

The 2013 amendment to § 2-06.2 of Title 29 of the Rules of the City of New York establishes rent adjustments prior to Article 7-B compliance, also known as interim rent adjustments for interim multiple dwelling units covered under MDL § 281(5).

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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, that New York City Loft Board is amending Title 29 of the Rules of the City of New York by adding a new Section 2-06.2 to update and clarify requirements related to interim rent adjustments.

A duly noticed public hearing was held on July 27, 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 27, 2012.

#### **Statement of Basis and Purpose**

On June 21, 2010, the New York State Legislature enacted Section 281(5) of Article 7-C which expanded the criteria for coverage under the Loft Law. Multiple Dwelling Law (MDL) section 286(2)(i) directs the Loft Board to establish rent adjustments prior to Article 7-B compliance, also known as interim rent adjustments for interim multiple dwelling (IMD) units covered under MDL § 281(5).

On November 17, 2011, the Loft Board heard testimony from owner and tenant representatives, the Met Council on Housing and the Rent Stabilization Association, among others, about factors the Loft Board should consider in determining the rent adjustments pursuant to MDL section 286(2)(i). In addition, the Loft Board considered over 30 letters received from tenants and advocates for tenants and owners. The information provided was insightful and helpful in understanding the potential impact of these increases on the artist community, current trends in loft housing, and the effect of rent regulation on the housing market.

The following list represents a summary of the reoccurring points presented to the Loft Board in the oral and written comments:

- Tenants report that they are already paying market rent;
- Tenants report that most of them have had a recent increase in rent;
- A further increase in addition to the legalization milestone increases will result in the unit being over market rent and price-out the artist community;
- An increase prior to Article 7-B compliance after a lease expires may encourage an owner not to finish the Article 7-B work until after the lease expires to collect the increase;
- Tenants report that the buildings are in a state of disrepair and the owners fail to do proper maintenance; and
- Tenants have invested considerable sums of money by making improvements to make the loft spaces livable and owners should not reap the benefits of their financial investment prior to Article 7-B compliance.

After consideration of the comments received to date, the Loft Board determined that there should be no rent adjustment prior to Article 7-B compliance pursuant to MDL § 286(2)(i). The rule sets forth this determination in the interim rent adjustments required in MDL § 286(2)(i) for interim multiple dwelling (IMD) units covered under MDL § 281(5). In addition, the rule provides that garbage escalators will not include services provided by the New York City Department of Sanitation.

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

Title 29 of the Rules of the City of New York is amended by adding a new section 2-06.2 to read as follows:

**§ 2-06.2 Interim Rent Guidelines and Rent Adjustments pursuant to MDL § 286(2)(i).**

**(a) Coverage.**

(1) These rent guidelines apply to interim multiple dwelling ("IMD") units, as defined in § 281 of Article 7-C of the Multiple Dwelling Law ("MDL"), which (i) are subject to Article 7-C solely pursuant to MDL § 281(5); (ii) are registered with the Loft Board; and (iii) do not meet the safety and fire protection standards of Article 7-B of the MDL.

**(b) Definitions.** For the purposes of this section, the following definitions apply:

- (1) **"Lease or rental agreement"** means:  
(i) a written lease or rental agreement; or

(ii) an oral agreement for a rental period of one year or less, provided that:

(A) There was a change in the rent for the IMD unit, confirmed by rent checks tendered by the residential occupant and accepted by the landlord within the year prior to June 21, 2010; or

(B) There had been a substantial change in the level of services agreed to be provided within the year prior to June 21, 2010.

(2) “Escalators” are additional charges agreed upon by the occupant and landlord to be paid by the occupant provided in a lease or rental agreement, including but not limited to charges based on: real estate taxes; heating fuel; labor; water and sewer; insurance; vault tax; or any cost-of-living increase formulas.

(3) (i) “Use-Based Escalators” are escalators that: 1) are based on a verifiable calculation of the occupant's usage and the cost to the owner; and 2) were part of the last lease or rental agreement in effect on or before June 21, 2010. Use-based escalators may include charges related to gas, electricity and steam.

(ii) **Garbage Escalators** are escalators related to garbage collection services that were part of the last lease or rental agreement in effect on or before June 21, 2010. Garbage escalators will not include charges for services provided by the New York City Department of Sanitation or a succeeding government agency at no cost to the owner.

(4) “**Total rent**”

(i) *Lease in effect on June 21, 2010.* Except as provided in (iii), **total rent** is the rent, including escalators, specified in the lease or rental agreement in effect on June 21, 2010, paid by the tenant pursuant to said lease or rental agreement.

(ii) *No lease in effect on June 21, 2010.* Except as provided in (iii), where no lease or rental agreement was in effect on June 21, 2010, the **total rent** is the rent, including escalators.

paid by the tenant to the landlord on or before June 21, 2010 pursuant to the last lease or rental agreement prior to June 21, 2010.

(iii) **Total rent** shall not include use-based escalators or garbage escalators.

(c) *Rent Adjustments Pursuant to § 286(2)(i).* For purposes of determining rent adjustments pursuant § 286(2)(i), there will be no increase permitted above the total rent as defined above for any unit subject to Article 7-C pursuant to MDL § 281(5).

(d) *Permissible Rent Levels.* An owner of a unit subject to Article 7-C pursuant to MDL § 281(5) may not charge a residential occupant more than:

- (1) Total rent, as defined above; plus
- (2) Any other rent adjustments authorized pursuant to Article 7-C and these Rules, including allowable rent adjustments authorized pursuant to § 2-12 of these Rules; plus
- (3) Use-based escalators, if any; plus
- (4) Garbage escalators, if any.

(e) *Overcharges and Penalties.* Rent payments made prior to September 11, 2013, the effective date of this rule, in excess of the permissible rent levels as described above in subdivision (d) constitute an overcharge which may be paid, at the owner's option, either in a lump sum to the tenant or as a 20 percent reduction of the legal rent permitted under this rule as of September 11, 2013, the effective date of the rule, until payment of the full overcharge is completed. No treble damages may be imposed for a violation of this section.