

MEMBERSHIP ON THE BOARD

The Rent Guidelines Board (also referred to herein as the “Board” or the “RGB”) is a local body with a mandate in both state and local law to investigate conditions within the residential real estate industry and to establish fair rent adjustments for rent stabilized units. Under the Rent Stabilization Law (section 26-510) the Board is charged with establishing annual guidelines following a review of (1) the economic condition of the residential real estate industry in New York City including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of housing accommodations and over-all vacancy rates, (2) relevant data from the current and projected cost of living indices for the affected area, and (3) such other data as may be made available to it.

Composition of the Board, Terms of Office, Eligibility for Appointment

The RGB consists of nine members, all of whom are appointed by the Mayor. Two members are appointed to represent tenant interests. One of these serves a two-year term, and the other a three-year term. Two members are appointed to represent owner interests. Like the tenant members, one serves a two-year term, and the other a three-year term. Five members (including the chairperson) are appointed to represent the general public. One of these serves a two-year term, another a three-year term and two serve four-year terms. The chairperson serves at the pleasure of the Mayor. The complete text of the law governing Board appointments, powers and duties is set forth in Appendix A. A complete listing of all members serving on the Rent Guidelines Board since 1969 and their terms of office is included in Appendix B.

All members are required to be residents of the City and must remain residents during their period of service. Each public member must have had at least five years experience in either finance, economics or housing. No member may be an employee or officer in any state or municipal rent regulation agency. Nor can any member own or manage rental property affected by the Board’s orders or be an officer in any owner or tenant organization. The chairperson may hold no other public office. All members take an oath of office.⁸ New members are expected to submit a written

⁸ All of the above requirements for Board membership are contained in section 26-510(a) of the New York City Administrative Code with the exception of the residency requirements, which can be found in sections 3 and 30 of the Public Officers Law, see Appendix C. The requirement of execution and filing of an oath of office is included in section 10 of the Public Officers Law. The failure to file such oath within 30 days will create a vacancy in the office as per section 30(1)(h) of the Public Officers Law.

statement attesting to their compliance with the above eligibility requirements upon appointment. A sample copy of the oath and such statement is annexed hereto as Appendices D and D1 respectively. Each prospective member of the Board is also subject to a background investigation by the Department of Investigation prior to appointment.

Vacancies and Removal

A member may remain on the Board after the expiration of his or her term until a qualified new member is appointed. The Mayor is required to fill any vacancy which may occur by reason of death, resignation or otherwise, in a manner consistent with the original appointment. A member may be removed by the Mayor for cause, but not without an opportunity to be heard in person or by counsel. At least ten days notice to the member is required prior to such a hearing.

Conflicts of Interest & Financial Disclosure

All Board members and staff are required to comply with the ethics provisions contained in chapter 68 of the New York City Charter along with the rules and opinions of the New York City Conflicts of Interest Board. Under the conflicts of interest rules members of the Board and staff are prohibited from engaging in certain specified activities that generally concern misuse of authority for personal gain or practices that directly or indirectly conflict with official duties. The Charter also contains many post-employment restrictions.

Because Board members are “public servants” but not “regular employees” and because the agency they serve is the Rent Guidelines Board and not the executive branch of city government, the application of certain of the rules is limited. For example, a “regular employee” is prohibited from having a business interest in a firm that has business dealings with any agency of the City, while Board members may not have an interest in a firm that has business dealings with “the agency served by the public servant” – a less restrictive rule. To illustrate, an RGB employee may not have a business interest in a vendor that supplies and services copying machines to any city agency,⁹ but this would not create a conflict for an RGB member so long as the RGB did not utilize that vendor’s services. In any event, it is best to consult with the Executive Director if a “conflicts” question arises.

⁹ There are exceptions to this restriction. For example, it may be permissible for an employee to own stock in a publicly traded business (e.g. Xerox, Canon or Sharp) which does business with the city.

Unclear issues will be referred directly to the Conflicts of Interest Board. A copy of the relevant provisions of the City Charter dealing with conflicts of interest is contained in Appendix E. **All Board members and staff are expected to be familiar with these provisions.**

Upon appointment and during each year of service, Board members are required to complete a financial disclosure statement. The general purpose of this statement is to ensure that Board members do not hold any interests which conflict with their duties as Board members or which would otherwise create an appearance of impropriety. All Financial Disclosure Forms are completed electronically.

Below are summary notes on some of the matters that may arise in connection with service as a Board member or employee:

- **GIFTS:** No public servant may accept a gift with a cumulative value of \$50 or more in a 12-month period from a person or firm doing business with the City. There are exceptions to this rule such as gifts exchanged between co-workers or relatives, wedding gifts or meals given at a function where you represent the Board.
- **MOONLIGHTING:** This rule only applies to the Board's staff members who are "regular employees." RGB staff may not work for a company that has business with the City. In addition, any such outside work must be on the employee's own time and may not involve the use of city resources, confidential information or the use of the employee's official position.
- **OWNERSHIP INTERESTS:** The Rent Stabilization Law itself prohibits Board members from having an ownership interest in property subject to the Board's orders. Notably, there appears to be no restriction on continuing as a tenant in a rent stabilized apartment while serving on the Board.
- **POLITICAL ACTIVITIES:** All political activities must be performed on the member or employee's own time. Members and staff may not use a city letterhead, supplies, equipment or personnel while carrying out such activities. They may not coerce or induce fellow employees to participate in political activities. Managers may not even ask subordinates to participate in or contribute to a campaign.
- **POST-EMPLOYMENT RESTRICTIONS:** RGB staff and members may not appear before the RGB for a period of at least one year after leaving service. They may not divulge confidential information obtained while in the Board's employ. They may never work on a particular matter or project they were directly involved

in while employed by the City. Notably, each new guideline is considered a separate and distinct matter, so it would be unusual for this latter conflict to arise.

Detailed advisory opinions and pamphlets on these topics and others are available to Board members on request. Again, if there is any uncertainty, it is always best to seek a ruling.

It may be useful to note that the Conflicts of Interest Board has the authority, upon the making of certain findings, to grant waivers and issue orders allowing public servants to hold positions, or maintain ownership interests, otherwise prohibited by the Charter.

Board Member Compensation

Members are compensated at a rate of one hundred dollars per day for up to twenty-five days per year. The chairperson receives one hundred twenty-five dollars per day for up to fifty days per year. This rate of compensation has remained unchanged since 1969.

Board members are compensated on a “per diem” basis although this term has never been precisely defined. By convention each Board meeting counts as at least one day of service. Board meetings that exceed seven hours (as the Board’s public hearings often will) may qualify for additional per diem payments. For example, a twelve-hour meeting would qualify for two per diem payments.

To obtain compensation for attending a meeting of the Rent Guidelines Board, the member must sign the Rent Guidelines Board sign-in sheet circulated by the Office Manager at the meeting. The city will then issue a check to each member who attended the Board meeting. An example of the sign-in sheet is included herein as Appendix D2.

Under current practice, all other Board activities that cumulatively exceed five hours shall count as one per diem. These activities are compensated by what are known as “non-public” per diems. Such activities may include individual meetings with staff or attendance at briefings by government officials or housing experts, a review of staff reports or meetings with constituent groups (e.g. tenant or owner advocates).

If a Board member attends a briefing directly related to the Board’s work (other than a Board meeting), or meets with a constituent group, or conferences with staff, a signed and dated form describing the date, duration, location and purpose of the

qualifying activity should be forwarded to the Executive Director to ensure compensation. Board members may also list the time needed to review each of the many (often time consuming) reports issued in conjunction with Board meetings. A copy of an RGB per diem payment requisition form is included herein as Appendix D3. Note that non-public per diem requests are subject to review and approval by the RGB Chair, and the Department of Housing Preservation and Development.

Bylaws of the Board

In 1981 the Board adopted a brief set of bylaws that largely reflect the statutory provisions governing the Board's operations. The complete text of the bylaws is contained in Appendix F. The bylaws set forth the purpose and powers of the Board, qualifications of members, role of the chairperson and compensation of members, all in accordance with the Rent Stabilization Law. In addition, the composition of the Board's staff is established and the chairperson is granted the authority to modify this composition if the financial resources of the Board permit such modification.

The bylaws also reflect the requirements for annual public meetings and hearings contained in the Rent Stabilization Law. In addition, the chairperson is granted authority to call special meetings for any purpose consistent with the Board's mandate. All meetings must take place within the City of New York.¹⁰ At least five members must be present before a meeting may begin and five supporting votes are needed for the Board to exercise its guideline setting authority. Thus, if only seven members attend a meeting, a simple majority of four votes is inadequate for the Board to exercise its guideline setting authority. By convention, at least one tenant and one owner representative should be present before any meeting proceeds. The order of business at each meeting is determined by the chairperson, but the order of business may be changed by vote of a majority of the members present. Robert's Rules of Order govern the proceedings except as to those matters addressed directly in the bylaws.

¹⁰ A full discussion concerning the Board's meetings and hearings is provided on pages 108-110.

The Rent Guidelines Board Staff & Use of Consultants

Prior to 1980 the Board relied upon staff provided by the New York City Department of Housing Preservation and Development (“HPD”) for its administrative support. In that year the City Council adopted Local Law 11 (copy annexed in Appendix A1), designating the chairperson as chief administrative officer of the Board, and permitting him or her to “employ, assign and supervise the employees of the rent guidelines board and enter into contracts for consultant services”. This legislation appears to have been, in part, in response to public criticism of the practice of borrowing staff from “other agencies to which staff members owe their primary obligations.”¹¹

In each succeeding year, the Board has received an allocation of funds through a contract with the Department of Housing Preservation and Development (“HPD”) to hire staff and provide for office expenses. Thus, in terms of its funding, the Board’s staff operates through negotiation by its Chair of annual terms agreed upon with HPD.

Throughout the 1980's the Board had not exercised its power under Local Law 11 to directly enter into consulting agreements itself. The annual price index studies and other projects had been procured for the Board through contracts let by the Department of Housing Preservation and Development. For a time (1972-1978) these studies were funded in whole or in part by the Rent Stabilization Association, an owners advocacy group. The funding history of this important contract is contained in Appendix G. Since 1990 the Board has exercised full control over the scope of all consulting services as well as the choice of consultants.

Section 310(2) of the City Charter now requires a Board resolution when the Chairperson performs certain contract oversight functions. A resolution of this type, which authorizes the Chairperson to act on behalf of the Board in contract matters, was adopted on February 13, 1991.¹²

The Board’s current full-time staff of five includes an executive director, a senior research associate, a research associate, an office manager, and a public information assistant. In addition to providing administrative support for the Board during its annual deliberations, the staff is engaged year round in research efforts and in providing information to the public on housing questions. The staff fields hundreds of calls per month from tenants and owners with housing and rent related questions. The Office of Corporation Counsel presently serves the function of legal counsel.

¹¹ Quoting Coalition against *Rent Increase Passalongs v. Rent Guidelines Board*, 422 N.Y.S. 2nd 660, n.1 (Sup. Ct. NY Co.1979), 104 Misc.2d 101, affd, 176 AD2d 1043 (1st Dept. 1980).

¹² The full text of the resolution is included in Appendix H.

The executive director coordinates meetings, maintains Board communications and media relations, administers contracts, oversees procurement, supervises the staff, and works with the City's Corporation Counsel to advise the Board on all matters concerning litigation, new legislation, and the Board's lawful functions. The executive director also oversees the development and production of the information and analysis necessary for the Board to conduct its annual review of the conditions of the residential real estate industry. Finally, the executive director advises other public agencies on Board related matters and maintains the Board's internet site.

Although the staff often consults with the State Division of Housing and Community Renewal, the City Department of Housing Preservation and Development and the Office of the Corporation Counsel, it is an independent staff, directly responsible only to the chairperson and the Board itself. The Board is solely responsible for the staff's research projects and is fully accountable for the decisions it makes based on the staff's research findings.

Notably, Board members and staff are covered by section 50-k of the General Municipal Law. Consequently, they are entitled to be represented by the City's Corporation Counsel and to be indemnified for acts occurring within the scope of their public service.

A complete copy of the staff's RGB Employee Manual and office rules is included herein as Appendix I.

The Board's Web Site: <http://www.housingnyc.com>

In 1996 the Rent Guidelines Board launched the City's first web site. Although it received limited use at that time, by 2010, the site was receiving over 1 million-1.5 million "hits" per month.

Currently the Board's site offers a variety of services. It includes all of the Board's major studies issued since 1995, along with data from the triennial Housing and Vacancy Surveys. The site also includes most of the Board's past rent orders. One highly popular feature is the "Apartment Guide" which offers advice and assistance to apartment hunters. Another widely used section is the section on frequently asked questions ("FAQ").

The site also includes a variety of publication reprints such as the Attorney General's Landlord/Tenant Guide; the New York City Housing Maintenance Code; A Tenant's Guide to Housing Court; a variety of Fact Sheets from the New York State Division of

Housing and Community Renewal; and the full text of the Rent Regulation Reform Act of 1997 and the Rent Law of 2003.

Legal Status of the Board

As previously noted, the Board is a local body with a mandate in both state and local law to investigate the conditions of the residential real estate industry and establish rent adjustments for rent stabilized units. Because it is not a state agency, it is not subject to the provisions of the State Administrative Procedure Act. It is, however, subject to the City Administrative Procedure Act. It is also subject to the Open Meetings Law and other requirements governing the process by which it conducts its business. These procedural requirements are discussed on pages 108 through 110.

The Board is a quasi-legislative body without judicial or executive authority. Its authority to make rent adjustments after reviewing certain mandated considerations is very broad. But it has no power to enforce its orders or to penalize violators. Enforcement authority for exceeding the Board's orders rests with the State Division of Housing and Community Renewal and the courts (usually the Housing Part of the Civil Court of the City of New York). There is no pro-active review of rental charges by the DHCR to achieve compliance with the Board's orders. Rent overcharge proceedings are initiated by individual tenants either by filing a complaint with the DHCR or by raising an overcharge claim in the courts.

The Board cannot act outside of its rent-setting jurisdiction, nor can it adopt rent orders that are unreasonable, arbitrary or capricious. The Board's orders must be justified in terms of the economic criteria set forth in the Rent Stabilization Law. That criteria is fully set forth in the law itself which is contained in section 26-510(b) of the Rent Stabilization Law, contained in Appendix A.

The Board may not abdicate its regulatory authority over the rent stabilized housing stock nor any part of it; only the City Council may permit such deregulation, and then only after a public hearing in accordance with section 3(b) of the Emergency Tenant Protection Act of 1974 (hereafter "ETPA").

To support the Board's investigative functions, all City and State agencies are required to cooperate with the Board by responding to all reasonable requests for information and assistance.¹³

¹³ See ETPA, L. 1974, c.576, 4[13].