

2006 amendments to § 2-01(b)
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NEW YORK CITY LOFT BOARD

NOTICE OF ADOPTION OF FINAL RULE

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 §2-01(b) Title 29 of the Rules of the City of New York, relating to extensions of time to comply with the code compliance legalization deadlines. The text added to the rules is underlined, and deleted text is bracketed.

The proposed rule was published in the City Record on September 15, 2005. Thereafter a public hearing was held on October 20, 2005, 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 until October 31, 2005.

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

Section 2-01(b) is amended as follows:

(b) Extensions of time to comply with the amended code compliance timetable.

(1) Pursuant to M.D.L. §284(1)(vi), an owner of an IMD may apply to the Loft Board for an extension of time to comply with the code compliance deadlines set forth in section 284 of the Multiple Dwelling Law, as in effect on the date of the filing of the extension application. An application for an extension shall not be filed after the deadline for which an extension is sought has passed, except that where title to the IMD was conveyed to a new owner, within 90 days after acquisition of title, such new owner may file an

application for an extension of time of up to one (1) year to comply with the most recently passed deadline. “New Owner” shall be defined as an unrelated entity or unrelated natural person(s) to whom ownership interest is conveyed for a bona fide business purpose and not for the purpose of evading code compliance deadlines of the Multiple Dwelling Law. The Executive Director shall make a determination of whether an applicant qualifies as a “new owner.” The Executive Director may request documentation or other appropriate information to substantiate that an applicant is a “new owner.”

(2) Statutory standard. The Loft Board will grant an extension pursuant to this subdivision only where an owner has demonstrated that it has met the statutory standards for such an extension, namely, that the necessity for the extension arises from conditions or circumstances beyond the owner's control, and that the owner has made good faith efforts to meet the code compliance timetable requirements. Examples of such conditions or circumstances include, but are not limited to, a requirement for a certificate of appropriateness for modification of a landmarked building, a need to obtain a variance from the Board of Standards and Appeals or the denial of reasonable access to an IMD unit. The existence of conditions or circumstances beyond the owner's control must be demonstrated in the application by the submission of corroborating evidence, for example, copies of documents from the Landmarks Commission or the Board of Standards and Appeals, or an architect's statement. Failure to include such corroborating evidence in the application shall be grounds for denial of the application without further consideration. [The owner of an IMD may seek an extension of time pursuant to this subdivision in any of the following ways, but only one at a time:]

(3) [(i)] The owner of an IMD may apply to the Loft Board's Executive Director for an extension [of up to 90 days from the date the owner was required] to comply with the amended code compliance timetable. The Loft Board's Executive Director will promptly decide each application for an extension. Where the Loft Board's Executive Director determines that the owner has met the statutory standards for an extension, the Executive Director shall grant the minimum extension required by the IMD owner [not to exceed 90 days]. The Executive Director's determination shall be mailed to the owner and to the affected parties identified in the application submitted pursuant to paragraph [(3)] (4) of this subdivision, and shall be subject to review by the Loft Board upon application by such owner or affected party. An application for review of such determination shall be timely if filed within 20 days after the date of mailing. Applications for extensions pursuant to this subparagraph shall be limited to one per deadline in the amended code compliance timetable.

[(ii)] The owner of an IMD may apply to the Loft Board's Director for an extension of 91 days up to one year from the date the owner was required to comply with the amended code compliance timetable. The Loft Board's Director will promptly decide each application for an extension. Where the Director determines that the owner has met the statutory standards for an extension, the Director shall grant the minimum extension required by the IMD owner, not to exceed one year. The Director's determination shall be mailed to the owner and to the affected parties identified in the application and shall be subject to review by the Loft Board upon application by such owner or affected party. An application for review of such determination shall be timely if filed within 20 days after the date of mailing.]

[(iii) The owner of an IMD may apply to the Loft Board for an extension of more than one year. The Director of the Loft Board shall, upon consideration of the statutory standards for granting an extension, make a recommendation to the Board and the Board shall make a final determination regarding each application. Where the Board determines that the owner has met the statutory standards, the Loft Board shall grant the minimum extension required by the IMD owner. An owner or affected party aggrieved by such determination may file a reconsideration application pursuant to §1-07 or pursue such other remedies as may be available under law.]

[(3)] (4) Form of application and tenant responses. An extension application filed pursuant to this subdivision (b) of §2-01 shall be [submitted] filed on a form prescribed by the Loft Board and shall meet the requirements of this subdivision and §§1-06 and 2-11 of these rules. [, except that for] An application for an extension must specify a date to which the applicant seeks to have the deadline extended. Failure to so specify in the application shall be grounds for dismissal of the application. Applications must include a list of all residential IMD units in the building. A[a]pplications [seeking an extension of less than one year] filed pursuant to [subparagraph (i) or (ii) of this paragraph, only] paragraph (3) of this subdivision [two copies] must be filed with the Loft Board along with two copies. Prior to filing an extension application pursuant to [subparagraph (ii) or (iii) of this paragraph] paragraph (3), an owner shall serve a copy of such application upon each [residential] occupant of an IMD unit in the building. Any [A residential] occupant of an IMD unit in the building may file an answer to such application with the Loft Board within 20 days from completion of service by owner. The [residential] occupant(s) of an IMD unit shall serve a copy of such answer upon the

owner prior to filing the answer with the Loft Board. Service pursuant to this subdivision may be by first class mail, or by any method permitted by Article 3 of the New York Civil Practice Law and Rules. Each application and answer filed with the Loft Board shall include proof of such service. Service by mail shall be deemed completed five days following mailing [by the owner]. If service of the application is performed in any manner other than mailing, service shall be deemed completed on the date the application is served. While an application filed under this subdivision is pending, an owner may amend such application one time to request a longer extension period than was originally sought in the application.

Statement of Basis and Purpose

The extension provisions set forth in section 2-01(b) are being amended to eliminate most retroactive extensions of missed code compliance deadlines and to simplify the application process for obtaining an extension.

This proposed rule would prohibit most owners from seeking retroactive extensions of missed code compliance deadlines. Extensions should be granted only to diligent owners who are in the process of complying with the Loft Law but are unable to meet the next deadline due to a condition or circumstance beyond their control. There is no acceptable reason an owner could not bring such circumstances to the Loft Board's attention and seek appropriate relief before the expiration of the deadline. The only exception provided is for owners who recently bought their IMD buildings. Such owners would be given 90 days after taking title to seek an extension of a missed code compliance deadline, provided they can meet the statutory standards and other requirements set forth in section 2-01(b)(2) of the Rules.

The proposed rule also would simplify the extension rule by eliminating the three types of extension applications (extensions of 90 days or less, 91 days to one year and more than one year) and their attendant special procedures. Currently, the three time periods alter the service requirements. Additionally, the short extension rule codified in subdivision (b) of section 2-01 of the Board's rules provides that owners may obtain an extension of 90 days or less on an *ex parte* basis.

In contrast, under the new rule there would no longer be three different types of extension applications, but only one. The same standards for granting an application would apply to extensions of any length. The Executive Director would decide all

extension applications. By eliminating separate procedures for different length extensions and the ability of owners to apply for short extensions on an *ex parte* basis, these amendments will provide occupants of IMD units with notice of every owner's request for an extension and an opportunity to be heard on the merits of every extension application.

In addition, the rule would provide that for all applications, regardless of length of extension sought, the owner-applicant rather than the Loft Board would be responsible for mailing the application to the affected tenants and providing the Loft Board with proof of service upon the tenants.

Dated: September 21, 2006

Marc Rauch
Chairperson