of the OPD (rent controlled apartment).

However, in the event the tenant(s) fails to return the ICF within 30 days of service, or the owner disputes it, such owner may, no later than June 30, file an OPD with DHCR requesting DHCR to verify the “total annual income” of the occupants of the subject apartment with the New York State Department of Taxation and Finance (DTF). DHCR will notify the subject tenant(s) named on the lease that they must provide any information DHCR and DTF require to verify whether the total annual income exceeded the applicable threshold amount for each of the two preceding calendar years. The notice will also state that a failure to do so within 60 days may result in an order being issued decontrolling the apartment. In this situation, the tenant(s) may be required to submit a photocopy of either the preprinted mailing labels used on the New York State State Income Tax returns for the applicable years, or the first page of the New York State Income Tax returns for the applicable years, for each tenant or occupant whose income is to be included in “total annual income,” or in the event neither is available, a written explanation indicating why Income Tax returns were not filed for the applicable years.

Tenant(s) should delete all social security numbers and income figures from all copies of preprinted mailing labels or tax returns submitted. The name and address of any tenant or occupant who didn’t file a New York State State Income Tax return for any applicable year must be supplied on a form prescribed by the DHCR, as they would have appeared had that tenant or occupant filed the return.

If DTF notifies DHCR that it has determined that the total annual income was in excess of the threshold amount for each of the two preceding years, DHCR will notify the owner and tenants of the results of such determination, after which all parties will have 30 days to comment. Where appropriate, after the expiration of the comment period, DHCR will issue an order providing that the apartment will no longer be subject to rent regulation upon expiration of the existing lease (for rent stabilized apartments), or as of March 1 in the year next succeeding the filing of the OPD (for rent controlled apartments).

Where the DTF determines that the income threshold has not been met, DHCR will deny the OPD.

Subsequent Occupancy

A high rent apartment, which becomes deregulated on the basis of high income, remains deregulated, notwithstanding subsequent occupancy by a household whose total annual income would not have qualified for high income deregulation, or if the legal regulated monthly rent falls below \$2,500.

Exceptions to High-Rent High-Income Deregulation

Apartments in buildings that are receiving certain real estate tax benefits (e.g. "421-a" or "J-51") are not eligible for High-Rent High-Income Deregulation at least for as long as such benefits continue.

Lease Renewal

Where the "window period" during which an owner must offer a renewal lease has not expired, an owner who has filed an OPD with DHCR which is still pending, is permitted to attach a rider to the offered renewal lease, on a form prescribed or a facsimile of such form approved by the DHCR, containing a clause notifying the tenant that the offered renewal lease, if accepted, will nevertheless no longer be in effect after 60 days from the issuance by the DHCR of an order of deregulation. The rider may also state that in the event that a petition for administrative review (PAR) is filed against such order of deregulation, the renewal lease will terminate after 60 days from the issuance by the DHCR of an order dismissing or denying the PAR.

Privacy

The only information required to be exchanged and subject to consideration in the process of income verification among the owner, tenant, DHCR and the DTF is whether the income threshold for each of the two preceding years has been met. Specific income figures will not be disclosed or exchanged. The provisions of the State Freedom of Information Law ("FOIL") which might otherwise allow certain information to be disclosed, do not apply to such income information obtained by DHCR.

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

Queens

92-31 Union Hall Street
6th Floor
Jamaica, NY 11433
(718) 739-6400

Lower Manhattan

25 Beaver Street
5th Floor
New York, NY 10004

Brooklyn

55 Hanson Place
7th Floor
Brooklyn, NY 11217

Bronx

2400 Halsey Street
Bronx, NY 10461

Upper Manhattan

163 W. 125th Street
5th Floor
New York, NY 10027

Westchester County

75 South Broadway
White Plains, NY 10601