

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”) by Section 1802 of the New York City Charter and Section 27-2109.52(b) of the Administrative Code of the City of New York, and in accordance with Section 1043 of the City Charter, HPD is adopting amendments to Chapter 52 to Title 28 of the Rules of the City of New York, which governs the Speculation Watch List.

A notice of proposed rulemaking was published in the City Record on July 5, 2019. A public hearing was held on August 13, 2019.

Statement of Basis and Purpose of Rule

Article 3 of subchapter 4 of chapter 2 of title 27 of the Administrative Code of the City of New York (the “Law”) requires HPD to produce a “Speculation Watch List” comprised of certain multiple dwellings that contain six or more dwelling units, the majority of which are rent regulated, and to promulgate by rule the criteria for a multiple dwelling’s inclusion in or removal from the Speculation Watch List. Such rules were promulgated as chapter 52 of title 28 of the Rules of the City of New York (the “Rules”).

The Law requires HPD to produce the Speculation Watch List by analyzing the Capitalization Rate for Qualified Transactions involving certain multiple dwellings and applying the Speculation Watch List inclusion criteria HPD has promulgated by rule. The Law requires HPD to update the Speculation Watch List on at least a quarterly basis. The Speculation Watch List is intended by the Law to serve as a resource for anti-harassment efforts by identifying multiple dwellings in which tenants may be at greater risk for tenant harassment.

The prior definition of “Multiple Dwelling” in the Rules encompasses recently constructed multiple dwellings receiving tax exemption benefits under subdivisions 1 through 15 of Real Property Tax Law Section 421-a. The sales of such multiple dwellings in the first years after construction may have negatively skewed Capitalization Rates because these buildings are more likely to have low net operating incomes due to higher vacancy rates at initial lease up. As a result, their Capitalization Rates are unlikely to be indicative of a greater risk for tenant harassment. In fact, tenants in newly constructed multiple dwellings are likely to face less harassment than tenants in existing rent regulated properties.

The rule amendment removes from the definition of Multiple Dwelling those multiple dwellings that were constructed within the last several years and in which a majority of Dwelling Units are Rent Regulated due to Real Property Tax Law Section 421-a(1)-(15) requirements.

In order to avoid unnecessary alterations to previously-produced Speculation Watch List updates and to provide a greater degree of public certainty, the rule amendment also changes the definition of Borough Capitalization Rate to maintain its consistency for each Fiscal Quarter once each Speculation Watch List update has been finalized, regardless of whether there are subsequent changes to data upon which HPD’s calculation of such Borough Capitalization Rate was based.

In order to ensure that the Speculation Watch List applies consistent criteria devised to best achieve the purpose of the Law, the rule amendment will be applied retroactively to Speculation Watch List updates that have already been completed and/or published prior to the rule amendment's effective date.

HPD's authority for this rule is found in sections 1043 and 1802 of the New York City Charter and section 27-2109.52(b) of the Administrative Code of the City of New York.

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 “borough capitalization rate” in section 52-01 of chapter 52 of title 28 of the Rules of the City of New York is amended to read as follows:

Borough Capitalization Rate. “Borough Capitalization Rate” means the median Capitalization Rate of all Qualified Transactions in a given borough during the four most recent Fiscal Quarters, as calculated by HPD at the time each Speculation Watch List update is completed.

§ 2. The definition of “multiple dwelling” in section 52-01 of chapter 52 of title 28 of the Rules of the City of New York is amended to read as follows:

Multiple Dwelling. “Multiple Dwelling” means a multiple dwelling, as defined in section 4 of the Multiple Dwelling Law:

- (i) in which a majority of Dwelling Units are Rent Regulated;
- (ii) that appears on the most recent DOF final assessment roll;
- (iii) for which, during the Fiscal Year of the most recent DOF final assessment roll, DOF has recorded a notice of property value that lists numerical values greater than zero for both estimated gross income and estimated expenses;
- (iv) for which the final assessment roll for the Fiscal Year immediately preceding the most recent notice of property value lists a tentative actual assessed value of greater than \$40,000;
- (v) that either [(a)] (A) is exclusively residential with eleven or more Dwelling Units or [(b)] (B) contains seven or more Dwelling Units and one or more commercial units;
- (vi) that is not providing Affordable Housing subject to Local Supervision;

(vii) that is neither (A) fully exempt from real property taxation under any applicable law or (B) partially exempt from real property taxation pursuant to article 2, 4, 5, or 11 of the Private Housing Finance Law or section 420-c of the Real Property Tax Law; [and]

(viii) that is not receiving benefits pursuant to section 11-243 of the Administrative Code of the City of New York for any eligible work that was carried out with the substantial assistance of grants, loans or subsidies from any federal, state, or local governmental agency or instrumentality; and

(ix) that is not located on a 421-a New Building Tax Lot.

§ 3. Section 52-01 of chapter 52 of title 28 of the Rules of the City of New York is amended by adding new definitions to be inserted in alphabetical order and to read as follows:

421-a Construction Period Benefits. "421-a Construction Period Benefits" means exemption from taxation for local purposes, other than assessments for local improvements, for the tax year or years immediately following taxable status dates occurring subsequent to the commencement and prior to the completion of construction, but not to exceed three such tax years, pursuant to subdivisions 1 through 15 of section 421-a of the Real Property Tax Law.

421-a Final Benefits. "421-a Final Benefits" means exemption from taxation for local purposes, other than assessments for local improvements, in tax years immediately following the taxable status date first occurring after the expiration of 421-a Construction Period Benefits, pursuant to subdivisions 1 through 15 of section 421-a of the Real Property Tax Law.

421-a New Building Tax Lot. "421-a New Building Tax Lot" means a tax lot (i) for which DOF records indicate that 421-a Construction Period Benefits were received no earlier than eight fiscal years before the final day of the most recently concluded Fiscal Quarter, or (ii) for which DOF records indicate that 421-a Final Benefits were received no earlier than five fiscal years before the final day of the most recently concluded Fiscal Quarter, or (iii) that has received any real property tax exemption benefits pursuant to subdivisions 1 through 15 of section 421-a of the Real Property Tax Law for a new multiple dwelling thereon that received its first temporary or permanent certificate of occupancy no earlier than five years before the final day of the most recently concluded Fiscal Quarter.

Commissioner Louise Carroll
November 6, 2019