*State Senator Liz Krueger's Memo Regarding Reform of the Office of Rent Administration*
*New York State Division of Housing & Community Renewal (DHCR)*
*January 2007*

## *Executive Summary*

Since the Division of Housing and Community Renewal (DHCR) assumed full responsibility for the statewide administration of New York's rent regulation laws in 1983, the agency has been plagued by confusion and disarray. During the last twelve years, the agency facilitated the deregulation of more than a hundred thousand apartments across the state, repeatedly violated its own regulations and procedures, and failed to strategically plan for the housing needs of our state. As a result of more than a decade of neglect from the previous administration, the DHCR needs to be fundamentally rebuilt.

This memo is the first in a series that will examine many of the key problems facing DHCR. This memo focuses on a number of serious challenges found within the Office of Rent Administration (ORA)–and propose a series of solutions that the new administration can and should work to implement as quickly as possible. The problems and solutions identified in this paper were gleaned from a wide variety of survey responses that my office sent to tenant organizations, legal advocacy groups, and affordable housing developers across New York State. An examination of survey data collected by my office, along with an analysis of numerous recent research reports and government documents, revealed a number of recurring themes which broadly fell into eleven major problem areas at the ORA at DHCR:

- Lack of consistent and impartial regulatory enforcement
- Absence of a strategic plan
- Unequal treatment of landlords and tenants
- Lack of dedicated leadership
- Insufficiently trained staff
- Extremely lengthy decision times in almost all types of administrative cases
- Poorly designed and uninformative website
- Inability to effectively combat harassment
- Lack of oversight over Major Capital Improvements (MCI) applications
- Refusal to proactively deal with illegal vacancy decontrol
- Poor oversight of high-income decontrol
- Inability to provide basic general assistance and information to tenants or landlords

## Recommendations:

The following recommendations are an overview of many of the suggestions from the surveys that were received, various housing reports, as well as proposals based on my office's own experience with thousands of constituents with various housing issues involving the DHCR over the past five years. Some of these proposals are simply regulatory changes that the agency can easily implement without legislative approval. Other changes will require the cooperation of the Legislature and amending existing state laws.

**1) Revamp the Leadership of DHCR** - There must be an effective and proactive leadership at DHCR with a commitment to developing and preserving affordable housing, and the fair impartial administration of all of the state's housing laws. It is critical that the next commissioner of DHCR be committed to these values and a proven leader with the necessary experience in landlord/tenant, housing law and/or affordable housing development and experience managing a large agency.

**2) Create a Strategic Plan** - DHCR should develop a strategic plan to more effectively handle its caseload and create concrete goals and mechanisms to develop and preserve hundreds of thousands of affordable homes across the state.

3) Restore Fairness and Impartiality in the Office of Rent Administration – During the past 12 years, DHCR has been viewed by many as having a blatantly pro-landlord bias. To restore a measure of fairness and impartiality in its dealings with tenants and owners the agency should fundamentally re-examine many of its policies and procedures and change many of its common practices. Currently, there is little to no input from or interaction with tenants or tenant advocates. DHCR should re-activate its various Advisory Councils which consisted of tenants, owners, tenant and owner organizations and agency staff.

4) Reduce Lengthy Decision Times and Promote Greater Efficiency – The ORA must develop a better system of case management in order to eliminate the backlog in its offices. DHCR should institute systems to more efficiently process cases and reallocate its resources to increase staffing in many areas.

5) Improve Training for ORA Employees – While many ORA employees are committed and hardworking, a considerable number are unfortunately widely viewed as unhelpful and inexperienced. DHCR should develop an extensive ongoing training program that emphasizes effective communication with the public and a more extensive curriculum in landlord/tenant law for all of its new and current employees.

6) Upgrade the DHCR Website – There are many ways in which DHCR's website can be improved to make it much more informative and easier to use. The site should have a greater amount of information available, be more user-friendly and interactive, and regularly updated. A number of New York City agencies, including the Department of Finance and Department of Housing, Preservation and Development, maintain high-quality websites that could serve as strong models.

7) Strengthen the Enforcement of Anti-Harassment Laws – DHCR, along with the Legislature, should create a clear, more useful definition of harassment with meaningful and stricter penalties that are actually enforced. The current legal definition of "harassment" DHCR uses an unreasonably high standard to prove claims harassment with penalty amounts so low that they do not serve as a deterrent. The fines and penalties for those found to be committing harassment should be substantially increased to provide a real deterrent to prevent owner harassment of tenants.

8) Proactively Review Major Capital Improvement (MCI) Applications – MCIs are one of the more controversial issues within NYS rent regulation laws, intended to provide a mechanism for owners to maintain and improve their buildings over time. Many MCI applications are for legitimate reasons. But, due to lack of proper oversight, MCI applications have become one of the easiest ways for landlords to obtain permanent, substantial rent increases - without justifying the need or verifying the completion and cost of actual work done. This systematic failure of DHCR to closely examine MCI applications has led to substantial fraud and unjustified rent increases. DHCR must develop a proactive and comprehensive evaluation system.

9) Implement Policies to Prevent Illegal Vacancy Decontrol – Tens of thousands of apartments have been deregulated through vacancy decontrol. While many of these deregulations have taken place in compliance with existing laws, a significant percentage of units have been deregulated illegally. Vacancy decontrol, with its potential financial windfall, provides landlords with a compelling incentive to vacate their rent-regulated apartments. Vacancy decontrol applications should be thoroughly examined and analyzed by DHCR and not simply rubber stamped. Owners who are found to have provided false documents and illegally deregulated apartments should face high financial penalties and forced to re-regulate the apartments if they have been found to have committed fraud.

10) Increase Oversight of High Income, High Rent Decontrol Applications – High Income, High Rent Decontrol applications are often insufficiently scrutinized by the DHCR. As with MCIs, these particular types of applications are prone to owner fraud and abuse. DHCR must greatly increase its oversight of these claims.

*"To make New York State a better place to live by supporting community efforts to preserve and expand affordable housing, home ownership and economic opportunities, and by providing equal access to safe, decent and affordable housing."*

- DHCR Mission Statement

## The Challenges Facing DHCR

While DHCR's mission states that it will provide "equal access to safe, decent and affordable housing," the agency's actions and initiatives have regularly fallen far short of its mission. Since the Division of Housing and Community Renewal (DHCR) assumed full responsibility for the statewide administration of New York's rent regulation laws in 1983, the agency has been plagued by confusion and disarray. As a result of more than a decade of neglect from the previous gubernatorial administration, the DHCR needs to be fundamentally rebuilt. During the last twelve years, the agency facilitated the deregulation of more than a hundred thousand apartments across the state, repeatedly violated its own regulations and procedures, and failed to strategically plan for the housing needs of our state.

The new Governor has a historic opportunity to fundamentally transform DHCR and New York's housing policies. The development and preservation of affordable housing should be one of the major priorities of the new administration. The Governor can best support these goals by appointing a new Commissioner who is strongly committed to these goals and to implementing better policies to reform this troubled agency.

This is a first in a series of memos that will examine many of the key problems facing DHCR. This memo will focus specifically on a number of serious challenges found within the Office of Rent Administration (ORA)—and proposes a series of solutions that the new administration can and should work to implement as quickly as possible. The problems and solutions identified in this paper were gleaned from a wide variety of survey responses that my office sent to tenant organizations, legal advocacy groups, and affordable housing developers across New York State.

Our overall findings were troubling and generally portray an agency that is dysfunctional and largely ineffective. The DHCR has not adequately fulfilled its principal function of fairly enforcing the rent regulation and housing laws of New York State. An examination of survey data collected by my office, along with an analysis of numerous recent research reports and government documents, revealed a number of recurring themes which broadly fell into eleven major problem areas:

- Lack of consistent and impartial regulatory enforcement
- Absence of a strategic plan
- Unequal treatment of landlords and tenants
- Lack of dedicated leadership
- Insufficiently trained staff
- Extremely lengthy decision times in almost all types of administrative cases
- Poorly designed and uninformative website
- Inability to effectively combat harassment
- Lack of oversight over Major Capital Improvements (MCI) applications
- Refusal to proactively deal with illegal vacancy decontrol
- Poor oversight of high-income decontrol
- Inability to provide basic general assistance and information to tenants or landlords

In anticipation of the new gubernational administration, my office created comprehensive surveys to evaluate the performance of DHCR and its Office of Rent Administration (ORA). The surveys were sent to hundreds of tenant organizations, housing lawyers, and affordable housing developers all over the state. The recommendations and solutions proposed below are based on an analysis of

returned surveys, numerous research reports by housing advocates, agency audits, budget hearing testimony, conversations with noted housing experts and lawyers, DHCR reports, and previous written correspondence with DHCR. The seminal 1987 report, *Bleak House: DHCR at the Crossroads,* written by the Assembly Committees on Housing and Oversight, Analysis, and Investigation under the leadership of Assemblymembers Pete Grannis and Brian Murtaugh, also proved invaluable. There are numerous recommendations, specific proposals and solutions, which are addressed in much greater detail in the memo, which divided into the following ten general category areas:

- Develop better and more effective leadership
- Create a strategic plan and promote greater efficiency
- Restore fairness and impartiality towards tenants and eliminate landlord favoritism
- Substantially reduce the waiting time for administrative decisions
- Implement more effective staff training
- Improve the website
- Clearly define harassment and strongly enforce the anti-harassment laws
- Better review over Major Capital Improvement (MCI) applications
- Prevent illegal vacancy decontrol
- Increase oversight of high income and high rent decontrol applications

## Recommendations

The following ten recommendations are an overview of many of the suggestions from the surveys that were received, various housing reports, as well as proposals based on my office's own experience with thousands of constituents with various housing issues involving the DHCR over the past five years. Some of these proposals are simply regulatory changes that the agency can easily implement without legislative approval. Other changes will require the cooperation of the Legislature on amending existing state law.

### 1) DHCR Needs Effective and Impartial Leadership

The previous leadership of DHCR appeared to have lost touch with the two primary missions of the agency—the development and preservation of affordable housing and the impartial enforcement of the rent regulation laws. During the previous administration, this neglect coupled with the clear influence of politics in many decisions, led the agency to be less concerned with working proactively to address the state's housing crisis than with strengthening the ability of landlords to deregulate apartments as quickly as possible. It is critical that the next commissioner of DHCR be an effective, impartial, and experienced administrator who is strongly committed to the agency's mission.

<u>Provide Increased Transparency</u>

There has been lack of transparency at DHCR regarding its administrative decisions and policies. The DHCR does not make its administrative decisions available to the public, making it extremely difficult for housing lawyers to understand DHCR's interpretation of the law and creating a culture of mistrust. Meetings with landlords and owners are frequently conducted without tenants or tenant representatives present. One such problem area is with dissolution discussions in Mitchell-Lama Housing. Tenants and tenants associations or their representatives are often not notified or included in DHCR's dissolution discussions when owners are considering buying out of the program.

- DHCR must do everything possible to promote greater transparency and accountability throughout the agency. It should immediately make its policies and administrative decisions easily available to the public and ensure that all parties in cases are provided equal access to agency staff.

<u>Widely Publicize Proposed Changes to the Rent Stabilization Code</u>

Since 2000, DHCR has enacted a series of significant changes to the Rent Stabilization Code (RSC). These regulatory changes have had severe and negative impacts on affordable housing and tenants,

and in many cases directly contradict state law. These changes have further exacerbated the appearance of the agencies bias in favor of owners. DHCR must be more circumspect in its role as an executive agency. DHCR has overreached with many of these administrative code changes, and usurped the law-making power of the Legislature. Particularly with many of the code changes in 2000, the DHCR actually made significant changes in the law and did not simply implement or conform the code to the 1997 changes in the law. These changes were also made with very little notice to tenants, tenant advocates or attorneys because the agency's only public notice was in the *New York State Register*, an obscure and largely unread state publication. Most recently, a number of problematic emergency regulations were proposed in the last month of 2006, in the last weeks of the 12 year Pataki administration with little public notice.

- DHCR should hold open public hearings that are widely publicized in at least two major mainstream media and community news outlets whenever important policy, regulatory, or administrative codes changes are proposed. Announcements of proposed changes and public hearing should also be highlighted on the DHCR website.

## 2) Create a Strategic Plan, Support Affordable Housing Development and Shift Agency Priorities

DHCR should develop strategic plans to more effectively handle its caseload and create concrete goals and mechanisms to develop and preserve hundreds of thousands of affordable homes across the state. This should include a full internal evaluation of the organization, structure, and priorities of staff and resources as well as the development of a strategic plan with a larger vision for the preservation and creation of affordable housing in New York State.

### Support Affordable Housing

The new leadership of DHCR must proactively and aggressively support the development and preservation of affordable housing for all New Yorkers. All around the state local leaders have recognized the magnitude of the housing crisis. The County Executives of Nassau, Suffolk, Westchester, and Rockland Counties have identified the lack of affordable housing as one of the worst problems facing their counties and are beginning to generate comprehensive local plans. New York City is implementing the nation's most ambitious municipal housing plan, promising to spend $7.5 billion to create and preserve more than 165,000 homes in the next 10 years. Amazingly, at the rate that housing units are exiting rent regulation, the new homes will not even be able to replace the staggering loss of affordable regulated units. Unfortunately, the positive actions in localities throughout New York have been completely absent at the state level.

- DHCR should develop a statewide affordable housing plan with large scale specific target goals, similar to New York City's plan.

### Implement Efficiency Standards for Processing Files and Cases

In 1987, the *Bleak House* report revealed that DHCR had simply lost over five hundred cases of one thousand submitted by landlords alone. Unfortunately, DHCR is still perceived as an inefficient and highly bureaucratic agency that often mishandles case files and takes an inordinate amount of time to process the cases, particularly if they are tenant initiated. DHCR needs to execute a plan to eliminate the loss of files and the extensive backlog in many of its offices. In a 2005 audit of the DHCR buyout process of Mitchell Lama buildings conducted by the State Comptroller, the DHCR was unable to provide the auditor with necessary files on a number of companies participating in the buyout process.

- Better maintenance and tracking of case files is clearly necessary, as well as the implementation and consistent enforcement of deadlines for closing both tenant and owner cases with stated benchmarks for the agency to meet those deadlines.
- The State Comptroller's auditor recommended that DHCR better document all of the proceedings and that "a written record of the required public information meetings should be prepared and any agreements reached by DHCR and/or the tenants with the housing companies prior to a buyout should be formulated in writing."

Improve Data Collection

In recent years when legislators, researchers, researchers, policy advocates, and members of the press have requested information from DHCR regarding the affordable housing and economic development needs in different areas of the state, the agency has consistently stated it does not collect such data. All inquires regarding New York City housing issues were referred to the City Rent Guidelines Board or the Department of Housing, Preservation and Development. It is simply inexcusable that the agency charged with planning and implementing the state's affordable housing programs lacks even basic demographic data. DHCR cannot even begin to develop effective public policy, improve agency functioning, or set attainable goals for developing and preserving affordable housing without relevant data.

- DHCR must develop a computerized tracking system to easily collect and catalog the critical housing and other relevant demographic data on a county by county basis. The comprehensive studies conducted annually by the New York City Rent Guidelines Board would serve as a strong model.

Implement Basic Fraud Prevention Measures

Unfortunately, the filing of fraudulent applications and documents with ORA appears to be a serious and widespread problem that must be addressed aggressively. The following recommendations are measures that DHCR should strongly consider implementing:

- DHCR should create an audit unit within the ORA.
- Institute regular random audits of all applications submitted to the ORA. The ORA should also allow discovery by opposing parties of documents such as contractor receipts and architectural contracts.
- DHCR should periodically examine its caseload to detect patterns and violations among troublesome owners or management companies or those with particularly bad records and explore cross-investigations with local agencies such as NYC's HPD code enforcement unit.
- DHCR should utilize its subpoena power in questionable cases to compare checks and invoices submitted by owners with the actual contents of the official books and records of owners and contractors.

## 3) Restore Fairness and Impartiality to the Office of Rent Administration

Whether it is through individual case decisions, the development of new policies, or the interpretation of legislation, DHCR has taken a far less balanced stance with respect to tenants for the last 12 years. Tenants are continuously faced with obstacles in dealings with the DHCR. Many tenant advocates and housing attorneys reported they have given up hope that DHCR will administer the rent laws impartially or act on behalf of tenants in cases where there is clear owner harassment, fraud, or abuse. In contrast, the bureaucratic hurdles for owners have been eased significantly. Among the survey findings:

- A major change that has a significant deleterious effect on tenants has been the implementation of the four-year rule, which explicitly prohibits looking beyond four years in rental histories in rent regulated apartments.
- Applications and requests for many common administrative proceedings have become increasingly much more complicated and time-consuming for tenants.
- Tenants must now give landlords written repair notices 10-60 days in advance before applying to DHCR for rent reductions due to lack of services, even if it is an emergency condition.
- DHCR has adopted several amendments to the Rent Stabilization Code that favor landlords (RSC). For example, in a review by the Legal Services for New York City of the 2000 revision of the RSC, they summarize §2526.1(a)(2) as saying, "tenants who seek not to challenge, but only to refer to older rents, are prohibited from doing so where the result may be an overcharge award against the landlord."

Rent Restorations vs. Rent Reductions

Many tenant advocacy groups have seen their clients encounter significant burdens with rent reduction and MCI applications, especially with the new burdensome regulations that were imposed in the 2000 code revisions, while landlords encounter much less difficulty when filing for rent restorations. §2523.4(g)(2) of the revised RSL states that: *"The presumption raised by the affidavit may be rebutted only on the basis of persuasive evidence, including a counter affidavit by an independent* ***licensed architect or engineer****, or a report of a subsequent inspection conducted, or a subsequent violation imposed by a governmental agency, or* ***an affirmation signed by 51 percent of the complaining tenants.*** *Except for good cause shown,* ***failure to rebut the presumption within 30 days*** *will result in the issuance of an order without* ***any further physical inspection of the premises by DHCR."*** The problems facing tenants are further worsened due to the following:

• Most tenants do not have the kind of financial resources necessary to hire a licensed architect or engineer or they are unable to get the necessary 51% of tenants in the whole building to agree to file for a building-wide rent reduction or challenge an MCI. Therefore, tenants frequently end up abandoning well-founded cases.
• When tenants initiate reduction in services complaints, DHCR rarely if ever sends inspectors to independently evaluate the situations. When inspectors are sent, they often fail to inspect all of the alleged complaints reported by the tenant. It is clear that DHCR must dramatically increase the size and professional capacity of its code inspection department.
• Our surveys revealed that it frequently takes the ORA many years to process reduction in services complaints, rent overcharge, and rent reduction cases. Numerous legal advocacy groups and tenant organizations reported that they regularly assist tenants with cases that go back more than a decade.

Address Inequity Between Parties

As a state administrative agency, DHCR must implement policies and practices that treat all parties in cases equitably. Unfortunately, this has not been the case under the previous administration. Many housing attorneys, tenant organizers, and tenant advocacy groups no longer even recommend to tenants that they go to DHCR for relief because they perceive the exercise will be a waste of time. In many instances DHCR will not check cases that seem obviously erroneous unless the tenant first brings a challenge or appeals a decision. DHCR has become so grossly ineffective and inactive that it rarely seems to monitor landlord applications, MCI applications, tenant complaints or other procedures that they are legally mandated to administer. DHCR makes no inquiries into rent histories, even if one year a landlord reports $400 for rent and then the next it has suddenly increased to $1400. The tenant must file an overcharge claim for DHCR to look into it. If the tenant does file an overcharge claim, it often takes years to get any response to it and, more often than not, a blatant overcharge of rent is approved by the agency.

- ORA must immediately implement policies to ensure that all parties are held to the same standards.

Restore Tenant and Community Input

To begin to address the lack of trust and communication that has developed between DHCR and community organizations and tenant advocates, the agency should:

- Re-establish the Tenant Advisory Council.
- Establish active community task forces to enable local advocates and organizations to work collaboratively with DHCR on community planning and development.
- Create advisory teams to facilitate dialogue between the agency, Governor, and the community.

The DHCR should also implement regulatory changes in a number of critical areas that have become increasingly more important over the past several years. The primary areas that have emerged as

those of most critical concerns are: lease renewals, rent registrations, the four year rule, preferential rents, demolitions, owner use evictions and roommate overcharges.

### Lease Renewals

- The Rent Stabilization Code should be amended to clearly state that no rent increase can or should be collected until the renewal lease is offered, the tenant signs and returns it to the owner and the landlord returns a signed copy to the tenant within the appropriate time periods.
- There is currently no penalty for owners who do not provide the necessary rider which is required by law. These riders are often the tenant's only indication other than rent registrations that they are rent stabilized and the only documentation that lists all of their rights as rent stabilized tenants. The code should be amended to make it clear that owners cannot receive rent increases until they provide the proper riders.
- DHCR should clarify the ambiguous rules and inconsistent language which currently only allows spouses to be added to leases. Since they are entitled to succession rights, both traditional and nontraditional family members should be able to be added to the lease, at the tenant's option.

### Rent Registrations

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 key if and when any disputes emerge regarding the legal status and/or rent of a unit. Unfortunately, in recent years a significant percentage of landlords and management companies have failed to register their apartments on a regular basis, either because they are unaware of the legal requirements or they know they will not face any penalties for failing to do so.

- All previous DHCR rent registrations should be the basis for rents since they are a matter of public record and relatively easy records for tenants to obtain regardless of when they were filed.
- DHCR should work to remind owners of their legal responsibility to register all regulated apartments on a yearly basis. Failure to register should lead to the assessment of fines.
- The RSC should be amended so that a landlord's failure to register the rent would automatically extend the period of time when the last valid rent registration can be used as a basis for establishing the tenant's rent regardless of the four year rule.

### Four Year Rule

DHCR should follow the clear legislative intent of the four year rule which the Legislature clarified through amending the RSL in 1997. The intent of the law was clear in that it established that there was a four year statue of limitations for challenging a rent registration by filing an overcharge complaint with DHCR. This would mean if an existing rent registration was not challenged within four years it would become the means by which a tenant's rent was established. DHCR then turned this clear directive on its head and amended the RSC to provide far greater protections to landlords than the Legislature intended. These changes to the RSC now allow the base rent for rent-stabilized apartments to be whatever the landlord charged four years ago. DHCR actually created a law that the Legislature did not authorize, which permitted the owner charge <u>any</u> market rate rent to the subsequent tenant If the apartment was vacant four years ago. In effect, the DHCR created a new form of vacancy decontrol without legislative approval that was nowhere justified in the RSL or EPTA.

- The RSC should be amended to restore the original legislative intent of the statue, which was the rent should be determined in accordance with the registration documents that are a matter of public record, as long as they remain unchallenged for four years.
- DHCR's orders or prior rent registration records, no matter how long ago they were issued should be given effect in every case involving rent, since they are a matter of public record.

## Preferential Rents

Due to a 2003 change in state law, landlords are now frequently able to opt out of preferential rent agreements during the lease renewal process; additionally, landlords no longer are required to list both the legal and preferential rent on all leases and rent registrations for the previous 4 years. As a result, thousands of long-term tenants are facing unexpected and unaffordable rent burdens.

- DHCR should amend the RSC to reflect recent case law that states that preferential rents are permanent when there is language in the lease that states that it is permanent.
- DHCR should also promulgate rules that state an owner should have to establish that every rent entered into before the statue was amended in 2005 contain a notice of the legal rent and the preferential rent.
- DHCR should also amend the code to require all leases that establish or continue preferential rents to clearly notify tenants of the potential rent increases they could face if the landlord decides to terminate or cancel the preferential rent in the future; leases should also inform tenants that they have four years to challenge the first non-preferential rent.

## Demolitions

- The compensation provided to tenants who are forced out of their homes due to demolition is wholly inadequate. The stipend formula, which was essentially gutted in recent years should be changed to provide for either relocation to another rent regulated apartment or a greatly increased stipend amount to reflect current market rate rents.
- The demolition provision of the state's rent regulation laws was intended to permit owners to remove regulated tenants living in dilapidated buildings that are about to be fully demolished and replaced with new safe housing. Increasingly, ill-intentioned landlords are filing "phony demolition" applications for structurally sound buildings where it is evident that the owners simply plan to renovate the property and convert rent-regulated apartments into luxury housing or other uses. DHCR should amend the RSC to strictly prohibit "phony demolitions."
- DHCR should re-implement its policy of having mandatory formal hearings in all demolition cases.
- DHCR should require that owners provide it with all supporting documentation including the actual plan filed with the local Department of Buildings.
- Discovery should be permitted in demolition proceedings as in other administrative proceedings.

## Owner Use Evictions

- The Emergency Tenant Protection Act (EPTA) provides far greater protections for tenants in owner use evictions outside of New York City those than those provided under the RSL in the City. This is an unfair because tenants in New York City should enjoy the same protections as tenants in the surrounding suburban counties. Before an owner can evict a tenant for personal use, an owner should be required to show an immediate, and compelling necessity for an eviction.
- DHCR should adopt the same protections for certain categories of tenants as the EPTA. Tenants who are seniors, disabled or in occupancy for 20 years or more should be exempted from owner use evictions.

## Roommate Overcharges

- DHCR should amend the RSC to implement a less severe penalty than eviction for a roommate overcharge. This was one of the 2000 changes that penalize both the tenant and the roommate. DHCR should impose a penalty if a tenant willfully overcharged a roommate in addition to paying back the roommate but not allow for eviction of the tenant.

## Unique & Peculiar Rent increases

- The Emergency Tenant Protection Act originally provided for "unique & peculiar" rent increases only in certain limited instances and special circumstances, such as when an apartment has been rented for free to a building superintendent that is now entering rent stabilization. Owners of pre-1974 Mitchell Lama buildings that are currently covered under

rent stabilization are now using this obscure, limited clause in the RSL to make the case in the courts that the act of simply leaving the Mitchell Lama program is considered a "unique & peculiar circumstance." This decision could subject thousands of tenants to massive increases in rents even in units that are rent stabilized. DHCR should establish policies restricting unique and peculiar rent increases to individual units only under limited circumstances and should not be applied to entire buildings.

## 4) Significantly Reduce Decision Times in Administrative Cases

One of the greatest challenges facing ORA is its significant case backlog. This backlog frequently leads to exceedingly long processing time for common DHCR administrative proceedings. Proceeding times are often so long that they make it impossible for parties to seek administrative redress through the agency's administrative mechanisms. Additionally, tenant-initiated claims appear to be processed far slower than landlord initiated applications.

Overhaul the Administration of Overcharge Claims

According to our surveys, the average processing time for tenant-initiated overcharge claims is 21 months, with many claims taking more than 3 years. Numerous tenant advocacy organizations, housing resource guides, and tenant websites regularly advise tenants that filing any type of complaint or claim with DHCR should always be the last option. Even if a tenant wins the rent overcharge complaint, the landlord can then file for a Petition for Administrative Review (PAR). PARs then often drag the process out for additional years. A 2002 audit by the New York State Comptroller, found approximately 237 open PARs for overcharge complaints; the average PAR was open for 267 days. After the audit, the auditor noted that, "DHCR officials were not aware of the rate of PARs granted, nor were they aware of the reasons for the larger rate (of granted PARs) in the Overcharge Bureau."

- DHCR should do a full evaluation of all its open overcharge complaints and implement procedures to eliminate the backlog. Strict deadlines should also be imposed for the processing of initial complaints and PARs.

Restore Impartiality in the Deadlines Discrepancy Between Tenants and Owners

Tenants are frequently forced to wait years to receive decisions on their complaints and are generally held to extremely strict deadlines for submission of complaints or paperwork. In contrast, the vast majority of landlord-initiated applications (for MCI increases, deregulation applications, etc) are processed within weeks; additionally, landlords have reportedly often been permitted to resubmit requests and papers that are years past their deadlines. Landlords are often given great leeway and undue consideration in relation to their applications. If tenants do not submit papers within the deadline date, then their cases usually are considered closed and extensions are very rarely given. Many legal service providers have cited numerous instances where DHCR reopened proceedings for landlords under "reconsideration" and special circumstances, even though the owner had clearly missed the deadline to submit an administrative appeal. However, when reconsideration was requested by tenants in cases involving "clearly erroneous decontrol orders," DHCR refused. To restore fairness in the process:

- In accordance with a new strategic plan for DHCR, it needs to find a new way to file and access data so that they can greatly decrease the amount of time it takes to make a decision on a case. It is unacceptable that it takes years to close relatively simple cases, such as rent overcharges.
- DHCR must either treat deadlines as final or provide allowances for special circumstances for all parties.
- DHCR should develop written guidelines for its employees on what constitutes these special circumstances, when they should apply, and in what types of cases they should be used.

## 5) Improve Training for ORA Employees

While many ORA employees are committed and hardworking, a considerable number are unfortunately widely viewed as unhelpful and inexperienced. DHCR should develop an extensive ongoing training program that emphasizes effective communication with the public and landlord/tenant law for all of its new and current employees.

According to a number of our survey respondents, the majority of employees in DHCR's Community Development unit are helpful, professional, and informative. In contrast, employees in the ORA were almost universally seen as being unable to perform the duties required of them. The *Bleak House* report found that employees had continuously given out wrong information, lost important case files, been unavailable on the phone lines, along with other problems. Nineteen years later, these issues still exist.

ORA employees continue to give out wrong information and inappropriate legal advice to callers even though many are not attorneys and do not have any specific legal training. There have been a number of cases where DHCR employees' mistakes detrimentally affected unfortunate parties. In one instance, a survey respondent recounts an incident of receiving misinformation from a DHCR employee: *"Initial rent registration is done on form RR-1. That form states that complaints about the landlord's RR-1 form may be filed on RR-5, a form that in fact has been discontinued. When I asked DHCR representatives which form to use to complain about the rent registration, I was told to use the overcharge complaint form. Those complaints were later dismissed by DHCR because tenants were not in fact complaining about overcharges, but rather about the rent registration!"*

Additional problems include:

- Employees who put callers on hold and then hang up on them.
- Employees tell callers they will call back and fail to do so.
- Employees fail to send promised files or papers.

<u>Improve Training and Invest in Staff Development</u>

Many organizations and groups feel that more pro-active, impartial, and non-political personnel need to be hired. Extensive training for all employees is long overdue and could include the following.

- Employees should become familiar with the various municipal agencies, advocacy organizations, and policy experts working on affordable housing and economic development issues.
- Sensitivity training to understand how poor housing conditions and other common stressful situations affect tenants.
- Employees should acknowledge when they do not know the answers and know where to send callers in order to receive the answers they need.
- DHCR should have a prompt mandatory "response time" for calls and letters.
- Basic skills training in effective communication and appropriate interaction with citizens.

## 6) Improve the DHCR Website

There are many ways in which DHCR's website can be improved to make it much more informative and easier to use. The site should have a greater amount of information available, be more user-friendly and interactive, and regularly updated. A number of New York City agencies, including the Department of Finance and Department of Housing, Preservation and Development, maintain high-quality websites that could serve as strong models.

<u>Make The DHCR Website User-Friendly</u>

Many websites have become much more interactive over the past years, yet DHCR has failed to update its site. Complaint forms should be made available online and tenants should be provided

the option of filing complaints or asking questions on DHCR's website. Doing so will streamline the grievance process, establish an electronic data trail that will minimize problems due to lost paperwork, and provide tenants an easy and convenient method of alerting DHCR to violations. Many tenant organizations, affordable housing developers, and legal advocacy groups have requested that the website be made more user-friendly and updated regularly.

- Fact sheets and complaint forms should be made available in several different languages. This should be a top priority since a large portion of rent-regulated housing is located in New York City, one of the most ethnically and linguistically diverse places in the world.
- DHCR on-line information should be categorized by subject and region, with a strong "keyword" search option.
- The software used by DHCR should be available to users free of charge or by shareware as not everyone has the software that is compatible to DHCR's website.
- Organize policy statements and Operational Bulletins by subject, instead of by arbitrary numbers that are meaningless to the general public.

Make Public Information Public

Links to data, projects, and anything else that is public information should be made available on the website so that DHCR employees can focus on taking more calls from those with pressing issues and needs. Much of the information is currently available only through the Freedom of Information Law (FOIL), so FOIL requests should be made available on the website. However, DHCR should also make more information available to the public as most New York City agencies have done.

Here are additional suggestions my office received:

- Agency decisions and responses should be made available online.
- Daily notes in files as to calls and complaints should be added to online case files
- Rent histories and registrations should be made available so that new tenants can know when they are being overcharged.
- Information and links on the administration of enhanced vouchers
- Provide online access to PAR decisions.
- The Affordable Housing Directory should list federal and state projects
- Regular training sessions and handouts for advocates and unrepresented individuals should be placed on the website.
- Links to grant programs should be updated.
- The case status pages should include more detailed about the status of applications.
- Provide a clear process that tenants can follow to learn about DHCR and their legal rights.
- Provide regular email/electronic updates to individuals interested in changes in codes or regulations.

## 7) Strengthen & Improve the Enforcement the Anti-Harassment Laws

Tenant harassment continues to be a steadily growing problem. There have been reported instances of harassment ranging 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. While DHCR has established harassment proceedings with the intent of decreasing or eliminating harassment altogether, they have been an ineffective deterrent. DHCR must establish a more clear and useful definition of harassment with meaningful and stricter penalties that are actually enforced. Many survey respondents noted that mediation does nothing more than allow the landlord more time to continue to harass their tenants.

Despite repeated requests from elected officials and housing advocates, DHCR has refused to disclose both the number of harassment claims filed each year and the percentage of cases which result in any penalties being imposed. However, based upon anecdotal reports my office has received from dozens of tenant attorneys and advocates, it appears that few if any harassment claims are even sent to trial, let alone result in penalties. Numerous tenant advocates have stated

that they no longer even encourage tenants facing harassment to file claims with the DHCR because they are so unlikely to yield any positive results or relief.

Even if a tenant is dealing with a landlord known to have committed numerous violations in the past, it is still a long and difficult process to prove that he or she has been harassed or victimized. One of the most poignant examples that has come up recently is the systematic harassment of tenants by the Pinnacle Group. A June 7, 2006 *NY Daily News* article documented this pattern: "For months, hundreds of angry tenants and neighborhood leaders…say Pinnacle systematically harasses and forces out long-term tenants, many of them immigrants, elderly or poor, then illegally charges newcomers far higher rents than permitted by state housing law." DHCR only recently began an investigation into Pinnacle after significant public pressure even though tenants had made countless complaints to the agency, and issues had been widely reported in several media outlets for months.

New York State's rent regulation laws state that "*DHCR will permit no rent increases once there has been a finding of harassment until there is a finding that the harassment has ended*." However, because DHCR rarely investigates claims of harassment, landlords engaged in these practices overwhelmingly continue to receive rent increases. An entire revamping of the way that harassment proceedings are handled is necessary in order to effectively combat harassment of tenants by landlords.

While the widespread use of harassment by landlords is contemptible, it is not surprising. More often than not, landlords are not punished for their actions and tenants are left with the option to stay in an apartment and face continued harassment, or to leave and face the incredibly difficult task of finding affordable housing elsewhere. Even when landlords are found guilty of harassment, the maximum fine they face is $5,000. Compared to the huge rent increases owners can apply for after a tenant vacates, the $5000 is just a small cost of doing business.

Furthermore, for many years DHCR has treated harassment complaints differently from all other complaints regarding violations of the rent laws. Harassment complaints are treated as purely discretionary. The enforcement bureau has total discretion whether or not to prosecute cases, under a procedure that requires mediation of even extremely serious cases. The enforcement bureau does not prosecute cases when it determines the mediation process "successful," which means that the offensive conduct has ceased. Under these procedures, landlords are not prosecuted for physically harming tenants, as long as it only happens once. Victims of harassment have the right to expect their landlords will be punished for past illegal actions.

<u>Re-Establish & Strengthen the Gutted Enforcement Bureau</u>
When Governor Pataki took office, the position of the Director of the Enforcement Bureau was made part-time. The following proposals outline ways to strengthen this unit:

- Considering the fact that the Director handles harassment as well as overcharge complaints, it must be restored to a full-time position.
- In 1999, the number of Enforcement Unit lawyers was reduced from fifteen to five. Given the overwhelming number of landlord harassment allegations reported to my office by advocates and constituents, this level of staffing is utterly insufficient. The number of lawyers in the Enforcement Unit *at a minimum* should be restored to fifteen.
- DHCR should provide greater access by expanding office hours and opening additional local district offices in NYC where the vast majority of New York State's rent-regulated tenants live.
- The enforcement bureau should offer, but not require, mediation before trial.

<u>Implement and Enforce Strong Anti-Harassment Laws</u>

- DHCR should support legislation to expand the restrictive definition of harassment, which currently only considers harassment to be something that is a continuing course of conduct or a pattern of behavior. This definition does not reflect the wide range of methods

employed by owners or their representatives to make rent-regulated tenants so uncomfortable and fearful that they decide to leave their homes.

- The maximum fine for harassment must be substantially increased so that fines serve as a significant deterrent against harassment. When appropriate, DHCR should also refer extreme cases of harassment to local law enforcement authorities so that criminal investigations can be carried out.

## 8) Implement More Stringent Review of Major Capital Improvement (MCI) Applications

MCI applications are one of the easiest ways for landlords to successfully and easily obtain substantial rent increases. Many MCI applications are legitimate, and landlords should certainly be encouraged to maintain their properties, but the ORA's failure to closely examine MCI applications has led to substantial fraud and unjustified rent increases. Often tenants do not receive timely notice and in some cases, no notice at all that an MCI application has been filed until the final order for an MCI is sent to them. DHCR must develop a proactive and comprehensive evaluation system for MCI applications.

Increasingly, MCIs are being used specifically to move apartments out of rent-regulation. Once a unit is deregulated, it is permanently free of rent regulation and MCIs have become an effective means of raising rents to that magic number where the landlord can apply for high-income decontrol or vacancy decontrol. Essentially, they are now rewarding landlords for neglecting maintenance because many MCIs are done as a result of a lack of upkeep by the owner. MCIs no longer appear to serve the purpose the purpose for which they were intended.

### The Difficulties for Tenants

For those tenants who are notified of an MCI by their landlord, many are unaware of what it is or what they can do to challenge an application. Applications are written in a densely complex prose, baffling to those outside the legal profession. For those tenants who get beyond the initial obstacles, the new RSC states in §2527.3(a)(2) that they cannot challenge an MCI for inadequate improvements of the property if they do not hire an architect or engineer to corroborate their claims. Because tenants are often unable to challenge MCIs, applying for them is an effective way for landlords, who almost always have the means to hire lawyers, architects, or engineers, to permanently increase rents.

### Landlord Abuse

Many landlords have abused MCIs and actually applied for them without making any improvements and somehow were still able to receive rent increases from DHCR. Building inspectors are almost never sent by DHCR to ensure that landlords have made all of the filed building changes and improvements. Essentially, no one at the agency knows whether the improvements the landlord claims to have made were actually made or whether the costs claimed were legitimate. There have been 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.

### DHCR's Ineffectiveness

DHCR is either unwilling or does not have the resources to fully inquire into MCI applications. According to some of our survey respondents, there have been patterns of cases where landlords "phony" actual costs reports to DHCR such that a repair costs $50,000 when in reality, costs are 5 - 10 times lower. However, unless a tenant initiates a challenge to the MCI, DHCR will not investigate. Even in cases where DHCR investigates or a resourceful tenant (who knows a good engineer or architect) finds that the landlord quoted a grossly incorrect amount in their MCI application, the MCI is merely decreased based on the correct charge but the landlord is not punished. This system does not provide any incentive for landlords to honestly represent the true costs of MCIs. This problem is a testament to the need for the DHCR to send out more inspectors and conduct random audits so that all parties know fraud will not be tolerated. There should also be substantial financial penalties for fraudulent applications.

MCIs Should be Temporary Surcharges

Owners recapture their costs for MCIs after 7 years under the current formula used to calculate them. There is no reason for tenants to have to continually pay for an improvement after the owner has recouped his or her costs. The rent increases due to MCIs should not be permanent. Instead, they should be made into temporary surcharges to reflect the originally intended purpose of the charge. Making MCIs a surcharge decreases landlords' incentives to abuse them because it will be more difficult for landlords to use MCI rent increases to raise rents enough to decontrol them. There is currently a bill in the State Legislature, which would make the increased charge temporary. In addition, the bill requires that that an MCI be recorded on rent bill as a separate surcharge. It has yet to pass but we recommend that DHCR lobby in support of this bill.

The agency should strongly consider the following recommendations:

- MCI applications should be automatically rejected if a rent reduction order is in place, or a reduction in services complaint is under investigation, at the time of application.
- MCIs should not be approved for work that is either incomplete or defective at the time of application.
- Regular inspections and audits should be conducted to determine if work is defective. The current system of relying only on the submission of a contractor's self-certified submission of a plan is not sufficient to insure that work is completed properly and that fraudulent claims are not being approved.
- DHCR should investigate and conduct inspections of the completed MCI work, both randomly and by request.
- Since there is a great financial incentive for owners to inflate costs, exaggerate claims and submit fraudulent documents, DHCR should conduct independent periodic audits of MCI claims, and subpoena landlord, contractor, and bank records in suspicious cases.
- The RSC code should be amended to rescind changes implemented in 2005 in regards to the proportionate costs for rent regulated, commercial and market rate tenants. Rent regulated tenants share of any rent increase for MCIs should be proportional to their share of the rent roll.
- Provide agency support for proposed legislation changing the status of MCIs from permanent charges to a fixed surcharge.

## 9) Implement Policies to Prevent Illegal Vacancy Decontrol

Tens of thousands of apartments have been deregulated through vacancy decontrol. According to a 2006 New York City Rent Guidelines Board report, approximately 66% of apartments permanently taken out of rent-stabilization were removed through vacancy decontrol. While many of these deregulations have taken place in compliance with existing laws, a significant percentage of units have been deregulated illegally. Vacancy decontrol, with its potential financial windfall provides landlords with a compelling incentive to vacate rent-regulated apartments. Vacancy decontrol applications should be carefully examined and analyzed by DHCR and not simply rubber stamped. Owners who are found to have provided false documents and deregulated apartments illegally should face high financial penalties and be forced to re-regulate the apartments.

For landlords to remove their vacated, rent-regulated units from rent regulation, in addition to getting vacancy increases, owners must often make significant improvements to the apartments. Once enough improvements have been made to allow the rent to reach $2,000 or more per month, the apartments can be permanently removed from regulation. Under current law, landlords do not need to obtain DHCR approval to start the improvement process, and only need to provide minimal documentation of their expenses. Owners usually only have to provide their calculations to justify the rent increase.

Vacancy decontrol gives landlords an extremely compelling financial incentive to vacate their rent-regulated apartments. This has led to growing problems with tenant harassment and the faulty use

of MCIs to raise the rent to $2,000. With more than twice as many units being removed from rent stabilization status as new affordable units are being created, vacancy decontrol is dramatically increasing our State's housing crisis. Our recommendations include:

- Establish and enforce significant penalties for owners who illegally decontrol units based upon fraudulent claims.
- Owners have been regularly allowed to deregulate units by changing their size including creating smaller apartments. Owners should not be allowed to decontrol units that have been reduced in size through either subdivision of an existing apartment or through the reconfiguration a unit.
- The RSC should be amended so that owners must apply to DHCR for permission to deregulate units based upon physical vacancy decontrol; all units should remain regulated until permission has been granted.
- DHCR should randomly audit applications for vacancy decontrol, and use its subpoena power when necessary to fully evaluate questionable cases.
- Owners must be required to provide the first non-regulated tenants of decontrolled units written notices explaining that apartments were recently deregulated and the current tenants have the right to appeal the decision to DHCR.
- The four year rule should apply equally. If the owner fails to apply for deregulation with four years after the prior stabilized rent registration the owner should lose the right to apply.
- DHCR should strongly support proposed state legislation which would repeal vacancy decontrol.

### 10) Improve Oversight of High-Income, High-Rent Decontrol Applications

While high-income, high-rent decontrol was originally enacted so that wealthy tenants would not be able to take advantage of the rent-regulation system, it has come to serve a very different purpose. When enacted in 1993, deregulation could take place if an apartment rented for more than $2,000 a month and the tenant has an income of $250,000 or more for two consecutive years. In 1997, the income mark was substantially reduced to $175,000, and while the cost of living has substantially increased, particularly in NYC, the threshold has remained the same.

While the threshold rule may seem simple enough, there are many technical problems that have been found with high-income deregulation process. For example, if the tenant has been residing with a co-tenant at any point during the last two years, then the two incomes combined must be less than $175,000 in order to avoid luxury decontrol. However, DHCR also says that both incomes must be included on the Income Certification Form (ICF) if the co-tenant is residing in the unit on the date the ICF is served, regardless of the fact that the second tenant may have just moved in a year ago.

Even more troubling, many individuals and families whose incomes are far below the threshold have had their apartments deregulated. The most common reason for this is that the process of income verification is exceedingly confusing and inflexible. Numerous tenants have had their apartments deregulated simply because they did not return requested documents within the required number of days. Owners frequently serves an ICF forms on tenants and have to provide tax returns verifying their income. Owners can then dispute the income information provided with a petition to DHCR. DHCR then sends a second form, which tenants must return within 60 days, in order to avoid high-income deregulation. The second form confuses many tenants, because it looks very similar to the first ICF and many believe that DHCR must have sent out a second one in case any tenants did not fill out the first form. Many tenants are also on vacation or on business trips when either the first or second form is sent. Therefore, many tenants end up being deregulated not because of their income, which is what it is supposed to be based on, but because they failed to return a form.

The DHCR should completely overhaul the review process for high-income, high-rent decontrol applications.

- The response time should also be lengthened so that those tenants who are away from their home have a chance to verify their income.
- Tenants should not be automatically deregulated if they are late responding to a petition. DHCR should implement a hearing process and allow tenants to demonstrate good cause.
- The confusion on the ICF forms must be eliminated. The format of the second form should be changed so that tenants do not confuse it with the first ICF form.
- The $175,000 threshold should only pertain to the leaseholder's income as there are several issues that can arise when roommate incomes are counted.
- DHCR should implement the existing case law that has determined that tenants whose apartments have been deregulated should be allowed to stay until the end of their lease term, or be allowed to renew their leases if they are appealing the DHCR's deregulation order.
- The income of household members who did not occupy the unit for the full two year look-back period should not be counted for the full two years.
- DHCR should prohibit deregulation in cases where an owner has no good faith basis for believing that a tenant's income exceeds the threshold.
- DHCR should strongly support the repeal of luxury decontrol, one of the driving factors in harassment because it provides the financial incentive for owners to vacate units. Or that the very least substantially increase the $2,000 threshold amount and annually index the amount to inflation rate.

## Conclusion

It is my hope that this memo sheds some light on the challenges faced by DHCR and provides practical and comprehensive recommendations for improvement. New York's residents and communities cannot afford any more years of failed leadership on affordable housing and community renewal. We cannot permit our state to continue to ignore the needs of millions of residents who have to pay more and more of their incomes on housing, live in substandard homes, or are forced out of the communities they love simply due to housing costs.

The new Governor has an historic opportunity to fundamentally transform DHCR and restore New York State's once-proud history in affordable housing and community preservation.