NEW YORK CITY LOFT BOARD

Notice of Adoption

The New York City Loft Board hereby gives notice—pursuant to the authority granted by Multiple Dwelling Law § 282 and New York City Charter § 1043—of the adoption of amendments to its rules in Title 29 of the Rules of the City of New York.

The amendments in this rule were proposed and published on February 4, 2026. A public hearing was held on March 19, 2024. The Loft Board received six comments from the public.

Statement of Basis and Purpose of Rules

Background

In 1982, the New York State Legislature enacted Article 7-C of the Multiple Dwelling Law (MDL), also known as the Loft Law. The Loft Law created a new class of buildings in New York City called interim multiple dwellings (IMD). Initially, the Loft Law allowed the conversion to residential space of former commercial and manufacturing spaces that were used as residences by at least three or more families living independently from April 1, 1980, through December 1, 1981, in zoning districts that permitted residential use. The Legislature subsequently amended the Loft Law to allow for the conversion of commercial or manufacturing space in additional districts and additional time periods. In the most recent amendment, in June 2019, the Legislature adjusted the eligibility criteria for coverage under MDL § 281(5) and expanded the scope of the law to include spaces used as residences for twelve consecutive months between 2015 and 2016.

Legislative findings in MDL § 280 indicate that the Legislature intended Article 7-C to be remedial in nature. The Legislature declared a serious public emergency created by the illegal conversion of former commercial and manufacturing spaces to residential use, without compliance with the applicable laws. The Loft Law legitimized the residential tenancy and designated such converted units as IMDs, directed owners to complete a legalization process, and provided for the possibility of an adjustment in rent to help pay for the costs of compliance. Because the residential tenancy was given legal status, the tenants were not required to relocate. Pursuant to Article 7-C, residential tenants are protected from eviction (also known as “protected occupancy” status), provided that the unit is used as their primary residence.

Recognizing that the issues related to loft units and Loft Law-protected tenants are novel and therefore require a different regulatory approach compared to other types of buildings or structures, the Legislature established the Loft Board, which is charged with overseeing the legalization of IMD spaces. The Loft Board has three primary functions: legislative, quasi-judicial and enforcement. As part of its legislative function, the Loft Board promulgates rules to implement the Loft Law. As part of its quasi-judicial functions, the Loft Board resolves disputes regarding coverage and protected occupancy determinations under Article 7-C, among other disputes, and as part of its enforcement function, the Loft Board may initiate proceedings and impose penalties for violations of Article 7-C or a rule in Title 29 of the Rules of the City of New York.

MDL § 284 explicitly provides that IMD owners must comply with the fire and safety standards of Article 7-B for legalization of IMD units. Prior to Article 7-C, the legalization provisions of Article 7-B only applied to Joint Living-Work Quarters for Artists ("JLWQA"). Article 7-C expanded these provisions to legalization of IMDs under Article 7-C. The Article 7-B provisions were designed to simplify the conversion process of non-residential buildings to residential use. Like the JLWQA units, loft units often have a portion of space that is used for business purposes.

Acknowledging the unique circumstances of loft living, including the historical live/work use in IMDs, and the remedial purpose of the Loft Law, the Loft Board developed a comprehensive multi-factor review of the evidence presented to decide primary residence issues in protected occupancy cases.

The rule amendments clarify the criteria in protected occupancy determinations in § 2-08(s) of Title 29 of the Rules of the City of New York. The amendments make clear that representations and deductions on tax returns prior to filing for protected occupancy alone are not determinative. These representations and deductions are only one factor to be considered by the Loft Board as part of the Board's review of all relevant evidence submitted. The rule also adds employment records, school records, and bank records as additional factors the Loft Board may consider in making a determination on protected occupancy status.

On July 17, 2025, the Loft Board voted to initiate the rulemaking process under the Citywide Administrative Procedure Act for this rule amendment.

A public hearing was held on March 19, 2026. The Loft Board received six comments from the public. One comment opposed the change, arguing that information included on tax returns should be determinative of whether an individual uses an IMD unit as a primary residence because the common-law tax estoppel principle articulated in *Mahoney-Buntzman v. Buntzman*, 12 N.Y.3d 415 (2009), generally precludes an individual from taking a legal position that is contrary to what is reflected on their tax return. The Appellate Division, First Department expressly applied this default rule to an IMD proceeding in *Matter of One Double Nine Dashing LLC v. N.Y.C. Loft Board*, 211 A.D.3d 540 (2022). However, the Loft Board's rulemaking reflects its judgment that the default rule does not serve the distinctive purpose and goals of the Loft Law.

The Loft Law is designed to protect tenants residing in non-residential spaces and compel owners to bring such spaces into compliance with residential safety laws. The statute addresses units that, by definition, are not legalized for residential occupancy. The Loft Law's objectives are best served when tenants residing in qualifying units without certificates of occupancy are encouraged to bring those units to the attention of the Loft Board so that the units may be legalized, without the process being chilled or thwarted by a rule holding that any inconsistency in tenants' tax reporting will doom their application. The tax estoppel principle articulated in *Mahoney-Buntzman* and applied in *One Double Nine Dashing* thus fails to effectuate the purposes of the Loft Law. Protected occupancy proceedings under the Law are not intended to police tax code compliance, but to enable tenants residing in units without certificates of occupancy to claim certain residential protections, provided that the unit is their primary residence.

One Double Nine Dashing provides an excellent example of why the *Mahoney-Buntzman* rule does not best effectuate the Loft Law's purposes. It was undisputed there that the tenants used the pertinent loft as their primary residence and listed it as such on their federal and state tax returns throughout the pertinent period. The Appellate Division nevertheless precluded them from claiming the loft as their primary residence because they had taken a partial rental deduction as a business expense, in alleged violation of a federal tax code provision that purportedly prohibited taking such an exemption for a unit used as both a business location and a primary residence.

It is the view of the Loft Board that this application of the common-law rule undermined the purpose of the Loft Law, which is to protect tenants who have been living and working in certain buildings even if they did so in violation of law. It is the further view of the Loft Board that a more holistic rule better suits the Loft Law's underpinnings, which are inconsistent with "clean hands" principles requiring strict legal compliance before tenants may claim legal protections against the landlords who profited from their illegal residency.

Under the review process as amended by this rule, the Board will consider not only tax returns, but also other personal records such as driver's licenses, school records, bank records, and employment records. The rule as amended does not preclude the Loft Board from considering the information listed in a tax return insofar as it bears on whether the tenants resided in the unit as their primary residence; it merely allows the Board to also consider other relevant information. Therefore, no changes have been made in response to this comment.

Another comment did not address the proposed amendment. The other four comments were supportive.

<u>New material is underlined.</u>

[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. Paragraph 5 of subdivision (s) of section 2-08 of Title 29 of the Rules of the City of New York is amended, and new subparagraphs (iii) and (iv) are added, to read as follows:

(5)(i) In addition to the requirements contained in paragraphs (1), (2), (3) and (4) of this subsection, the Loft Board may find an individual is a protected Occupant only if the individual uses the IMD unit as a primary residence on the filing date of the Application for protected occupancy.

(ii) In determining whether an individual uses the IMD unit as a primary residence, the Loft Board may refer to precedent from the Housing Part of the Civil Court for guidance as to the type of evidence commonly used to prove primary residence. [Although no single factor is determinative, factors for the Loft Board to consider]

(iii) The Loft Board shall consider all relevant evidence presented in determining whether the individual uses the IMD unit as a primary residence [include] including, but [are] not limited to:

(A) Whether the individual resides in the IMD unit;

(B) Whether the individual keeps furniture, clothing and other personal effects in the IMD unit;

(C) Whether the individual listed the IMD unit as a residential address on official documents. [filed with government agencies.] Such documents may include, but are not limited to, a tax return, employment records, school records, bank records, a motor vehicle registration, a driver license, or a voter registration;

(D) Whether the individual subleased the unit to another in violation of law or the Loft Board's rules; and

(E) Any other factor the Board deems relevant.

(iv) No single category of relevant evidence described in clauses (A) through (E) of subparagraph (iii) of this paragraph, including a tax return, shall, by itself, be determinative of the Board's decision whether an individual uses the IMD unit as a primary residence.