

The 2013 amendment to § 2-07 of Title 29 of the Rules of the City of New York extends the existing provisions of 2-07 to units subject to coverage pursuant to MDL § 281(5); amends the service and proof of service requirements for an application challenging a proposed sale of improvements; 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 2-07 of Title 29 of the Rules of the City of New York, regarding sales of improvements pursuant to Multiple Dwelling Law § 286(6). The amended rule conforms section 2-07 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. Effective as of June 21, 2010, the Legislature enacted Chapters 135 and 147 of the Laws of 2010, which amended the Loft Law.

To ensure the Loft Board rules are aligned with the recent amendments to the Loft Law, the amended rule:

- Adds provisions addressing when units covered by the Loft Law pursuant to MDL § 281(5) may be exempted from rent regulation after a sale of improvements.

- Amends the service and proof of service requirements for an application challenging a proposed sale of improvements.
- Directs the reader to the Loft Board’s new fine schedule for penalties that may be imposed for an owner’s failure to file a sales record form with the Loft Board.
- Removes provisions governing sales of improvements that occurred prior to March 23, 1985.
- Adds headings and re-orders the subdivisions of the rule into a more coherent section.

**NEW YORK CITY LOFT BOARD
REORGANIZATION OF SECTION 2-07,
SALE OF IMPROVEMENTS**

Old Subdivision Designation	Description	New Subdivision Designation
§ 2-07(a)	Definitions	No Change
§ 2-07(b)	Notice: Form and Time Requirements	§ 2-07(f)
§ 2-07(c)	Modifications on Consent, Change of Address	§ 2-07(h) (renamed Deadline Extensions on Consent and Change of Address)
§ 2-07(d)	Parties	§ 2-07(g)(3)
§ 2-07(e)	Sales not Subject or Partially Subject to These Regulations	§ 2-07(b)(2)
§ 2-07(f)(1)	Right to Sell	§ 2-07(b)(1)
§ 2-07(f)(2)	Offers to Sell to Prospective Tenant	§ 2-07(c)
§ 2-07(f)(3)	Owner’s Response to Offer & Proposed Tenant	§ 2-07(d)
§ 2-07(f)(4)	Acceptance of Prospective Tenant through Owner’s Consent to Tenant’s Purchase or Owner’s Failure to Respond	§ 2-07(d)(3)
§ 2-07(f)(5)	Owner’s Purchase of Improvements	§ 2-07(d)(4)
§ 2-07(g)(1)	Challenges to Proposed Sales of Improvements – Procedures	No Change
§ 2-07(g)(2)	Grounds for Challenge	No Change
§ 2-07(h)	Sales which Occurred Prior to Effective Date of these Regulations	DELETED

§ 2-07(i)	Fair Market Value of Improvements; Hard Exemptions, Vacate Orders, Owner Occupancy	No Change
§ 2-07(j)	Filing the Record	No Change in location but renamed to “Filing the Sales Record with the Loft Board”

"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 2-07 of Title 29 of the Rules of the City of New York is amended to read as follows:

§2-07 Sales of Improvements.

(a) Definitions. The following terms shall have the following definitions unless context clearly indicates otherwise.

(1) Fair market value. "Fair [Market Value] market value" is [the value established by a] defined as follows:

(i) A bona fide offer by a prospective incoming tenant to purchase improvements [from a prospective tenant, unless the Loft Board finds, upon application of an owner challenging such offer as not representing fair market value, that the offer does not represent the value of the improvements as determined after the Board's consideration, as further set forth in §2-07(g) herein,

(i) for such improvements as were purchased by the outgoing tenant, of the amount paid by the outgoing tenant, less depreciation for wear and tear and age, to the prior tenant or to the owner, or to both, for purchase of improvements, and

(ii) for such improvements, as were made by the outgoing tenant, of the replacement cost of such improvements less depreciation for wear and tear and age] made or purchased by an outgoing tenant qualified for protection under Article 7-C is presumed to represent the fair market value of the improvements.

(ii) The presumption in (i) above may be rebutted if the owner challenges the value in accordance with § 2-07(g), in which case the fair market value will be determined by the Loft Board in accordance with § 2-07(g).

(iii) If no such offer is made or available, the value shall be established by agreement of the parties or pursuant to an application to the Loft Board, which shall determine the value in accordance with the criteria and procedures set forth [herein] in this Rule.

(2) Improvements. "Improvements" are the fixtures, alterations and development of [a unit in] an interim multiple dwelling ("IMD") unit which were made or purchased by a residential tenant who is qualified for protection under Article 7-C.

(i) "Fixtures" are defined as that which is fixed or attached to real property permanently as an appendage[and shall include], including, but not [be] limited to, the following: kitchen installations, [including] such as stoves, sinks, counters, and built-in cabinets; bathroom installations, [including] such as sinks, toilets, bathtubs, and showers; other installations, [including] such as partitions, ceilings, windows, and floors, including tiling; built-in shelves; plumbing and utility risers; electrical work; heating units; and hot water heaters.

(ii) "Alterations and development" [shall] include, but [not be] are not limited to the following: demolition work, [including] such as debris removal; repair[(], other than normal recurring maintenance[)] and]; renovation of ceiling, walls, windows, and floors; design, including professional fees paid to architects and designers in connection with the improvements; labor; equipment rental; [design including professional fees paid to architects and designers in connection with the improvements;] and such removable personal property as [was] is reasonable to establish residential use, such as a refrigerator and dishwasher.

Improvements [shall] do not include other removable household furnishings, such as rugs, tables, and chairs[, nor statutory rights]. A sale of improvements does not constitute a sale of rights pursuant to [Article 7-C, neither of which may be the subject of a sale pursuant to § 286(6) of the Multiple Dwelling Law ("MDL")] § 286(12) of the Multiple Dwelling Law ("MDL").

(3) [**Multiple dwelling unit.** A multiple dwelling unit, (also "IMD unit" or "unit,") is a] Unit, as referred to in this Rule, means:

- (i) A residential unit in an [interim multiple dwelling] IMD building, as defined by MDL §_281 and [Loft Board Coverage regulations] these Rules, which [unit] is registered with the Loft Board [as required by regulations relating to registration of interim multiple dwellings at the time of service on the owner of the Improvement Sales Disclosure Form as required herein. Included are units in multiple dwellings which were] or granted coverage by the Loft Board or a court of competent jurisdiction; or
- (ii) For the purposes of sales of improvements governed by this section only, a unit formerly registered as [IMD's and have] an IMD unit, but which has subsequently been legalized and removed from the Loft Board's jurisdiction.

(b) [*Notice: form and time requirements.* All notices, requests, responses and stipulations served by owners and tenants pursuant to these regulations shall be in writing, with a copy delivered or mailed to the Loft Board, accompanied by proof of service. Service by the parties shall be effected either (1) by personal delivery or (2) by certified or registered mail, return receipt requested, with an additional copy sent by regular mail. Unless otherwise agreed in writing by the parties, with notice to the Loft Board, these communications shall be delivered or sent to the outgoing tenant and to the prospective tenant at the respective addresses specified on the Improvements Sale Disclosure Form, described herein; and to the owner via the registrant of the IMD unit at the address indicated on the IMD registration form unless the owner informs the Loft Board, in writing, of an alternate party or address, or both, to be contacted regarding a sale of improvements. Proof of service shall be in the form of a verified statement of the person who effected service, setting forth the time, place and other details of service, if service was made personally, or by copies of the return receipt and verified statement of mailing, if service was performed by mail. Communications by the Loft Board pursuant to these regulations will be sent by regular mail to the addresses indicated above.

Service shall be deemed effective upon personal delivery or five days following service by mail. Deadlines provided herein are established pursuant to the effective date of service.]

Applicability.

This section applies to sales which occur on or after March 23, 1985, except that the definition of the term "fair market value," provided in subdivision (a) of this section, applies only to sales of improvements where a Disclosure Form has been filed with the Loft Board on or after February 16, 1996.

(1) *Right to sell.*

The residential occupant of an IMD unit which is qualified for protection under Article 7-C may sell the improvements of the unit to the owner or to a prospective tenant, either before or after such unit has been legalized and registered with DHCR, subject to the procedures established in these Rules. This right to sell may be exercised only once for each IMD unit. The improvements must be offered to the owner for an amount equal to their fair market value, as defined in § 2-07(a) above, prior to their sale to a prospective incoming tenant.

(2) *Sales not subject, or partially subject, to these rules.*

(i) *Registration or a finding of coverage.* This section does not apply to units which have never been registered with the Loft Board, unless the unit was granted coverage pursuant to a Loft Board order or court of competent jurisdiction. Any sale of improvements which occurred prior to registration of the unit with the Loft Board or prior to a finding of coverage by the Loft Board or a court of competent jurisdiction does not constitute a sale pursuant to MDL § 286(6), and is not covered by this section. This section does not apply to units which the Loft Board or the Executive Director have found are not covered by Article 7-C pursuant to §§ 2-05 and 2-08 of these rules, or which a court of competent jurisdiction has found do not qualify for Article 7-C coverage.

(ii) *Sales between co-tenants.* This section does not apply to sales of improvements between co-tenants of an IMD unit, where at least 1 of the co-tenants will remain in occupancy after the sale and is an occupant qualified for the protection of Article 7-C.

(iii) *Compensation to prime lessee or sublessor.* Compensation to a prime lessee or sublessor by a residential occupant does not constitute a sale of improvements pursuant to MDL § 286(6), and is governed by § 2-09(c) of these rules in matters regarding the prime lessee's or sublessor's right to compensation for costs incurred in developing a

residential unit. After compensation has been made by the residential occupant to the prime lessee or sublessor, the residential occupant has the right to sell the improvements in the unit pursuant to MDL § 286(6) and this section.

(c) [*Modifications on consent, change of address.* Deadlines, herein may be modified, applications may be withdrawn, and disputes may be resolved, by written agreement of the parties, subject to Loft Board approval. Parties may change their address upon service of written notice to the other parties and the Loft Board and such notice shall be effective upon personal delivery or five days following service by mail.]

Procedure for sales of improvements to prospective incoming tenant.

(1) An outgoing tenant in an IMD unit proposing to sell improvements to a prospective incoming tenant must send the Loft Board approved Disclosure Form to the owner and prospective incoming tenant in accordance with the following procedures at least 30 calendar days in advance of the date of closing of the proposed sale.

(i) The outgoing tenant must notify the owner of his or her intent to move and to sell the improvements, and the identity of the prospective incoming tenant, providing the following information to the owner:

(a) A list and description of the improvements included in the proposed sale which were made or purchased by the outgoing tenant with accompanying proof of payment;

(b) A written copy of the offer, verified by the prospective incoming tenant, to purchase the improvements, which includes all terms and conditions of the offer;

(c) Identification of the prospective incoming tenant by name, current business and home addresses and any other address and telephone numbers elected for purposes of delivery of notices and communications;

(d) An affidavit by the outgoing tenant that he or she made or purchased the improvements offered for sale; or an affidavit that he or she is authorized to sell the improvements on behalf of any

other parties having ownership interest in such improvements, accompanied by appropriate evidence of such authorization;

(e) An affidavit by the prospective incoming tenant that he or she has received and reviewed the Disclosure Form; and

(f) Three reasonable dates and times within 10 calendar days after service of the Disclosure Form upon the owner, when the owner and/or the owner's designee could inspect the improvements.

(ii) The Disclosure Form must also include the following advisories to the prospective incoming tenant:

(a) The improvements included in the sale are limited to those items listed and described by the outgoing tenant;

(b) The prospective incoming tenant is purchasing absolute title to the use and enjoyment for the duration of the prospective tenancy of all other property deemed improvements pursuant to these rules. The owner is responsible for maintenance of improvements deemed fixtures pursuant to these rules; however, the owner has the right to alter or remove the improvements pursuant to code compliance requirements, subject to the terms of this section;

(c) The right to sell improvements may be exercised only once for the unit and an incoming tenant cannot re-sell such improvements to the owner or a prospective incoming tenant pursuant to MDL § 286(6);

(d) Upon completion of the sale of improvements by the prospective incoming tenant pursuant to MDL § 286(6), the prospective incoming tenant assumes the rights and obligations of the outgoing tenant as an occupant qualified for protection under Article 7-C;

(e) The amount of the rent and a statement as to the types of further increases which may be applicable to the IMD unit pursuant to the terms of the Loft Board's rules or Rent Guidelines Board's orders;

(f) If the building has not been issued a final residential certificate of occupancy for the IMD unit at the time of the offer to purchase, the unit remains subject to the requirements of Article 7-C and the Loft Board's rules requiring that such units be brought into compliance;

(g) MDL § 286(5) provides that the costs of legalization as determined by the Loft Board are passed through to the tenants and may result in rent adjustments owed by the tenant above the base rent, amortized over a 10 or 15 year period;

(h) The offer is subject to the owner's right:

1. To purchase the improvements for an amount equal to their fair market value;

2. To challenge the offer as provided in § 2-07(g) below; and

3. To withhold consent to the prospective tenant, provided that consent may not be unreasonably withheld;

(i) If an owner purchases the improvements, the owner will not be entitled to the opportunity for decontrol of rent regulation or market rentals, as provided in § 2-07(d)(4)(ii) below, if the owner is found to have harassed tenants, pursuant to § 2-02 of these rules, unless the harassment finding has been terminated pursuant to § 2-02 of these rules.

(2) The completed Disclosure Form with original signatures must be filed with the Loft Board, together with proof of service. Following receipt, the Loft Board staff will determine whether a sale for the unit in question has been previously filed with the Loft Board's office. If a sale was previously filed, the parties will be notified of the prior sale and the proposed sale will not be given any effect under MDL § 286(6).

(d) [*Parties.* Unless otherwise indicated herein, in cases involving an offer to purchase improvements, parties shall be limited to the owner and the outgoing tenant, except that a prospective tenant tendering an offer to purchase improvements shall be a party to cases involving issues of the *bona fides* of an offer.]

Owner's response to offer and prospective incoming tenant.

(1) Procedures for owner's response.

(i) Within 10 calendar days of service of the Disclosure Form, the owner may request any reasonable additional information from the outgoing and prospective incoming tenants that will enable the owner to decide whether to purchase the improvements, and to determine the suitability of the prospective incoming tenant.

(A) No request by the owner for additional information from the outgoing tenant may be unduly burdensome, and requests for additional information must be relevant to the criteria set forth in § 2-07(g) below.

(B) If the Loft Board finds that the owner's request for additional information is unduly burdensome, it may reject the owner's request on application by the outgoing tenant.

(ii) In the owner's response to the Disclosure Form, the owner must affirm that the subject unit is currently registered with the Loft Board or DHCR, or any successor agency and was registered at the time of service of the Disclosure Form and that he or she either owns the premises or is authorized to act on behalf of the owner in this matter.

(iii) Within 20 calendar days after service of the Disclosure Form, or delivery of the additional information reasonably requested by the owner, whichever is later, the owner must notify the outgoing and prospective incoming tenants of the owner's:

(A) Rejection of the offer based on one or more of the grounds for challenge listed in § 2-07(g)(2), by following the procedures provided in § 2-07(g);

(B) Consent to the prospective incoming tenant and consent to the sale of improvements to the prospective incoming tenant; or

(C) Acceptance and commitment to purchase the improvements at the offered price.

(iv) If the owner's challenge is based on the unsuitability of the prospective tenant, the owner may only initiate an action based on that ground in a court of competent jurisdiction. If an action is brought pursuant to this subparagraph, the owner must inform the Loft Board in writing within 20 calendar days after service of the Disclosure Form or delivery of the additional information requested, if any.

(2) Owner's rejection of the offer.

(i) If the owner rejects the outgoing tenant's offer to purchase the improvements, the owner must elaborate on the grounds for the rejection by filing a challenge application in accordance with the procedures provided in subdivision (g), except as provided in § 2-07(d)(1)(iv). If the rejection is based on the claim that the offer exceeds the fair market value of the improvements, the rejection must include the owner's fair market valuation of the improvements and the owner's commitment to purchase if the fair market value is determined to be no greater than such valuation. If the rejection is based on the claim that the owner made or purchased the improvements, the rejection must indicate which improvements the owner alleges to have made or purchased and include proof.

(ii) Failure of the owner to file with the Loft Board a complete application, including payment of a fee of \$800.00 to cover the full cost of an appraiser selected by the Board, with copies to the outgoing and prospective tenants, within the time provided in § 2-07(d)(1)(iii) above, shall be deemed an acceptance of the proposed sale. However, if the owner's challenge is on the ground of the unsuitability of the prospective tenant, the owner may only initiate an action based on that ground in a court of competent jurisdiction and must inform the Loft Board in writing within the time period in § 2-07(d)(1)(iv).

(3) Owner's acceptance of sale and prospective tenant.

(i) The owner may send a notice of approval of the proposed sale to the prospective incoming tenant, and acceptance of the prospective incoming tenant.

(ii) An owner's failure to: 1) send a complete notice of approval, as described in (i) above or 2) file a challenge application with the Loft Board within the time period provided in § 2-07(d)(1)(iii) above, or by

another deadline agreed upon in writing by the owner and outgoing tenant, is deemed an acceptance of the proposed sale from the outgoing tenant to the incoming tenant and acceptance of the prospective incoming tenant, except as provided in § 2-07(d)(1)(iv).

(iii) In the case of (i) or (ii) above, the tenant assumes the rights and obligations of the outgoing tenant as an occupant qualified for protection under Article 7-C, upon the execution of the sale provisions and compliance with the other provisions of these Rules. The prospective incoming tenant is permitted to commence residency, despite the lack of a residential certificate of occupancy covering the unit. He or she must pay the rent previously charged to the outgoing tenant, including any applicable pass-throughs or increases permissible under Article 7-C or the Loft Board's rules and orders, including but not limited to:

(A) Any increases permissible pursuant to §§ 2-06, 2-06.1, or 2-06.2, if such increases have not already been imposed; or

(B) Any increases pursuant to the Rent Guidelines Board's orders, if applicable.

(4) Owner's purchase of improvements.

(i) If the owner elects to purchase the improvements in an IMD unit in accordance with the terms of the prospective incoming tenant's offer, the owner must notify the outgoing tenant and the prospective incoming tenant of the owner's acceptance in accordance with § 2-07(d)(1)(iii), and must meet the terms of the offer within 30 calendar days of service of owner's acceptance upon the outgoing tenant. If the owner fails to meet the terms of the offer within the 30 calendar day period, the owner is deemed to have waived the right to purchase the improvements at an amount equal to their fair market value.

(ii) Upon completion of the purchase of improvements by the owner, an IMD unit subject to rent regulation solely by reason of Article 7-C of the MDL, and not receiving any benefits of real estate tax exemption or tax abatement, will be exempted from the provisions of Article 7-C requiring rent regulation,

(A) if such building had fewer than 6 residential units: (a) on June 21, 1982 for a unit covered under MDL § 281(1); (b) on July 27,

1987 for a unit solely covered under MDL § 281(4); or (c) on June 21, 2010 for a unit covered by MDL § 281(5) that became subject to Article 7-C pursuant to Chapters 135 or 147 of the Laws of 2010; or

(B) if the unit was purchased by the owner pursuant to these rules before July 27, 1987 and the building had fewer than 6 residential units on June 21, 1982, but 6 or more residential units on July 27, 1987.

(iii) Upon completion of the purchase by the owner, any unit subject to rent regulation solely by reason of Article 7-C of the MDL, and not receiving any benefits of real estate tax exemption or tax abatement, will be subject to subsequent rent regulation after being rented at market value, if such building had 6 or more residential units on: (a) June 21, 1982 for a unit covered under MDL § 281(1); (b) July 27, 1987 for a unit solely covered under MDL § 281(4); or (c) June 21, 2010 for a unit covered by MDL § 281(5) that became subject to Article 7-C pursuant to Chapters 135 or 147 of the Laws of 2010.

(iv) The exemption from rent regulation is not available in a building when any sale of improvements takes place on or after the date of a finding of harassment, and before the harassment order is terminated by the Loft Board in accordance with § 2-02(d)(2) of these Rules.

(e) [Sales not subject, or partially subject, to these regulations. These regulations do not apply to IMD units which have never been registered with the Loft Board. Any sales of improvements which take place in such units prior to registration do not constitute sales pursuant to §285(6) of the MDL.

These regulations do not apply to units which the Board has determined not to be covered by Article 7-C of the MDL.

These regulations also do not apply to sales of improvements between co-tenants of an IMD unit, where at least one of the co-tenants is remaining in occupancy and is an occupant qualified for the protection of Article 7-C. Also, compensation to prime lessees by subtenants or assignees who are residential occupants, pursuant to the section of the regulations on Subletting and Similar Matters regarding the prime lessee's right to compensation for costs incurred in developing residential unit(s), shall not constitute sales pursuant to §286(6). After such compensation has been made, where required under such section, the residential occupant shall have the right to sell the improvements in the unit pursuant to §286(6) and these Regulations. (See the section of Subletting and

Similar Matters regulations regarding residential occupant's rights to sale of improvements pursuant to §286(6) of the MDL).

In a unit which has been determined by the Loft Board to be covered by Article 7-C, or has previously been registered with the Loft Board, but which is not registered in accordance with §2-07(a) "Interim Multiple Dwelling Unit" above, or with the New York State Division of Housing and Community Renewal (DHCR), a sale of improvements shall constitute the one-time-only sale as provided by §286(6) but it shall not be subject to the owner's right to challenge except on grounds of suitability of the prospective tenant which challenge must take place in a court of competent jurisdiction.]

(f) [*Applicability.* These rules shall apply to sales which occur on or after March 23, 1985, except as provided in §2-07(e), and except that the definition of the term "fair market value" set forth in subdivision (a) of this section, as amended effective on February 16, 1996, shall apply only to sales of improvements with respect to which a Disclosure of Sale Form was filed with the Loft Board on or after February 16, 1996. For the rules applicable to sales which occurred prior to March 23, 1985, see §2-07(h).

(1) *Right to sell.* The residential occupant of an IMD unit which is qualified for protection under Article 7-C, including such unit which has been legalized and is registered with DHCR, may sell the improvements of the unit to the owner or to a prospective tenant, subject to the procedures established herein. This right to sell may be exercised only once for each IMD unit. Such improvements must be offered to the owner for an amount equal to their fair market value as defined in §2-07(a) "Fair Market Value" above, prior to their sale to a prospective tenant, as provided herein.

(2) *Offers to sell to prospective tenant.* An outgoing tenant in an IMD unit, proposing to sell improvements to a prospective tenant, shall comply with the following procedures at least 30 days in advance of the date of closing or consummation of the proposed sale: (i) (A) The outgoing tenant shall notify the owner of his or her intent to move and to sell improvements, and the identity of the prospective tenant on an Improvements Sale Disclosure Form ("Disclosure Form"), as prescribed by the Loft Board, providing the following information to the owner:

- (a) a list and description of the improvements
 - (1) installed and
 - (2) purchased by the outgoing tenant, with accompanying proof of payment;
- (b) a written copy of the offer, verified by the prospective tenant, to purchase such improvements, which includes all terms and conditions of the offer;

(c) identification of such prospective tenant by name, current business and home addresses and such other address, if any, as such prospective tenant elects for purposes of delivery of notices and communications, and telephone numbers;

(d) an affirmation by the outgoing tenant that he or she installed or purchased the improvements offered for sale, or if not, that he or she is authorized to sell the improvements on behalf of any other parties having ownership interest in such improvements, accompanied by appropriate evidence of such authorization;

(e) an affirmation by the prospective tenant that he or she has received and reviewed the Disclosure Form;

(f) provision of three reasonable dates and times at which inspection of the improvements by the owner or the owner's designee, or both, would be available, within 10 days of service of the Disclosure Form

(B) The Disclosure Form shall also include the following advisories to the prospective tenant:

(a) the improvements for sale are limited to those items listed and described by the outgoing tenant;

(b) the prospective tenant is purchasing absolute title to all removable personal property and the use and enjoyment for the duration of the prospective tenancy of all other property deemed improvements pursuant to these regulations; the owner shall be responsible for maintenance of improvements deemed fixtures pursuant to these regulations except that some improvements may be altered or removed pursuant to code compliance and requirements;

(c) the right to sell improvements may be exercised only once for the unit and an incoming tenant cannot re-sell them except for removable personal property;

(d) the prospective tenant, upon consummation of the sale of improvements, assumes the right and obligations of the outgoing tenant as an occupant qualified for protection under Article 7-C;

(e) the amount of the rent and a statement as to the types of further increases which may be applicable to IMD units pursuant to terms of the Loft Board's interim rent guidelines, pass-throughs of costs determined pursuant to Code Compliance regulations, or rent increases pursuant to the Rent Guidelines Board's orders;

(f) if the building has not been issued a residential certificate of occupancy for its IMD units at the time of the offer to purchase, it remains subject to the requirement of Article 7-C and Loft Board Compliance regulations that such units be brought into compliance;

(g) Article 7-C provides that the costs of legalization as determined by the Loft Board are passed through to the tenants

and may result in increased rent above the base rent over a 10 or 15 year period;

(h) the offer is subject to the owner's right to purchase the improvements for an amount equal to their fair market value, to challenge the offer as provided in §2-07(g) of these regulations, and to consent to the prospective tenant, provided that consent may not be unreasonably withheld;

(i) rent regulation as provided for in Article 7-C is scheduled to expire on May 31, 2006, pursuant to section 3 of part T of chapter 61 of the Laws of 2005, and may or may not be renewed or amended by the legislature of the State of New York;

(j) the opportunity for decontrol or market rentals, if an owner purchases improvements, may not be available in a building when an owner has been found guilty by the Loft Board of harassment of tenants subject to regulations to be adopted by the Loft Board.

(ii) The original of the Disclosure Form, completed and executed, shall be filed with the Loft Board, together with proof of service. Within 10 days of receipt of such form, the Loft Board staff shall determine whether a sale for the unit in question has been previously recorded at the Board's offices. If such a sale has been recorded, the parties will be so notified and the proposed sale will not be permitted to proceed.

(3) *Owner's response to offer and proposed tenant.* Within 10 days of service of the Disclosure Form, the owner may request of the outgoing and prospective tenants such additional information as will enable the owner to decide whether or not to purchase the improvements, and to determine the suitability of the prospective tenant. In such response the owner must affirm that the subject unit is currently registered with the Loft Board or DHCR and was registered at the time of service of the Disclosure Form and that he or she either owns the premises or is authorized to act on behalf of the owner in this matter. Any request by the owner for additional information from the outgoing tenant shall not be unduly burdensome. Requests for additional information regarding a decision whether to purchase the improvements must be relevant to the criteria set forth for making such determination in §2-07(g) below. If the owner submits further requests for information regarding the purchase of improvements, determined by the Loft Board to be unduly burdensome, such owner may forfeit his/her right to purchase the improvements in question.

Within 20 days of service of the Disclosure Form, or of the additional information reasonably requested by the owner, whichever is later, the owner shall notify the outgoing and prospective tenant, of the owner's

- (i) acceptance and commitment to purchase at the offered price,
- (ii) consent to the proposed tenant and sale or

(iii) rejection of the offer based on one or more of the grounds for challenge enumerated in §2-07(g)(2) herein by service upon the outgoing and prospective tenants of a challenge application and by filing with the Loft Board a copy of said challenge. If one of the grounds for challenge is the unsuitability of the prospective tenant, the owner must initiate any action based on that ground in a court of competent jurisdiction, and shall so inform the Loft Board in writing.

If the owner rejects the offer, the notice shall elaborate the grounds therefor. If the rejection is based on the claim that the offer exceeds the fair market value of these improvements, the rejection shall include the owner's fair market valuation of the improvements and the owner's commitment to purchase if the fair market value is determined to be no greater than such valuation. If the rejection is based on the owner's claim that (s)he made or purchased the improvements, the rejection shall indicate which improvements are so claimed and include proof thereof.

Failure of the owner to file a complete application, including payment of a fee of \$800.00 to cover the full cost of an appraiser selected by the Board, with the Loft Board, with copies to the outgoing and prospective tenants, within the time for response prescribed in §2-07(f)(3) above, shall be deemed an acceptance of the proposed sale except if the owner's challenge is on the ground of the unsuitability of the prospective tenant, the owner must initiate any action based on that ground in a court of competent jurisdiction and shall so inform the Loft Board in writing within the time period for response prescribed in §2-07(f)(3).

(4) Acceptance of prospective tenant through owner's consent to tenant's purchase or through owner's failure to respond. An owner's failure to send a complete notice of acceptance or rejection within the time provided above, or such other time as mutually agreed upon, shall be deemed an acceptance of the proposed sale and tenant. In such a case, or when the owner consents to the proposed tenant, said tenant shall assume the rights and obligations of the outgoing tenant as an occupant qualified for protection under Article 7-C, upon the consummation of the sale and compliance with the other provisions of these regulations. Such tenant shall be permitted to commence residency, notwithstanding the lack of a residential certificate of occupancy covering the unit. He or she shall pay the rent previously charged to the outgoing tenant, including any applicable pass-throughs determined pursuant to Code Compliance regulations plus:

(i) any increases permissible pursuant to the Loft Board's interim rent guidelines if such increases have not already been imposed; or

(ii) any increases pursuant to the Rent Guidelines Board's orders, if applicable.

(5) *Owner's purchase of improvements.* If the owner elects to purchase the improvements in an IMD unit in accordance with the terms of the offer, the owner shall notify the outgoing tenant and the prospective tenant of such commitment as required in §2-07(f)(3) above, and shall meet the terms of the offer within 30 days of service of such commitment upon the outgoing tenant. Failure by the owner to consummate such a commitment within such 30-day period shall be deemed a waiver of the owner's right to purchase the improvements at an amount equal to their fair market value.

Upon consummation of the purchase by the owner and compliance with the filing provisions of these regulations, any unit subject to rent regulation solely by reason of Article 7-C of the MDL, and not receiving any benefits of real estate tax exemption or tax abatement, shall be exempted from the provisions of Article 7-C requiring rent regulation,

(i) if such building had fewer than six residential units on June 21, 1982, and on July 27, 1987; or

(ii) if the unit was purchased by the owner pursuant to these rules before July 27, 1987 and the building had fewer than six residential units on June 21, 1982, but six or more residential units on July 27, 1987.

Otherwise, upon consummation of the purchase by the owner any unit subject to rent regulation solely by reason of Article 7-C of the MDL, and not receiving any benefits of real estate tax exemption or tax abatement, shall be subject to subsequent rent regulation after being rented at market value, if such building had six or more residential units on June 21, 1982 or on July 27, 1987.

These exemptions from rent regulation shall not be available in a building when an owner has been found guilty by the Loft Board of harassment of tenants pursuant to §2-02. This restriction shall apply to any sale of improvements that takes place on or after the date of the order containing the finding of harassment until such time as the order may be terminated by the Loft Board in accordance with §2-02(d)(2).]

Notice between parties: form and time requirements.

(1) All notices, requests, responses and stipulations served by owners and tenants pursuant to this section must be in writing, with a copy delivered or mailed to the Loft Board, accompanied by proof of service. Service by the parties will be effected either (1) by personal delivery or (2) by certified or registered mail, return receipt requested, with an additional copy sent by regular mail.

(2) Unless otherwise agreed in writing by the parties, with notice to the Loft Board, these communications must be sent to the outgoing tenant and to the

prospective incoming tenant at the respective addresses specified on the Disclosure Form; and to the owner at the address indicated on the latest IMD registration form filed with the Loft Board immediately prior to the filing of the Disclosure Form.

(3) If service was made personally, a verified statement of the person who effected service, setting forth the time, place and other details of service will constitute proof of service. If service was performed by mail, copies of the United States Post Office stamped return receipt and verified statement of mailing will constitute proof of service.

(4) The deadlines provided in this section are triggered by the effective date of service. Service is deemed effective upon personal delivery or 5 calendar days following service by mail.

(5) Communications by the Loft Board pursuant to this section will be sent by regular mail to the addresses indicated in paragraph (2) above.

(g) [Challenges to] Applications challenging proposed [sales] sale of improvements.

(1) *Procedures.*

(i) An owner of an IMD unit [who is contesting] seeking to contest the proposed sale of improvements [shall] must apply to the Loft Board for a determination within 20 calendar days of service upon the owner of the Disclosure Form, or within such additional period as provided pursuant to [§2-07(f)(3)] § 2-07(d) above, and [at such time shall] must pay the mandated filing fee of \$800. Before the owner files a challenge application under this subdivision, the owner's registration with the Loft Board, including payment of applicable registration fees, must be current, or before filing a challenge application with respect to improvements in a unit that was formerly subject to Article 7-C, the owner's registration with DHCR or any successor agency must be current. The owner must also state that he or she is the owner of the premises or is authorized to act on behalf of the owner in this matter.

(ii) Filing of an application challenging the sale of improvements to a prospective incoming tenant which is found by the Loft Board to be frivolous may constitute harassment, pursuant to § 2-02 of these Rules, with the consequences provided in [§2-07(f)(5) herein] § 2-07(d)(4). An

objection to the sale may be found to be frivolous on grounds including, but not limited to, the following: that it was filed without a good faith intention to purchase the improvements at fair market value or that the owner's valuation of the improvements has no reasonable relationship to the fair market value, as determined by the Loft Board.

[(ii) Recognizing the necessity that sales of improvements occur without undue delays, the Loft Board will process challenges to such sales pursuant to the following expedited procedures:

(A) [(iii) The owner [shall] must serve the outgoing [tenant and prospective tenant] and prospective incoming tenants with a copy of the owner's challenge application, [upon such forms as are established by the Loft Board, and shall] and file [two] within 5 calendar days of service 2 copies of the application at the Loft Board and proof of service as described in § 1-06(b).

[(B) Three copies of any written answers from the outgoing and prospective tenants in response to the challenge application must be served on the Loft Board at its offices within five business days of receipt of such challenge application] (iv) The outgoing and prospective incoming tenants will have 7 calendar days from when service of the application is deemed complete to file with the Loft Board an answer to the challenge application. Two copies of the answer must be filed with the Loft Board. One copy of the answer must be served on the owner and the other affected parties, if any, prior to filing the answer with the Loft Board. Proof of service must be filed with the Loft Board in accordance with § 1-06(e) of these Rules.

(v) The outgoing tenant's answer [shall] must include [three] 3 available dates and times during regular business hours within 10 calendar days of the date of filing of the answer with the Loft Board during which the improvements will be available to be inspected by a Loft Board-appointed appraiser in accordance with subparagraph (vi).

[Appraisers] (vi) The appraiser shall be appointed by the Loft Board[and shall], must be suitably qualified in valuing improvements and [shall] must be a Registered Architect, a Professional Engineer or a New York State Certified General Real Estate Appraiser. [Appraisers shall sign a written statement agreeing to adhere to the appraisal standards and

procedures adopted by the Board. The Loft Board shall serve a copy of the answer on the owner and on the prospective tenant.]

(vii) The Board shall also notify the owner, outgoing tenant and prospective incoming tenant of an inspection date at one of the times designated by the outgoing tenant, or at another time fixed by the Board if none of the proposed dates is mutually convenient. Following [such an] the inspection, a copy of the appraiser's findings [shall] will be mailed to the three parties. A conference or hearing date must be scheduled no fewer than [eight] 8 calendar days nor more than [fifteen] 15 calendar days from the mailing [by the Loft Board of the answer] of the notice of conference or hearing or, if applicable, the filing of the appraiser's report[, whichever is later]. There [shall] may be no more than one adjournment per party, limited to [seven] 7 calendar days, for good cause shown. Except as provided [herein] in these rules, the requirements of the Loft Board's rules [and regulations for Internal Board Procedures shall] regarding applications apply.

(viii) If a challenge application results in an order by the Loft Board determining that the offer constitutes fair market value, the owner may exercise the right to purchase improvements at that price [or, if]. If the [determination is] Loft Board determines that the offer does not constitute fair market value, in accordance with § 2-07(g)(2), the owner may exercise the right to purchase the improvements at the price determined to constitute fair market value. The owner [shall] must notify the outgoing tenant within 10 calendar days of service of the Loft Board's order determining fair market value of the owner's intent to purchase at such price less half the cost of the appraisal and [shall] must consummate the purchase within 10 calendar days of [such] the owner's notice to the outgoing tenant, except that where the fair market value determination is less than the [received] price offered by the outgoing tenant, the outgoing tenant may decline to sell the improvements. The Loft Board's order determining fair market value [shall constitute] constitutes the price at which the outgoing tenant must first offer to sell the previously offered improvements to the owner for a period of [two] 2 years from the [issuance] date of the Loft Board order.

[(iii)] (ix) If the owner elects not to purchase the improvements at the Loft Board-determined fair market value, the outgoing tenant may sell to [a] the prospective incoming tenant, without challenge by the owner to the fair market value of the offer. The owner's failure to consummate a purchase, following

notice of intent to purchase, within the period prescribed above, [shall be] is deemed an election not to purchase.

(2) *Grounds for challenge.*

[A challenge fully setting forth the owner's claims may be filed] An owner may challenge a proposed sale of improvements on the following grounds:

(i) The offer is not a *bona fide*, arms-length offer which discloses to the owner all its terms and conditions.

(ii) Some or all of the improvements offered for sale were made or purchased by the owner, not the outgoing tenant[, with the specificity required in § 2-07(f)(3) above]. Proof of ownership or payment is required.

(iii) The offer exceeds fair market value as determined in accordance with the following standards:

(A) A *bona fide* offer to purchase improvements made or purchased by the outgoing tenant [shall be] is presumed to represent fair market value.

(B) The presumption may be rebutted if the owner establishes that:

(a) [for] For such improvements as were purchased by the outgoing tenant, the offer exceeds the amount paid [to the owner or to the former tenant, or both,] for [such] the improvements minus depreciation for wear and tear and age; or

(b) [for] For such improvements as were made by the outgoing tenant, the offer exceeds the replacement cost of the improvements [less] minus depreciation for wear and tear and age.

(C) [Noncompliance of the improvements with the building code or other applicable laws or regulations shall not be considered in diminution of the amount paid or the replacement costs for improvements made or purchased prior to] If any of the

improvements offered for sale are out of compliance with the New York City Building Code or other applicable laws or regulations, the noncompliance may not be considered when calculating the amount paid for or the replacement costs of the improvements, for improvements made or purchased prior to (a) March 23, 1985, or (b) September 11, 2013, the effective date of this amended rule, for a unit covered under Article 7-C pursuant to MDL § 281(5).

(iv) On any other basis authorized under Article 7-C.

(v) If a basis of a challenge is the unsuitability of the prospective incoming tenant, the owner [must] may only initiate [any] an action based on that ground in a court of competent jurisdiction; such challenge will not be entertained by the Loft Board.

(3) Affected Parties.

The term “affected parties,” when used in an application challenging an offer to purchase improvements, is limited to the owner and the outgoing tenant, except that a prospective incoming tenant is an affected party in cases involving an owner’s challenge to the prospective incoming tenant’s offer to purchase improvements.

(h) [*Sales which occurred prior to the effective date of these regulations.* (1) For sales which occurred prior to March 23, 1985, the provisions of this section shall apply as follows:

(i) Where application for registration as an IMD was received on or before January 31, 1983, sales of improvements consummated on or after June 21, 1982 shall be subject to the rights and obligations set forth in paragraphs (2) and (3) of this subdivision (h).

(ii) Where application for registration as an IMD was received after January 31, 1983, sales of improvements consummated after receipt of such application, but prior to March 23, 1985, shall be subject to the rights and obligations set forth in paragraphs (2) and (3) of this subdivision (h).

(iii) Where sales of improvements were consummated for IMD units, prior to application for registration and prior to March 23, 1985, these regulations do not apply and such sales do not constitute the one-time only sales permitted pursuant to §286(6) of the MDL.

(2) *Prior sales without offer to owner or without acceptance.* If the sale of improvements in an IMD unit to an incoming tenant has occurred prior to March 23, 1985, and is subject to the provisions of this subsection (see

subparagraphs (1)(i) and (1)(ii) of this subdivision (h)), either without their first having been offered for purchase to the owner, or with the owner having contested the sale in writing, the owner must be afforded the opportunity to purchase the improvements at an amount equal to their fair market value, except that if the owner has accepted rent from the incoming tenant who purchased the improvements, such owner may purchase the improvements at the price paid by such incoming tenant, which shall be deemed to constitute fair market value, and may not challenge that price as in excess of fair market value.

(i) Where the owner has retained his/her right to purchase pursuant to this paragraph (2), and may wish to purchase the improvements, and the unit is registered with the Loft Board or with DHCR the owner must serve the purchasing tenant with a notice of his/her interest in purchasing the improvements no later than 90 days from the effective date of this regulation. The tenant must serve the owner with a notice describing the improvements purchased together with proof of payment of the amount paid to the outgoing tenant, within 15 days of service of notice by the owner. Within 30 days of receipt of this information, the owner shall send a notice to the tenant of the owner's

(A) commitment to purchase at such price,

(B) challenge to the fair market value of the improvements, unless such challenge is barred by the owner's acceptance of rent from the incoming tenant, or

(C) acceptance of the sale and tenancy, and such notice or failure to respond shall be of the same form, effect and consequences as if provided pursuant to §§2-07(f)(3)-(5) above.

(ii) Where the owner consummates a purchase of improvements pursuant to this section,

(A) the tenant shall have the right to remain in occupancy at the rent previously paid and accepted by the owner for 120 days, commencing on the first rent payment date following owner purchase, after which such tenant must either vacate the premises or agree to pay the rent set by the owner, with subsequent rent regulation, if applicable; or

(B) if the owner has not been accepting rent from such tenants, the tenant shall have the right to remain for 60 days commencing on the first rent payment date following owner purchase, provided that use and occupancy is tendered by the tenant in the amount of rent paid by the last tenant, after which such tenant must vacate the premises or agree to pay the rent set by the owner, with subsequent rent regulation, if applicable.

(3) *Prior sales of improvements with offer to owner.* (i) If the sale of improvements in an IMD unit has occurred prior to March 23, 1985, and is

subject to the provisions of this section (see §§2-07(h)(1)(i) and (ii) above), either

(A) to the owner, or

(B) to a prospective tenant where the owner has declined to purchase but did not claim in writing that the purchase price was in excess of the fair market value, a Loft-Board-approved Sales Record shall be filed with the Loft Board within 30 days of the effective date of this regulation. Any transaction which is the subject of a Record filed in compliance with this section shall be deemed valid and shall constitute the one-time-only sale authorized by §286(6) of the Multiple Dwelling Law, regardless of whether it was conducted in accordance with the procedures for sales of improvements described herein.

(ii) If a tenant claims that a sale of improvements prior to March 23, 1985 did not yield fair market value and that tenant was denied rights under the statute, such a challenge must be brought in a court of competent jurisdiction and will not be entertained by the Loft Board except that if such tenant claims harassment the Loft Board may entertain such claim pursuant to Loft Board regulations on harassment].

Deadline Extensions on consent and change of address.

Deadlines set in this rule may be modified, applications may be withdrawn, and disputes may be resolved, by written agreement of the parties, subject to Loft Board written approval. Parties may change their address upon service of written notice to the Loft Board and the other affected parties, as defined in § 2-07(g)(3) above. Notice is effective upon personal delivery or 5 calendar days following service by mail.

(i) [Fair market value of improvements; hardship exemptions, vacate orders, owner occupancy] Tenant's Right to Fair Market Value of Improvements in Cases of Hardship Exemptions, Vacate Orders and Owner Occupancy.

(1) In the event that [the]:

(i) The failure of an owner to comply with the legalization deadlines mandated by [MDL §284(1)(i) or MDL §284(1)(ii)] MDL § 284(1) results in a municipal vacate order pursuant to [MDL §284(1)(iv), or in the event of the granting by the] MDL § 284(1)(x);

(ii) The Loft Board [of] grants a hardship exemption pursuant to MDL § 285(2)[, or in the event that the]; or

(iii) The owner successfully obtains the right to occupy former IMD units under the provisions of the Rent Stabilization Law and the Rent Stabilization Code §§_2524.4(a) and 2525.6,

an occupant qualified for Article 7-C protections may apply to the Loft Board for a determination of fair market value of improvements and reasonable moving expenses.

(2) As further provided in MDL [§284(1)(iv)] § 284(1)(x), any [such] vacate order pursuant to § 2-07(i)(1)(i) above, is to be deemed an order to correct the non-compliant conditions, subject to the provisions of Article 7-C, and the occupant [shall have] has the right to reoccupy the unit when the condition has been corrected and [shall be] is entitled to all applicable protections of Article 7-C.

(3) The Loft Board shall determine the fair market value in accordance with this section except that the tenant shall be the applicant, affected parties shall be limited to the owner and tenant, and the tenant shall offer proof of reasonable moving expenses as well as both parties offering proof as to the value of the improvements.

(4) Upon a finding by the Loft Board of the fair market value of the improvements and of reasonable moving expenses, [it shall order the owner] the owner will be required to pay such amounts to the tenant plus an amount equal to the application filing fee.

(j) [Filing of sale record] *Effect of Sale: Filing the Sale Record with the Loft Board.*

(1) Except as provided in paragraph (2) below, within 30 calendar days of the sale of improvements [in a unit] to the owner, pursuant to [Multiple Dwelling Law] MDL §_286(6)[or of March 23, 1985, whichever is later, the owner, if such owner purchased the improvements shall], the owner must file a Loft Board-approved Sale Record, which provides the following information: address of IMD and location of unit; name and telephone number of incoming tenant; description of improvements conveyed; purchase price[and purchaser]; and rent. Failure by the owner to file the required Sale Record within 30 calendar days of the sale of improvements [will] may subject the owner to a civil penalty[up to \$1,000], as determined by the Loft Board in accordance with § 2-11.1 of these Rules.

(2) If a prospective incoming tenant purchases the improvements [subsequent to March 23, 1985] in the IMD unit, no further filing is required. Unless the Loft Board is otherwise informed, receipt by the Loft Board of a Disclosure Form [shall be] is presumed to be notice that a sale to the prospective incoming tenant identified [therein] has taken place[,] within 60 calendar days following receipt of such Disclosure Form, or 60 calendar days following the last deadline modification approved by the Loft Board.

If no sale has occurred, the outgoing tenant [shall so] must inform the Loft Board within 60 calendar days [of such time] following the filing of the Disclosure Form, or 60 calendar days from the last deadline. If the outgoing tenant fails to advise the Loft Board within the prescribed 60 calendar days that no sale has taken place, such tenant may [nevertheless rebut] refute the presumption by: 1) filing [an application for improvement sales consisting of] a letter withdrawing the previously filed Disclosure Form, or 2) filing another Disclosure Form, [the filing fee for a sale of improvements application of \$800.00, and] with a new proposed sale along with an [affirmation] affidavit by the outgoing tenant stating that the prior proposed sale did not occur, that the tenant has remained in occupancy of the unit and that no sale of improvements in the unit has occurred.