



*State and City Rent and Eviction Regulations
Emergency Tenant Protection Regulations
New York City Rent Stabilization Code*

Advisory Opinion 89-2 (December 21, 1989)

***False Statements:
Criminal Liability and Civil Penalties***

This Advisory Opinion is issued pursuant to:

State Rent and Eviction Regulations ("State Rent Regs") Sections 2106.1 and 2109.8;

City Rent and Eviction Regulations ("City Rent Regs") Sections 2206.3 and 2209.8;

Emergency Tenant Protection Regulations ("TPR") Sections 2505.1, 2505.2, 2506.2;

Rent Stabilization Code ("RSC") Sections 2525.1, 2525.2, 2526.2 and 2527.11.

I. Authority

A. Rent Laws and Regulations

Rent Controlled Housing Accommodations Outside New York City - Pursuant to section 10(1) of the Emergency Housing Rent Control Law ("State Rent Law"), it is unlawful for any person to demand or receive any rent for any housing accommodations in excess of the lawful maximum rent, or to *attempt* to do so.

Filing, in connection with an application to increase the lawful maximum rent, of documents or reports containing statements or entries which are false in any material respect is an attempt to "demand" or "receive" an illegal rent in violation of this section. A landlord who demands or receives increased rents pursuant to an order granting such application is in violation of this section.

Section 2106.1(a) of the State Rent Regs imposes penalties upon any person who wilfully violates such provision of the State Rent Law, and any person who makes any statement or entry which is false in any material respect in any document or report which is required to be kept or filed under the State Rent Law or Regs., including any rent registration statement, or who wilfully omits or neglects to make any material entry in any such document or report.

This document is being reissued for informational purposes only.

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



A person who is convicted of any of these acts or omissions is subject to a fine of up to \$5,000 and/or imprisonment for up to one year. Whenever the DHCR has reason to believe that any person is liable to such punishment, it may certify the facts to the district attorney of the county having jurisdiction of the violation. As defined in Criminal Procedure Law section 1.20(32), "District Attorney" includes the State Attorney General. Therefore, such certification of facts may also be made to the Attorney General.

Rent Controlled Housing Accommodations In New York City - Sections 26-412(a) of the City Rent and Rehabilitation Law ("City Rent Law"), and 2206.1(a) of the City Rent Regs., also proscribe any demand or receipt of excess rent, or attempts to do so, and the making of materially false statements or entries in any document or report which is required to be kept or filed under the City Rent Law or Regs., including any rent registration statement, or a willful omission or neglect to make required material entries in any such document or report. DHCR is authorized to impose similar criminal penalties as those discussed above, and to certify facts constituting violations to the district attorney for prosecution.

In addition, pursuant to section 2206.3 of the City Rent Regs., the DHCR may also impose civil penalties upon any person engaging in such acts by order after hearing, and bring an action to recover the penalty in a court of competent jurisdiction. Such penalties, which are payable to the DHCR, may be in the amount of \$100.00 for the first unlawful act, and \$500.00 for each subsequent offense.

Rent Stabilized Housing Accommodations Outside New York City - Pursuant to TPR section 2505.1(a), it is unlawful for any person to demand or receive any rent for any housing accommodation in excess of the legal regulated rent, or to *attempt* to do so.

Filing, in connection with an application to increase the legal regulated rent, or in connection with a proceeding to determine a legal regulated rent, of documents or reports containing statements or entries which are false in any material respect is an attempt to "demand" or "receive" an illegal rent in violation of this section. An owner who demands or receives increased rents pursuant to an order granting such application is in violation of this section.

TPR section 2505.2 prohibits direct or indirect evasion of legal regulated rents. Filing of materially false rent registration statements, or any documents or reports containing materially false statements in connection with an application to increase the legal regulated rent, or in connection with a proceeding to determine a legal regulated rent, is an evasionary practice in violation of this provision.

Pursuant to TPR section 2506.2(b), the DHCR may impose a penalty of up to \$250 (plus reasonable costs and attorney fees of the proceeding), upon an owner for each knowing violation of the Emergency Tenant Protection Act or the TPR. This penalty is payable to the tenant.

Rent Stabilized Housing Accommodations In New York City - Pursuant to RSC section 2525.1, it is unlawful for any person to demand or receive any rent for any housing accommodation in excess of the legal regulated rent, or to *attempt* to do so.

Filing, in connection with an application to increase the legal regulated rent, of documents or reports containing statements or entries which are false in any material respect is an attempt to "demand" or "receive" an illegal rent in violation of this section. An owner who demands or receives increased rents pursuant to an order granting such application is in violation of this section.

RSC 2525.2(a) prohibits direct or indirect evasion of legal regulated rents. Filing of materially false rent registration statements, or any documents or reports containing materially false statements in connection with an application to increase the legal regulated rent is an evasionary practice in violation of this provision.

Pursuant to RSC section 2526.2(b), the DHCR may impose a penalty of up to \$250 upon owners for each knowing violation of the Rent Stabilization Law or the RSC. This penalty is payable to the DHCR.

B. Penal Law

Provisions of the Penal Law which may apply to false statements filed with the DHCR include:

1) Offenses involving false written statements:

Falsifying business records with intent to defraud (class E felony or A misdemeanor, depending upon degree);

Offering a false instrument for filing (class E felony or A misdemeanor, depending upon degree, and whether there was intent to defraud the state);

Issuing a false financial statement describing a person's financial condition or ability to pay with intent to defraud (class A misdemeanor).

2) Perjury and related offenses:

Perjury in the second degree (depending upon whether the false statement is made in a subscribed written instrument for which an oath is required by law or appropriate regulatory provision; for example, an affidavit. Class E felony);

Knowingly making a punishable false written statement (the written instrument does not require notarization but bears a notice that false statements made therein are punishable; for example, an affirmation. Class A misdemeanor).

3) Schemes to defraud, based upon a systematic ongoing course of conduct with intent to defraud more than one person by false or fraudulent representations. (Class E felony or A misdemeanor, depending upon how much money is obtained from one or more such persons).

4) Prosecution for forgery and related offenses may also be appropriate under certain circumstances (such offenses, depending upon the crime charged, and the degree thereof, are punishable as felonies or misdemeanors).

Generally, class E felonies are punishable by imprisonment of from one to four years, and class A misdemeanors by imprisonment of up to one year.

II. Criminal Prosecution

As discussed above, the DHCR may certify facts for criminal prosecution to the District Attorney or State Attorney General under the State and City Rent Regs. In addition, the DHCR may also make referrals to the District Attorney having jurisdiction, or to the State Attorney General under Executive Law section 63(3).

In appropriate cases, the DHCR may pursue criminal prosecution of owners, *as well as any other persons* (including owners' agents and vendors), who either demand or receive a rent in excess of the lawful rent, or who attempt to do so, or who knowingly make materially false statements or entries in any document or report filed with the DHCR, including applications for rent increases. Such prosecution will be pursued either by certification of facts pursuant to the State and City Rent Regs, or referral to a district attorney or the State Attorney General.

III. Civil Penalties

The DHCR may impose the maximum civil penalties against any person who files a false registration statement with the DHCR, or a false statement pursuant to any proceeding before it, including proceedings to determine legal regulated rents or maximum legal rents, as well as rent increase applications.

In general, increases in rent, other than lease guidelines and individual apartment improvement increases for New York City rent stabilized housing accommodations, may be lawfully collected from tenants only if the DHCR approves the increases. In order to obtain the DHCR's approval, owners must first apply to the DHCR and submit appropriate supporting documentation.

Filing, in order to obtain a rent increase, of a rent registration statement or an application containing statements of fact known to be false in any material respect, is deemed to be an attempt to demand or receive an unlawful rent, or to evade lawful rents.

Where the DHCR, in reliance upon such materially false statements, grants a rent increase, the owner is deemed to have demanded or received an unlawful rent, and to have evaded the lawful rents. In addition, where the owner obtains lease guidelines increases based upon a false registration statement or statements filed with the DHCR, the owner is also deemed to have demanded or received an unlawful rent, and to have evaded the rent laws.

Filing of a materially false registration statement or rent increase application, which relates to more than one housing accommodation, may be deemed to constitute separate and distinct attempts to demand or receive unlawful rents, or to evade lawful rents, warranting the imposition of a separate penalty for each affected housing accommodation.

Owners of rent stabilized housing accommodations may be assessed \$250 per unit for each unlawful attempt or act. If an owner of rent stabilized housing accommodations has actually received an unlawful rent as a result of the granting of the application, the DHCR may impose treble damages on the amount of the overcharge in addition to the civil penalty of \$250 per unit.

Owners of rent controlled housing accommodations may be assessed \$100 per unit for each first unlawful act or attempt, and \$500 per unit for each subsequent offense.

In addition, if a rent increase application is found to contain intentionally false material statements as to any individual item, the DHCR may reject the entire application, and permanently bar the owner from again seeking a rent increase for any of the work which is the subject of the application.

IV. Illustrations of Penalties

- (1) An owner files an application seeking rent increases from 35 rent stabilized tenants based on 3 distinct Major Capital Improvements (“MCI’s”). The DHCR determines that the MCI application includes a knowing overstatement of the costs incurred by the owner for *one* of the improvements. Based upon this determination, the DHCR may impose a civil penalty for evasionary practices against the owner in the amount of \$17,500 (35 x \$500), reject the entire application, and permanently bar the owner from applying for a rent adjustment based on *any* of the improvements set forth in the fraudulent application including improvements, the costs of which were not overstated. Similarly, if the MCI contains knowing overstatements of the cost of more than one of the improvements, the penalty will be increased accordingly (i.e., 2 improvements = 2 x 35 x 500 = \$35,000).
- (2) An owner’s MCI application, which contains intentionally false statements of material fact, is granted by the DHCR, and the owner begins to collect the rent increase. Upon subsequently determining that approval of the application was fraudulently obtained, the DHCR may revoke the order, permanently bar the owner from applying for a rent adjustment based on *any* of the improvements included in the application, and impose civil penalties, and treble damages (for rent stabilized units), on the overcharge.
- (3) An owner of a building containing 25 rent controlled housing accommodations applies for an order adjusting the maximum rent for a successive two-year period (“MBR”). In support of such application, the owner intentionally files an Operating and Maintenance Expense Report which the DHCR determines to contain a false statement of material fact. Based upon this determination, the DHCR may impose a civil penalty against the owner in the amount of \$2,500 (25 x \$100), reject the application, and bar the owner from reapplying for an MBR increase within the same biennial cycle. If an order adjusting the maximum rent has been issued prior to the determination of the fraud, the DHCR may revoke the order and reduce the rent to the level in effect prior to the granting of the application.

In addition, the civil penalties may amount to \$2,500 (25 x \$100) for the first month that the overcharge in each apartment was collected and \$12,500 (25 x \$500) for each subsequent month that the overcharge in each apartment was collected.

V. Request to Close Without Action

An owner may request that an application for a rent adjustment be “closed without action.” However, in the event that a subsequent application is filed for the same or related items, the “closed” application will be consolidated with such subsequent action, and all relevant documents filed at any time will be considered in determining the subsequent application.

A request to close an application without action will not be granted after a Notice of Charges for filing false statements with such application has been issued by the Office of Rent Administration.

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for Rent Administration*