New York State
Division of Housing and Community Renewal
**Office of Rent Administration**

*Policy Statement 89-7 (June 21, 1989)*

## *Collection of Administrative Fees: Housing Accommodations Permanently Not Subject to the RSL or ETPA and Application Form*

Section 26-517.1 of the Rent Stabilization Law and Section 8 of the Emergency Tenant Protection Act provide for the imposition of a fee on owners of housing accommodations “subject” to the RSL or ETPA to assist DHCR in defraying the cost of administering such laws.

It is this Task Force’s interpretation of the relevant statutes that only *those housing accommodations which are permanently not subject to the RSL or ETPA are excused from such assessment*. What follows is applicable only to the issue of whether an owner is responsible for payment of the fee authorized by Section 26-517.1 RSL.

The purpose of this memo is to list those legal situations which cause the permanent decontrol of housing accommodations.

*The Rent Stabilization Law & Code in N.Y.C.*

Section 26-504 of the RSL and Section 2520.11 of the Rent Stabilization Code specify the grounds for both permanent decontrol and temporary exemption from the RSL & Code. While this memo will deal solely with the grounds for permanent decontrol, it is not always easy to separate the decontrol from the temporary exemption. “Permanent” may not always mean “eternal.” The following constitute grounds for permanent decontrol from Rent Stabilization coverage in New York City and, therefore, exempt the owner from the payment of the administrative fee:

1) A rent controlled apartment while it is still subject to Rent Control (Sec. 2520.11(a)).

2) Housing accommodations owned by the United States, the State of New York, any political subdivision, agency or instrumentality thereof, any municipality or any public housing authority (Sec. 2520.11(b)). Example: An “In Rem” building or a building owned by HUD because it foreclosed on the FHA insured mortgage. But, not a “pre-empted” building because this constitutes a temporary exemption.

3) Housing accommodations for which rentals are fixed by DHCR, HPD or UDC pursuant to laws other than the RSL and/or ETPA and which do not become subject to the RSL and Code after the establishment of initial rents pursuant to such other laws. (Sec. 2520.11(c)). Example: A Mitchell-Lama building while subject to PHFL.

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*The original document which contains signatures of authorization is on file at DHCR's Office of Rent Administration.*

4) Buildings containing fewer than six housing accommodations on the date the building first became subject to the RSL (Sec. 2520.11(d)). Example: A building containing five housing accommodations on July 1, 1974, the effective date of ETPA. According to court rulings, if a 6th unit is subsequently added, the building will become subject to RSL. A building will remain subject to the RSL if after the "base date" the number of housing accommodation is reduced to less than 6 units. A "garden apartment" development is subject to the RSL even though the individual certificates of occupancy are for one or two family houses. Depending on such factors as common ownership and common facilities (common heating plant, water sewer, utility lines, roof, etc.) two three-family houses may become subject to the RSL as a six family house.

5) Housing accommodations in buildings completed or buildings substantially rehabilitated as family units on or after January 1, 1974, except such buildings which are made subject to this Code by provisions of the RSL or any other statute (Sec. 2520.11(e)). Example: A newly constructed building effectuated entirely by private financing or a "gut rehabilitation" similarly performed. Where such construction is financed by the 421-a or "J-51" program, the newly constructed building is subject to the RSL for a specified period. See Items "12" and "13".

6) Housing accommodations owned by a hospital, convent, monastery, asylum, public institution, college or school dormitory or any institution operated exclusively for charitable or educational purposes on a non-profit basis, and occupied by a tenant whose initial occupancy is contingent upon an affiliation with such institution (Sec. 2520.1l(f)). Example: A hospital owns a building containing ten housing accommodations, five are occupied by Nurses working at the hospital since the hospital acquired the building; five apartments are occupied by non-affiliated tenants. If DHCR's registration records show ten apartments registered, DHCR should continue to bill for the ten units until such time as the entire building is occupied by affiliated personnel of the hospital. As occupancy is the basis for a "temporary exemption" only and DHCR cannot investigate each change of tenancy to determine "affiliation," until the entire building is not subject to the RSL, for the purpose of collecting the fee, the entire building will remain subject to the RSL.

7) Rooms or other housing accommodations in hotels where such housing accommodations were rented on May 31, 1968 for more than $350.00 per month or $88.00 per week or are contained in a hotel which was constructed after July 1, 1969 (Sec. 2520.11(g)). Note: Hotel registration records showing exempt units in the various hotels in New York City are in the possession of DHCR.

8) Housing accommodations in any motor court, or any part thereof, any trailer, or trailer space used exclusively for transient occupancy or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof. The term tourist home shall mean a rooming house which caters primarily to transient guests and is known in the community as a tourist home (Sec. 2520.11(n)). Example: What is known in common parlance as a "Motel". Also, see item 8 on page 4 for the definition of a "motor court" as stated in the Tenant Protection Regulations for the counties of Nassau, Rockland and Westchester.

9) Housing accommodations in buildings operated exclusively for charitable purposes on non profit basis (Sec. 2520.11(j)). Example: Housing accommodations in YMCA/YMHA building; or housing accommodations in the hospital building itself as opposed an apartment house owned by the hospital.

10) Housing accommodations contained in buildings owned as co-operatives or condominiums as provided in Section 352eeee of the General Business Law in accordance with Section 2522.5(h) of the Code and housing accommodations occupied by the Proprietary lessee/condo owner (Sec. 2520.11(1)). Example: Where a building has been converted to co-op ownership pursuant to a non-eviction plan, apartments occupied by a non-purchasing rent stabilized tenant are subject to the Rent Stabilization Law for as long

as the tenant continues to reside therein. However, if that tenant vacated from the apartment after the co-op has been declared effective and title passed to the co-op corporation or if the rent paying tenant buys the apartment and continues to reside therein, the apartment is not subject to the RSL. In a co-op eviction plan, the co-op may evict the non-purchasing tenant three years after the plan has been declared effective and once that period has expired, the apartment is no longer subject to the RSL.

11) Housing accommodations used exclusively for professional, commercial or other non-residential purposes in accordance with the certificate of occupancy (Sec. 2520.11(n)). *Example:* As this ground is an exemption based on usage, which for the purpose of fee collection is not operative to excuse the owner from payment of the fee because of its temporary nature, this ground will excuse an owner from payment of the fee only where the apartment has been converted to professional or commercial usage and the change has been noted on the certificate of occupancy. Also, for the owner to qualify for the decontrol on this basis, the tenant cannot reside in the apartment.

12) Housing accommodations in buildings completed or substantially rehabilitated as family units on or after January 1, 1974 or located in a building containing less than six housing accommodations, and made subject to the RSL and Code *solely* as a condition of receiving "J-51" Tax benefits or Art. XVIII PHFL funding; and thereafter receipt of such tax benefits and supervisory period has concluded and such housing accommodations became vacant; or, each lease and each renewal thereof of the tenant in occupancy when the benefit or supervisory period concluded includes a notice informing such tenant that the housing accommodations shall become deregulated upon the expiration of the last lease entered into during the tax benefit or supervisory period and states the approximate date on which such benefits and supervisory period are scheduled to expire (Sec. 2520.11(o)). *Example:* A housing accommodation would normally not be subject to the RSL because it was constructed on or after January 1, 1974 or because it contains less than six housing accommodations. However, because the owner was granted "J-51" benefits or effectuated rehabilitations pursuant to Article XVIII PHFL, the housing accommodations are made subject to the RSL pursuant to the terms of such statutes. When the respective benefits or supervisory period under each of the two statutes cited has (1) ended *and* (2) the tenant has moved out of the apartment *or* (3) the initial and renewal leases of the tenant in occupancy at the end of such periods notified the tenant of the forthcoming deregulation of the apartment and the approximate date thereof, the housing accommodations will no longer be subject to the RSL and the owner will not have to pay the fee.

13) Same as item "12" except that the benefit in question is granted pursuant to Section 421-a of the Real Property Tax Law and the housing accommodations became vacant after the expiration of the benefit period; or, for housing accommodations which first became subject to rent stabilization pursuant to 421-a after July 3, 1984 each lease and each renewal thereof of the tenant in occupancy at the time the period of tax exemption pursuant to 421-a expires, contain the same notice as that discussed in item "11", above. (Sec.2520.11(p)). Example: Same as item "12," except that the tax benefit statute is Section 421-a Real Property Tax Law. Also, the lease notification provision applies only to housing accommodations becoming subject to RSL because of 421-a, only, on or after July 3, 1984.

14) Housing accommodations which would be subject to the RSL & Code solely by reason of the Loft Law but are exempted from the Loft Law pursuant to Sections 286(6) and 286(12) of the MDL. *Example:* Loft space which has been authorized for residential usage by the Loft Board pursuant to the Loft Law becomes subject to the RSL at the initial legal regulated rent set by the Loft Board. However, when the owner buys the improvement made by the tenant to the Loft space in accordance with Section 286(6) of the Loft Law or where the owner and tenant, pursuant to Section 286(12) of such law agree on terms for the tenant to vacate the housing accommodation, such unit is no longer subject to the Loft Law and, therefore, will be not subject to the RSL. The owner is exempt from payment of the fee for such units.

Section 5 of ETPA and Section 2500.9 of the Tenant Protection Regulations specify the grounds for both permanent decontrol and temporary exemption from the ETPA and Regulations. For the most part they are very similar to those contained in Sections 26-504 of the RSL and Section 2520.11 of the Rent Stabilization Code and, except where clarification is needed, no new examples will be cited. While this memo will deal solely with the grounds for permanent decontrol it is not always easy to separate the decontrol from the temporary exemption. "Permanent" does not always mean "eternal". The following constitute grounds for permanent decontrol from ETPA coverage in the ETPA counties and, therefore, exempt the owner from the payment of the administrative fee.

1) Housing accommodations subject to the Emergency Housing Rent Control Law (Sec. 2500.9(a) TPR). *Example*: An apartment which is subject to the State Rent Control Law.

2) Housing accommodations owned by the United States, the State of New York, any political subdivision, agency or instrumentality thereof, any municipality or any public housing authority (Sec. 2600.9(b) TPR).

3) Housing accommodations in buildings in which rentals are fixed by or subject to the supervision of the State Division of Housing and Community Renewal under other provisions of law, or the New York State Urban Development Corporation. (Sec. 2500.9(c) TPR).

4) Housing accommodations in a building containing fewer than six dwelling units (Sec. 2500.9(d)(1) TPR).

5) Housing accommodations in buildings completed or buildings substantially rehabilitated as family units on or after January 1, 1974 (Sec. 2500.9(e) TPR).

6) Housing accommodations owned by a hospital, convent, monastery, asylum, public institution, or college or school dormitory or any institution operated exclusively for charitable or educational purposes on a non-profit basis other than accommodations occupied by a tenant on the date such housing accommodation is acquired by such institution, or which are occupied subsequently by a tenant who is not affiliated with such institution at the time of his initial occupancy. (Sec. 2500.9(f) TPR).

7) Rooms or other housing accommodations in hotels. (Sec. 2500.9(g) TPR). *Example:* A hotel room in Long Beach, Nassau County. Unlike New York City, hotel rooms in the three ETPA counties are not subject to ETPA.

8) Any motor court, or any part thereof, any trailer, or trailer space used exclusively for transient occupancy or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof.

    (a) The term motor court shall mean an establishment renting rooms, cottages or cabins, supplying parking or storage facilities for motor vehicles in connection with such renting and other services and facilities customarily supplied by such establishments, and commonly known as motor, auto or tourist court in the community.

    (b) The term tourist home shall mean a rooming house which caters primarily to transient guests and is known as a tourist home in the community. (Sec. 2500.9(h) TPR)

9) Housing accommodations in buildings operated exclusively for charitable purposes on a non-profit basis (Sec. 2500.9(j) TPR).

10) Housing accommodations contained in buildings owned as co-operatives or condominiums for as long as the housing accommodation is occupied by the proprietary lessee/condo owner. However, an owner occupied-apartment or a superintendent-occupied apartment in a non-co-op/condo apartment building is not excused from the payment of the administrative fee.

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