



## Non-Profit Institutions: Special Rights, But Technical Rules Under Rent Regulations

**Arcane** is a word often used to describe rent regulation. The rules affecting certain non-profit institutions are a subset of those arcane technicalities. However, once those arcane technicalities are mastered, the good news is that non-profit institutions are granted certain rights that private for-profit landlords do not enjoy.

Section 2520.11(f) of the Rent Stabilization Code exempts from coverage apartments owned, operated or leased by a hospital, convent, monastery, asylum, public institution or college or school dormitory or any institution operated exclusively for charitable or educational purposes on a non-profit basis, if the apartment is occupied by a tenant who rented the apartment from the institution after the institution bought the property and the tenant was affiliated with the institution at the time the tenant moved in.

Parenthetically, as an example of the often illogical theme that often seems to underlie rent regulation, both

the administrative agency and the courts have held that the above-described exemption may flow even if the non-profit institution has secondary purposes *other* than charitable or educational. In other words, “exclusively” does *not* mean “exclusively.”

As an example of the exemption from rent stabilization, if a professor at a university rents an apartment from the university after the university already owned the building in which the apartment is located, then the apartment is exempt from rent stabilization. However, if the university bought the property after the professor was already renting the unit from a private owner (even if the professor was affiliated with the university at the time he first rented), the apartment would not be exempt from rent stabilization.

Affiliation is a broader term than mere employment. If the tenant was a member of the faculty of a non-profit medical center, but it was not specifically employed by the medical center

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### Special Points of Interest:

- Preferential rent can be discontinued on renewal, even if rider provided to the contrary,
- Rejecting a prospective tenant on a credit-related basis, requires compliance with Federal Law.

## Discontinue Preferential Rent on Renewal, Even If Lease Provides to the Contrary

**T**he recent rent regulation extension law (Chapter 82, Laws of 2003) also contained a provision that stated that when an owner has charged a Rent Stabilized tenant a rent that was lower than the legal regulated rent, on vacancy or renewal the owner can revert back to the higher rent.

But what about where the owner had used a preferential rent lease rider

that specifically represented that renewals for that tenant would be based upon the lower preferential rent? Would the owner be so bound, notwithstanding the rider?

BBW&G requested an Advisory Opinion from DHCR regarding this issue

DHCR opined that, notwithstanding the rider and its specific representa-

## BBW&G NEWS

### MAY I QUOTE YOU?

**BBW&G** clients and their new buildings were featured in various publications. The *New York Times* described **Kamran Hakim's** new twenty-one story, 480 apartment building on East 34<sup>th</sup> Street, **The Anthem**. The *Times* and *The Real Estate Weekly* both had stories describing **The Jack Parker Corporation's** new 51 story, 464 apartment, West 47<sup>th</sup> Street building, **The Biltmore**.

**Sherwin Belkin** was quoted extensively in *The New York Times's* feature article in its Sunday Real Estate Section. Mr. Belkin described the recent rent regulation extension law, and its other substantive changes, noting, in particular, an owner's ability to now end a preferential rent previously granted to a rent stabilized tenant, not only on vacancy, but on renewal as well (*see clarifying story in this Update*).

*The Apartment Law Insider* quoted BBW&G's **Kara Rakowski**, as she explained that the new State law requiring property owners to install carbon monoxide detectors did not apply to New York City's buildings because it had not been added to the City's Administrative Code.

**BBW&G** was noted as the law firm representing the victorious owner enforcing a "no pet" provision in Scott Mollen's "Realty Law Digest" in *The New York Law Journal*. In discussing the decision in *Waterside Plaza, LLC v. Levine*, **Sherwin Belkin** noted that the case was an "important decision for owners seeking to uphold the no-pet clause in their leases."

**Robert Jacobs**, who practices in BBW&G's Administrative Law and Land Use Departments, completed his tenure on the New York City Bar Association's Real Property Committee, and has now been appointed to its Land Use Committee.

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itself, he would still be affiliated with the medical center for purposes of the Rent Stabilization Law.

The Rent Stabilization Law also gives the non-profit institution the opportunity to recover possession of rent stabilized apartments not afforded to private owners. For example, if a tenant moved into the apartment after the non-profit institution acquired the building, the non-profit owner can send a notice to the tenant (120-150 days before the lease expires) advising: (a) that the institution wants to recover possession of the apartment for its own use, and (b) that the tenant's lease

is not going to be renewed. If the institution wants to put an employee or faculty member into the apartment for residential use, the institution can only use this provision if the present tenant (a) moved into the apartment after the institution bought the building and (b) such occupancy began after 1978. If the tenant moved in before the institution bought the building, then this Section would not apply. However if the institution wants to recover the apartment for its own non-residential use in connection with its charitable or educational purposes, (such as a classroom or offices), the institution can seek to recover possession of the apartment regardless when the tenant moved in or

who owned the building when that tenant moved in.

Suffice to say, like everything else associated with rent regulation, the notices to be sent to the tenant are especially technical. Therefore, you should consult with your attorneys regarding the terms that must be contained in the notice. When it comes to rent regulation, form can be as important as substance. Use the wrong form, and your rights may be significantly delayed or even wiped out.

*This article was written by Joseph Burden, who practices in BBW&G's litigation Department. To discuss the special rights of non profit institutions, please contact Mr. Burden or Sherwin Belkin.*

*Discontinue Preferential Rent ...*  
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tion as to renewals being based upon the preferential rent, by virtue of the recent statute, on renewal the owner has the option of charging the higher legal regulated rent.

BBW&G suggests that, if you are discontinuing a prior preferential rent on renewal, that you not

simply send the renewal offer form to the Tenant. We suggest using an appropriate explanatory cover letter should accompany the renewal offer, since the Tenant may be surprised to find that the preferential rent which the tenant has been paying during the lease that is soon to expire, will not serve as the base rent on renewal. Such a letter may go a long

way towards avoiding an unnecessary dispute with the Tenant.

*This article was written by Sherwin Belkin who practices in BBW&G's Administrative Law Department. To discuss preferential rents, or other rent regulatory issues, please contact Mr. Belkin or Martin Heistein, Robert Jacobs or Kara Rakowski.*

## Avoiding Complaints When Rejecting A Prospective Renter

**A**n Owner of residential property may rent to anyone for legal purposes upon almost any terms to which the Owner and tenant agree (subject to compliance with applicable laws and regulations). An Owner may also refuse to rent to anyone; however, the Owner cannot refuse to rent due to certain classifications of people (including, but not limited to, race, age, religion, gender, disability, marital status or because the tenant has children). In Constitutional Law parlance, these are called "suspect classifications."

This does not mean that a person who falls into one of these classifications cannot be lawfully rejected on other grounds. For example, if an owner normally requires that a prospective tenant's income be a certain multiple of the rent, an owner can reject an applicant who does not meet this criteria, even if the applicant falls within one of the suspect classifications. The key is that the applicant was rejected *not* because the applicant fell into one of the classifications, but predicated upon *other* rationally based criteria.

When rejecting a prospective tenant, in whole or in part for credit related reasons, an owner

must abide by federal law.

**Please Note:** If proper, non-discriminatory, but *non*-credit related reasons exist for rejecting a prospective applicant, an owner is not under an obligation to provide a written rejection or to state the basis for rejection. The



rules and suggestions described below, relate to *credit related rejections only*. In fact, it may be safer not to reduce non-credit related reasons for rejection to writing, at all.

The Federal Fair Credit Reporting Act (FCRA) requires that all applicants for renting be treated in a non-discriminatory manner. (The FCRA requires an Owner to obtain an applicant's written permission before

performing a credit check.) If an Owner's rental criteria are unbiased, the Owner may reject anyone who does not meet them, and, if thorough records are kept, an Owner should have no trouble defeating a fair housing claim by an unqualified applicant who has been rejected. (Fair Housing experts generally recommend that records be retained for at least three years.) As such, if all applicants are treated in the same way, then any alleged discrimination should be disproved. (*Please Note:* In addition to the federal statute, both New York State and New York City have anti-discrimination rules which must be abided by).

### **Applicant Rejected or Adverse Action Taken For Credit Related Reasons:**

If any adverse action is taken on an applicant, based fully or, in part, on the review of an applicant's credit report, we recommend that the applicant be sent a detailed letter advising them of this fact. (Technically, a rejected applicant can be informed of his rights orally if the request to rent was made orally, such as by telephone, but it is recommended to always write and retain a copy. For more information on "any

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adverse action” see *Professional Apartment Management* November 1999, page 6. An example of an adverse action (but not a rejection) would include requiring an applicant with bad credit to have a guarantor for the lease.) In addition, an applicant should be informed if it is being rejected based on credit information received from a prior owner.

The letter should include the following:

- Advise applicants that they have been rejected and inform them of their rights under the Fair Credit Reporting Act and Section 380-i of the New York State General Business Law; and
- Explain that the rejection is based on either (a) a bad credit report, or (b) a credit report that does not have enough information for a decision to be made; and
- Provide the name and address of the agency that issued the credit report; and
- Inform the applicant that the credit reporting agency did not make the decision to reject them and that the agency cannot explain why the rejection was made; and
- Inform the applicant that he/she has the right to receive a copy of the report, dispute the report’s accuracy and have a statement (a “consumer statement”) put into the report explaining a debt; and
- Inform the applicant that he/she has 60 days to receive a copy of the credit report without charge; and
- Explain that he/she has an

opportunity to dispute the information and may receive assistance from personnel at the credit reporting agency.

A copy of the credit report need not be included in the letter of rejection.

### **Co-Tenants & Their Credit Application**

If two or more applicants are applying for co-residency in the same apartment, and one of the applicant’s credit history is deficient, a letter explaining why the applicants are being rejected should be sent to both applicants. We recommended that the rejecting owner advise that the application is being rejected based on the credit history of the applicant with the bad credit report. This can be accomplished by stating, “Your application as co-tenants is being rejected based on the credit history of co-tenant “John Doe.”

### **If the Rejection is Based on Owner Reference**

The FCRA also covers rejections based on information received about an applicant’s credit history from a source other than a credit reporting agency (such as from a prior Owner.) In order to comply with the FCRA, the rejection letter must either:

- Specify that the rejection was based on a bad owner credit reference; or
- Inform the applicant that they have the right to submit a written request to the Owner within 60 days of the date they receive a rejection letter to request an explanation as to why they were rejected.

According to an Opinion letter by the United States Federal

Trade Commission, however, since the landlord-tenant relationship is not a “credit” relationship, landlords have no obligations under Section 615(b) (1) of the FCRA to provide notices when they base an adverse landlord-tenant decision upon information obtained from persons *other than consumer reporting agencies*, such as information from an applicant’s previous landlord. Such a decision does not constitute a denial of, or an increase in the charge for, “credit” under Section 615(b) (1). Thus, this is a bit of an unsettled issue.

### **Requiring Applicant to Pay Higher-than-Normal Security Deposit:**

If an Owner requires an applicant with bad credit to pay a higher-than-normal security deposit (this assumes that the restrictions on the amount an owner may receive from a rent regulated tenant as security do not apply), the applicant must be sent a notice that said decision was made by the Owner after review of the applicant’s credit report.

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In conclusion, an owner may properly and legitimately reject a prospective tenant predicated upon non-discriminatory criteria. An owner may also reject a prospective tenant, or require greater protections if the would-be tenant has a bad credit history. However, in order to protect itself against a claim made by a rejected prospective tenant, the prudent owner will make sure that its basis for rejection is proper, and if it is credit related, has been documented and noticed in the manner required by federal law.

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