



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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*For Immediate Release*

**CITY RECEIVES RECORD \$1.1 MILLION SETTLEMENT PAYMENT  
OVER OWNERS' FAILURE TO MAINTAIN THE LANDMARKED  
WINDERMERE APARTMENT COMPLEX  
ON MANHATTAN'S UPPER WEST SIDE**

***NEW OWNER AGREES TO REPAIR DETERIORATED HISTORIC BUILDINGS***

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New York, May 21, 2009 – New York City Corporation Counsel Michael A. Cardozo and Landmarks Preservation Commission (LPC) Chairman Robert B. Tierney announced today that the City has reached a settlement with Toa Construction Co. Inc., and individual defendants resulting in the payment of \$1.1 million in civil penalties to the City the company's failure to comply with the Landmarks Law.

The settlement was reached after the City and LPC filed a March 2008 lawsuit against Toa over its failure to keep the Windermere, a designated New York City landmark, in good repair. A separate agreement also reached late yesterday includes a commitment by the buildings' new owner to repair and maintain the structures. The Windermere is a vacant, seven-story complex consisting of three buildings located at the southwest corner of 57th Street and Ninth Avenue. The settlement is the largest penalty ever recovered by the City for a violation of the Landmarks Law.

At the time they settled the landmark claims against them, the owners of the Windermere also settled a Housing Court proceeding brought by six tenants of one of the buildings. That settlement resulted in a payment to the tenants totaling more than \$2.6 million. The tenants, represented by Housing Conservation Coordinators, Inc. (HCC), together with the City's Department of Housing Preservation and Development (HPD), sought, and after trial, obtained a court order directing the owners to correct violations and dangerous conditions at the building by restoring the Windermere to a habitable condition, so that the tenants could regain possession of their apartments. However, as part of their settlement, the tenants will be surrendering their right to return to their apartments. In addition, the owners agreed to pay HPD \$124,482 for relocating the six tenants who had to be vacated from their homes because of fire safety concerns.

The Landmarks lawsuit was filed in New York State Supreme Court on March 19, 2008. The action sought to compel the owners to immediately stabilize and repair the 127-year-old landmarked apartment buildings. It also sought the imposition of penalties in the amount \$5,000 a day. A number of orders were issued in the action by Justice Karen Smith requiring that the buildings be shored, braced and repaired.

Yesterday's settlements coincide with Toa's sale of the Windermere to the new owners, Windermere Properties LLC. The new owner has agreed to comply with the Landmarks Law and the orders issued by Justice Smith. As part of that agreement, the buildings will be shored and braced by Sept. 30, 2009, and other mandated repairs will be made in a timely manner.

"This settlement sends a message to owners of landmarked buildings that they must keep them in a state of good repair," said Robert B. Tierney, Chairman of the Landmarks Preservation Commission. "Buildings like the Windermere are an indispensable part of New York City's architectural heritage and must be preserved for future generations."

"The owners of this landmark are now paying for their flat refusal to care for it," said Corporation Counsel Michael A. Cardozo of the New York City Law Department. "Fortunately, the City has one of the most powerful municipal landmarks laws in the country and this settlement shows how effective it can be."

The Landmarks Preservation Commission granted landmark status to the Windermere on June 28, 2005. The Queen Anne-style structure is a unified group of three buildings that was completed in 1881 and designed by Theophilus Smith, also the architect of several tenements and rowhouses on the Upper West Side.

It's one of the oldest remaining large apartment houses in the City, and was built to accommodate the growing middle class in the last decade of the 19th century. It became popular among single, self-supporting women such as cashiers, waitresses, nurses and teachers, and also was popular with those working in the arts. Some of its noteworthy tenants over the years have included actor Steve McQueen and Quinto Magnani, who composed the Pulitzer Prize-winning opera, "The Argonauts."

The buildings have been the subject of litigation since the early 1980's. In the 1980's, the managing agent of 400 West 57th St., a single-room occupancy building, was convicted of conspiring to force tenants out; the manager and the superintendent pled guilty to related charges. In September 2007, the conditions were so hazardous that the New York City Fire Department issued a vacate order against 400 West 57th St. and the six remaining tenants were forced to leave the building until the conditions were corrected. Since then HPD has provided emergency housing for the tenants.

The Landmarks case is being handled by Senior Counsel Virginia Waters of the New York City Law Department's Administrative Law Division. Waters noted that "the City is very pleased that the new owners will repair and maintain the buildings in compliance with the Court's orders." General Counsel Mark A. Silberman and Deputy General Counsel John Weiss of the Landmarks Commission are also involved with the case.

City laws require that owners of landmarked buildings keep them in a state of good repair to prevent architectural integrity from being compromised and to prevent intentional "demolition by neglect." In the Windermere's case, the City found that the walls, floors and roof are collapsing.

"After suffering decades of building neglect and dangerous living conditions, it appears that the tenants may have finally reached a light at the end of the tunnel," says Aurore DeCarlo, Director of Legal Services at HCC. "After almost two years of litigation initiated by the tenants in 2007, Toa Construction agreed to compensate our clients in an amount exceeding \$2.6 million. This settlement marks a new beginning for the building and the former residents."

In addition to Aurore DeCarlo, the tenants were represented at trial in the Housing Court by Rebecca Symes of HCC. HPD was represented in the Housing Court proceeding by Assistant Commissioner Deborah Rand.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at [nyc.gov](http://nyc.gov) or via direct link at [nyc.gov/law](http://nyc.gov/law).

The New York City Landmarks Preservation Commission is the largest municipal preservation agency in the United States. Since its creation in 1965, the Commission has designated some 25,000 buildings in all five boroughs, including 1,230 individual landmarks, 110 interior landmarks, nine scenic landmarks and 95 historic districts. For more information about the Agency, please visit [nyc.gov/landmarks](http://nyc.gov/landmarks).

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