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Testimony of State Senator Liz Krueger
Before the New York State Division of Housing and Community Renewal
Regarding Proposed Amendments to the Regulations Governing the
Implementation of the Rent Regulation Laws

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My name is Liz Krueger and I represent the 28th Senate District, which includes the Upper East Side, East Midtown, and Midtown areas of Manhattan. I want to thank you for providing me with this opportunity to testify regarding the Division of Housing and Community Renewal's (DHCR) proposed amendments to the regulations governing the enforcement of New York State's rent regulation laws.

I am extremely pleased that DHCR is considering substantive regulatory changes that will strengthen the agency's ability to enforce the rent laws. The June 2011 legislation renewing New York's rent regulation laws included a provision requiring DHCR to *"promulgate rules and regulations to implement and enforce all provisions of this act and any law renewed or continued by this act*." By requiring greater transparency, clarifying questions about rent setting, increasing the amount of information available to tenants, and expanding tenants' ability to challenge illegal rents, the proposed amendments fulfill the much of the mandate of the 2011 law.

The implementation of the proposed regulations will begin to restore fairness to the enforcement of the rent laws, repeal several of the damaging regulations implemented in previous decades, and help prevent some of the most rampant violations of the rent regulation system. While I believe a number of the proposed regulations could be improved, and provide suggestions for additional regulatory changes to increase tenant protections throughout my testimony, there is no question that regulations under consideration are an extremely important step in the right direction.

Some may think agency regulations are an esoteric issue. In reality, the rules and regulations governing the enforcement of the rent regulation laws directly impact the daily lives of the more than two million New Yorkers living in rent regulated housing. These regulations determine how DHCR handles many of the most essential components of our state's rent regulation system including rent setting, applications for rent increases and decreases, service, overcharge, and harassment complaints, and rent registrations. The regulations also dictate the amount of information that must be provided to

tenants throughout their tenancies and the ability to challenge determinations they believe are improper. Given the importance of our state's rent regulation laws to the lives of millions of New Yorkers, it is absolutely essential that the regulations implementing them empower DHCR to proactively enforce the law and are fully consistent with state law and settled judicial jurisprudence.

While not perfect, New York State's rent regulation system is by far our largest and most important affordable housing program. It enables close to two million people, the vast majority of whom are moderate- or low-income, to live in safe and affordable housing. The continuation of an improved rent regulation system is essential to our efforts to keep hardworking residents in New York and to ensure the maintenance of healthy and stable communities. Rent regulation helps to counteract the destabilizing effects of the acute housing shortages and abnormal market conditions in New York City, where the vacancy rate for rental housing is less than three percent, and the surrounding suburbs, where the vacancy rate remains below five percent. If we truly want to maintain the economic vitality and diversity of our state, we must do all we can to ensure an effective rent regulation system.

Unfortunately, the strength of our state's rent regulation system was significantly undermined over the last two decades by the erosion of the laws and regulations governing it. The weakening of these laws and regulations made it much easier for irresponsible landlords to take advantage of loopholes to evict regulated tenants, fraudulently increase rents, harass tenants, and illegally deregulate apartments. These loopholes have already led to the loss of more than 300,000 rent regulated, affordable apartments in New York City and the surrounding counties since 1994. Unless the laws and regulations governing rent and eviction protections are significantly strengthened, we will likely lose hundreds of thousands of additional affordable homes during the next decade.

Many of the most harmful changes to New York's rent regulation system, such as the creation of vacancy and high-rent decontrol, were the result of legislative action, and therefore outside of the control of DHCR. However, there is no question that the extensive changes DHCR made to the rules and regulations governing rent regulation in 2000, 2003, and 2005 also substantially undermined the protection of rent regulated housing and tenants' rights. In 2000 alone, DHCR approved over 150 pages of dramatic changes to the regulations which made it significantly easier for landlords to increase rents and deregulate apartments, and created numerous hurdles for tenants to fight rent overcharges, landlord harassment, and improper deregulation proceedings. These changes included: eliminating most penalties for landlords who fail to register their apartments annually, reducing the types of conditions eligible for redress through reduction-in-service complaints, preventing tenants from using older rents as part of an overcharge complaint, and making it easier for tenants to waive their rights under the rent laws.

These sweeping pro-landlord changes to the regulations were implemented by DHCR with little public debate despite the fact that in many cases they directly contradicted the legislative intent of the Rent Stabilization Law and/or settled judicial jurisprudence, and usurped the power of the Legislature. These amendments created egregious loopholes in the regulations governing the rent laws which encouraged landlords to pay highly-speculative prices for rent regulated properties, harass tenants, and fraudulently increase rents. These amendments were so harmful that they were described at the time as "an attempt to deregulate apartments on a wholesale basis" by a wide coalition of New York City legal aid and legal services organizations.

While the amendments made to the regulations in 2003 and 2005 regarding the sub-metering of electricity and preferential rent were much less far-reaching than the 2000 amendments, they similarly made it easier for landlords to raise rents. Taken as a whole, the changes to the regulations implemented in 2000, 2003, and 2005 by DHCR seriously harmed the public's confidence in the agency's impartiality and ability to preserve rent regulated housing.

The proposed regulations currently under consideration mark an extremely important new direction for DHCR. The proposed changes would restore some of the balance that was lost following the 2000, 2003, and 2005 amendments. They would significantly increase the amount of information available to tenants, and hopefully begin to significantly reduce the number of rent regulated apartments improperly lost due to fraud. While all of the proposed amendments are significantly better than the existing regulations, and should be implemented, I believe the following proposed regulatory changes are particularly important:

- Denying Major Capital Improvement (MCI) and vacancy bonuses to landlords in buildings with rent reductions in place, and making it more difficult for landlords with immediately hazardous violations to obtain MCIs.
- Mandating that new tenants in stabilized apartments receive a rider documenting any prior Individual Apartment Improvement (IAI) increases, informing tenants how they can obtain further documentation, and providing information about how to challenge IAIs.
- Tightening the rules on preferential rents.
- Establishing that tenant complaints to DHCR regarding reductions in services will be processed even if a tenant does not first notify the owner.
- Denying vacancy increases to landlords that have failed to register their apartments and making it more difficult for landlords to amend registrations.
- Requiring landlords to supply every tenant signing a vacancy or renewal lease information about how the rent was adjusted from the prior legal rent, as well as details about the rights and duties of landlords and tenants under the rent stabilization law.
- Requiring landlords to provide the first tenant of every deregulated unit detailed information about previous rent increases, how the apartment was deregulated, and previous rents can be verified with DHCR.
- Expanding the definition of harassment to include filing false documents or making false statements to DHCR.

Below, I highlight the significance of these proposed regulatory amendments, suggest how some of them could be improved, and provide proposals for additional regulatory changes that would increase tenant protections. My suggestions are based upon countless discussions I have had over the years about the challenges facing rent regulated housing with my constituents, housing organizations, policy experts, attorneys, and many of my colleagues in government. I want to once thank DHCR for proposing such substantive and important amendments to the regulations governing the enforcement of our rent laws, and look forward to continuing to work together.

Major Capital Improvements

Under the proposed regulations, DHCR staff will proactively determine if landlords applying for MCI increases have received violations from any government agency for immediately hazardous conditions in the subject building and/or are failing to provide required services. If immediately

hazardous conditions or a failure to provide services are found, DHCR will have the option to either deny the MCI application, grant it upon the condition that services will be restored within a reasonable period, or dismiss the application and provide the landlord an opportunity to re-file within 60 days. This change should encourage building owners to address outstanding violations and service complaints before filing for MCI increases.

Since DHCR currently approves MCI applications regardless of the conditions in buildings, the proposed amendments will improve the agency's current procedures. However, the proposals fail to adequately ensure that building owners with serious violations will not be able to receive MCIs. Given the extraordinarily limited number of DHCR inspectors, I do not believe the agency has the capacity to ensure that violations and services are restored after an MCI application is approved. The proposed regulations should be amended to state that MCI applications will be automatically be denied if a landlord is not maintaining all required services or if there are immediately hazardous conditions in a property. At an absolute minimum, the regulations must define the term "reasonable period" and require follow-up inspections.

The proposed regulations also fail address the larger flaws in the MCI application process. MCI applications are one of the easiest ways for landlords to obtain substantial rent increases and deregulate large numbers of apartments. While many MCI applications are legitimate, and landlords should be encouraged to maintain their properties, the failure to closely examine MCI applications has led to substantial fraud and improper rent increases. DHCR must develop a proactive and comprehensive evaluation system for MCI applications to ensure that all parties know fraud will not be tolerated.

Building inspectors are almost never sent by DHCR to ensure that landlords have made all of the filed building changes and improvements. As a result, it is impossible to determine whether improvements the landlord claims to have made were actually completed or whether the costs claimed were legitimate. There have been many documented instances where tenants are left paying higher rents when no structural improvements have occurred or when the costs for minimal improvements did not justify significant permanent rent increases.

Unless a tenant initiates a challenge to an MCI application, DHCR usually does not investigate. Even in cases where a tenant challenge leads to an agency investigation and a finding that the MCI application was flawed, the MCI is merely decreased or denied. Because there is no additional penalty for landlords who file fraudulent applications, there is little to dissuade dishonest building owners from exaggerating or misrepresenting the costs and type of work completed.

DHCR should conduct independent random audits of MCI claims, increase the size of staff of inspectors, and subpoena landlord, contractor, and bank records in suspicious cases. The regulations governing MCI applications should be amended to establish substantial financial penalties for fraudulent applications. Additionally, MCI applications should be automatically rejected if any of the improvements can funded through other government agencies such as HPD or NYSERDA, or the landlord will be able to recapture the cost of the improvements through energy savings that result from the work.

Individual Apartment Improvements

Many of the problems in the MCI application system also plague the IAI application system. However, the IAI application system is even more susceptible to abuse because there is no proactive regulatory oversight or even a requirement for landlords to document expenses. The only oversight of IAIs currently results from tenant-initiated complaints to DHCR. Additionally, because most IAIs are imposed based upon improvements made while apartments are vacant, this oversight mechanism has been proven structurally inadequate. New tenants are highly unlikely to question the rent they are paying or to investigate the condition of the apartment before they moved in. As a result, IAIs are rarely challenged and provide a mechanism for unscrupulous building owners to illegally increase apartment rents by hundreds or thousands of dollars by exaggerating their renovation costs or even without doing any renovations at all. In fact, a 2009 study conducted by the Association for Housing and Neighborhood and Housing Development concluded that the IAI loophole is one of the central factors in the loss of affordable housing in New York.

The proposed regulatory changes will address some of these problems by requiring landlords to supply new tenants in stabilized apartments a lease rider detailing any prior IAIs, informing tenants how they can obtain further documentation, and providing information about how IAIs can be challenged. This requirement should help empower new tenants to challenge questionable IAIs and encourage building owners to limit IAIs to legally permitted increases. However, the proposed amendments place too much of the responsibility for identifying improper IAIs on individual tenants. Given the rampant abuse of the IAI system which has been documented, DHCR should also consider implementing the following regulatory and procedural changes:

- IAI rent increases for work done in vacant apartments that raise the rent more than 20% should require approval from DHCR.
- Building owners should be required to file documentation with DHCR explaining the type and costs of all IAIs, and the agency should conduct random audits of these documents.
- IAI applications for cosmetic improvements, and those that result from the prior neglect of apartments should be denied.
- DHCR should discourage fraud by limiting IAIs to the reasonable, rather than actual, cost of improvements and require landlords to use licensed independent contractors.

Rent Registrations

Under the state rent laws, landlords are required to register all rent regulated units with DHCR each year. These registrations are supposed to include the rent of every unit and the name of the primary tenant. The information provided through this registration process is essential if and when any disputes emerge regarding the legal status and/or rent of a unit. Unfortunately, regulatory changes made in 2000 eliminated all meaningful incentives for landlords to comply with the registration requirements and removed all serious sanctions for failure to comply.

The proposed amendments address some of these issues by denying vacancy and MCI increases to landlords who have not registered their apartments, and requiring landlords seeking to amend previous registrations to apply for permission from DHCR and notify their tenants. Given the importance of accurate rent registrations, DHCR should also require landlords who file late registrations to follow the same procedures proposed for amended registrations. I also encourage DHCR to program

its database so that landlords who repeatedly fail to register, or file unusually large rent increases, can be automatically contacted and asked for additional information.

Preferential Rents

In 2003, the legislature changed the rent regulation laws to provide that rents in renewal leases may be based on a tenant's legal regulated rent, rather than a lower "preferential rent" previously charged to the tenant. Numerous court decisions since established that landlords can only establish a higher legal regulated rent if that rent was listed together with the preferential rent on all initial and renewal leases. Despite these court rulings, DHCR amended the regulations in 2005 governing preferential rents in way that contradicted the court rulings and radically loosened the requirements for establishing a higher legal registered rent. The proposed regulatory amendments will ensure help eliminate this confusion by ensuring that the regulations governing preferential rents are consistent with the settled legal jurisprudence.

Additional Information for Tenants Signing Leases

Under the proposed regulations, it will be mandatory for landlords to attach a new DHCR rider to every vacancy and renewal lease explaining how a tenant's rent was adjusted from the prior legal rent, as well as general information about the rights and obligations of landlords and tenants under the rent stabilization law. The amended regulations would also require landlords to provide the first tenant moving into an apartment that has been deregulated based on high rent/vacancy decontrol a notice containing the following details: the last regulated rent, the reason the unit is no longer subject to regulation, a calculation of how the rent reached the deregulation threshold, and a statement that the last regulated rent can be verified by contacting DHCR. Hopefully, this new information will reduce the number of illegal rent increases and apartment deregulations, and empower tenants to bring questionable rent histories to the attention of DHCR.

I fully support the proposals to provide additional information to tenants, but believe that DHCR must do much more to reduce the number of illegal rent increases and apartment deregulations. While the amendments currently under consideration are a step in the right direction, they still place all of the responsibility for identifying illegal rent increases and apartment deregulations on individual tenants. As the regulatory and enforcement agency, this responsibility should primarily rest with DHCR. DHCR must move from strictly responding to rent overcharge and deregulation complaints from individual tenants to proactively and strategically investigating entire buildings (or groups of buildings owned by the same owner) where multiple and/or repeated overcharges or illegal deregulations are likely taking place. In this technological age, the agency's database should also be able to be programmed to automatically detect possibly illegal rent increases registered by landlords. Significant penalties should be assessed against owners who illegally raise rents or decontrol units based upon fraudulent claims.

Service Reduction Complaints

Under New York State's rent laws, DHCR is responsible for ensuring that rent regulated tenants are provided with required services and live in habitable conditions. Unfortunately, amendments to the regulations governing enforcement of the rent laws in 2000 created numerous unnecessary hurdles for tenants attempting to file services complaints with the agency. As a result of the 2000 changes, DHCR

currently staff must automatically reject services complaints if a tenant fails to first notify their landlord by certified mail, wait a specified period, and then include proof of the certified mailing with the complaint.

According to the regulatory impact statement for the amendments currently under consideration, more than 30% of service complaints filed in recent years by tenants were rejected by DHCR because the tenants failed to first send a certified letter to the landlord or because the complaints in the letter were not identical to those in the DHCR complaint. Of these rejected complaints, 75% were never re-filed. The strict notification requirements, along with the delays imposed before tenants could even file services complaints with DHCR, led many tenants and tenant advocacy groups to see filing services and rent reduction complaints with DHCR as an ineffective last option.

I am extremely pleased that the proposed amendments eliminate the needless obstacles created in the 2000 regulations for tenants filing services complaints. There is simply no reason for DHCR to reject meritorious complaints simply because tenants did not first notify their landlords. In fact, I believe it is essential for DHCR to play a much more proactive role in code enforcement. In order to ensure that residents are living in safe and habitable conditions, DHCR must move from its failed complaint driven process to one that is proactive and strategic. The agency should initiate its own cases against owners with serious and/or repeated violations and publicize these actions as a deterrent to other landlords. DHCR's computer system should be linked with the databases of enforcement agencies and court systems throughout the state to enable agency staff to identify problem buildings and owners and expeditiously initiate action when necessary.

Harassment

I support the proposal to expand the definition of harassment to include filing false documents or making false statements to DHCR, but believe that the agency should do much more stop the widespread practice of harassment. Tenant harassment continues to be a frequent and steadily growing problem. My staff and I receive complaints of harassment from constituents on an almost daily basis. The forms of harassment include everything from landlords refusing to provide basic services, to arbitrarily calling Child or Adult Protective Services to cause emotional trauma for tenants, to bringing repeated frivolous lawsuits against tenants.

The narrowness of DHCR's current definition of harassment excludes many actions which ought to be deemed harassment. In particular, the "course of conduct" requirement may result in a finding from DHCR that just one or two egregious acts of harassment by an owner, even if they include threatening a tenant with a baseball bat or setting off a bomb in a building's basement to scare tenants, do not fall within DHCR's definition of harassment. In order to truly capture the breadth of actions that may constitute harassment, DHCR should adopt a definition of harassment that mirrors the definition used in New York City's Tenant Protection Act implemented in 2008.

DHCR must create procedures and penalties that act as true deterrents. These changes should include reforms of the agency's processes of harassment cases, and a clear and useful definition of harassment with meaningful and strict penalties that are actually enforced. The following reforms to the processing of harassment cases are recommended:

- DHCR must prioritize and expedite cases that significantly affect the tenant's use of the apartment and/or the tenant's health and safety. For example, cases which involve the continuous disruption of heat or hot water, threats of physical violence or eviction, or repeated instances of other forms of harassment should immediately be referred for investigative conferences and possible hearings before if appropriate. The agency should also ensure that decisions are reached within a defined and expeditious timeframe.
- Harassment complaints should be carefully tracked by building and landlord, and this data should be used to expedite cases involving multiple accusations against the same landlord.
- Once the case has reached the hearing phase, a fine should be mandatory if the landlord is found guilty, and fines should be imposed for every individual act of harassment.
- Given that other agencies, particularly New York City's Housing Court and Departments of Housing Preservation and Development and Buildings, already investigate and track certain kinds of complaints which may be part of a pattern of harassment, DHCR should utilize these resources to gather proof of landlords' negligent behavior. As part of its information gathering, DHCR should look at whether HPD or DOB violations have been issued for a particular building or owner and whether those violations have been resolved.

Enforcement of the *Roberts v. Tishman Speyer* Decision

The New York State Court of Appeals conclusively ruled in 2009 in *Roberts v. Tishman Speyer Properties* that all units, regardless of rent, in buildings receiving J-51 tax abatements from New York City must remain rent regulated. Despite the fact that almost four years have passed, the regulations governing the enforcement of the rent laws have still not been updated to reflect this definitive ruling. I strongly urge DHCR to expeditiously amend all regulations affected by the *Roberts v. Tishman Speyer Properties* decision, and work to notify all impacted tenants.

DHCR must also take steps to formally reregulate the tens of thousands of illegally deregulated apartments in buildings receiving J-51 benefits. Courts have requested DHCR create a method of ensuring these units be brought back under rent regulation at the correctly re-calculated monthly rent for their correct status. DHCR should immediately develop a method for coordinating its tracking systems with the systems maintained by the NYC Department of Housing, Preservation, and Development and the NYC Department of Finance to identify apartments that were improperly deregulated, notify building owners receiving J-51 abatements that that all these units must remain in or returned to their proper rent regulated, registered status for the duration of the tax benefit, and ensure that applications to deregulate apartments in these buildings are automatically rejected.