

FACT SHEET



Andrew M. Cuomo, Governor

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DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION

30 Succession Rights

For rent stabilized and rent controlled apartments throughout New York State, a "family member" of the tenant may have the right to a rent stabilized renewal lease or protection from eviction in an apartment under rent control when the tenant dies or permanently leaves the apartment. For a detailed explanation of "family member", refer the "Family Member-Definition" portion of this Fact Sheet.

A family member has the right to a renewal lease or protection from eviction if he or she resided with the tenant as a primary resident in the apartment for two (2) years immediately prior to the death of, or permanent departure from the apartment by the tenant. The family member may also have the right to a renewal lease or protection from eviction if he/she resided with the tenant from the inception of the tenancy or from the commencement of the relationship. If the family member trying to establish succession rights is a senior citizen or disabled person, then the minimum period of co-occupancy is reduced to one (1) year.

The first family member to establish succession rights on or after June 20, 1997 is not required to pay the owner a vacancy increase. (See Example #1)

However, the owner will be entitled to collect the vacancy increase from the next family member, called the second successor, who is entitled to receive a renewal lease or to remain in possession (**See example #2**). The vacancy increase for the second successor also applies to apartments subject to rent control (**See example #4**). Once the vacancy increase is applied to this second successor family member, a subsequent succession situation is again created (**See example #3**).

Examples

Example #1

Tenant A vacated a rent stabilized apartment on August 1, 2006 paying a legal rent of \$800 under a lease to expire on January 31, 2007. Family member B, who has lived with A as a primary resident of the apartment for three years, is entitled to receive a renewal lease for the apartment commencing February 1, 2007 without paying the owner any vacancy increases. B signed, in B's name only, a two-year renewal lease starting February 1, 2007 with a 7.25% rent increase and the rent became \$858 ($\$800 + \$58(7.25\% \text{ of } \$800)$).

Example #2

Continuing from Example #1, family member C began to live with A and B shortly before A left and continued to live with B. If B were to leave the apartment after two years, and C were entitled to receive a renewal lease on February 1, 2009 in C's own name because of the succession rules, C would be required to pay to the owner the vacancy increase. If C chose a two year lease, the legal rent would increase by 20% to \$1029.60 (\$858 + \$171.60(20% of \$858)).

Example #3

Continuing from Example #2, if C vacated and family member D became entitled to a renewal lease as a successor, D would not have to pay a vacancy increase as D is now the first succeeding tenant to C, who had received a vacancy increase.

Example #4

On June 1, 2000, in a rent control apartment, Tenant A, whose rent was \$550, dies. The son, family member B, because of succession rules, continues to occupy the apartment at a rent of \$550. If B were to permanently vacate on October 1, 2011 and family member C had succession rights to the apartment, the rent of \$550 would be increased by \$242 (44%) to a new rent of \$792. This increase is the sum of the vacancy allowance of 20% (20% x \$550 = \$110) and the longevity vacancy allowance of 24% (40 years since the last vacancy increase x .6% x \$550 = \$132). The apartment would still be under rent control.

Family Member - Definition

"Family member" is defined as either a spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant.

The definition of "family member" also includes any other person(s) residing with the tenant or permanent tenant in the housing accommodation as a primary resident, who can prove emotional and financial commitment and interdependence between such person(s) and the tenant.

The following are to be considered in determining whether emotional and financial commitment and interdependence between the tenant and such other occupants existed:

- a) longevity of the relationship;
- b) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;
- c) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, and loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;
- d) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

- e) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills, naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as representative payee for purposes of public benefits, etc.;
- f) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;
- g) regularly performing family functions, such as caring for each other's extended family member and/or relying upon each other daily for family services;
- h) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship.

The determination is not limited to any one factor, and in no event would evidence of a sexual relationship between such persons be required or considered.

"Tenant" relates to any person or persons named on a lease or rental agreement who is or are obligated to pay rent for the use of the housing accommodation.

"Permanent tenant" relates to individuals, who have continuously resided in housing accommodations located in hotels as a primary residence for a period of at least six months, or a hotel tenant in occupancy pursuant to or entitled to a lease.

Disabled Person

"Disabled Person" is defined as a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which substantially limit one or more of such person's major life activities.

Senior Citizen

"Senior citizen" is defined as a person who is sixty-two years of age or older.

Minimum Residency Requirements

The minimum periods of required residency will not be considered interrupted by any period during which the "family member" temporarily relocates because he or she:

- a) is engaged in active military duty;
- b) is enrolled as a full-time student;

- c) is not in residence at the housing accommodation in accordance with a court order not involving any term or provision of the lease and not involving any grounds specified in the Real Property Actions and Proceedings Law;
- d) is engaged in employment requiring temporary relocation from the housing accommodation;
- e) is hospitalized for medical treatment; or
- f) has such other reasonable grounds that shall be determined by the DHCR upon application by such person.

On the Notice To Owner Of Family Members Residing With The Named Tenant In The Apartment Who May Be Entitled To Succession Rights/Protection From Eviction (DHCR Form RA-23.5), the tenant may at any time, inform the owner of the names of all persons (other than the tenant), who are residing in the apartment. Or, the owner may at any time, but no more than once in any twelve months, request from the tenant the names of all such persons.

The following information pertaining to such persons should accompany the names;

- a) if the person is a family member as defined above;
- b) if the person may become entitled to be named as a tenant on a renewal lease or become entitled to protection from eviction upon the passage of the applicable minimum period of required residency;
- c) the date of the commencement of such person's primary residence with the tenant; and
- d) if the person is a senior citizen or disabled person as defined above.

Sources:

New York City Rent Stabilization Code, Section 2523.5

Tenant Protection Regulations, Section 2503.5

New York City Rent and Eviction Regulations, Section 2202.25

New York State Rent and Eviction Regulations, Section 2102.8

*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
South side of 110th St. and below

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
North side of 110th St. and above

Westchester County

75 South Broadway
White Plains, NY 10601