

**Special Legislative
UPDATE**

Sherwin Belkin,
Editor

The New York State Legislature completed its 2003 Session via its usual flurry, which included an extension of the rent control and rent stabilization laws.

Among the highlights of this enactment are the following:

Eight Year Extension: The laws were extended to June 15, 2011.

Re-enforcement of the “Urstadt Law”: The Rent Stabilization Law of 1969 was viewed as a drastic expansion of New York City’s authority to regulate housing (in that it caused housing built after 1947, that had previously been unregulated, to now be subject to rent stabilization). The Urstadt Law was enacted by the State Legislature in 1971 to curb such regulatory expansion by the City. The Urstadt Law generally bars the City from further regulating housing accommodations pursuant to local laws or ordinances adopted or amended. This past year, both the City Council and the Mayor began asserting that New York City’s regulated housing should be controlled by the City, rather than the State. The Legislature has now spoken and has re-enforced the Urstadt Law to state that the City may not adopt or amend local laws or ordinances to regulate or control rents and evictions, and that such bar pertains to issues which include, but are not limited to, the establishment or adjustment of rents, the classification of housing, the regulation of evictions and the enforcement of local laws and ordinances.

Lower Rent Charged Does Not Affect Legal Regulated Rent on Renewal or Vacancy:

Until recently, under Rent Stabilization, when an owner charged a rent lower than the legal regulated rent, that rent would be considered a preferential rent and would govern as the base rent for that tenant until the apartment was vacated.

Assuming that there was a proper lease rider and it was properly registered, the owner would be able to revert back to the higher legal regulated rent only upon a vacancy.

Several years ago, as the result of a decision by the Appellate Division in *Missionary Sisters v. DHCR*, a

new concept arose; the temporary rent concession. This meant that if an owner had charged a rent lower than the legal regulated rent -- and made it clear via a rider that this was for a single lease term only -- then, upon renewal with that tenant, the owner would be able to revert back to the higher legal regulated rent and would not need to wait for a vacancy (as was the case with the preferential rent).

The new law seems to obliterate this distinction.

Now, if an owner charges a rent lower than the legal regulated rent, upon renewal **or** vacancy the owner will be able to revert back to the higher legal regulated rent. The law does not even seem to require a rider.

We expect that DHCR may issue an operational bulletin or policy statement or other clarification as to how it interprets this enactment or what requirements, if any, it may seek to impose. As of the writing of the Update, none has been promulgated.

Until then, BBW&G suggests that owners who are charging a rent lower than the legal regulated rent use a rider to so inform the tenant. What most owners have used as a preferential rent rider or temporary rent concession rider seems to require modification. BBW&G suggests that the tenant be told, via a rider, what the legal regulated rent is, that the payable rent is lower than the legal regulated rent, and that, upon renewal, the owner may offer a renewal predicated upon the legal regulated rent as the base rent, or such lesser amount as the owner elects, in its sole discretion.

High Rent Vacancy Decontrol Triggered By \$2000 Legal Regulated Rent, Not Rent Charged or Paid: By statute, a provision of the Rent Stabilization Code, as amended in December 2000, was made into law. Therefore, when a regulated apartment is vacated, and the legal regulated rent is \$2000 or more, that apartment is permanently deregulated “whether the next tenant in occupancy or any subsequent tenant in occupancy actually is charged or pays less than two thousand dollars a month.”

If you have any questions regarding this new law, please call one of BBW&G’s attorneys to assist you.

BELKIN BURDEN WENIG & GOLDMAN, LLP

New York Office

270 Madison Avenue
New York, New York 10016
(Tel): (212) 867-4466
(Fax): (212) 867-0709

Connecticut Office:

125 Main Street
Westport, Connecticut 06880
(Tel): (203) 226-1223
(Fax): (203) 227-6044

PLEASE NOTE: This newsletter is intended for informational purposes only and should not be construed as providing legal advice. This newsletter provides only a brief summary of complex legal issues. The applicability of all or any of the issues described in this newsletter is dependent upon your particular facts and circumstances. Accordingly, it is suggested that prior to attempting to utilize or implement any of the suggestions provided in this newsletter, you should make sure to consult with your attorney.

Belkin Burden Wenig & Goldman, LLP
270 Madison Avenue
New York, New York 10016

Special Legislative Update
June 2003