

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (HPD) pursuant to Section 421-a of the New York State Real Property Tax Law (RPTL) and in accordance with Sections 1043 and 1802 of the City Charter, HPD is adopting amendments to Chapter 51 of Title 28 of the Rules of the City of New York for buildings applying for tax benefits under RPTL Section 421-a(16).

A notice of proposed rulemaking was published in the City Record on March 25, 2022. A public hearing was held on May 3, 2022.

Statement of Basis and Purpose

Section 421-a(16) of the Real Property Tax Law (RPTL) was enacted by the State Legislature in Chapter 20 of the Laws of 2015, as further amended by Chapter 59 of the Laws of 2017. RPTL Section 421-a(16) provides real property tax exemptions for eligible new multiple dwellings. In New York City, HPD determines eligibility for these exemptions and is responsible for ensuring that applicants for the exemption comply with eligibility requirements.

This rule clarifies the meaning of the terms “Dwelling Unit” and “Ineligible Space” as they are used in connection with eligibility for 421-a(16) benefits.

The rule clarifies that units located in facilities licensed by the New York State Department of Health as Adult Care Facilities and Assisted Living Residences and operated as Enriched Housing Programs are permanent housing eligible for 421-a(16) benefits. Based on comments received at the public hearing, the rule has been further amended to clarify that all such units, including any units within the Adult Care Facility that also are certified as Special Needs Assisted Living Residence (SNALR) units and/or Enhanced Assisted Living Residence (EALR), are intended for permanent housing and are eligible for the benefits of the program.

The rule further clarifies that all licensed assisted living units, both with and without full kitchens, would be eligible for benefits under the law to the same extent as other permanent housing.

Because these units are effectively permanent housing for their occupants, their treatment under this rule is consistent with Section 421-a(16). For example, the statute expressly prohibits hotels from receiving these benefits (see RPTL Section 421-a(16)(b)), making clear that the benefits are intended for permanent housing, such as assisted living units in such facilities.

New material is underlined.

[Deleted material is in brackets.]

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

Section 1. The definition of “Ineligible Space” in section 51-01 of chapter 51 of title 28 of the Rules of the City of New York is amended, and a new definition of “Dwelling Unit” is added to such section, in alphabetical order, to read as follows:

Dwelling Unit. “Dwelling Unit” means one or more living rooms, arranged to be occupied as a unit separate from all other rooms within a dwelling, with lawful sanitary facilities and a lawful kitchen or kitchenette for the exclusive use of the family residing in such unit, except that for the purposes of this chapter, such term shall include units in all facilities that are licensed by the New York State Department of Health as an Adult Care Facility and Assisted Living Residence and operated as an Enriched Housing Program, including any units within the Adult Care Facility that are also certified as Special Needs Assisted Living Residence (SNALR) units and/or Enhanced Assisted Living Residence (EALR) units.

Ineligible Space. “Ineligible Space” means commercial, community facility, and accessory use space, other than parking which is located not more than twenty-three feet above the curb level. For the purposes of this chapter, Dwelling Units in a facility that is licensed by the New York State Department of Health as an Adult Care Facility and Assisted Living Residence and operated as an Enriched Housing Program, including any units within the Adult Care Facility that are also certified as Special Needs Assisted Living Residence (SNALR) units and/or Enhanced Assisted Living Residence (EALR) units, shall not be considered Ineligible Space.

Commissioner Adolfo Carrion Jr.

June 7, 2022