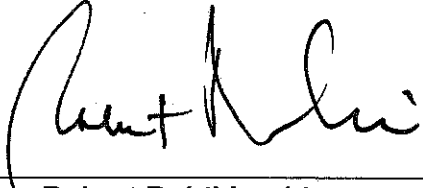


## NOTICE OF ADOPTION OF RULE

**NOTICE IS HEREBY GIVEN**, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the amendments to section 310-01 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding classification of student apartments.

This rule was first published on January 22, 2010 and a public hearing thereon was held on March 1, 2010.

Dated: 3/16/10  
New York, New York

  
\_\_\_\_\_  
Robert D. LiMandri  
Commissioner

Title 1 of the Rules of the City of New York is amended by adding a new Chapter 300 and a new Section 310-01 to read as follows:

**Chapter 300**  
**Use and Occupancy Classification**

**§ 310-01 Student apartments.**

**(a) Scope.** This rule establishes criteria for determining when dwelling units are classified as student apartments and when the fire safety provisions of Chapter 9 of the Building Code are applicable to such apartments. Student apartments shall not include buildings or portions thereof classified or recorded on a certificate of occupancy or in other records of the Department or other agencies as a dormitory pursuant to Chapter 3 of the 2008 Building Code or Subchapter 3 of Chapter 1 of Title 27 of the 1968 Building Code or as an equivalent classification pursuant to the building code in effect prior to December 6, 1968.

**(b) References.** See section BC 310.2 (definitions of: apartment; apartment, student; family); section BC 907.2.9.1; Housing Maintenance Code section 27-2004(a)(4) (definition of family).

**(c) Classification as student apartments.** Student apartment shall mean any apartment occupied or arranged to be occupied by students enrolled at a single accredited college or university and maintaining a common household pursuant to a lease, sublease, or occupancy agreement directly with such college or university, provided however, that the occupancy by fewer than four such students maintaining a common household and who are enrolled in a graduate program, a professional post-graduate program, or a continuing education program intended for adult learners beyond traditional undergraduate university or college age shall not be deemed a student apartment.

**(1) Definition of “family” under the New York City Zoning Resolution.**

Where the Zoning Resolution limits the use of a building to either a one-family or two-family residence, the number of occupants in such residence occupied as a student apartment shall be limited to four unrelated persons in accordance with the definition of “family” in Section 12-10 of the Zoning Resolution.

**(d) Applicability of fire safety requirements.**

**(1) Apartments converted to student apartment use on or after July 1, 2009.**

An apartment first occupied as a student apartment on or after July 1, 2009 shall comply with the following requirements:

- (i) where required by section BC 907.2.9.1, a fire alarm system complying with such section shall be installed;**
- (ii) the entire structure in which the dwelling unit is located shall be fully sprinklered, provided however, that a building previously approved as fully sprinklered in accordance with the laws in effect prior to July 1, 2009 shall suffice as fully sprinklered;**
- (iii) such occupancy shall not exceed the maximum occupancy contained in section 27-2075(a) of the New York City Housing Maintenance Code;**
- (iv) prior to commencement of such occupancy, and on an annual basis thereafter, such college or university shall submit a fire safety and evacuation plan for such dwelling units and other student apartments in the building that contains fire safety and evacuation procedures**

- acceptable to the Fire Commissioner and is in compliance with any rules promulgated by the Fire Commissioner; and
- (v) the dwelling unit shall comply with additional occupancy and construction requirements as may be established by rule by the Housing Preservation and Development Commissioner; and
- (vi) an application for construction document approval shall be submitted to the Department indicating the dwelling unit numbers to be converted to student apartments within the job description of such application, regardless of whether or not any construction activity will occur. A permit shall be issued and the project signed off prior to use as student apartments.
- (2) Apartments converted to student apartment use prior to July 1, 2009.**  
The occupancy of an apartment first occupied as student apartment prior to July 1, 2009 may be continued without triggering the requirements of paragraph (1) of subdivision (d) of this section, provided that:
- (i) the occupancy of such apartment is limited to no more than three students maintaining a common household; and
- (ii) such apartment is thereafter occupied as a student apartment, although not necessarily by the same students, provided that such student apartment is not vacant for a period in excess of 12 months.
- (3) Summary chart.** The chart in Figure 1 summarizes the applicability of fire safety requirements, but is not intended to supersede the text of paragraphs (1) and (2) of subdivision (d) of this section.

**Figure 1**  
**Summary chart of fire safety requirements**

		<b><u>Pre-2008-code buildings (1968, 1938, etc)</u></b>		<b><u>2008-code buildings</u></b>
		<u>Unit converted to student apartment prior to July 1, 2009</u>	<u>Units converted to student apartments on or after July 1, 2009</u>	<u>Units created or converted to student apartments</u>
<b><u>UNDERGRADUATE</u></b>	<u>1 to 3 students in the apartment</u>	<u>Requirements of §310-01 (d)(1) are not applicable</u>	<u>Requirements of §310-01 (d)(1) are applicable</u>	<u>Requirements of §310-01 (d)(1) are applicable</u>
	<u>4 to 7 students in the apartment</u>	<u>Requirements of §310-01 (d)(1) are applicable</u>	<u>Requirements of §310-01 (d)(1) are applicable</u>	<u>Requirements of §310-01 (d)(1) are applicable</u>
<b><u>POST-GRADUATE</u></b>	<u>1 to 3 students in the apartment</u>	<u>Not deemed a student apartment</u>	<u>Not deemed a student apartment</u>	<u>Not deemed a student apartment</u>
	<u>4 to 7 students in the apartment</u>	<u>Requirements of §310-01 (d)(1) are applicable</u>	<u>Requirements of §310-01 (d)(1) are applicable</u>	<u>Requirements of §310-01 (d)(1) are applicable</u>

- (e) Certificate of occupancy.** An amended certificate of occupancy need not be obtained in order to occupy an otherwise lawful apartment for use as a student apartment.

**(f) Records .** The college or university shall maintain records at the building that contains any student apartment, identifying the unit numbers of student apartments, the maximum number of students housed in each such unit, whether the students are post-graduate or are permitted to be undergraduate, and where applicable, whether the apartment was first occupied as a student apartment prior to July 1, 2009. Such records shall be available for inspection by the Department, the Fire Department, and the Department of Housing Preservation and Development. The college or university may be required to produce further records to substantiate compliance with this section.

#### STATEMENT OF BASIS AND PURPOSE

The foregoing rule is promulgated pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter. The rule clarifies the fire safety requirements of the 2008 Building Code for student apartments and establishes when such requirements apply to dwelling units that were first occupied as student apartments prior to the effective date of the Construction Codes. The fire safety requirements clarified by this rule also include the requirement that student apartments only be located in buildings equipped throughout with automatic sprinkler protection. The rule also serves to establish that the sharing of an apartment by up to three post-graduate students is not a student apartment.