DEMOLITION EVICTIONS

A real possibility.

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The author wishes to acknowledge the assistance of Jay B. Itkowitz with this publication.

By the way: YES! This is legal advertising. And we hope it works!
DEMOLITION EVICTIONS: A REAL POSSIBILITY

I. Introduction

First – I rant. As any thinking person of conscience must – against a $17,000,000.00 buyout of a New York City Rent Stabilized tenant.

I am not a fan of the current Rent Stabilization laws. In my twenty–two years of working in this area I have defended many tenants against unscrupulous landlords, mercilessly attempting to hound people out of units that, as the current law stands, they fully deserved to live in. I have fought against hundreds of conniving tenants defrauding the system and keeping units off the market for people who would really live there. I have seen families torn apart, as a husband and wife refuse to consolidate their lives and share a single roof, because neither wants to give up their Rent Stabilized apartment. Moreover, Rent Stabilization has created two classes of apartments in New York City – the over–priced kind and the underpriced kind – fuelling tensions between people.

Nothing, however, is perhaps as insane as Mr. Herbert J. Sukenik getting a $17,000,000.00 payment and a $2,000,000.00 apartment with a $1.00 per month rent for life from Zekendorf in exchange for vacating his rent regulated apartment at 15 Central Park West.1 If nothing else, just consider the gross inequity between the vacated tenants of 15 CPW. One assumes that those who left earlier, also left for less money. That’s how it works. A few people always bite at the landlord’s opening low–end offer. The last person to leave, the “holdout” tenant, gets the big prize. From the point of view of the tenants, what makes one person’s home worth more money than the last person’s home? Likely – nothing. Yet, the tenant who is best suited to hunkering down and waiting gets a windfall. Consider that one–third of that money probably went to a lawyer, and you cannot help but be dispirited. The purpose of the rent regulatory laws, to maintain affordable housing in New York City, is simply not furthered by any of this.

Buyouts are ubiquitous these days.² Last year, our Brooklyn Real Estate Summit presentation was entitled “Buy Outs – Making Them Happen”³, and it dealt with using the “stick” of strong, colorable litigation together with the “carrot” of unique offers to tenants that created win-win situations for everyone. This year, we are expanding the discussion and suggesting the following – forget the buyout for now, consider trying Demolition Eviction if you want to move Rent Stabilized tenants out of the way to redevelop a site. Demolition Eviction may be a better pathway to development for both the landlord and the tenant.

II. Demolition Eviction – The Statute and Regulations

A landlord who intends to demolish a Rent Stabilized building may recover such units, subject to certain exceptions and limitations.⁴

In Appendix A we provide most of the full text of the following statutes and regulations (so you do not have to take my word for it – you have the material right there), including:

- 9 NYCRR 2524.5, Rent Stabilization Code § 2524.5 (Grounds for refusal to renew lease or discontinue hotel tenancy and evict which require approval of the DHCR [NYS Division of Housing and Community Renewal])

- New York State Division of Housing and Community Renewal Fact Sheet #11

- New York State Division of Housing and Community Renewal Operational Bulletin 2009-1


³ http://itkowitzteachingandpublishing.blogspot.com/2013/05/tenant-buy-outs-making-them-happen.html.

⁴ 9 NYCRR 2524.5, Rent Stabilization Code.
Rent Stabilization Laws are kind of like a field of daisies. (Not really.)

III. Requirements

In order to achieve an eviction on the grounds of demolition, you must comply with the following requirements.

A. Permission from DHCR

Demolition eviction requires the owner to first get the permission of the New York State Division of Housing and Community Renewal (“DHCR”). That process can take months or years.

B. Proof You Have the Money for the Project

The owner must submit proof to the DHCR of the owners financial ability to complete the project.

5 9 NYCRR 2524.5(a).

6 9 NYCRR 2524.5(a)(2)(i).
Evidence of financial ability to complete the project may include a Letter of Intent or a Commitment Letter from a financial institution, or such other evidence as DHCR may deem appropriate under the circumstances.\textsuperscript{7} See also Peckham v. Calogero, 12 NY3d 424 (2009), below.

\textbf{C. Building Plans Approved by the City}

The plans for the project must have been already approved by the appropriate city agency (Department of Buildings, Landmarks, Department of Environmental Protection, whatever is required).\textsuperscript{8}

\textbf{D. Paying the Tenant}

1. \textbf{Moving Expenses}

The owner must pay the tenant’s reasonable moving expenses.\textsuperscript{9}

2. \textbf{Stipend}

The owner must pay the tenant a “stipend” of $5,000.00, provided the tenant leaves by the vacate date in the DHCR’s order.\textsuperscript{10}

\textsuperscript{7} DHCR Operational Bulletin 2009-1.

\textsuperscript{8} 9 NYCRR 2524.5(a)(2)(i).

\textsuperscript{9} 9 NYCRR 2524.5(a)(2)(ii)(a).

\textsuperscript{10} 9 NYCRR 2524.5(a)(2)(ii)(a) and (b)(1).
Many days I feel like one of these fish.

E. **Relocate Tenant or Pay an Additional Stipend Based on an Established Formula**

The owner must relocate the tenant or pay the tenant a large additional stipend based on a formula established by the DHCR.\(^{11}\)

1. **“Permanent” Relocation**

The **owner has the option** of moving the tenant out of the way permanently. In that case, the alternative housing must satisfy at least three criteria\(^{12}\):

a. **Suitable Housing Accommodation**

The alternate housing accommodation must be “suitable”.\(^{13}\) Let us now examine what “suitable” means under the law.

\(^{11}\) 9 NYCRR 2524.5(a)(2)(ii)(b)(1).

\(^{12}\) 9 NYCRR 2524.5(a)(2)(ii)(b)(1).

\(^{13}\) 9 NYCRR 2524.5(a)(2)(iii).
i. **Time Table**

In the event a comparable housing accommodation is offered by the owner, a tenant may file an objection with the DHCR challenging the suitability of a housing accommodation offered by the owner for relocation within 10 days after the owner identifies the housing accommodation and makes it available for the tenant to inspect and consider the suitability thereof. Within 30 days thereafter, the DHCR shall inspect the housing accommodation, on notice to both parties, in order to determine whether the offered housing accommodation is suitable. Such determination will be made by the DHCR as promptly as practicable thereafter. In the event that the DHCR determines that the housing accommodation is not suitable, the tenant shall be offered another housing accommodation, and shall have 10 days after it is made available by the owner for the tenant’s inspection to consider its suitability.\(^{14}\)

In the event that the DHCR determines that the housing accommodation is suitable, the tenant shall have 15 days thereafter within which to accept the housing accommodation. A tenant who refuses to accept relocation to any housing accommodation determined by the DHCR to be suitable shall lose the right to relocation by the owner, and to receive payment of moving expenses or any stipend.\(^{15}\)

\(^{14}\) 9 NYCRR 2524.5(a)(2)(iii).

\(^{15}\) 9 NYCRR 2524.5(a)(2)(iii).
<table>
<thead>
<tr>
<th>STEPS FOR OFFERING TENANT ALTERNATIVE HOUSING ACCOMMODATIONS</th>
<th>DAYS UNTIL NEXT STEP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner offers comparable housing accommodation and makes it available for the tenant to inspect.</td>
<td>_______________</td>
</tr>
<tr>
<td>Tenant has 10 days to challenge comparable housing accommodation. If tenant objects - go to next step.</td>
<td>10 Days</td>
</tr>
<tr>
<td>Within 30 days DHCR shall inspect the housing accommodation, on notice to both parties, in order to determine whether the offered housing accommodation is suitable. Then DHCR shall decide &quot;as promptly as practicable thereafter&quot;. If DHCR decides the accommodation is not suitable, go to next step.</td>
<td>30 days</td>
</tr>
<tr>
<td>The tenant is offered another housing accommodation, and shall have 10 days after it is made available by the owner for the tenant's inspection to consider its suitability. If tenant objects - go to next step.</td>
<td>Assuming owner can immediately offer tenant another accommodation - tenant has another 10 days to inspect.</td>
</tr>
<tr>
<td>Here, the statute is unclear, but we assume DHCR has another 30 days to inspect ...</td>
<td>30 Days</td>
</tr>
<tr>
<td>...and another period of time to decide which will be &quot;as promptly as practicable thereafter&quot;.</td>
<td>The process could theoretically continue.</td>
</tr>
<tr>
<td>If the DHCR ever approves of an accommodation the tenant rejects, then tenant shall have 15 days thereafter within which to accept the housing accommodation.</td>
<td>15 days</td>
</tr>
<tr>
<td>Any aggrieved party can then go into the appeal process...</td>
<td>...which is lengthy.</td>
</tr>
</tbody>
</table>
ii. Size, Features, Services

Suitable housing accommodations shall mean housing accommodations which are similar in size and features to the respective housing accommodations now occupied by the tenants. 16

Such housing accommodations shall be freshly painted before the tenant takes occupancy, and shall be provided with substantially the same required services and equipment the tenants received in their prior housing accommodations. 17

iii. No Violations

The building containing such housing accommodations shall be free from violations of law recorded by the city agency having jurisdiction, which constitute fire hazards or conditions dangerous or detrimental to life or health, or which affect the maintenance of required services. 18

iv. The New Accommodations Do NOT Have to Be Rent Stabilized

The DHCR will consider housing accommodations proposed for relocation that are not presently subject to rent regulation, provided the owner submits a contractual agreement that places the tenant in a substantially similar housing accommodation at no additional rent for a period of six years, unless the tenant requests a shorter lease period in writing. 19

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16 9 NYCRR 2524.5(a)(2)(iii).
17 9 NYCRR 2524.5(a)(2)(iii).
18 9 NYCRR 2524.5(a)(2)(iii).
19 9 NYCRR 2524.5(a)(2)(iii).
b. **At the Same or Lower Regulated Rent**

The alternate housing accommodation must be “at the same or lower legal regulated rent”. ²⁰

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²⁰ 9 NYCRR 2524.5(a)(2)(iii).

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²¹ 9 NYCRR 2524.5(a)(2)(iii).
2. **Temporary Relocation**

If the owner intends to put the tenant back in the newly constructed building on the site, then the owner has to house the tenant in suitable interim housing provided at no cost to the tenant.\(^2\)

3. **Pay an Additional Stipend Based on an Established Formula**

Or the owner can, in essence, buy the tenant out, but such “buyout” is really a 72 month stipend based on an established formula set up by DHCR that is calculated based on the number rooms in the apartment (no less than three) and the tenants current rent.\(^3\) A copy of the “Demolition Stipend Chart” is included with Operational Bulletin 2009–1 in Appendix A of these materials. An owner would have to pay a tenant in a six room apartment, whose rent is $1,000.00 per month, for example, $1,958.00 per month for 72 months, or $140,976.00.\(^4\)

This third option is NOT available, however, if the stipend would result in the tenant losing a subsidy or other governmental benefit which is income dependent. In that case, *the tenant may elect* to waive the stipend and have the owner at his or her own expense, relocate the tenant to a suitable housing accommodation at the same or lower legal regulated rent in a closely proximate area.\(^5\) Therefore, it is important to note that this third option (perhaps the most desirable) is not always available.

**F. Who is the “Owner”**

When it comes to development, ownership usually has a whole bunch of entities floating around and there are all kinds of transfers happening. While that is being handled by your transactional attorney, your counsel on the Demolition Eviction Application has to be kept

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\(^2\) 9 NYCRR 2524.5(a)(2)(ii)(b)(1).

\(^3\) 9 NYCRR 2524.5(a)(2)(ii)(b)(3).

\(^4\) 9 NYCRR 2524.5(a)(2)(ii)(b)(1).

\(^5\) 9 NYCRR 2524.5(a)(2)(ii)(c).
apprised. It is possible to be bounced from the DHCR because the application was not filed by “the owner”. The term, "owner", is specifically defined in RSC Section 2520.6(i). 26

G. DHCR Application Process; No Rent Increases While Application Pending

The owner is required to file Form RA-54, ‘Owner's Application for Order Granting Approval to Refuse Renewal of Lease and/or to Proceed for Eviction’ with the DHCR.27

Once an application has been filed, an owner may refuse to renew tenants' leases until a determination of the owner's application has been made. **Tenants may remain in occupancy during such period, and the owner may not increase the rents.** Should the application be denied or withdrawn, the owner must again offer prospective renewal leases to the tenants, as directed in the DHCR's order of denial or withdrawal.28

In New York City, pursuant to RSC Section 2524.2(c)(3), after filing a demolition application, an owner must serve each tenant with a Termination Notice at least 90 and not more than 150 days (the “Golub Period”) prior to the expiration of the tenant's lease term. Provided each tenant whose 'window period' occurs prior to the issuance of the order is served with a timely Termination Notice, the order granting the application may be issued. 29

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26 RSC Section 2520.6(i): Owner. A fee owner, lessor, sublessor, assignee, net lessee, or a proprietary lessee of a housing accommodation in a structure or premises owned by a cooperative corporation or association, or an owner of a condominium unit of the sponsor of such cooperative corporation or association or condominium development, or any other person or entity receiving or entitled to receive rent for the use or occupation of any housing accommodation,…Any separate entity that is owned, in whole or in part, by an entity that is considered an owner pursuant to this subdivision, and which provides only utility services shall itself not be considered an owner pursuant to this subdivision. Except as is otherwise provided in sections 2522.3 and 2526.1(f) of this Title, a court-appointed receiver shall be considered an owner pursuant to this subdivision.

27 DHCR Fact Sheet #11.


29 DHCR Operational Bulletin 2009-1.
The Termination Notice may be served either personally or by regular or certified mail. A contemporaneous affidavit providing dispositive facts by the person making the service or mailing a receipt indicating proof of certified mailing shall constitute sufficient proof of service. When service is by registered or certified mail, the stamped post office receipt shall constitute sufficient proof of service. Once such proof of service has been submitted to the DHCR, the burden of proving non-receipt shall be on the tenant.

The Termination Notice shall state that:

1. the owner will not renew the tenant's lease because the owner has filed an application for permission to recover possession of all housing accommodations in the building for the purpose of demolishing them, for which plans and financing have been obtained, as stated in the application;

2. while the application is pending, the tenant may remain in occupancy;

3. the tenant shall not be required to vacate until the DHCR issues a final order approving the application and setting forth the time for vacating, stipends and other relocation conditions; and

4. the tenant must be offered a prospective renewal lease if the application is withdrawn or denied.

The DHCR may conduct a hearing on the application.30

The DHCR cannot order the eviction of any tenant. In other words, if you get a vacate order from the DHCR and the tenant does not go, then you need to take the tenant to Housing Court. Warrants of eviction must be obtained from courts of competent jurisdiction.31

Any party aggrieved by the DHCR's determination may file a Petition for Administrative Review (PAR) in accordance with RSC Part 2529. The filing of a PAR shall stay such order until the final determination of the PAR by the DHCR Commissioner. Upon a

30 DHCR Fact Sheet #11.

31 DHCR Operational Bulletin 2009-1.
showing that there are equitable grounds, the DHCR Commissioner may entertain requests for expedited processing of the PAR.

H. What is “Demolition”

The definition of “demolition” has been challenged, and the law is governed by the Pekham case (Peckham v. Calogero, 12 NY3d 424 (2009)), so we examine the case in detail below. Pekham also contains an important holding regarding the definition of “financial ability” to complete the project.


Peckham started in 2004 and took until 2009 to resolve because it went all the way up the New York State’s highest court. Landlord won. The building was a 40 foot deep, three story, 8 unit Rent Stabilized Building in Manhattan. The owner wanted to build a 70 foot deep building with 12 units in its place.

According to owner's plan, “[t]he Demolition will entail the removal of (a) the roof, (b) entire interior of the Building, (c) all partitions, (d) floor joints, (e) subfloors, and (f) building systems. In addition, much of the facade, and the entire rear wall of the Building will be removed.”

Tenant opposed owner's application, arguing that (1) owner advised the New York City Department of Buildings (DOB) that the job involved “a reconstruction or an alteration” and (2) the evidence of financial ability could not be relied upon because the only thing it established was that the funds in question were held in the name of an entity other than owner. Moreover, tenant challenged what was meant by “demolition.”

The state’s highest court ultimately held that it was not important that there is no precise or expansive definition of “demolition” in the Rent Stabilization Law and Code. Numerous terms and concepts lack such a definition. Further, over the years, DHCR has not required the proponent of a demolition application to show that it intends to “raze the structure to the ground” (the dictionary definition of “demolition”) in order to be successful. An intent to gut the interior of the building, while leaving the walls intact, has been held as sufficient. Courts reviewing this interpretation of the term “demolition” have held likewise. Therefore, the court
held in *Peckham* that owner's demolition plan comported with DHCR’s long-held interpretation of “demolition.”

Regarding the “financial ability” that must be shown before a demolition application is granted, DHCR has stated that “[e]vidence of financial ability to complete the project may include a Letter of Intent or a Commitment Letter from a financial institution, or such other evidence as DHCR may deem appropriate under the circumstances” (DHCR Operational Bulletin 2002–1). In *Peckham*, Owner submitted (1) a printout from JPMorgan Chase Bank verifying that a bank account had been opened and funded in the amount of $4,800,000 and (2) a letter indicating that these funds were to be applied toward Owner's demolition/construction project. Although the letter was addressed to a different Limited Liability company ("LLC") than the ownership LLC, there was ample basis for DHCR to infer that the borrower LLC and ownership LLC were affiliates.

It is interesting to note that there are very few recent reported decisions on Demolition Eviction. Extel, however, applied for a demolition eviction on East 17th Street in 2006, according to the Village Voice.32

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IV. Strategic Considerations and Practical Suggestions

As you can see from the “Requirements” Section of this article, a permission to do Demolition Evictions can be difficult to get from DHCR. It is not, however, impossible. The following are some strategic considerations and procedural tips to keep in mind when considering Demolition Eviction.

A. Relocation and Stipend

I do not see why either the proof of financing and the approved plans requirements should be prohibitive. If you really are developing a building, you will have both the dollars and the approved plans eventually. If you put those pieces together sooner, as opposed to later, then you can proceed with a Demolition Eviction application.

The real cost of Demolition Eviction can be the relocation and stipend requirements. What I see so often in my practice is that owners often do not really understand the law, and they make assumptions that things – like recovering an apartment that a tenant does not occupy as their primary residence or Demolition Eviction – are not possible, when, in fact, under their particular circumstance, they are. Below are examples.

Example 1: An owner owns many Rent Stabilized buildings in Bedstuy. He wishes to demolish and redevelop one of them. He buys out most of the tenants, but three tenants will not leave. If the owner sets aside three vacant apartments from his other Rent Stabilized inventory in that neighborhood and makes sure that building is violation-free (which he should anyway), then he can apply for a Demolition Eviction and offer relocation to the tenants in the other building.

Example 2: In the immediate vicinity of a project in Clinton Hill, owner buys a one-bedroom condo apartment, or buys a co-op that owner is certain can be perpetually sub-let. Owner uses this as the relocation apartment for a holdout tenant. This may cost owner $1M – $1.5M in acquisition costs, plus carrying costs for the unit (which will be minimally off set by the tenant’s artificially low rent). The unit will appreciate, however, and can function as a long-term
investment. This would work ideally for an elderly tenant. What seems better – giving the tenant a seven-figure buyout, or buying something for yourself for seven figures that will appreciate?

Example 3: Owner is demolishing a six-family building in Park Slope, which is part of a larger development site that contains other buildings that have already been emptied. There is a holdout tenant in the way, who sees what kind of a project he is in the way of and he wants a big buyout. When the project is built, it will contain 60 units. Owner applies for a Demolition Eviction of the holdover, promising to relocate the holdout in his new building when it is finished. The cost of giving up one unit in 60 to Rent Stabilization, which may be required anyway if the project is part of a tax abatement program, might be better than a seven figure buyout.

B. The Relationship Between Demolition Eviction and Buyout

There can be a relationship between an owner’s attempt to secure a buyout on favorable terms and the degree to which owner is willing to push forward on a Demolition Eviction application. Here is where we come full circle to Mr. Herbert J. Sukenik and his $17,000,000.00 buyout. Demolition Eviction may take a long time to secure and it may cost a lot of money; but it can be better than making the last holdout tenant a virtual partner in your building by paying him huge numbers. When faced with a Demolition Eviction application, and the prospect that they may just end up in a different Rent Stabilized apartment, a tenant’s number might go down.

C. Keep the Rent Stabilized Leases in Effect

Many of my clients come to me with buildings where their predecessor–in interest has allowed the Rent Stabilized leases to lapse. This is, for so many reasons, a terrible thing for an owner to do. In Rent Stabilization the lease protects the owner much more than the tenant. The tenant has all her rights, lease or no lease. The landlord, however, loses all kind of rights, even to sue for nonpayment of rent, if a properly renewed Rent Stabilized lease is not in place.

Demolition eviction is predicated on refusal to renew an existing lease. The allowable time for the notice of non–renewal is within 90 to 150 days of the expiration of an existing lease. Absent a lease being in effect, the 90 to 150 day period cannot be arrived at.\textsuperscript{33}

\textsuperscript{33} Santorini Equities, Inc. v. Picarra, 72 A.D.3d 73 (1st Dept. 2010).
Therefore, until you have a firm plan of action for your Rent Stabilized building, make sure you renew the leases in a timely fashion and keep the building properly registered with DHCR.

V. Conclusion

Demolition Eviction is worth looking at and understanding if you are in the business of redeveloping properties in New York City. It is difficult, it does take time, and it can be expensive. Yet it might be a developer’s only alternative. Finally, it might not be as hard, take as long, or cost as much as you assume.

See you at the after party!
APPENDIX A

- 9 NYCRR 2524.5, Rent Stabilization Code § 2524.5 (Grounds for refusal to renew lease or discontinue hotel tenancy and evict which \textbf{require} approval of the DHCR [NYS Division of Housing and Community Renewal])

- DHCR Fact Sheet #11

- DHCR Operational Bulletin 2009–1
9 NYCRR 2524.5, Rent Stabilization Code § 2524.5 (Grounds for refusal to renew lease or discontinue hotel tenancy and evict which require approval of the DHCR) states:

(a) The owner shall not be required to offer a renewal lease to a tenant or continue a hotel tenancy, and shall file on the prescribed form an application with the DHCR for authorization to commence an action or proceeding to recover possession in a court of competent jurisdiction after the expiration of the existing lease term, upon any one of the following grounds:

***

(2) Demolition.

(i) The owner seeks to demolish the building. Until the owner has submitted proof of its financial ability to complete such undertaking to the DHCR, and plans for the undertaking have been approved by the appropriate city agency, an order approving such application shall not be issued.

(ii) Terms and conditions upon which orders issued pursuant this paragraph authorizing refusal to offer renewal leases may be based:

(a) The DHCR shall require an owner to pay all reasonable moving expenses and afford the tenant a reasonable period of time within which to vacate the housing accommodation. If the tenant vacates the housing accommodation on or before the date provided in the DHCR’s final order, such tenant shall be entitled to receive all stipend benefits pursuant to clause (b) of this subparagraph. In addition, if the tenant vacates the housing accommodation prior to the required vacate date, the owner may also pay a stipend to the tenant that is larger than the stipend designated in a demolition stipend chart to be issued pursuant to an operational bulletin authorized by section 2527.11 of this Title. However, at no time shall an owner be required to pay a stipend in excess of the stipend set forth in such schedule. If the tenant does not vacate the housing accommodation on or before the required vacate date, the stipend shall be reduced by one sixth of the total stipend for each month the tenant remains in occupancy after such vacate date.

(b) The order granting the owner’s demolition application shall provide that the owner must either:

(1) relocate the tenant to a suitable housing accommodation, as defined in subparagraph (iii) of this paragraph, at the same or lower legal regulated rent in a closely proximate area, or in a new residential building if constructed on the
suitable interim housing shall be provided at no additional cost to the tenant; plus in addition to reasonable moving expenses, payment of a $5,000 stipend, provided the tenant vacates on or before the vacate date required by the final order;

(2) where an owner provides relocation of the tenant to a suitable housing accommodation at a rent in excess of that for the subject housing accommodation, in addition to the tenant’s reasonable moving expenses, the owner may be required to pay the tenant a stipend equal to the difference in rent, at the commencement of the occupancy by the tenant of the new housing accommodation, between the subject housing accommodation and the housing accommodation to which the tenant is relocated, multiplied by 72 months, provided the tenant vacates on or before the vacate date required by the final order; or

(3) pay the tenant a stipend which shall be the difference between the tenant’s current rent and an amount calculated using the demolition stipend chart, at a set sum per room per month multiplied by the actual number of rooms in the tenant’s current housing accommodation, but no less than three rooms. This difference is to be multiplied by 72 months.

(c) ***

(d) ***

(e) Where the order of the DHCR granting the owner’s application is conditioned upon the owner’s compliance with specified terms and conditions, if such terms and conditions have not been complied with, the order may be modified or revoked.

(f) Noncompliance by the owner with any term or condition of the administrator’s or commissioner’s order granting the owner’s application shall be brought to the attention of the DHCR’s compliance unit for appropriate action. The DHCR shall retain jurisdiction for this purpose until all moving expenses, stipends, and relocation requirements have been met.

(iii) Comparable housing accommodations and relocation. In the event a comparable housing accommodation is offered by the owner, a tenant may file an objection with the DHCR challenging the suitability of a housing accommodation offered by the owner for relocation within 10 days after...
the owner identifies the housing accommodation and makes it available for the tenant to inspect and consider the suitability thereof. Within 30 days thereafter, the DHCR shall inspect the housing accommodation, on notice to both parties, in order to determine whether the offered housing accommodation is suitable. Such determination will be made by the DHCR as promptly as practicable thereafter. In the event that the DHCR determines that the housing accommodation is not suitable, the tenant shall be offered another housing accommodation, and shall have 10 days after it is made available by the owner for the tenant’s inspection to consider its suitability. In the event that the DHCR determines that the housing accommodation is suitable, the tenant shall have 15 days thereafter within which to accept the housing accommodation. A tenant who refuses to accept relocation to any housing accommodation determined by the DHCR to be suitable shall lose the right to relocation by the owner, and to receive payment of moving expenses or any stipend. Suitable housing accommodations shall mean housing accommodations which are similar in size and features to the respective housing accommodations now occupied by the tenants. Such housing accommodations shall be freshly painted before the tenant takes occupancy, and shall be provided with substantially the same required services and equipment the tenants received in their prior housing accommodations. The building containing such housing accommodations shall be free from violations of law recorded by the city agency having jurisdiction, which constitute fire hazards or conditions dangerous or detrimental to life or health, or which affect the maintenance of required services. The DHCR will consider housing accommodations proposed for relocation which are not presently subject to rent regulation, provided the owner submits a contractual agreement that places the tenant in a substantially similar housing accommodation at no additional rent for a period of six years, unless the tenant requests a shorter lease period in writing.
Fact Sheet #11: Demolition

One of the grounds upon which an owner may end a rent regulated tenancy (rent controlled or rent stabilized) is where the owner intends to demolish the building. However, in such situations, the owner must first obtain the approval of The Division of Housing and Community Renewal (DHCR).

The owner is required to file Form RA-54, "Owner's Application for Order Granting Approval to Refuse Renewal of Lease and/or to Proceed for Eviction" with DHCR.

In New York City, if the building contains rent controlled tenants, before filing Form RA-54, the owner must also file with DHCR and serve the rent controlled tenants with Form RC-50 "Report and Certification To Alter or Demolish Occupied Housing Accommodations." The RC-50 needs to be filed prior to the submission of plans to the New York City Department of Buildings.

Owner’s Filing Requirements

An RA-54 application will be rejected and not docketed or accepted for filing, unless it contains the following documents:

1. Plans that have been reviewed and approved by the New York City Department of Buildings or other appropriate government agency outside of New York City.

2. Evidence of financial ability to complete the project, such as a Letter of Intent or a Commitment Letter from a financial institution, or other evidence that DHCR determines to be appropriate.

DHCR Application Processing

Once the RA-54 application is accepted for filing, DHCR will:

- serve each tenant with a copy of the application
- review all tenant responses
- conduct a hearing, if appropriate
- issue a written order granting or denying the application

During the processing of the case:

- Owners do not have to offer renewal leases, but tenants may remain in occupancy with no increase in rent.
- Owners are required to serve tenants with termination notices, which among other things state "that the tenant shall not be required to vacate until DHCR has issued a final Order approving the RA-54 application."

Tenant Protections

- If the owner's RA-54 application is granted, the DHCR Order will contain terms relating to relocation stipends, moving expenses, and will give the tenant a reasonable amount of time to vacate the apartment.

- If the owner's application is denied or withdrawn, the DHCR Order will direct the owner to offer the tenants prospective lease renewals.

- Orders can be appealed within 35 days. The filing of the appeal (PAR) stays (freezes) the order.

- Warrants of eviction must be obtained from a court of competent jurisdiction.

This Fact Sheet is a summary of this topic. For a detailed discussion, please refer to:


Appendix A
Sources:
- Tenant Protection Regulations, Sections 2504.4(f), 2507.11
- New York City Rent Stabilization Code, Sections 2524.5(a)(2), 2527.11
- New York City Rent and Eviction Regulations, Sections 2203.10, 2204.8(c), 2209.8

For more information or assistance, call the DHCR Rent InfoLine, or visit your Borough or County Rent Office (/AboutUs/contact.htm#ora).

Issued: 11/08

Last updated on 10/25/2012

Quick Links
- Contact Us (/AboutUs/ContactUs.htm)
- Executive Staff (/AboutUs/ExecutiveStaff/)
- MWBE Corner (/AboutUs/MWBECorner.htm)
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- Public Notices (/AboutUs/Notices/)
- Storm Recovery Resources (/Topics/StormRecoveryResources.htm)
- HCR Weather-Related Office closings (for HCR staff only) (/AboutUs/HCR-closings.htm)

The Homes for Veterans Program:

Interest Rate

3.875%

For complete program details, click here (/Topics/Home/Buyers/SONYMA/SONYMAProductsforFirstTimeHomebuyers.htm).
I. Introduction

This Operational Bulletin replaces Operational Bulletin 2002-1, issued September 19th, 2002, and is issued pursuant to Sections 2504.4(f) and 2507.11 of the Emergency Tenant Protection Regulations ("TPR"), Sections 2524.5(a)(2) and 2527.11 of the Rent Stabilization Code ("RSC"), and Sections 2204.8(c) and 2209.8 of the New York City Rent and Eviction Regulations ("CRER").

TPR Section 2504.4(f) and RSC Section 2524.5(a)(2) provide that an owner shall not be required to offer renewal leases to tenants and may maintain an action or proceeding to recover possession in a court of competent jurisdiction after the expiration of the existing lease term, where DHCR has granted such owner's application to demolish all of the apartments located in the subject building. Below are the eligibility, notice, order, relocation and other requirements relating to the demolition application process.

II. Eligibility & Application

The term, "owner", is specifically defined in TPR Section 2500.2(g) and RSC Section 2520.6(i). A demolition proceeding must be instituted by the filing of an application in the name of the owner as defined in such sections.

An owner may file, either personally or by mail, an Owner's Application for Order Granting Approval to Refuse Renewal of Lease and/or to Proceed for Eviction (Form RA-54). At the time the owner files the application, a sufficient number of copies of the application for each tenant to receive a copy must also be submitted.

An owner must state in the application that recovery of possession of the housing accommodations is being sought for the purpose of demolishing them. No demolition application will be accepted by DHCR unless the owner has submitted proof to the DHCR of financial ability to complete such undertaking, and plans for the undertaking have been approved by the appropriate governmental agency. Evidence of financial ability to complete the project may include a Letter of Intent or a Commitment Letter from a financial institution, or such other evidence as DHCR may deem appropriate under the circumstances.

As promptly as practicable after the application has been filed, the DHCR will serve each tenant with a copy thereof and afford the tenant 20 days to answer. The word, "tenant", as used throughout this Bulletin, means all persons named on the lease, treated as a single entity, or in the case of a housing accommodation subject to CRER Section 2204.8(c), any person entitled to the possession or to the use or occupancy of the housing accommodation, treated as a single entity. The DHCR will also mail a copy of this Operational Bulletin to each tenant, advising that tenant of the owner's obligations concerning Termination Notice requirements pursuant to TPR Section 2504.3(c)(3) or RSC Section 2524.2(c)(3), the owner's obligation pursuant to TPR Section 2504.4(f)(2) or RSC Section 2524.5(c) to pay certain moving expenses and relocation benefits, and the owner's other obligations, the tenants' rights and procedural advisements contained herein.

III. Notice Provisions

Appendix A
Once an application has been filed, an owner may refuse to renew tenants’ leases until a determination of the owner’s application has been made. Tenants may remain in occupancy during such period, and the owner may not increase the rents. Should the application be denied or withdrawn, the owner must again offer prospective renewal leases to the tenants, as directed in the DHCR’s order of denial or withdrawal.

Pursuant to TPR Section 2504.3(c)(3), after filing a demolition application, an owner must serve each tenant with a Termination Notice at least 90 and not more than 120 days prior to the expiration of the lease term ("window period"). In New York City, pursuant to RSC Section 2524.2(c)(3), after filing a demolition application, an owner must serve each tenant with a Termination Notice at least 90 and not more than 150 days prior to the expiration of the tenant's lease term, or in the case of a hotel permanent tenant without a lease, at least 90 and not more than 150 days prior to the commencement of a court proceeding. Provided each tenant whose "window period" occurs prior to the issuance of the order is served with a timely Termination Notice, the order granting the application may be issued. See exceptions below.

The Termination Notice may be served either personally or by regular or certified mail. A contemporaneous affidavit providing dispositive facts by the person making the service or mailing a receipt indicating proof of certified mailing shall constitute sufficient proof of service. When service is by registered or certified mail, the stamped post office receipt shall constitute sufficient proof of service. Once such proof of service has been submitted to the DHCR, the burden of proving non-receipt shall be on the tenant.

The Termination Notice shall state:

1. that the owner will not renew the tenant's lease because the owner has filed an application for permission to recover possession of all housing accommodations in the building for the purpose of demolishing them, for which plans and financing have been obtained, as stated in the application;

2. that while the application is pending, the tenant may remain in occupancy;

3. that the tenant shall not be required to vacate until the DHCR issues a final order approving the application and setting forth the time for vacating, stipends and other relocation conditions; and

4. that the tenant must be offered a prospective renewal lease if the application is withdrawn or denied.

Interested parties should be aware that DHCR cannot order the eviction of any tenant. Warrants of eviction must be obtained from courts of competent jurisdiction. Additionally, it should be noted that tenants who elect to vacate prior to the dates provided in the order, will, if stipends are applicable, be eligible to receive an enhanced stipend.

IV. Administrative Orders

Unless the owner has submitted proof of its financial ability to complete the undertaking to the DHCR, and plans for the undertaking have been approved by the appropriate agency, the owner’s application will not be accepted, but instead, will be rejected without being docketed.

DHCR may, at the discretion of the Administrator, and upon 30 days written notice to the owner, dismiss an application because of the owner’s failure to proceed in a timely fashion. Upon the issuance of an order denying the application, or if the application is withdrawn by the owner, prospective renewal leases must be offered to all affected tenants as directed in the order of denial or withdrawal.

An order granting the application shall also be conditioned upon the compliance by the owner with such terms as shall be set by the Administrator relating to stipends and moving expenses, and the compliance by the owner with service of Termination Notices.

In the event that the owner does not serve each tenant whose "window period" occurred prior to the issuance of the Administrator's order with a Termination Notice, but can establish before the Administrator that such failure was not the result of a willful attempt to evade this obligation, and if the owner can establish that he or she has otherwise substantially complied with the obligation to serve every such tenant, the DHCR shall not be required to terminate the proceeding and may issue the order. Nevertheless, any such tenant who is not served with the Termination Notice will be entitled to remain in occupancy at no increase in rent pursuant to a one-year "deemed lease," commencing on the date following the expiration date of the prior lease. Thereafter, during the pendency of the proceeding, no additional

Appendix A
renewal rights vest pursuant to this "deemed lease." The Administrator’s Order shall provide that, alternatively, the owner may, at its option, elect to pay a stipend based on an additional period up to one year for any tenant remaining in occupancy who was not served timely with a Notice of Termination, and who leaves on or before the vacate date indicated in the final order.

In no event may any tenant be required to move out of an apartment before the expiration date of that tenant's lease, or the vacate date indicated when the owner's application is approved, whichever is later. Where the DHCR determines that an owner's failure to timely serve a Notice of Termination occurred, but was not willful, and where such owner does not pay an additional one-year stipend, the affected tenant may remain in occupancy for the "deemed" one-year lease term, if later than such periods.

V. Stipends and Other Relocation Conditions

For housing accommodations subject to the TPR or RSC, the word, "tenant", shall mean all persons named on the lease, treated as a single entity. For housing accommodations subject to CRER Section 2204.8(c), such word shall mean all persons entitled to the possession or to the use or occupancy of any housing accommodation, treated as a single entity.

Any order granting an owner's application shall require the owner to pay all reasonable moving expenses. The tenant shall also be afforded a reasonable period of time within which to vacate the apartment. If the tenant vacates the apartment on or before the date provided in the DHCR final order which authorizes the owner to refuse to renew the tenant's lease and obtain possession of the apartment, such tenant shall be entitled to receive all stipend benefits pursuant to subparagraphs (1) or (2) or (3) below. If the tenant does not vacate the apartment on or before the date upon which a final order authorizes the owner to obtain possession of the apartment, the stipend shall be reduced. The reduction of the stipend shall be one-sixth of the total stipend for each month the tenant remains in occupancy after the vacate date indicated in the final order.

The order granting the owner's application shall also provide that, at the owner's option, the owner may:

1. Relocate the tenant to a suitable housing accommodation at the same or lower regulated rent in a closely proximate area, or in a new residential building if constructed on the site, in which case suitable interim housing shall be provided to the tenant at no additional cost; plus, in addition to reasonable moving expenses, payment of a $5,000 stipend shall be made to the tenant, provided he or she vacates on or before the vacate date set forth in the DHCR Order; or

2. Where an owner provides relocation of the tenant to a suitable housing accommodation at a rent in excess of that for the subject housing accommodation, in addition to the tenant's reasonable moving expenses, the owner may be required to pay the tenant a stipend equal to the difference in rent, at the commencement of the occupancy by the tenant of a new housing accommodation, between the subject housing accommodation and the housing accommodation to which the tenant is relocated, multiplied by 72 months (6 years), provided the tenant vacates on or before the vacate date set forth in the DHCR order; or

3. Pay the tenant a stipend which shall be the difference between the tenant's current rent and an amount to be calculated using the demolition stipend chart, per room per month, multiplied by the actual number of rooms in the tenant's housing accommodation, but no less than three rooms. This difference is to be multiplied by 72 months (6 years). Such amount is as follows:

For housing accommodations subject to the TPR

- Nassau County $493
- Westchester County $396
- Rockland County $334

For New York City housing accommodations subject to the RSC or CRER Section 2204.8(c):

$526

For housing accommodations subject to the TPR, please consult the following Demolition Stipend Chart for sample calculations of stipends:
As registered

The 2005 New York City Housing Vacancy Survey calculated the mean asking rent level at $491 per month. Since the actual enumeration for the Survey occurred between January and May of 2005, the rent level was increased by 2.75% (one year lease renewal guideline for 2005-2006) and by 4.25% (one year lease renewal guideline for 2006-2007) to a total of $526.

<table>
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<tr>
<th>Number of Rooms</th>
<th>Maximum Monthly Allowance</th>
<th>Monthly Allowance By Current Rent, If Rent Equals</th>
<th>Total Stipend By Current Monthly Rent For Tenancies Based On A 6 Year Length of Tenure</th>
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These values are based on owners’ responses to the 2008 Property Maintenance and Operations Cost Surveys conducted for each county, and are the calculated mean rents, per room, of units entering vacancy leases in 2007. As in New York City, the stipend compensates for a reasonably expected alternative rent multiplied by the typical length of tenure (72 months).

For housing accommodations subject to the RSC or CRER Section 2204.8(c), please consult the following Demolition Stipend Chart for sample calculations of stipends:

<table>
<thead>
<tr>
<th>Number of Rooms</th>
<th>Maximum Monthly Allowance</th>
<th>Monthly Allowance By Current Rent, If Rent Equals</th>
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$396 WESTCHESTER

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$334 ROCKLAND

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These values are based on owners’ responses to the 2008 Property Maintenance and Operations Cost Surveys conducted for each county, and are the calculated mean rents, per room, of units entering vacancy leases in 2007. As in New York City, the stipend compensates for a reasonably expected alternative rent multiplied by the typical length of tenure (72 months).
For orders issued during the period commencing October 1, 2008, and on or after October 1st of each subsequent year, the $526 per month base will be raised by the applicable guidelines increase available for a one year renewal lease. The $526 per month base, plus annual adjustments, shall remain in effect until the release of a new Housing and Vacancy Survey for the City of New York, at which time the base rent, per room, shall be adjusted to reflect the mean asking rent, per room, for all vacant rental units in that next Survey.

The formula for determining the stipend is based on data derived from the 2005 New York City Housing and Vacancy Survey. The stipend compensates for a reasonably expected alternative rent ($526 per room, per month), multiplied by the typical length of tenure (72 months). While the $526 per month rent remains constant for the projected time period, it is deemed to be equivalent to taking the present value of such rent with projected guidelines increases over time.

**Applicable To All Housing Accommodations**

Wherever a stipend would result in any tenant losing a subsidy or other governmental benefit which is income dependent, at the tenant's option, the tenant may elect to waive the stipend and have the owner at its own expense, relocate the tenant to a suitable housing accommodation at the same or lower regulated rent in a closely proximate area.

In the event that the tenant dies prior to the issuance by the DHCR of a final order granting the owner's application, the owner shall not be required to pay such stipend to the estate of the deceased tenant.

Where the order of the DHCR granting the owner's demolition application is conditioned upon the owner's compliance with specified terms and conditions, if such terms and conditions have not been complied with, the order may be modified or revoked.

The owner's non-compliance with any term or condition of the Administrator's or Commissioner's order granting the owner's application shall be brought to the attention of the DHCR's Compliance Unit for appropriate action. DHCR shall retain jurisdiction for this purpose until all moving expenses, stipends, and relocation requirements have been met.

**VI. Comparable Apartments and Relocation**

In the event a comparable apartment is offered by the owner, a tenant may file an objection with the DHCR challenging the suitability of an apartment offered by the owner for relocation, within 10 days after the owner identifies the apartment and makes it available for the tenant to inspect and consider the suitability thereof. The apartment will then be inspected by the staff of the DHCR within 30 days, on notice to both sides, so that the DHCR may determine whether the offered apartment is suitable. The DHCR will make such determination as promptly as practicable thereafter. In the event the DHCR determines that the apartment is not suitable, the tenant shall be offered another apartment, and shall have 10 days after it is made available by the owner for the tenant's inspection to consider its suitability.

If DHCR determines that the offered apartment is suitable, the tenant shall have 15 days thereafter within which to accept it. A tenant who refuses to accept relocation to any apartment determined by the DHCR to be suitable shall lose the right to relocation by the owner and to receive payment of moving expenses or any stipend.

"Suitable housing accommodations" as used in this Operational Bulletin shall mean apartments which are similar in size and features to the respective apartments now occupied by the tenants. Such apartments shall be freshly painted before the tenant takes occupancy and shall be provided with substantially the same required services and equipment the tenants received in their prior apartments. The building containing such accommodations shall be free from violations of law recorded by the governmental agency having jurisdiction, which constitute fire hazards or conditions dangerous or detrimental to life or health, or which affect the maintenance of required services.

The DHCR will consider apartments proposed for relocation which are not presently subject to rent regulation, provided the owner submits a contractual agreement, between the tenant and the owner of such proposed apartment, that places the tenant in a substantially similar housing accommodation at no additional rent for a period of six years, unless the tenant voluntarily requests in writing a shorter lease period.

**Appendix A**
VII. Administrative Review

Any party aggrieved by the Administrator's determination may file a Petition for Administrative Review (PAR) in accordance with TPR Part 2510 or RSC Part 2529. The filing of a PAR shall stay such order until the final determination of the PAR by the Commissioner. Upon a showing that there are equitable grounds, the Commissioner may entertain requests for expedited processing of the PAR.

Leslie Torres
Deputy Commissioner for Rent Administration
February 10, 2009

Last updated on 02/24/09

Quick Links

- Contact Us (/AboutUs/ContactUs.htm)
- Executive Staff (/AboutUs/ExecutiveStaff/)
- MWBE Corner (/AboutUs/MWBECorner.htm)
- Executive Order #38 (http://executiveorder38.ny.gov)
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- HCR Weather-Related Office closings (for HCR staff only) (/AboutUs/HCR-closings.htm)

NY WORKS for Business

(http://nyworks.ny.gov/)

(http://www.nyhousingsearch.gov/)

SONYMA State of New York Mortgage Agency

(/Topics/Home/Buyers/SONYMA/SONYMAProductsforFirstTimeHomebuyers.htm)

The Homes for Veterans Program:

Interest Rate

3.875%

For complete program details, click here
(/Topics/Home/Buyers/SONYMA/HomesforVeteransProgram.htm).

Appendix A
ABOUT THE AUTHOR

Michelle Maratto Itkowitz is the "Itkowitz" in Itkowitz PLLC, which she joined in 1997 and now heads. Michelle has been practicing real estate law, specializing in the area of residential and commercial landlord and tenant law in the City of New York, for over twenty years. She also is very experienced in all manner of real estate transactions and in general commercial litigation.

Michelle publishes and speaks frequently. The groups Michelle has taught, presented, and written for include: Lawline.com; LandlordsNY; Lorman Education Services; The Association of the Bar of the City of New York; The Practicing Law Institute; The New York State Bar Association, Real Property Section, Commercial Leasing Committee; Thompson Reuters; The Cooperator; The New York State Bar Association CLE Publications; The Brooklyn Real Estate Summits.

Michelle is currently co-authoring the New York State Bar Association's New York Commercial Landlord and Tenant Law and Procedure Book. Michelle authored a manual on evictions in New York City for Lorman Education Services and co-authored a chapter on lease remedy clauses for the New York State Bar Association Commercial Leasing Manual. Michelle is frequently quoted in the press on real estate issues, including in Brick Underground and AM NY.

Michelle is admitted to practice in New York State and the United States District Court for the Southern District of New York.

Michelle is a pioneer of Legal Project Management, a unique and better way for lawyers and clients to work together. Michelle writes and speaks extensively about Legal Project Management. Ask Michelle about our alternative legal fee options! (This is her favorite topic.)

Michelle went to Union College (Bachelor of Arts in Political Science in 1989), and she got her Juris Doctorate from Brooklyn Law School in 1992.

There are many ways to keep up with Michelle. Michelle's Legal Project Management blog is becoming very popular http://itkowitzlegalprojectmanagement.blogspot.com/. Michelle publishes and speaks frequently – next up on May 20, 2014 is a continuing education program for the Columbia Society of Real Estate Appraisers (email mmaratto@itkowitz.com for more info). And when Michelle tweets (@m_maratto), which is not an obnoxious amount, you can not only actually understand what she is saying, but it is useful stuff about real estate, business, and the legal industry that you might miss between the headlines. Michelle would be happy to speak to you.

Here she is!