

## Section 8 Owners Hurt by Rent Reasonableness Determinations

Owners of buildings with Section 8 tenants are used to dealing with any number of bureaucratic problems at the New York City Housing Authority (NYCHA) and the City Department of Housing Preservation and Development (HPD). However, a new problem has arisen which has caught owners by surprise and caused further confusion and uncertainty.

The U.S. Department of Housing and Urban Development (HUD) regulations require the local housing authorities that administer Section 8 (NYCHA and HPD) to make a rent reasonableness check prior to approving an initial lease or granting any rent increase. HUD regulations require that the rent reasonableness determination be made by looking at comparable rents of at least three unassisted apartments in the area and to consider such factors as location, quality, size, type, age and amenities. Both NYCHA and HPD use a third party vendor, GoSection8, to determine comparable rents.

Recently, NYCHA sent letters to some Section 8 owners, primarily in the Bronx, notifying them that their requests for annual rent increases authorized by the Rent Guidelines Board were not approved and directing the owners to lower the rent.

Until this year, it was the policy of NYCHA, which administers the vast majority of Section 8 vouchers in the City; to approve RGB-authorized rent increases for rent stabilized renewal lease applications.

**RSA and other owner groups met with NYCHA in April to discuss this issue and NYCHA recently responded by doing the following:**

- The number of comparable rents used by GoSection8 to determine whether the annual rent increase is reasonable has been increased from 3 to 20.
- NYCHA will permit owners to submit their own comparable rents if they disagree with NYCHA's determination (HPD already permits owners to do so).
- NYCHA is working with GoSection8 to enable owners to submit comparables at the time the lease renewal rent increase application is submitted to NYCHA.
- NYCHA will permit owners to maintain their current contract rent (but without an increase) upon renewal even if GoSection8 makes a lower rent reasonableness determination.

Owners who were notified that they are required to reduce the rent below the current contract rent should receive a second letter from NYCHA notifying them that they do not have to do so.

Owners are required to file renewal rent increases no less than 60 days prior to the effective date of any rent increase. However, NYCHA has a significant backlog of Section 8 renewal applications, resulting in situations where NYCHA approves the rent increase after the renewal lease at the higher RGB increase has already been executed by the owner and the tenant. In those cases, the owner may be required to execute a new renewal lease with the tenant and include a preferential rent rider at the lower amount approved by Section 8. Owners should consult RSA and/or legal counsel when lowering lease rents and/or executing new leases in order to obtain payments from Section 8.

While the concept of "rent reasonableness" is appropriate to ensure that the government does not pay excessive subsidies, it would seem that the concept should not apply where initial rents and rent increases are regulated as they are in the City. RSA is asking NYCHA to re-visit this issue in the context of a regulatory environment in which owners are prohibited from refusing to rent to Section 8 voucher holders, where owners are required to offer renewal leases and where the amount of rent increases is firmly established by the Rent Guidelines Board. RSA will be meeting with NYCHA regarding GoSection8 and its rent reasonableness determinations in the near future to attempt to resolve this ongoing matter.

Owners and their counsel should also be aware of a decision in the case of *Citadel Estates v. New York City Housing Authority*, which was issued in January 2013. One of the many issues in that case related to the refusal by NYCHA to recognize RGB-authorized rent increases as reasonable. State Supreme Court Justice David Schmidt ruled against NYCHA, holding that "since the landlords are obligated to accept the rent increases as set by the Rent Guidelines Board as 'reasonable,' the Housing Authority is similarly obligated." Justice Schmidt went on to state that "there is no authority that would allow the Housing Authority to refuse to increase the housing assistance payment paid to a landlord based upon increased rent approved by the Rent Guidelines Board." ■

More information on Section 8 is available in NYCHA's spring 2014 Owners' Newsletter, which can be found under the resources section on the RSA website at [www.rsanyc.net/section-8/](http://www.rsanyc.net/section-8/).