

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Opportunity to Comment On Proposed Rules Governing Tax Exemption under §421-a of the Real Property Tax Law

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Commissioner of Housing Preservation and Development by §1802 (6) (c) and in accordance with the requirements of §1043 of the New York City Charter that the Department of Housing Preservation and Development intends to modify the rules governing tax exemption under §421-a of the Real Property Tax Law of the State of New York.

Written comments regarding these rules may be sent to the Department of Housing Preservation and Development, Attention: Elaine R. Toribio, TIP Director, 100 Gold Street, Room 3-Z1, New York, New York 10038, on or before February 9, 2011. Written comments may also be submitted electronically through NYC RULES at www.nyc.gov/nycrules. A public hearing will be held from 1:00 P.M. to 4:00 P.M. on February 9, 2011, at 100 Gold Street, 9 floor, Room 9-P10, New York, New York. Persons seeking to testify are requested to notify the TIP Director at the foregoing address. Written comments and an audiotape of oral comments received at the hearing will be available for public inspection within a reasonable time after receipt between the hours of 9:00 A.M. and 5:00 P.M. at the Office of the TIP Director.

The proposed rule amendments were included in HPD's 2010-11 Regulatory Agenda.

Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are requested to notify the TIP Director by January 28, 2011.

Material to be added is underlined. Material to be deleted is in [brackets].

Section one. The definitions of "commence" and "multibuilding project" contained in subdivision (a) of section 6-09 of Chapter 6 of Title 28 of the Rules of the City of New York are amended to read as follows:

Commence. "Commence" shall mean:

(a)(1) the later to occur of (i) the date upon which a new metal or concrete structure to be incorporated into the multiple dwelling that shall perform a load bearing function for such multiple dwelling is installed; or (ii) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural [, plumbing] and structural plans approved by the Department of Buildings) was issued by such department; or

(2) if a project includes new residential construction and the concurrent conversion, alteration or improvement of a pre-existing building or structure, the later to occur of (i) the date upon which the actual construction of the conversion, alteration or improvement of the pre-existing building or structure begins; or (ii) the date upon which an alteration permit for the multiple dwelling (based upon architectural[, plumbing] and structural plans approved by the Department of Buildings) on which the actual construction of the conversion, alteration or improvement takes place, was issued by such department;

(b) provided, however, that (1) with respect to subparagraph (1) of paragraph (a), if piles or caissons are required, "commence" shall mean the later to occur of (i) the date upon which at

least one fully driven pile or caisson is installed; or (ii) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural[, plumbing] and structural plans approved by the Department of Buildings) was issued by such department; and

(2) with respect to both subparagraphs (1) and (2) of paragraph (a):

(i) such installation of a new metal or concrete structure or such beginning of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure, respectively, and such issuance of a building or alteration permit, must both have occurred in order for the multiple dwelling to meet this definition of "commence"; and

(ii) for multibuilding projects, each multiple dwelling in such multibuilding project shall be deemed to "commence" (A) with respect to subparagraph (1) of paragraph (a), on the later to occur of (1) the date upon which a new metal or concrete structure to be incorporated into the first multiple dwelling in such multibuilding project that shall perform a load bearing function for such multiple dwelling is installed; or (2) the date upon which a building or alteration permit for the first multiple dwelling in such multibuilding project (based upon architectural[, plumbing] and structural plans approved by the Department of Buildings) was issued by such department, provided that all of the multiple dwellings in such multibuilding project have been issued by the Department of Buildings a building or alteration permit (based upon architectural[, plumbing] and structural plans approved by such department) on or before the applicable deadline, and the periods of construction and final real property tax exemption benefits granted pursuant to the Act shall commence simultaneously for all of the multiple dwellings in such multibuilding project; and (B) with respect to subparagraph (2) of paragraph (a), on the later to occur of (1) the date upon which the actual construction of the conversion, alteration or improvement of the first pre-existing building or structure in such multibuilding project begins; or (2) the date upon which an alteration permit for the first multiple dwelling in such multibuilding project (based upon architectural[, plumbing] and structural plans approved by the Department of Buildings) on which the actual construction of the conversion, alteration or improvement takes place, was issued by such department, provided that all of the multiple dwellings in such multibuilding project have been issued by the Department of Buildings a building or alteration permit (based upon architectural[, plumbing] and structural plans approved by such department) on or before the applicable deadline, and the periods of construction and final real property tax exemption benefits granted pursuant to the Act shall commence simultaneously for all of the multiple dwellings in such multibuilding project; and

(iii) if the architectural[, plumbing] and structural plans approved by the Department of Buildings in conjunction with the issuance of the first such building or alteration permit are thereafter amended to provide for more than a thirty-five percent (35%) increase (the "35% standard") in the floor area of such multiple dwelling as defined pursuant to the Act, the construction of such multiple dwelling shall be deemed to have commenced on the date upon which such amended plans are filed with such department, provided, however, that, in the case of a multibuilding project that meets the requirements of clause (ii) of this paragraph (2), any such increase in the floor area may be distributed amongst the multiple dwellings in such multibuilding project in any manner permitted under the Zoning Resolution and the 35% standard may be applied to such multibuilding project on an aggregate rather than a single building basis; and

(iv) the construction of any such multiple dwelling also must be completed without undue delay. For purposes of this definition of "commence[",] ":

(1) for any application for a Preliminary Certificate of Eligibility that is filed no later than ninety days from the effective date of this amendment, or that is filed with respect to a project that was the subject of mortgage foreclosure proceedings or other lien enforcement litigation by a lender on or before ninety days from the effective date of this amendment: (A) if a project consists of one multiple dwelling and such multiple dwelling is completed within [thirty-six (36)] seventy-two (72) months from the later to occur of (1) the date of the installation of a new metal

or concrete structure or of the beginning of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure, respectively, (2) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural[, plumbing] and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, such multiple dwelling shall be deemed to have been completed without undue delay, and (B) if a project meets the requirements of clause (ii) of this paragraph (2), if all of the multiple dwellings in such multibuilding project are completed within [thirty-six (36)] seventy-two (72) months from the later to occur of (1) the date of the installation of a new metal or concrete structure for the first multiple dwelling in such multibuilding project or of the beginning of the actual construction of the conversion, alteration or improvement of the first pre-existing building or structure in such multibuilding project, respectively, (2) the date upon which a building or alteration permit for the first multiple dwelling (based upon architectural[, plumbing] and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, all of the multiple dwellings in such multibuilding project shall be deemed to have been completed without undue delay. Where construction is not completed within such [thirty-six (36)] seventy-two (72) month period and an architect or professional engineer has certified that such construction was completed without undue delay, the Department will not merely rely on such certification. In order to determine whether such construction was, in fact, completed without undue delay, the Department will consider the following factors: (i) the extraordinary size and/or complexity of the construction project; (ii) strikes or other unavoidable labor stoppages of substantial duration and severity; (iii) industry-wide shortages of construction materials of substantial duration and severity; (iv) substantial damage to completed construction work caused by fire or other casualty, and (v) [inability, despite diligent and continuous efforts, to obtain financing for the construction of such project, and (vi)] mortgage foreclosure proceedings or other lien enforcement litigation by a lender with regard to such project. In each case, the Department will consider such factors and determine whether construction could reasonably have been completed in a materially shorter period of time.

(2) for any application for a Preliminary Certificate of Eligibility that is filed more than ninety days after the effective date of this amendment, and that is not filed with respect to a project that was the subject of mortgage foreclosure proceedings or other lien enforcement litigation by a lender on or before ninety days from the effective date of this amendment: (A) if a project consists of one multiple dwelling and such multiple dwelling is completed within thirty-six (36) months from the later to occur of (1) the date of the installation of a new metal or concrete structure or of the beginning of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure, respectively, (2) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, such multiple dwelling shall be deemed to have been completed without undue delay, and (B) if a project meets the requirements of clause (ii) of this paragraph (2), if all of the multiple dwellings in such multibuilding project are completed within thirty-six (36) months from the later to occur of (1) the date of the installation of a new metal or concrete structure for the first multiple dwelling in such multibuilding project or of the beginning of the actual construction of the conversion, alteration or improvement of the first pre-existing building or structure in such multibuilding project, respectively, (2) the date upon which a building or alteration permit for the first multiple dwelling (based upon architectural and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, all of the multiple dwellings in such multibuilding project shall be deemed to have been completed without undue delay.

(3) Notwithstanding anything to the contrary contained herein, if a multiple dwelling meets the affordability requirement or is located outside of the GEA, such multiple dwelling shall be deemed to have been completed without undue delay.

Multibuilding project. "Multibuilding project" shall mean a project that consists of more than one multiple dwelling where the multiple dwellings are located inside the GEA, do not meet the affordability requirement, are contiguous and are under common ownership. For purposes of this definition of "multibuilding project", multiple dwellings shall be deemed to be (a) "contiguous" if such multiple dwellings are on tax lots that (1) are adjacent for at least ten linear feet, or, (2) but for the intervention of streets or street intersections, would be adjacent for at least ten linear feet and front the same street or intersection, and (b) "under common ownership" if at the date of commencement of construction, each of the multiple dwellings in such multibuilding project is owned and/or controlled directly or indirectly by the same individual or entity.

§ 2. Subparagraph (ii) of paragraph (3) of subdivision (b) of Section 6-09 of the Rules of the City of New York is amended to read as follows:

(ii) when filing an application for a [Final] Preliminary Certificate of Eligibility pursuant to § 6-05[(d)] (b) of this chapter for a multiple dwelling that contains GEA 60% AMI units or GEA SGA units, submit evidence satisfactory to the Office that a restrictive declaration in a form satisfactory to the Office (A) has been executed by all parties in interest, (B) has been recorded against the real property containing the multiple dwelling receiving benefits pursuant to the Act, and (C) provides that the GEA 60% AMI units or the GEA SGA units in such building must for thirty-five years from the completion of construction (1) comply with the affordability requirement, and (2) if such multiple dwelling is owned and operated as a rental, remain rent stabilized and allow tenants holding a lease and in occupancy at the expiration of such thirty-five year period to remain as rent stabilized tenants for the duration of their occupancy.

Statement of Basis and Purpose. These proposed rule amendments address the current situation in the housing construction industry by extending the safe harbor for completion without undue delay from 36 months to 72 months for applications for Preliminary Certificates of Eligibility filed no later than 90 days after the effective date of the rule amendments or filed with respect to projects that were the subject of mortgage foreclosure proceedings during such time period. They also deem multiple dwellings that meet the affordability requirements or are located outside the GEA to be completed without undue delay since the undue delay requirement was intended to ensure that projects breaking ground before the affordability restrictions took effect actually proceeded with construction to completion in a timely manner. In essence, there was no intent to subject projects with an affordability component or projects outside of the GEA to any completion deadline. These projects are also expressly carved out of the definition of "multibuilding project," which also imposes restrictions on projects seeking exemption from restrictions imposed on receipt of RPTL § 421-a benefits. The proposed rule amendments eliminate the exception to the undue delay safe harbor for inability to obtain the necessary financing to complete a project. The fair implementation of this exception to the undue delay safe harbor has proven difficult because there is no objective measurement by which a particular applicant's efforts to obtain financing can be evaluated. Furthermore, with the extension of the safe harbor period, HPD anticipates that projects will be able to obtain financing in time to reach completion within the extended period. The rule amendments conform this rule provision to Local Law 16 of 2010, which eliminated the requirement that plumbing plans be approved in conjunction with the Department of Building's issuance of a building or alteration permit. Finally, the rule amendments would now require proof of the recordation of the

restrictive declaration to be submitted with the Preliminary Certificate of Eligibility application instead of the Final Certificate of Eligibility application.

Commissioner Rafael E. Cestero
_____,2010