

2013 amendment to § 2-10 of Title 29 of the Rules of the City of New York addresses the procedures for a sale of rights, as applied to residential occupants of units covered under the Loft Law including occupants covered pursuant to MDL § 281(5), and conforms the rule to the amendments made to Article 7-C of the Multiple Dwelling Law, effective as of June 21, 2010.

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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. 129, dated May 22, 2009, and pursuant to and in accordance with the requirements of Section 1043 of the New York City Charter.

The New York City Loft Board is amending section 2-10 of Title 29 of the Rules of the City of New York to conform the Loft Board’s rule regarding sales of rights by residential occupants pursuant to MDL § 286(12), to the amendments made to Article 7-C of the Multiple Dwelling Law, effective as of June 21, 2010.

A duly noticed public hearing was held on July 19, 2012, affording the public opportunity to comment on the amendments, as required by Section 1043 of the New York City Charter. Written Comments were accepted through July 19, 2012.

Statement of Basis and Purpose

Pursuant to § 282 of Article 7-C of the MDL (“Loft Law”), the Loft Board may promulgate rules to ensure compliance with the Loft Law. On June 21, 2010, the Legislature amended the Loft Law. Chapters 135 and 147 of the Laws of 2010, among other things, added MDL § 281(5), and increased the civil penalties that may be imposed for violations of Loft Board rules.

MDL § 286(12) allows a residential occupant to sell his or her Loft Law rights to the owner. These rule amendments address the procedures for a sale of rights, as applied to residential occupants of units covered under the Loft Law including occupants covered pursuant to MDL § 281(5).

The rule changes:

- Direct the reader to the Loft Board's fine schedule in § 2-11.1 for civil penalties that may be imposed for failure to timely file a Sales Record form.
- Clarify that a purported sale of rights pursuant to MDL § 286(12) made prior to June 21, 2010 for units subject to coverage pursuant to MDL § 281(5) will not be given any effect by the Loft Board.
- Provide that the estate of a residential occupant entitled to protection will be an affected party in an abandonment application.
- Include minor edits to promote clarity and organization of the rule.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this Board, unless otherwise specified or unless the context clearly indicates otherwise.

New matter in the following rule is underlined, and deleted material is in [brackets].

Section 1. Subdivisions (a) through (f) of Section 2-10 of Title 29 of the Rules of the City of New York are amended to read as follows:

§2-10 Sales of Rights.

(a) *Right to sell and the limitations on an occupant's right to sell.*

(1) *The Right to Sell.* The residential occupant of an IMD unit may sell the rights afforded such occupant pursuant to Article 7-C₂ to the owner of the IMD or the owner's authorized representative, [which shall include] including a net lessee[provided that, with respect to sales which occur on or after March 16, 1990, or with respect to sales in units subject to Article 7-C solely pursuant to MDL §281(4), which occur on or after November 23, 1992, the authorized representative files with the Loft Board written proof of authorization from the owner for such sale on a form issued by the Loft Board. Except as provided in § 2-10(c) and (d) herein, a sale pursuant to §286(12) of Article 7-C of the Multiple Dwelling Law shall constitute a sale of all rights in the unit.], in accordance with the terms of MDL § 286(12) and these rules. A sale pursuant to MDL § 286(12), after the effective date of the relevant provision of MDL § 281, as provided in § 2-10(a)(2) below, constitutes a sale to the owner of all of the tenant's rights in the unit.

(2) Limitations.

(i) No sale or agreement made prior to:

(A) June 21, 1982 for units subject to Article 7-C pursuant to MDL § 281(1),

(B) July 27, 1987 for units subject to Article 7-C solely pursuant to MDL § 281(4), or

(C) June 21, 2010 for units covered under MDL § 281(5) that became subject to Article 7-C pursuant to Chapter 135 or 147 of the Laws of 2010,

in which an occupant purported to waive rights under the Article 7-C will be given any force or effect.

(ii) For any sale made pursuant to MDL § 286(12), the unit subject to a sale of rights may not be the subject of another sale pursuant to MDL § 286(12); nor may such unit be the subject of a subsequent sale of improvements pursuant to MDL § 286(6).

(b) Filing requirement for sales which occur on or after the effective date of these [regulations] Rules.

[For sales which occur on or after the effective date of these regulations, the owner or its authorized representative must file with the Loft Board a record of such sale, on a form issued by the Loft Board, and executed by the owner or its authorized representative and the occupant or the occupant's attorney. Failure]

For a sale of rights in a unit subject to Article 7-C pursuant to (i) MDL § 281(1), which occurs on or after March 16, 1990, (ii) MDL §281(4), which occurs on or after November 23, 1992, or (iii) MDL § 281(5), which occurs on or after September 11, 2013 the effective date of this amended rule, the owner or authorized representative must file with the Loft Board a sales record on the Loft Board approved form (“sales record form”) within 30 days of the sale, together with the sales agreement, if any, or any other documentation substantiating the sale.

The Loft Board's approved form must be signed by the owner or its authorized representative and the occupant and his or her authorized representative, if any, who sold rights to the unit. If the occupant refuses to sign the form, the owner or its authorized representative must file with the form a sworn statement identifying the occupant, the reasons given by such occupant for refusing to execute the form and proof of the sale of rights, including supporting documentation. If the prior occupant could not be found, the owner or its representative must provide a description of the reasonable efforts used to locate the occupant and must file proof of the sale of rights including supporting documentation.

Except as provided in paragraph (c) below, failure by the owner or the owner's authorized representative to file a sales record [of sale] form within 30 calendar days of the date of the sale may subject the owner to a civil penalty [up to \$1,000] as determined by the Loft Board in § 2-11.1 of the Loft Board Rules.

(c) *[Effect of sales. (1) Non-Residential use.*

(i) If the unit to be used for non-residential purposes, the owner is relieved of its obligations to comply with the requirements of Article 7-C of the Multiple Dwelling Law regarding such unit. The non-residential use must conform with applicable provisions of the Zoning Resolution and the Administrative Code, and with any existing Certificate of Occupancy for the unit, or other source of legal authorization for such use. The unit may not be converted to non-residential use if there is a harassment finding by the Loft Board as to any occupant(s) of the unit which the Board has not terminated pursuant to §2-02(d)(2) of the Board's Harassment Regulations.

(ii) Prior to such change of use, the owner or its authorized representative must file with the Loft Board a declaration of intent on a form issued by the Loft Board stating that the unit will only be occupied for a conforming non-residential use. Within 30 days of the Board's receipt of such filing, the Loft Board shall conduct or cause to be conducted an inspection of the premises to verify that all fixtures, as defined in §2-06(a) "Improvements" of the Board's Sales of Improvements Regulations, which were constructed or installed without necessary approvals by appropriate government agencies and for which such approvals have not been secured, or which are intended primarily for residential occupancy, have been removed or approved. The results of this inspection shall be reported to the owner or its authorized representative within 30 days of the inspection, and approval of the non-residential conversion shall

be granted promptly when the removal of these fixtures has been verified. Disputes shall be resolved by application to the Loft Board.

(iii) Prior to approval by the Loft Board, as set forth in §2-10(c)(1)(i), the owner remains subject to all the requirements of Article 7-C, and regulations and orders of the Board, including the legalization requirements of Multiple Dwelling Law §284, as set forth in §2-10(c)(2) herein.

(iv) When the conversion of such unit to a non-residential conforming use reduces the number of IMD units below three, the IMD status for such building and for the remaining IMD units in such building, and the protections afforded protected occupants thereof, shall not be eliminated.

(v) Notwithstanding the provisions of §2-01(1) of the Board's Code Compliance Regulations, if conversion of such a unit to a non-residential conforming use increases the costs of legalization under Multiple Dwelling Law §284 for the remaining IMD units, such increased costs shall be borne by the owner and may not be passed through remaining residential occupants pursuant to Article 7-C and the Board's Code Compliance Regulations.

(2) Residential use. If the unit is to remain residential, the owner remains subject to all the requirements of Article 7-C, and regulations and orders of the Board, including the legalization requirements of Multiple Dwelling Law §284, except that the unit is no longer subject to rent regulation where coverage under Article 7-C was the sole basis for such rent regulation, provided that there is no finding by the Loft Board 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. During the period of its IMD status, the IMD unit may be converted to non-residential use, as set forth in §2-10(c)(1) of these regulations, except that a harassment finding made after a sale shall not bar conversion of the unit to non-residential use.

(3) Terminations of harassment. As provided in §2-02(d) (2)(ii) of the Board's Harassment Regulations for sales of improvements, an order terminating a Loft Board finding of harassment shall apply prospectively only. The owner shall not be relieved of the requirements of Article 7-C, including rent regulation, nor may the owner convert the unit to non-residential use, when a sale of rights pursuant to §286(12) for the unit has taken place during the period from the date of the order finding harassment as to any occupant(s) of the unit to the date of the order terminating such finding.]

Filing requirement for sales which occurred prior to the effective date of these rules.

(1) Filing deadlines:

(i) For a unit subject to Article 7-C pursuant to MDL § 281(1), if the sale of rights occurred after June 21, 1982, but before March 16, 1990, the owner or its authorized representative must file the sales record form and the sales agreement with the Loft Board on or before June 14, 1990;

(ii) For a unit subject to Article 7-C solely pursuant to MDL § 281(4), if the sale of rights occurred after July 27, 1987, but before November 23, 1992, the current owner or its authorized representative must file the sales record form and the sales agreement with the Loft Board on or before February 21, 1993; or

(iii) For a unit covered by MDL § 281(5) that became subject to Article 7-C pursuant to Chapter 135 or 147 of the Laws of 2010, if the sale of rights occurred after June 21, 2010, but before September 11, 2013 the effective date of this section, the current owner or its authorized representative must file the sales record form and the sales agreement with the Loft Board on or before December 10, 2013, which is 90 calendar days following the effective date of this section.

(2) The sales record form must contain a sworn statement by the owner or its authorized representative, on a form issued by the Loft Board, as to the current use and occupancy of the unit. If the owner intends to use the unit for non-residential purposes, the owner must: a) disclose its intention on the sales record form; and b) include a declaration of intent by the owner or its authorized representative that the use is consistent with applicable provisions of the New York City Zoning Resolution and the New York City Administrative Code, and in conformity with any existing certificate of occupancy, and any other source of legal authorization for such use.

(3) If the owner indicates in the sales record an intention to use the unit for non-residential purposes, the unit will be subject to inspection to determine its compliance with the requirements set forth in § 2-10(d)(1)(ii) of these rules.

(4) Failure by the owner or the owner's authorized representative to timely file a sales record form may subject the owner to a civil penalty as determined by the Loft Board in § 2-11.1 of the Loft Board rules. The Loft Board may inspect any unit for which a sale of rights has occurred

prior to the effective date of these rules. The Loft Board may also inspect any unit for which a sales record form was not timely filed to determine the current use of space.

(d) [*Sales which occurred prior to the effective date of these regulations.*

(1) No sale or agreement made prior to June 21, 1982, or prior to July 27, 1987 for units subject to Article 7-C solely pursuant to MDL §281(4), in which an occupant purported to waive rights under the statute shall be accorded any force or effect.

(2) By June 14, 1990, the current owner or its authorized representative shall file with the Loft Board a record of any sale pursuant to §286(12) which occurred prior to March 16, 1990 and after June 21, 1982, on a form issued by the Loft Board. Except that for sales pursuant to MDL §286(12) of units subject to Article 7-C solely pursuant to MDL §281(4) which occurred after July 27, 1987, but before November 23, 1992, the current owner or its authorized representative shall file a record of such sale with the Loft Board on the prescribed form on or before February 21, 1993. Such form shall be executed by the current owner or its authorized representative and the occupant who sold such rights. If the occupant fails or refuses to execute such form, the owner or its authorized representative shall file such form and submit a sworn statement identifying the occupant, describing the efforts to locate the occupant or the reasons given by such occupant for refusal to execute the form. Such record of sale shall also contain a sworn statement by the owner or its authorized representative, on a form issued by the Loft Board, as to the current use and occupancy of the unit, and if such record discloses that a unit is being used non-residentially, it shall also contain a sworn declaration by the owner or its authorized representative that the current use is consistent with applicable provisions of the Zoning Resolution and the Administrative Code, and in conformity with any existing Certificate of Occupancy, or other source of legal authorization for such use. Any unit identified in such record as being used non-residentially is subject to inspection to determine its compliance with the requirements set forth in §2-10(c)(1)(ii) of these regulations, except that such inspection shall take place within 90 days of the Loft Board's receipt of such filing.

(3) Failure by the owner or the owner's authorized representative to file a record of sale by June 14, 1990, or by February 21, 1993 for sales of

units subject to Article 7-C solely pursuant to MDL §281(4), may subject the owner to a civil penalty up to \$1,000, as determined by the Board. The Loft Board shall also cause units to be inspected for which a sale of rights has occurred prior to the effective date of these regulations and a Board-issued record of sale has not been timely filed to determine the current space.

(4) During the period of IMD status units used residentially may be converted to non-residential use, as set forth in §2-10(c)(1) of these regulations, except that a harassment finding made after a sale shall not bar conversion of the unit to non-residential use. Prior to such conversion, the owner remains subject to all the requirements of Article 7-C, and regulations and orders of the Board, including the legalization requirements of Multiple Dwelling Law §284, except that the unit is no longer subject to rent regulation where coverage under Article 7-C was the sole basis for such rent regulation. Units used non-residentially must conform with applicable provisions of the Zoning Resolution and the Administrative Code, and with any existing Certificate of Occupancy for the unit, or other source of legal authorization for such use.]

Effect of sales.

(1) Non-Residential use.

(i) If the unit is to be used for non-residential purposes after a sale of rights pursuant to MDL § 286(12), upon approval by the Loft Board, the owner will be relieved of its obligations to comply with the requirements of Article 7-C of the MDL regarding such unit. The non-residential use must comply with applicable provisions of the New York City Zoning Resolution and the New York City Administrative Code, and with any existing certificate of occupancy for the unit, and any other source of legal authorization for such use. The unit may not be converted to non-residential use if there is a harassment finding by the Loft Board as to any occupants of the unit that the Loft Board has not terminated pursuant to § 2-02(d)(2) of these rules. If the Loft Board issues a harassment finding after the sale of rights, the owner is permitted to convert the IMD unit to non-residential use, provided that all other applicable requirements in this section are met.

(ii) Prior to conversion to a non-residential use, the owner or its authorized representative must file with the Loft Board a declaration of intent on a form issued by the Loft Board stating that the unit will only be occupied for a conforming non-residential use. Following the Loft Board's receipt of the filing, the Loft Board must conduct or require an inspection of the premises to verify that the following fixtures, as defined in § 2-07(a) of these rules, have been removed or approved: (1) fixtures that were constructed or installed without necessary approvals by the appropriate government agencies and for which approvals have not been secured, and (2) fixtures that are intended primarily for residential occupancy.

The results of this inspection will be reported to the owner or its authorized representative. A determination on the request for non-residential conversion will be issued after the removal or approval of these fixtures has been verified. Any disputes will be resolved by application to the Loft Board.

(iii) Prior to approval by the Loft Board, in accordance with § 2-10(d)(1)(ii), the owner remains subject to all the requirements of Article 7-C, these rules, and orders of the Loft Board, including the legalization requirements of MDL § 284.

(iv) When the conversion of a unit to a non-residential conforming use reduces the number of IMD units below three or two, as provided by MDL § 281(5), the IMD status for the building and for the remaining IMD units in the building, and the protections provided in Article 7-C to the protected occupants will not be eliminated.

(v) Notwithstanding the provisions of § 2-01(l) of these Rules, if conversion of a unit to a non-residential conforming use increases the costs of legalization under MDL § 284 for the remaining IMD units, the additional increased costs must be paid by the owner and may not be passed through to the remaining residential occupants pursuant to Article 7-C and these Rules.

(2) Residential use.

If the unit is to remain residential after a sale of rights pursuant to MDL § 286(12), the owner remains subject to all of the requirements of Article 7-C, these rules and orders of the Loft Board, including the legalization requirements of MDL § 284, except that the unit is no longer subject to rent regulation where coverage under Article 7-C was the sole basis for such rent regulation. The exemption from rent regulation will not be permitted if there is a finding by the Loft Board of harassment as to any occupant(s) in the IMD unit which has not been terminated pursuant to § 2-02(d)(2) of these rules.

(3) Termination of harassment.

If a sale of rights pursuant to MDL § 286(12) occurs during the period between the date of the order finding harassment and the date of the order terminating the harassment finding, the sale of rights does not relieve the owner of the requirements of Article 7-C, including rent regulation, and the owner may not convert the unit to non-residential use. The effect of a termination of harassment finding applies prospectively only.

(e) *[No right to sale of improvements or rights after a sale pursuant to §286(12) has occurred. For any sale pursuant to §286(12), the unit subject to such sale may not be the subject of another sale pursuant to §286(12); nor may such unit be the subject of a subsequent sale of improvements pursuant to §286(6) of the MDL.]*

(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] MDL § 286(12) or sale of [fixtures] improvements pursuant to [Multiple Dwelling Law] MDL § 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] these Rules.

(2) Abandonment [shall be defined as] means the relinquishment of possession of a unit and all rights relating to a unit either: (i) voluntarily, with the intention of never resuming possession or reclaiming the rights surrendered, 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.

(3) To be considered timely, an owner's application alleging abandonment must be filed with the Loft Board within [one] 1 year of the date the owner knew or should have known that the IMD tenant vacated the unit.

(4) In deciding whether a unit has been abandoned voluntarily pursuant to subparagraph (i) of paragraph (2) above, the factors the Loft Board may consider[, inter alia] include, but are not limited to, the following [factors]:

(i) [the] The length of time since the occupant allegedly abandoned the unit;

(ii) [whether] 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] initiated;

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

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

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

(vi) [whether] 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] Whether any [violations] notices of violation or notices to appear pursuant to the Loft Board's Minimum Housing Maintenance Standards have been issued;

(viii) [whether] Whether the owner has made affirmative efforts to locate the occupant to attempt to purchase rights pursuant to [Multiple Dwelling Law] MDL §_286(12) or improvements pursuant to [Multiple Dwelling Law] MDL §_286(6); and

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

(5) In determining whether abandonment has occurred as a result of the death of an IMD [tenant] occupant as set forth in subparagraph (ii) of paragraph (2) above, proof of the occupant's death [of such tenant of an IMD unit shall] must 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. The heir, beneficiary, administrator, or executor of the occupant's estate, as applicable, is an affected party in a case where an owner seeks an abandonment finding based on the death of an IMD occupant.

(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)] § 2-10(d)(1) of these [regulations] Rules.

(7) (i) Upon compliance with these specified provisions of [§2-10(c)(1)] § 2-10(d)(1) with regard to units [to be] determined to be abandoned and used for non-residential purposes, the legal effect of the Loft Board's determination of abandonment [shall be] is the same as that of a sale of rights as provided in [§2-10(c)] § 2-10(d) of these [regulations] Rules.

(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] is the same as that of a sale of rights as provided in [§2-10(c)] § 2-10(d) of these [regulations] Rules, but only if [and when]:

(A) [on] 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

(B) [within] 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] and the 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] must remain residential and the owner [shall] is not [be] permitted to re-rent the unit at a market rate to the incoming tenant. Additionally, the owner [shall] must 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] The written notice to an incoming tenant or tenants [shall] must 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 in[-]coming tenant(s) may challenge such rent by filing an application alleging a rent overcharge with the Loft Board.

(9) [New paragraphs] Paragraphs (3) and (8), and the amendments to paragraph (7) of this subdivision (f), made [by the rulemaking that added this paragraph, shall] effective on October 8, 2006 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] after April 8, 2007.