

Amendments to 29 RCNY §§ 1-06.1, 2-01(i)(2), 2-01(m), and 2-01(n) and repeal of §2-01(o), relating to the filing of applications for a determination of the initial legal regulated rent

FINAL, as voted by Board at 3/23/99 meeting

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NEW YORK CITY LOFT BOARD

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, and pursuant to an affirmative vote of the New York City Loft Board taken at a duly noticed public meeting March 23, 1999, that the New York City Loft Board hereby adopts final rules amending Section 1-06.1 of Chapter 1 of Title 29 of the Rules of the City of New York ("RCNY"), and sections 2-01(i)(2), 2-01(m), and 2-01(n) and repeals subdivision (o) of section 2-01 of Chapter 2 of 29 RCNY, relating to applications for a determination of the initial legal regulated rent.

A duly noticed public hearing was held on February 23, 1999, affording the public opportunity to comment on the proposed amendments, as required by §1043 of the New York City Charter. Written comments were accepted through March 5, 1999.

Text added to the rules is shown underlined, and text deleted from the rules is bracketed. Text that is neither underlined nor bracketed remains unchanged.

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

Section 1-06.1(e) is amended as follows:

1-06.1 Limitations on Applications.

(e) Code compliance rent adjustment applications. An application pursuant to § 2-01(i)(2) for code compliance rent adjustments shall be filed by the time set forth therein.

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

(2) Cost of compliance increases.

(i) An owner may apply for rent adjustments based on the necessary and reasonable costs of obtaining a residential certificate of occupancy: once upon certification of compliance with Article 7-B of the M.D.L., alternative local building codes or provisions of the M.D.L. or issuance of a temporary residential [C of O] certificate of occupancy, or once upon issuance of a final residential [C of O] certificate of occupancy, or both. The application may include those necessary and reasonable costs incurred prior to June 21, 1982 for which the residential occupant(s) have not reimbursed or are not in the process of reimbursing the owner. In the course of the processing of the application, the residential occupant(s) who claim(s) that reimbursement has been or is being made for such costs shall be required to present satisfactory proof of such reimbursement to the Loft Board. Rent adjustments shall be allowed for both necessary and reasonable code compliance costs incurred by an owner in obtaining the building permit under which code compliance work is performed and for necessary and reasonable costs incurred for work performed after the issuance of such a permit. An owner who has failed to register its building as an IMD on or before December 1, 1985 or, [for] in the case of a building which is an IMD solely pursuant to M.D.L. §281(4), an owner who has failed to register his building as an IMD on or before February 11, 1993, shall be allowed only necessary and reasonable code compliance costs incurred after registration. An owner who fails to register its building as an IMD on or before March 1, 1986 or, [for] in the case of a building which is an IMD solely pursuant to M.D.L. Section 281(4), an owner who fails to register its building as an IMD on or before May 11, 1993, shall be allowed only the necessary and reasonable code compliance costs incurred after registration, and such costs shall be based upon the schedule in effect on the effective date of these regulations, without indexing, regardless of when such costs were incurred.

Section 2-01(i)(2)(ii) is amended as follows:

(ii) An application filed pursuant to this paragraph (2) of §2-01(i) shall be filed within nine months after the owner has obtained a certificate of occupancy or February 1, 2000, whichever date is later. An owner that fails to file an application for code compliance rent adjustments in a timely manner pursuant to this provision shall be deemed to have waived its right to seek such a rent adjustment. An application submitted pursuant to this paragraph shall be submitted on a form prescribed by the Loft Board and shall meet the requirements of this paragraph and §§1-06 and 2-11 of these rules, except that for applications filed pursuant to clause (A) of subparagraph (iii) of this paragraph, only two copies must be filed plus one for each affected party, and for precertified applications filed pursuant to clause (B) of subparagraph (iii) of this paragraph, only two copies of the application must be filed. As part of the application the applicant must submit an itemized statement of costs incurred, including paid bills, cancelled checks or receipts for work performed, any construction contracts, the certificate issued by the [D.O.B.] Department of Buildings for the pertinent level of compliance, and such other information or materials as the Board requires. If the applicant seeks reimbursement for interest and service charges incurred in connection with compliance costs, the applicant must submit the information and materials required under paragraph (4) of §2-01(k) of these rules. In accordance with the provision of §1-06(j)(1), the Board may require the applicant to furnish such reports and information as it may require concerning the code compliance work performed and may audit the books and records of the applicant with respect to such matters.

Section 2-01(i)(2)(vi) is amended as follows:

(vi) An owner may [also] expressly waive its right to a rent adjustment based on the cost of compliance. To do so, it shall indicate its waiver decision on the Notice of RGB Increase form described in §2-01(i)(1) and follow the procedures therein for notification of the affected occupants. In addition, an owner may be deemed to have waived its right to a rent adjustment based on the cost of compliance pursuant to §2-01(i)(2)(ii).

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

(m) *Initial legal regulated rents/issuance of residential leases.*

(1) Following the calculation of [rent adjustments,] code compliance rent adjustments pursuant to §2-01(i)(2)(ii) or the waiver of an owner's [or if the owner has waived its] right to such rent adjustments pursuant to section 2-01(i), [following receipt of such waiver] the Loft Board shall set the initial legal regulated rent for all covered residential units [, except for those units that are exempt from rent regulation , as a result of the owner's purchase of improvements pursuant to M.D.L. §286(6) and §2-07(f)(5) of these rules] remaining subject to rent regulation under MDL Article 7-C.

(2) If an owner has waived its right to code compliance rent adjustments, the Loft Board may establish the initial legal regulated rents for covered residential units subject to rent regulation under MDL Article 7-C based on the owner's RGB application pursuant to §2-01(i)(1), or, if no RGB application was filed, by evidence including, but not limited to, Loft Board records, documents submitted by affected parties, and the testimony of witnesses.

(3) (i) Upon the issuance by the Loft Board of an order establishing the initial legal regulated rent, the owner shall offer each [Each] residential occupant [shall then be offered] a residential lease subject to the provisions regarding evictions and regulation of rent set forth in the Emergency

Tenant Protection Act of 1974, except that to the extent the provisions of Article 7-C are inconsistent with such act, the provisions of Article 7-C and these rules shall govern. At such time, the [owners of such buildings] owner shall register with the New York State Division of Housing and Community Renewal in accordance with the ETPA.

Note: §285(3) of the M.D.L. requires registration with a real estate industry stabilization association; however, amendments to the ETPA (Chapter 403 of the Laws of 1983) modified that filing requirement as shown[, as of the effective date of these regulations].

(ii) If the owner has received any RGB Increase under §2-01(i)(1), then the initial term of such lease shall end upon expiration of the last RGB Increase Period (as defined in §2-01(i)(1)) prior to the setting of the initial legal regulated rent; provided, however, that no notice or proceeding by the owner to recover the unit pursuant to §2524.4 of the Rent Stabilization code may be commenced during the pendency of this initial abbreviated lease term. The initial legal regulated rent established by the Loft Board pursuant to this subparagraph (ii) shall be equal to:

[(1)] (A) the rent in effect, including escalations, and any RGB Increase granted under §2-01(i)(1) as of the date of the rent order (“base rent”), plus

[(2)] (B) the maximum annual amount of any increase allocable to compliance as provided herein.

(iii) If an owner has not received any RGB Increases under §2-01(i)(1), then the rent shall be the sum of clauses [(1) and (2)] (A) and (B) of subparagraph (ii) above plus the percentage increase then applicable to one-or-two year leases, as elected by the tenant, as established by the RGB and applied to the base rent, provided, however, such percentage increases may be adjusted downward by the Loft Board if prior increases based on Loft Board guidelines cover part of the same time period to

be covered by the Rent Guidelines Board adjustments. For units in buildings that have been rented at market value subject to subsequent rent regulation as a result of the owner's purchase of improvements pursuant to M.D.L. §286(6) and §2-07(f)(5) of these rules, the initial legal regulated rent shall be calculated as set forth above except that the code compliance cost increase [(as described in §2-01(m)(2) above)] shall be zero.

(4) Rental adjustments attributable to the cost of code compliance shall not become part of the base rent for purposes of calculating rent adjusted pursuant to Rent Guidelines Board increases and shall terminate, after 10 or 15 years, as established by Loft Board order.

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

(n) ***Cooperatives and condominiums.***

(1) Cooperative or condominium conversion of an IMD shall be fully in accordance with Article 23-A of the General Business Law, as amended, and the rules and regulations promulgated by the New York State Attorney General pursuant thereto. No eviction plan for conversion to cooperative or condominium ownership for a building that is, in whole or in part, an IMD shall be submitted for filing to the office of the New York State Attorney General pursuant to the General Business Law until a final residential certificate of occupancy is obtained and the residential occupants are offered residential leases in accordance with these regulations.

(2) Noneviction plans for such buildings may be submitted for filing provided that the sponsor or owner association remains legally responsible for bringing all rental, cooperative, and condominium units and all common areas of the building into compliance with Article 7-B of the M.D.L., or alternative building codes or provisions of the M.D.L. described in §2-01(a)(3) of these

regulations and for all work in common areas required to obtain a residential certificate of occupancy. An IMD that has been converted to cooperative or condominium ownership is subject to compliance with Article 7-C and Loft Board rules and regulations promulgated pursuant thereto.

(3) Cooperative and condominium units occupied by unit owners or tenant-shareholders are not subject to rent regulation pursuant to Article 7-C of the M.D.L. Cooperative and condominium units occupied by residential occupants qualified for the protection of Article 7-C of the M.D.L., i.e., who are not unit owners or tenant-shareholders, are subject to rent regulation pursuant to the statute.

[Also see §2-01(o).]

(4) The sponsor or owner association of an IMD building that has converted to cooperative or condominium ownership shall file for code compliance rent adjustments for any units remaining subject to rent regulation pursuant to MDL Article 7-C by the time set forth in §2-01(i)(2)(ii). A sponsor or owner association that fails to file an application for code compliance rent adjustments in a timely manner pursuant to this provision shall be deemed to have waived its right to seek such a rent adjustment.

(5) At any time after obtaining a residential certificate of occupancy, the sponsor or owner association of such an IMD building shall file with the Loft Board a list of all units originally registered as IMD units that are occupied by unit owners or tenant-shareholders, certifying that such units are occupied by unit owners or tenant-shareholders, and affirming that the sponsor or owner association seeks exemption for those units from the Loft Board's order setting the initial legal regulated rents. The building shall remain subject to the annual registration renewal requirement pending completion of Loft Board review of such list.

* * * *

Subdivision (o) of section 2-01 is REPEALED.

Statement of Basis and Purpose:

It is the Loft Board's mandate to take a fixed group of buildings and move them through the process of legalization, ultimately reducing the number of buildings in its jurisdiction. The last step in that process is setting the initial legal regulated rents, and directing the owners to issue rent stabilized leases and to register with the State Division of Housing and Community Renewal (DHCR). This occurs after the owner has achieved compliance with Article 7-B of the Multiple Dwelling Law or has obtained a residential certificate of occupancy. It is not uncommon, however, for owners to obtain a residential certificate of occupancy but delay obtaining a final rent order setting the initial legal regulated rents. This has the effect of keeping such buildings in the Loft Board's jurisdiction indefinitely.

Under current rules, there is no deadline for filing these applications. This amended rule requires owners to file their applications for a final rent order soon after obtaining a residential certificate of occupancy. Also, current rules do not give the Loft Board the authority to issue final rent orders in the absence of an owner's application. This amendment gives the Board that authority.

The amendment provides that owners who do not file an application for code compliance rent adjustments within the time limit set forth are deemed to have waived their right to such adjustments. The rule gives owners nine months or until February 1, 2000, whichever is later, to make their application. The amendment allows the Loft Board to set the initial legal regulated rent in cases where an owner has submitted neither an application for code compliance rent adjustments nor a Rent Guidelines Board increase under 2-01(i)(1). In such case, the Loft Board can commence a proceeding to establish the initial legal regulated rents (without reference to the costs of code compliance) based on evidence such as records in the Loft Board's files, documents submitted by affected parties, and the testimony of witnesses.

Section 2-01(n) is amended to clarify the Loft Board's existing policy on IMD buildings converted to cooperative or condominium ownership. The provision makes clear that owners of coops or condos must file for a final rent order for any rent-regulated units remaining in the building by the deadline applicable to all final rent order applications. It also requires owners of such buildings to provide the Loft Board with a list of owner-occupied units after the building obtains its residential certificate of occupancy. The filing of this form triggers a review of Loft Board records. If the Loft Board's records confirm that the identified units are all owner-occupied, the Loft Board will initiate a summary proceeding to issue a final order, which will result in the removal of the building from the Loft Board's jurisdiction. The amendment makes clear that until the Loft Board issues that order, a coop or condo remains in the Loft Board's jurisdiction and must continue to renew its annual registration.

Section 2-01(o) is repealed. Section 2-01(o) states that the “foregoing regulations” constitute a “comprehensive set of rules governing code compliance” but that the “Loft Board reserves the right” to promulgate additional rules on related topics. Subdivision (o) is unnecessary because it contains no substantive provisions, and because the Loft Board’s rulemaking authority is set forth in MDL Article 7-C and Executive Order No. 66 (Sept. 30, 1982). The repeal of this subdivision in no way limits the Loft Board’s rulemaking authority.

Dated: March 23, 1999

HECTOR BATISTA
Chairman