

The New York Times

November 26, 2007

Albany Bars Rent Rise for Thousands

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A loophole in [New York State](#)'s rent regulations that would have led to sharp rent increases for thousands of tenants was closed last week by housing officials.

The rule allowed landlords withdrawing from government subsidy programs to immediately bring the rent in their apartments up to market rate by claiming that exiting the programs created a "unique and peculiar" circumstance.

Normally, such landlords are limited in how much they can adjust rents each year. Citing the exception, the owners of 23 buildings in New York City and Westchester and Nassau Counties had sought permission from the state to raise the rents to market levels in 4,400 units.

In July, Gov. [Eliot Spitzer](#) and Deborah VanAmerongen, the commissioner of the state's housing agency, the Division of Housing and Community Renewal, proposed clarifying the regulation, a move applauded by tenants, housing advocates and elected officials who said the increased rents in the affected buildings would have forced many residents to move out.

On Wednesday, the Division of Housing and Community Renewal officially closed the loophole by amending the regulation.

Landlords of the 23 buildings were exiting the state's Mitchell-Lama program. The program encouraged the creation of middle-income housing by offering owners low-interest mortgages and tax abatements, in return for caps on rents. It was enacted in 1955 by the New York State Legislature and named in honor of the two legislators who sponsored it, Senator MacNeil Mitchell and Assemblyman Alfred A. Lama.

Both the old and new regulations apply only to buildings that were completed before 1974. Those buildings are required to move automatically into the rent stabilization system, which

limits the size of rent increases. Buildings completed after 1974 can go to market-rate rents and require no state oversight.

State housing officials said the “unique and peculiar” provision had been intended to permit rent increases in unusual situations, as when an owner sought to rent out a unit that had been occupied by a building manager or family member and therefore had an exceptionally low rent.

But tenant advocates said landlords of buildings leaving subsidy programs like Mitchell-Lama had been trying to use the provision for their entire buildings by claiming that withdrawing from the program itself constituted a unique and peculiar circumstance.

The new regulation says that justification can no longer be used.

“A lot of the residents of Mitchell-Lamas are seniors on a fixed income and disabled families who simply could not afford the increases that landlords were requesting,” said Ellen B. Davidson, a staff attorney with the [Legal Aid Society](#), which supported amending the regulation.

Sue Susman, the tenant association president at Central Park Gardens at 50 West 97th Street, one of the buildings that had applied for increases, said that had the loophole not been closed, her rent of \$1,000 a month for a three-bedroom unit would have gone up to \$5,275.

At another affected building, Columbus Manor at 70 West 93rd Street, Hector Cardona said rent for the two-bedroom unit he shares with his wife would have shot up to \$4,500 a month from \$981.

“It’s astronomical, a jump like that,” said Mr. Cardona, 66, a retired union organizer and president of the tenant association. “We would have had to get out. We would have ended up upstate somewhere.”

Even before the regulation was clarified, no landlord had successfully used the loophole to raise the rents for a whole building. At a few buildings that had applied for increases under the provision, tenants had agreed to modest rent increases in negotiations with owners.

Now, landlords of the 23 buildings will be sent a copy of the new regulation and must decide whether to revise or withdraw their applications, said Greg Fewer, director of policy at the Division of Housing and Community Renewal’s Office of Rent Administration.

At a public hearing in September, Mitchell Posilkin, general counsel for the Rent Stabilization Association, which represents residential building owners, criticized state officials for characterizing the provision as a loophole.

“Rather than being some sort of illegal scam or nefarious scheme, this supposed ‘loophole’ has existed as a matter of law for over 30 years, and its use in this specific context has been upheld by the state’s highest court as recently as two years ago,” Mr. Posilkin said in his testimony.

In 2005, the New York State Court of Appeals ruled that the owner of a former Mitchell-Lama building on the Upper West Side, KSLM-Columbus Apartments, could apply for buildingwide rent adjustments under the provision. The owner later settled the rent dispute with tenants.

Mr. Posilkin said that owners of buildings withdrawing from Mitchell-Lama had the right to increase artificially low rents to pay for increased taxes and debt burdens, maintenance and “to ensure their continued economic vitality.”

The owners of four Manhattan buildings, including Columbus Manor and Central Park Gardens, sued the Division of Housing and Community Renewal, seeking to have a judge order the agency to grant their “unique and peculiar” applications. The owners argued that they were entitled to have their initial regulated rents reset to conform with the rents in the area. The suit was denied this year.

The new regulation takes effect as the number of buildings in the Mitchell-Lama program has dwindled rapidly in New York City in recent years, as more owners have opted out of the program to seek higher profits in the real estate market. A report released in May by the Community Service Society, a liberal research and advocacy group, found that from 1990 to 2006, some 26,000 units in Mitchell-Lama rental developments, or 40 percent, had been lost in the city.

These days, much of the city’s moderately priced housing is built under the so-called 80-20 program, in which developers of new buildings reserve 20 percent of their apartments for low- or moderate-income households in return for state- or city-issued tax-exempt bonds.

City officials and state legislators have also expanded the number of neighborhoods where developers are required to include apartments for low- and moderate-income tenants in order to receive tax breaks.