



New York APARTMENT LAW INSIDER.®

The How-to Resource for Owners, Managers & Real Estate Professionals

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Council Member Seeks to Change RGB Methodology

City Council Member Corey Johnson seeks to introduce new legislation that would change the methodology of the city's Rent Guidelines Board (RGB) for determining rent guidelines for rent-stabilized apartments. At a rally in front of City Hall, he said that while owners' operating expenditures have gone up slightly in the past few years, their incomes have risen much faster.

His plan entails discontinuing consideration of the Price Index of Operating Costs (PIOC) and instead mandating the RGB to place greater weight on owner income. He says this would result in decisions about annual rent adjustments that more accurately reflect the costs and revenues accrued by owners.

Johnson claims that the PIOC doesn't measure the income owners receive from their properties, even though the RGB receives actual numbers of owners' income and expenses. He says that this income and expenses data proves the PIOC has overestimated operating costs by roughly one-third for the past several years.

Currently, owners of income-producing property are required to file their income annually with the Department of Finance if they own more than 10 units. The proposed legislation would lower the minimum to six units. Johnson stated he would like to see New York City's RGB operate more like the boards in Westchester and Nassau County, which don't use a price index and have frozen rents several times, compared to New York City, which has never seen a rent freeze. ♦

FEATURE

What to Do if Tenant Won't Give You Duplicate Key

Tenants can install and maintain their own locks on their apartment entrance doors in addition to the lock supplied by the owner. The lock may be no more than three inches in circumference, and tenants must provide owners with a duplicate key upon request. Any lease provision requiring a tenant to pay additional rent or other charges for the installation of an additional lock is void as against public policy and unenforceable (Multiple Dwelling Law §51-c).

If your tenant installs a lock, it's important that you ask for and get this duplicate key. Otherwise, it will be difficult to get into the apartment in an emergency. For example, you may need to get into the apartment when the tenant isn't home, to fix a leaky pipe, or even when the tenant is home but is hurt or ill and needs help. So if the tenant won't give you a duplicate key after you request it, act quickly to convince the tenant to give it to you.

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MANAGEMENT BASICS

Important Dates for Challenging NYC Property Taxes

Every Jan. 15, the NYC Department of Finance (DOF) sends to each owner a tentative assessment for the next fiscal year (2016, in the current case) conveying the market value of the lot, including improvements, the actual assessed value of the lot, and, most important, the value upon which the lot will be taxed for the upcoming fiscal year.

According to the recently released tentative property assessment roll, New York City's hot real estate market led to a 9.1 percent hike on assessed property values, which probably translates to more in taxes for owners. "The real estate market remains robust in sales, rentals, and leases, with strong demand across the board," says Commissioner Jacques Jiha. "We are also seeing increased construction activity in the boroughs outside of Manhattan. The Bronx, in particular, has seen an increase of 46 percent in new construction value, which is very good for job creation in that borough." The total mar-

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Duplicate Key (continued from p. 1)**Eviction Is Last Resort**

If a tenant refuses to give you a duplicate key, you can, as a last resort, seek the tenant's eviction. If your lease has the right language, the tenant's refusal to give you a duplicate key will be a substantial lease violation, entitling you to evict the tenant.

Get Tenant's Compliance

Before you spend time and money suing to evict a tenant, try to get the tenant to give you a duplicate key voluntarily.

Step #1: Check lease. If a tenant refuses to voluntarily give you a duplicate key after asking for it, he may be violating a common

MODEL LETTER**Formally Inform Tenant of Requirement to Provide Duplicate Key**

Here's a model letter you can use after a tenant refuses to provide a duplicate key after asking for one. The letter lets a tenant know that you need the duplicate key for emergencies and that he's violating state law by refusing to give it to you.

Jan. 15, 2015

Re: Notice to Provide Duplicate Key

Dear Mr. Tenant:

It has come to my attention that you have installed your own lock on your apartment door. On Jan. 8, 2015, I spoke with you and asked you for a duplicate key. To date, however, I still have not received one.

- 1 You are in violation of Section 51-c of the Multiple Dwelling Law which requires you to supply a duplicate key to a tenant-installed lock upon request.
- 2 This is a very serious matter. You are also in violation of paragraph 11 of your lease, which says that the tenant must obey and comply with all government laws and regulations. This is a substantial obligation of the tenancy.
- 3 An owner is entitled to gain access to any apartment at a reasonable time and in a reasonable manner for inspections or repairs. In an emergency situation, however, no advance notice is required. If you feel uncomfortable about giving an apartment key, you can provide the duplicate key in what is known as a Keysure Key Control System or in an Envelock. The Keysure Key Control system uses a sealed plastic storage container that must be broken to remove the key. The Envelock is a tamper-proof evident security envelope. These can provide you with an indication that the key has been used only in an emergency situation.
- 4 If you do not provide a duplicate key within 15 days from the date of this letter, I will turn this matter over to my attorney for appropriate legal action, including starting an eviction lawsuit against you.

Thank you for your anticipated cooperation.

Owner & Owner, Inc.

By: John Q. Owner, President

lease clause that requires the tenant to comply with all city, state, and federal laws and regulations. Because the Multiple Dwelling Law requires tenants to give you a duplicate key to locks they install when you ask for it, a tenant who refuses to do so is violating this law and therefore the lease clause.

Step #2: Give oral warning.

Although you've already asked the tenant to give you the duplicate key, ask again. Remind the tenant that you need the duplicate key for emergencies and that he's violat-

ing state law by refusing to give it to you.

Step #3: Send letter. If, despite your oral warning, the tenant continues to refuse to give you a duplicate key, send the tenant a polite, but firm letter asking for it. We've provided a Model Letter: Formally Inform Tenant of Requirement to Provide Duplicate Key. This letter:

- Tells the tenant he's violating Section 51-c of the Multiple Dwelling Law;

- Tells the tenant he's violating his lease and points out the lease clause he's violating;

- Mentions an alternative tamper-proof evident method for the tenant to give you a key that may provide the tenant assurances that the key will be used only in an emergency situation; and

- Makes it clear that if the tenant doesn't give you a duplicate key to his lock, he risks being the target of an eviction lawsuit. ♦

Management Basics (continued from p. 1)

ket value for the upcoming year is \$988.3 billion, an increase of \$82 billion, or 9.1 percent from the 2015 fiscal year.

Approximately 6.7 percent of the growth on the tentative roll reflects continued strength of real estate sales and leasing in the city. But 2.4 percent reflects other factors, including new construction. These other factors include the addition of value of some previously tax-exempt properties that may have their exemptions restored on the final roll.

The release of the tentative assessment roll marks the beginning of the time period in which property owners can examine and challenge their property values before the roll is finalized in May. The assessed values in the final roll, along with the tax rates and any exemptions or abatements, are used to calculate property taxes for the fiscal year that starts on July 1, 2015.

Values for Class 2 Properties

Market values for fiscal year 2016 in Class 2 and 4 are based on calendar year 2013 income and expense data provided by owners, which are trended to reflect current market conditions, as well as mortgage and bond interest rates, which are used to determine income capitalization rates.

The total market value for Class 2 residential buildings, which include rental apartment buildings, rose \$23.4 billion, or 10.9 percent, to \$239.3 billion city-wide. Seventy-five percent of this increase, or \$17.7 billion, is due to market forces, with the remainder coming from other changes, including new construction. The total assessed value for Class 2 increased 10.5 percent to \$69.7 billion. Class 2 rentals saw a market value increase of 14.6 percent and an assessed value increase of 12.7 percent.

Values for Class 4 Properties

The total market value for Class 4 commercial properties increased \$29.1 billion, or 11.8 percent, to \$275.8 billion. Market forces accounted for \$14.4 billion of the increase for non-utility commercial property, while new construction and other forces accounted for \$14.7 billion of the increase. Other factors also include certain previously exempt properties being restored to the roll, which may become exempt again before the final roll. The total assessed value for Class 4 increased 10.6 percent.

Important Dates and Information for Owners

The NYC real property tax assessment and appeal procedure is calendar driven. With the release of the tentative assessment roll, owners have an opportunity to examine and challenge the values on the roll before the final assessment roll is finalized in May. Here are the important dates to consider:

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Management Basics

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■ The upcoming NYC tax year begins on July 1, 2015, and runs through June 30, 2016. This is the 2015/2016 tax year.

■ The Jan. 15, 2015, Tentative Assessment for the 2015/2016 tax year is based on the property's condition as of Jan. 5, 2015. This date is referred to as the "Tax Status Date."

■ This year, the absolute deadline for filing a challenge to a property's assessment is March 2, 2015, and owners who don't file a tax appeal by March 2 lose any right to contest assessments for the ensuing July 1, 2015, through June 30, 2016, tax year. Forms to file a challenge are available on the Tax Commission's website at www.nyc.gov/html/taxcomm.

Owners who believe that the DOF has incorrect property information, such as the wrong number of units or square footage, may file a Request to Update with the DOF. These forms are posted at www.nyc.gov/finance. The deadline for correcting property errors with DOF this year is March 16 for Class 2 properties. Filing a Request to Update with the DOF, however, is not a substitute for challenging the assessed value with the Tax Commission.

The final assessment roll will include any changes based on the decisions made by the New York City Tax Commission, as well as new information the DOF gathers about abatements, exemptions, and other adjustments. In June, the DOF will use the final roll to generate property tax bills for fiscal year 2016.

Permitted Valuation Approach

Most NYC commercial property is comprised of Tax Class 2 properties and Class 4 properties. Class 2 consists of buildings with greater than three residential units, and Class 4 properties include non-residential commercial property other than utility buildings. For tax assessment purposes, the market value of each commercial property is determined using the income capitalization approach.

For income-producing commercial properties, the actual income and expenses reported by the owner are used to determine the property's net operating income. For mixed-use property, each category of income must be separately stated—for example, gross residential income must be separated from gross office income. All income derived from the property must be disclosed.

Similarly, in determining net revenue expenses directly related to the operation of the property that are to be deducted from the gross revenue must be separately stated. Non-operational expenses, such as mortgage interest, depreciation, and corporate income tax, are not considered. Although the entire cost of a capital improvement cannot be deducted in the year of expenditure, a reasonable reserve may be treated as a deduction for one or more years.

After determining net operating income, a capitalization rate (often called the cap rate) is applied. In simple terms, the cap rate is the annual rate of return expected by an investor in the property. The cap rate varies based on the use, condition, and location of a particular com-

mercial property. Arithmetically, the cap rate is the net operating income divided by the market value of a property expressed as a percentage. In many cases, the success of an appeal hinges on the cap rate applicable to the property.

NYC Tax Commission Hearings

Between March and October, the NYC Tax Commission conducts hearings with property owners who have challenged their Tentative Assessments or their representatives to consider whether an assessment should be reduced. At such hearings, information and documentation supporting a property owner's appeal may be presented. Hearing Officers typically render decisions within weeks of a hearing.

If the property owner accepts a NYC Tax Commission offer to reduce the assessment, the appeals process is concluded, the reduction is effective as of July 1, and the property owner may apply for a refund of any tax overpayment.

If the NYC Tax Commission does not extend an offer to reduce the assessment, or if the property owner does not accept the offer and believes that a greater reduction is warranted, the tax appeal for the current year may be continued by filing a petition in New York Supreme Court on or before Oct. 24. Note that tax appeal cases very rarely proceed to trial because the appeals for which petitions are filed are considered in the next year by the NYC Tax Commission, which has jurisdiction over two years of tax appeal cases (that is, those initiated in the current year and those continued from the previous year). ♦

NEW LAWS & REGS

New Law Banning E-Waste with Regular Trash Goes into Effect

The NYS Electronic Equipment Recycling and Reuse Act, which was signed into law by the governor on May 28, 2010, took effect in full on Jan. 1, 2015. Overseeing the law's enforcement is the NYS Department of Environmental Conservation (DEC). Businesses and households are no longer allowed to dispose of their e-waste by placing it for collection intended for processing at a solid waste or hazardous waste management facility. In short, you can't place e-waste at the curb with normal trash and recycling.

The city will allow a grace period until March 2015. Stickers will be placed on each piece of electronic trash informing you the trash is not allowed in the waste stream. Following that, owners will be fined \$100 for each violation.

How to Dispose of E-Waste

Recycling electronic equipment keeps harmful materials out of the waste stream and the environment. While safe to use, electronics often contain lead, mercury, and other hazardous materials. In fact, electronics make up the largest and fastest growing component of the hazardous materials entering the waste stream.

NYC apartment buildings with 10 or more units are eligible to participate in a program that provides buildings with a free and convenient service to pick up and recycle unwanted electronics. This program specifically targets apartment buildings because over 50 percent of the city's population lives in apartment buildings, and

over 50 percent of the city's population has no access to a vehicle. Due to these factors, the rate of electronics recycling in New York City falls below the state average.

The Department of Sanitation hopes to boost the electronics recycling rate in the city by targeting those buildings that have the most difficulty recycling their electronics. The multiple-dwelling residential electronics recycling program is called "e-cycleNYC." And depending on the size and type of apartment building, a variety of service options are available. The options include:

Room cleanouts (buildings with 10 or more units). E-cycleNYC removes electronics self-stored by participating buildings.

Storage bins (buildings with 50 or more units). The program provides your building with a locking bin to store electronics. There are two bin sizes available, a small bin (2 ft. deep × 4 ft. wide × 5 ft. high) and a large bin (2 ft. deep × 5.5 ft. wide × 6 ft. high).

Building events (buildings with 250 or more units). The program removes electronics during pre-scheduled, outdoor events that buildings organize for their residents.

Covered Electronic Equipment

The items listed below are considered covered electronic equipment (CEE) by the NYS Electronic Equipment Recycling and Reuse Act. Therefore, these items are accepted by e-cycleNYC and

otherwise banned from regular disposal:

- Computers (including items such as tablets and e-readers) and peripherals such as any cable, cord, or wiring permanently affixed to or incorporated into such product;
- Televisions (as well as cathode ray tubes) and TV peripherals;
- Small-scale servers;
- Monitors;
- Electronic keyboards;
- Electronic mice or similar pointing devices;
- Facsimile machines (only those intended for use with a computer and weighing less than 100 lbs);
- Document scanners (only those intended for use with a computer and weighing less than 100 lbs);
- Printers (only those intended for use with a computer and weighing less than 100 lbs);
- VCRs;
- Digital video recorders;
- DVD players;
- Digital converter boxes;
- Cable or satellite receivers;
- Electronic or video game consoles;
- Portable devices;
- Portable digital music players;
- Tablets (considered a computer); and
- E-readers (considered a computer).

What's Not Accepted

The following items may be mistaken for covered electronic equipment, but they're not accepted by the e-cycleNYC program. These items include:

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New Laws & Regs

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Appliances. If predominantly metal or rigid plastic, recycle these with other metal and plastic recyclables, otherwise discard as trash.

Loose batteries. Bring rechargeable batteries to any store that sells them, such as a pharmacy, office supply, or hardware store. Rechargeable batteries may contain mercury, cadmium, lead,

and other heavy metals that can be dangerous if not disposed of properly. Alkaline batteries can be discarded in the trash. Standard alkaline batteries are not considered hazardous waste, since they no longer contain mercury.

Fluorescent bulbs. Compact fluorescent bulbs can be dropped off for free recycling at any Home Depot, IKEA, Lowes, or other participating retailers. CFLs and other fluorescents can be brought

to any of NYC Department of Sanitation's Household Special Waste Drop-Off Sites or SAFE disposal events.

How to Enroll

If you're interested in participating in the e-cycleNYC electronics recycling program, you can complete an online inquiry form at www.nyc.gov/html/nycwasteless/html/contact/enrollmentform.shtml. ♦

IN THE NEWS

City Council Holds Hearing on Illegal Short-Term Rentals

On Jan. 20, the City Council's Housing and Buildings Committee held a hearing to discuss various matters related to short-term apartment rentals, especially those listed through Airbnb, the pioneering home rental service. New York has emerged as Airbnb's largest market. The company says it has 25,000 active hosts in the city and is waging a perception campaign against the idea that its service is exacerbating the housing shortage in New York. The company argues that the money guests bring in bolsters local businesses and helps New Yorkers pay their rents, while opponents point to the illegality of Airbnb's business in creating illegal, unsafe hotels.

It's currently illegal in New York to rent out apartments in buildings with three or more units for under 30 days, according to a law passed by the state legislature in 2010. Scrutiny of this industry has increased since the state's attorney general, Eric T. Schneiderman, released a report in October that said 72 percent of Airbnb listings for entire units from January 2010 through June 2014 ran afoul of this and other codes.

In a letter sent to the City Council preceding the hearing, Airbnb laid out a plan to change that law. "The law should be carefully amended to make it possible for regular people to occasionally share only the home in which they live, while not providing loopholes for illegal hotels to operate," the company wrote. If the city legalized short-term rentals, Airbnb said, New York stands to gain \$65 million in hotel and tourist taxes, which the company would collect on behalf of its hosts.

Airbnb Actions to Root Out Illegal Listings

At the hearing, the council did not take kindly to this proposal. In some of the most poignant exchanges, Council members Helen Rosenthal and Jumaane Williams, the committee's chairman, interrogated David Hantman, the global head of public policy for Airbnb, about what actions the company takes to find and eliminate illegal listings on its site.

Aside from requiring New York hosts to pledge that they're not breaking the law or violating their

lease agreements, Airbnb doesn't actively look for illegal listings. Instead, Hantman said, the site is focused on eliminating listings that are not of a good "quality."

"We've removed thousands of listings in New York, for instance, because they were not providing that kind of experience and they should not have been on our site," Hantman said. "We're constantly doing that kind of review. But we focus as a company and a platform on the kind of quality experience where people are providing to their fellow community members." However, pressed by Williams, Hantman admitted not doing any research to determine what listings are illegal.

Current Enforcement of Short-Term Rental Laws

The City Council also took issue with how the de Blasio administration has enforced the short-term rental laws, accusing the special enforcement unit, part of the Mayor's Office of Criminal Justice, of being "reactive" rather than "proactive." Airbnb currently falls under the jurisdiction of the

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BUILDING MANAGEMENT CALENDAR

This calendar covers key dates in the period from Feb. 15 through March 15, 2015.

DATE	TO DO	FOR MORE INFO
2/15 SUN	☐ Check if tenants responded to annual window guard and lead-based paint notice. All tenants' responses to the Department of Health and Mental Hygiene (DOHMH) "Annual Notice: Protect Your Child from Lead Poisoning and Window Falls" are due today. If a tenant doesn't return a signed and dated annual notice to you by today and you don't know if the tenant needs or wants window guards, DOHMH regulations require that by March 2, 2015, you inspect the tenant's apartment at "reasonable" times to determine whether a child 10 years or younger resides in the apartment and, if so, whether window guards are properly installed. And for lead-based paint, the law requires that by March 2, 2015, you inspect the occupant's apartment at "reasonable" times to determine whether a child under age 6 lives there.	Call the DOHMH's Office of Field Operations Inspections at (212) 676-6100.
2/16 MON	☐ Use President's Day building schedule. President's Day is a Service Employees' Union (Local 32BJ) contract holiday. It's also a Sanitation Department workers' holiday, which means there's no garbage pickup or street cleaning.	
3/2 MON	☐ Notify DOHMH of tenants who didn't respond to annual window guard and lead-based paint notice. Starting today, you should notify DOHMH in writing if you've been unable to determine whether a tenant needs or wants window guards, or if you've been unable to get access to an apartment for an inspection to determine whether a child under age 6 lives there. The letter should describe the efforts you've made to learn of the tenant's need for window guards and your attempts to gain access. ☐ File NYC real property tax assessment protest—Class 2 and 4 properties. Today is the last day to apply to the Property Division of the Department of Finance (DOF) for a reduction of the 2015–16 assessment for Class 2 and Class 4 properties. DOF must receive the application on or before March 2, 2015. If you file by mail, make sure you mail it far enough in advance to arrive by this date.	Call DOHMH's Office of Field Operations Inspections at (212) 676-6100. Call DOF's Taxpayer Assistance Unit at (212) 504-4080.
3/16 MON	☐ File NYC real property tax assessment protest—Class 1 properties. Today is the last day to apply to the DOF's Property Division for a reduction of the 2015–16 assessment for Class 1 properties. DOF must receive the application on or before March 16, 2015. If you file by mail, make sure you mail it far enough in advance to arrive by this date. If your application is hand-delivered, you must bring it to the office on or before March 16, 2015. ☐ File J-51 application. The first period in 2015 for filing J-51 tax abatement and exemption applications with HPD ends today. If mailed, the application must be postmarked no later than March 16, 2015. If hand-delivered, you must bring it to the office on or before March 16, 2015.	Call DOF's Taxpayer Assistance Unit at (212) 504-4080. Call HPD's Office of Tax Incentive Programs at (212) 863-5517.

Open to Read Your Latest Issue

In the News (continued from p. 6)

Mayor's Office of Special Enforcement (OSE), a joint task force formed in 2007 to tamp down on the rise of illegal hotels. That was before the rise of Airbnb, and it didn't seem credible to members of the City Council that OSE's staff of 10 investigators were capable of coping with the explosion in short-term rentals.

The task force chiefly responds to 311 complaints. It received 1,150 illegal-hotel complaints last year, a 62 percent increase from 2013. Though the office has taken to using software to cross-reference complaints, it hasn't gone so far as to look at platforms like Airbnb, said Elizabeth Glazer, the director of the criminal justice office, who oversees the office.

In addition to inspections conducted by the OSE, the FDNY has about 300 field inspectors in its fire inspection bureau that can look into potential code violations, FDNY Chief of

Fire Prevention Thomas Jensen said. These comments followed a sworn affidavit recently submitted by Chief Jensen stating that residents and visitors of buildings with illegal hotel rentals face a greater risk of injury or death because Airbnb and other illegal hotel users are unfamiliar with building layouts and evacuation plans, making it more difficult to exit in the event of a fire emergency. According to Jensen, unlike legitimate hotels, where there are standard regulations for smoke detectors with alarms to automatically notify FDNY and where there are evacuation plans with a secondary egress in case of fire, Airbnb and other illegal hotel rentals units don't meet the same fire safety standards.

Chief Jensen also noted that by law, hotels are required to provide portable fire extinguishers, automatic sprinkler systems, photo-luminescent exit path markings for exits and stairwells

in high-rise buildings, manual and/or automatic fire alarm systems on all floors with smoke detection capability, and a fire safety and evacuation plan. Residential buildings—converted into illegal hotel rentals—don't have to provide for these safety protections, Jensen added.

Numerous Council members suggested a larger staff would allow for inspectors to actually seek out illegal listings rather than respond to complaints. Glazer and Jensen both said such an approach would have to be prescribed by the mayor's office directly. The chief also said he felt restricted by existing law.

The Attorney General's investigation into Airbnb is ongoing, and the City Council is likely to have more hearings on this topic. Airbnb, meanwhile, is lobbying for a bill that would amend the 2010 law and make its listings legal. ♦