2006 Amendments to § 2-10(f)
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NEW YORK CITY LOFT BOARD

NOTICE OF ADOPTION OF FINAL RULES

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY LOFT BOARD by Article 7-C of the Multiple Dwelling Law and Mayor's Executive Order No. 66, dated September 30, 1982, and pursuant to and in accordance with the requirements of Section 1043 of the New York City Charter, that the New York City Loft Board has amended section §2-10(f) of Title 29 of the Rules of the City of New York, relating to the abandonment of an interim multiple dwelling ("IMD"). The text added to the rules is underlined, and deleted text is bracketed.

A duly noticed public hearing was held on July 20, 2006, affording the public opportunity to comment on the proposed amendments, as required by section 1043 of the New York City Charter. Written comments were accepted through July 13, 2006.

These rules were not published in the regulatory agenda because they were not anticipated.

Subdivision (f) of section 2-10 of chapter 2 of Title 29 of the Rules of the City of New York is amended to read as follows:

(f) Abandonment of IMD unit. (1) An owner or its authorized representative may apply to the Loft Board for a determination that the occupant of an IMD unit has abandoned the unit and no sale of rights pursuant to Multiple Dwelling Law §286(12) or sale of fixtures pursuant to Multiple Dwelling Law §286(6) has been executed, provided there has been no finding of harassment as to any occupant(s) of the unit which has not been terminated pursuant to §2-02(d)(2) of the Board's Harassment Regulations.

(2) Abandonment shall be defined as the [voluntary] relinquishment of possession of a unit and all rights relating to a unit <u>either (i) voluntarily,</u> with the intention of never resuming possession or reclaiming the rights surrendered<u>, or (ii) by the death of the IMD tenant, provided no family member, as defined in 29 RCNY § 2-08.1(c)(3), is denied the benefits of succession rights in accordance with 29 RCNY § 2-08.1.</u>

<u>(3) To be considered timely, an owner's application alleging abandonment must be filed with the Loft Board within one year of the date the owner knew or should have known that the IMD tenant vacated the unit.</u>

[(3)] (4) In deciding whether a unit has been abandoned pursuant to subparagraph (i) of paragraph (2) above, the Loft Board may consider, inter alia, the following factors:

(i) the length of time the occupant allegedly abandoned the unit;

(ii) whether the occupant owed rent as of the time the occupant allegedly abandoned the unit and whether court proceedings to attempt to collect this rent have been installed;

(iii) whether the occupant's lease for the unit has expired;

(iv) whether the occupant provided notice of an intent to vacate or requested permission to sublet the unit for a specified period of time;

(v) whether the unit contained improvements which were made or purchased by the occupant and whether the occupant was reimbursed for those improvements;

(vi) whether any prior harassment findings have been made by the Loft Board concerning the occupant(s) of the unit or whether any harassment application remains pending;

(vii) whether any violations or notices to appear pursuant to the Loft Board's Minimum Housing Maintenance Standards have been issued;

(viii) whether the owner has made affirmative efforts to locate the occupant; to attempt to purchase rights pursuant to Multiple Dwelling Law §286(12) or improvements pursuant to Multiple Dwelling Law §286(6); and

(ix) whether an inspection of the unit by the Loft Board staff indicates that the unit is presently vacant.

[(4)] (5) In determining whether abandonment has occurred as a result of the death of an IMD tenant as set forth in subparagraph (ii) of paragraph (2) above, proof of the death of such tenant of an IMD unit shall be made by the presentation of a death certificate, the testimony of a relative of the occupant alleged to be dead, or any other trustworthy evidence.

(6) If the owner's application alleging abandonment is granted by the Loft Board and if the unit is to be used for non-residential purposes, the owner or its authorized representative must comply with §2-10(c)(1) of these regulations.

[(5)] (7) (i) Upon compliance with these specified provisions of §2-10(c)(1) with regard to units to be used for non-residential purposes [or upon the Loft Board's granting of the owner's application alleging abandonment with regard to units to remain residential], the legal effect of the Loft Board's determination of abandonment shall be the same as that of a sale of rights as provided in §2-10(c) of these regulations.

(ii) Upon the Loft Board's granting of the owner's application alleging abandonment with regard to units to remain residential, the legal effect of the Loft Board's determination of abandonment shall be the same as that of a sale of rights as provided in §2-10(c) of these regulations but only if and when:

> (A) on or prior to the date of the Loft Board's granting of the owner's application alleging abandonment, the owner has obtained a certificate of occupancy for the affected building and filed an application seeking a final rent order and/or removal from the Loft Board's jurisdiction; or
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> (B) within one year after the date of the Loft Board's granting of the owner's application alleging abandonment, or prior to the expiration of the code compliance deadline for obtaining a certificate of occupancy in effect on the date of the Loft Board's granting of such application (as such code compliance deadline may be extended pursuant to 29 RCNY § 2-01(b)), whichever is earlier, the owner has obtained a certificate of occupancy for the affected building and has filed an application seeking a final rent order and/or removal from the Loft Board's jurisdiction.

(8) If, whenever an IMD unit becomes vacant without a prior sale of rights or improvements and subparagraph (i) of paragraph (7) does not apply, an owner fails to meet either the criteria set forth in § 2-10(f)(7)(ii)(A) or the criteria set forth in § 2-10(f)(7)(ii)(B), the unit shall remain residential and the owner shall not be permitted to re-rent the unit at a market rate. Additionally, the owner shall provide any incoming tenant(s) with written notice that the rent for the IMD unit may increase to a market rate if and when the owner complies with the criteria set forth in § 2-10(f)(7)(ii)(A) or § 2-10(f)(7)(ii)(B). Such written notice to an incoming tenant or tenants shall include a copy of this subdivision (f) and a copy of the Loft Board order granting the abandonment application, (if any). If an owner re-rents the unit at a market rate in violation of this provision, the incoming tenant(s) may challenge such rent by filing an application alleging a rent overcharge with the Loft Board.

(9) New paragraphs (3) and (8), and the amendments to paragraph (7) made by the rulemaking that added this paragraph, shall apply only to those IMD units for which applications alleging abandonment are filed more than six (6) months after the effective date of this paragraph.

Statement of Basis and Purpose

The abandonment provisions set forth in 29 RCNY § 2-10(f) are being amended to further encourage owners of interim multiple dwellings ("IMD") to comply with the legalization requirements of the Loft Law.

One of the main purposes of the Loft Law is to require owners to bring their buildings up to the minimum standards of the New York City residential building code. This purpose is not served by allowing owners to rent abandoned IMD units at a market rent without also requiring them to obtain a residential certificate of occupancy. The proposed rule would prohibit owners from enjoying the benefits of a deregulated IMD unit as a result of abandonment without undertaking the necessary and reasonable steps to legalize their buildings in accordance with Multiple Dwelling Law § 284(1). Until such steps are taken, owners also would be required to provide notice to new tenants that rents for the relevant units may increase to market rate if the abandonment determination becomes effective.

The proposed rule also would codify Loft Board precedent defining the death of an IMD tenant as an abandonment of the IMD unit. Further, it would establish a deadline for the filing of an abandonment application to prevent the loss of witnesses and other evidence relevant to the resolution of the application.

Finally, the proposed rule would in effect require the Loft Board to make two determinations in processing abandonment applications. First, the Loft Board would determine whether sufficient proof had been offered to conclude that an IMD tenant abandoned a unit. Second, the Loft Board would determine, in those instances where the abandonment application is granted, whether the effect of the abandonment finding will be the deregulation of the unit based on the owner's actual completion of the necessary legalization work in the affected building.

By conditioning the benefit of a deregulated IMD unit on the fulfillment of the obligation to legalize the building in question, the proposed rule will serve as a valuable tool for furthering the goals of the Loft Law.

Dated: September 1, 2006

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Marc Rauch
Chairperson