



Transcript of the November 4, 2021

Meeting of the

New York City Loft Board

This transcript has been prepared pursuant to legislation S.50001/A.40001 signed by Governor Hochul, which suspended Article 7 of the Public Officers Law to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

The meeting began at: 2:09 P.M.

1 **Chairperson Hylton:** Good afternoon. My name is Renaldo Hylton, the Chairperson designee of the New
2 York City Loft Board. Welcome to our November 4th, 2021, public meeting. This meeting is being held
3 via teleconference in accordance with legislation signed by Governor Hochul on September 2nd, 2021,
4 due to the Coronavirus emergency.

5 Section 282 of the New York State Multiple Dwelling Law establishes the New York City Loft Board. The
6 Board is charged with overseeing the conversion of Interim Multiple Dwelling buildings from commercial
7 and manufacturing spaces to safe, rent-regulated residences that comply with the minimum standards
8 of safety and fire protection stated in Article 7-B of the New York State Multiple Dwelling Law. To
9 achieve this goal, the Board adjudicates and mediates disputes between owners and tenants, tracks the
10 progress of each building undergoing legalization, and prosecutes parties who violate the Loft Law and
11 the Loft Board rules.

12 The only item on the agenda today is the Loft Board rules and the Law Department's comments on
13 those proposed rules. Mr. Schultz will be leading this discussion. Or is Mr. Clarke leading the discussion?

14 **Mr. Schultz:** Let's say I'll kick it off, and when it gets tough, Mr. Clarke will be there to save me.

15 **Chairperson Hylton:** Okay. My notes seem to say something different here, but Mr. Schultz is leading
16 the discussion.

17 **Mr. Schultz:** We share our mind, Mr. Clarke and I. We all do. So, when I stop speaking, one of them will
18 speak. Hello, everyone. Thanks for joining in this special rulemaking session. Just to lay the groundwork,
19 this is the set of rules that were passed in May. I shouldn't say the rules were passed, but the language
20 that was voted on by the Board to reflect everything that the Board thought was the way they want the
21 rules. Then that went to the Law Department. The Law Department has made comments, and over the
22 last two meetings, we've been working our way through those comments. And this meeting is a
23 continuation of that. All who were there know some of the comments were very content-driven; others
24 were less so. Being both thorough and efficient, I will move through them. When it is a form issue, I will
25 note it and move on. It doesn't mean there can't be questions on it. Likewise, if there's a content issue
26 that I seem to be going through too quickly, of course, please just stop me. But I will work to be
27 thorough and keep this moving. And as I always say to the staff, if while I'm speaking, I have something

1 wrong, please just chime in. Or if there's something that you think you can clarify, you have the freedom
2 and appreciation to do just that; because I have not been involved in most of the stages of this. Likewise
3 with other veteran members. I'm going to be relying on you to the extent that you have memories,
4 perhaps, of what was discussed before, at certain points, to try to get clarification on some things as
5 much as I can. So if I say something that is my understanding of the way it was previously discussed, feel
6 free to speak up to let me know if it's accurate or not. Anything before we start?

7 **Mr. DeLaney:** Before we start, can I just ask one question, Kevin?

8 **Mr. Schultz:** Of course.

9 **Mr. DeLaney:** We're working off the draft that you sent around captioned, clean draft markup, 10 29 21?

10 **Mr. Schultz:** Yes.

11 **Mr. DeLaney:** And has that had the changes that we discussed in the last few meetings put into it?

12 **Mr. Schultz:** Some of them. So first, I should mention there's a version available on our website next to
13 the public link, the calendar link, that's the Loft Board rules. And that is the version that was passed in
14 May. It doesn't have the comments that the Board members have, that are the attorney comments, but
15 to answer your question, Mr. DeLaney, I started putting some of them in, but then, once I realized that it
16 changed the pagination, I decided not to, because I didn't want to disrupt any comparisons to the prior
17 version.

18 **Mr. DeLaney:** So does that mean that the version the public has has the same pagination?

19 **Mr. Schultz:** That's correct.

20 **Mr. DeLaney:** Okay. That's what I was trying to figure out.

21 **Mr. Schultz:** And so, we had a September meeting where we discussed some things, and between
22 September and October, we had incorporated those changes; but then I think I literally hit one that was
23 big, and it changed the pagination. And I said, you know what, I'm going to stop and just leave the
24 discussed language, the approved language, or any changes in the margin, and then put it all in at once,

1 so it can be compared to the main version. And then once we're through it, compared, [there will be]
2 basically three versions instead of multiple versions. I hope that works.

3 **Mr. DeLaney:** Thank you.

4 **Mr. Schultz:** You're welcome. Yes, of course. So with that, you'll see this did not go entirely
5 sequentially. So we'll be skipping over some, and for the Board members' sake, you'll see certain things
6 in the margin that we're going to skip over, because it notes that it was discussed in a previous meeting.
7 And so not rehashing anything we previously discussed, unless there's an update to that. Any other
8 comments or questions before we start? Okay. Wonderful.

9 So we're going to start on page 17, which is a page we spent a good amount of time on already. And this
10 is within a section we had discussed in September. The Law Department's suggestion, and I think the
11 Board was okay with it, was that some language be changed to reflect that it was service by Loft Board
12 staff rather than a waiver of the service requirement. And so those changes were incorporated here,
13 and they didn't change the pagination.

14 But there was another suggestion compounding off of that. It's at the bottom of page 17, and it relates
15 to (d)(2) at the bottom of page 17. And there's language that discusses: "To request service by the Loft
16 Board, the Applicant must submit a written request, asking the Loft Board to serve each Affected Party
17 attached to an electronic copy of the Application containing an electronic signature or a hard copy of
18 such Application containing an original signature."

19 That is some new language we discussed, amongst new language for the whole rules, to change what
20 we've already changed. And we don't do that often, here, to be perfectly honest. There's some
21 suggestion that, instead of describing all the things that are required, the language simply reference
22 another section that discusses what is required. It will be more accurate; it'll be more thorough; it'll
23 avoid a repetition that could create inconsistency. So, the language that's recommended is in the
24 margin. And you'll see it's largely similar, but it includes language that references 1-21(e), below, which,
25 if you turn to page 18, are the requirements for filing an application with the Loft Board.

26

1 And so the language in that section (2), the first sentence only would now read, "To request service by
2 the Loft Board." I'm sorry, I want to go back. This is (d)(2) at the bottom of page 17. The language
3 recommended is, "To consider service by the Loft Board, applicant must submit a written request asking
4 the Loft Board staff to serve each Affected Party attached to an electronic or hard copy of the
5 Application that complies with RCNY section 1-21(e), below." Are there any questions on that
6 suggestion and change?

7 **Chairperson Hylton:** I just want to correct you on something you read -- that to consider service; it says
8 to request service.

9 **Mr. Schultz:** Oh, I'm sorry. You're right to request service. Thank you. To request service by the Loft
10 Board.

11 **Chairperson Hylton:** And secondly, I don't know if it's important enough for us to put what RCNY before
12 that number is. What RCNY number are we?

13 **Mr. Schultz:** Twenty-nine.

14 **Chairperson Hylton:** So maybe we should put 29 RCNY, before that?

15 **Mr. Schultz:** I'll check...

16 **Chairperson Hylton:** It's these rules, right? So, that complies with section 1-21(e) of these rules. No?

17 **Mr. Schultz:** I can certainly look at the rest for how we did it elsewhere for consistency. If any of the
18 staff have an insight on how that's been referenced elsewhere, I'll take it. Otherwise...I see in other
19 spaces there's language, "as defined in 29 RCNY section," et cetera, so the addition of 29...

20 **Chairperson Hylton:** At least put 29 in there.

21 **Mr. Schultz:** Yeah, that's what I see throughout. So yes, thank you, Chairperson. The addition of 29
22 there would make it consistent. Thank you. Any other comments on that? And then further, in the next
23 sentence of (d)(2), there's a reference to "an applicable fee." And the Law Department's suggestion is

1 that that language is unnecessary and repetitive, now that we have cleaned up the top part, because the
2 applicable fee is included and discussed in (e). And so, a lot of these changes the Law Department is
3 suggesting -- and some of them work, some of them might not -- are to avoid redundancy. And the
4 thinking is that redundancy can create the possibility of inconsistency. So that would be a few things we
5 see in there. And there are times where it's put here to consider; and there are times where we have
6 other reasons to not consider. Are there any questions about that comment on (d)(2)?

7 All right, thank you. I'm going to move on, then. We're going to move on, I should say, to page 20.
8 I almost didn't include this, but I thought I'd share it with the Board. There was a suggestion that the
9 language add the word business day. We're at the top of page 20. The section (c) on page 20, the
10 second and third lines down, have language that reads, "...if any, with the Loft Board, on or before close
11 of business on the last day of the time period." And the Law Department wondered if the Board wanted
12 to put business day in there. In analysis, I noted those words aren't actually necessary, because we have
13 a computation of time section that has that go without saying. I don't know if Law Department knew
14 that. I'm not going to say it needn't be here nor there, because I obviously brought it to the Board, but
15 this is an example, I suppose, where Law Department thought clarity was good. I happen to know the
16 Board likes easier reading stuff, so I put it here as a suggestion. Does the Board have any thoughts on
17 adding the word business before the word day? Yay or nay?

18 **Mr. DeLaney:** This is with regards to filing answers, correct?

19 **Mr. Schultz:** Yes.

20 **Chairperson Hylton:** Are you talking about (d)? (d) what number?

21 **Mr. Schultz:** No. I'm talking about (c), which continues from page 19 into 20. The third line down.

22 **Chairperson Hylton:** I don't think you should put business there. It doesn't do anything to clarify,
23 because we're talking about business days, and it's just the last day of those business days.

24 **Mr. Schultz:** Yeah, I actually agree, and I almost didn't bring it to the Board, but then I don't want to be
25 presumptive about anything, to be perfectly honest.

1 **Mr. Hylton:** Business day makes it as clear as possible. You just say the last day, close of business. Close
2 of business is different than business day.

3 **Chairperson Hylton:** It's the last day of the time period stated. The time period is given in business days.
4 Okay, so it's the last day of that time period. That's how it reads here, which... It has to be a business
5 day.

6 **Mr. Barowitz:** Let's just take out "on or before close of business." Let's just remove it.

7 **Mr. Schultz:** All right. I'm going to suggest, frankly, that we not add the word business to it, because the
8 use of another section that is controlling implicates the right timeline without any extra words. And so
9 this is a time where Law Department made a suggestion, and I actually think it's not necessary. It doesn't
10 help. I'm not sure it would hurt, but I'm not sure it helps.

11 **Mr. Hylton:** I think it helps in clarity. When you say business day, it means business day. Then you know
12 how you're counting.

13 **Chairperson Hylton:** But we only count in business days, don't we?

14 **Mr. Barowitz:** I don't think it matters in terms of what's being said here. It doesn't matter. I mean, if you
15 simply say, on the last day of the time period, etcetera, that's enough. Whether it's business day,
16 weekday, holiday. Let's not go nuts with putting all of these things in. It just gets more jargon in there
17 and more confusing. But okay, whatever you want to do.

18 **Mr. Schultz:** So again, Mr. Hylton, I want to hear you out, certainly. I'll just note that section 1-16, which
19 is computation of time, would render the addition of that word unnecessary, especially from a legal
20 standpoint. The suggestion by Law Department, frankly, I don't know if it was done out of ignorance of
21 that section, or because they thought clarity was important. I will say Law Department tended not to like
22 redundancy. So I'm a little surprised they included it. My recommendation is to not.... I'll be honest, I do
23 not think I've come across a time where there's been disagreement amongst the Board on a rulemaking
24 term. So, I don't know how it's been handled in the past. I don't know if we just move on.

25 **Mr. Hylton:** I've raised my point. Feel free to move on.

1 **Mr. DeLaney:** I have to say I tend to agree with Mr. Hylton. We do define in our definitions the term
2 business day. We don't define the term day.

3 **Mr. Schultz:** Yes.

4 **Mr. Hylton:** Okay.

5 **Mr. Schultz:** So Chairperson, could you actually educate me? Because I know I listened to some
6 meetings, but did moments like this come to a vote? If there's a nuanced disagreement....

7 **Chairperson Hylton:** Mr. Barowitz, we probably...It's just maybe an agreement, right?

8 **Mr. Hylton:** I don't think it needs to be a vote. I think you're in agreement to move on, leaving it as is. So
9 just keep going.

10 **Chairperson Hylton:** Right.

11 **Ms. Roslund:** I would agree with Chairperson Hylton, having just re-read section 1-16(a), it is very clear.
12 If one were reading the rules from beginning to end, it's just a section or two before where we are right
13 now. So you kind have just read it.

14 **Chairperson Hylton:** All right.

15 **Mr. Schultz:** I'm going to leave it as is. It's something that could be revisited if anyone has strong
16 feelings about it. Moving on to page 22, this is one of a few that I'll call somewhat unresolved. I'm
17 bringing it to the Board's attention because I want you to be aware of it. And I'm, of course, happy to
18 hear any thoughts. But this is potentially more of a conversation between OATH and Law Department
19 than ourselves.

20 At the bottom of page 22, at section 1-27(c), there's language that discusses the hearings that will be
21 involved in our applications, and it discusses that, "At the hearing, the parties may be represented by
22 counsel, or by a duly authorized representative." And the Law Department has suggested some
23 parenthetical language that says, "provided such duly authorized representative neither provides legal
24 advice or an opinion of law, nor holds himself or herself out as a lawyer without being admitted to the

1 bar in the state of New York.” And Law Department has legal reasons why they think this language is
2 important.

3 Now, I want to be clear, this doesn't say that the individual has to be an attorney. What it says is they
4 can't hold themselves out as one. And it then also says they can't provide legal advice. And Law
5 Department has cited what they believe are some cases to support this. OATH has so far believed that
6 this language is unnecessary. My opinion is also that it's unnecessary, frankly, because it's going to go
7 without saying based on the controlling law. I personally don't see it as our rules' concern to address.
8 Law Department obviously disagrees.

9 I wanted you to be aware of this as a space that might need some additional conversation, but perhaps
10 not. Right now, honestly, I need OATH and the Law Department on the same phone call, which hasn't
11 happened yet. I do want to present it, though, again, because everything's new to me here, and so to
12 the extent that there are thoughts that I could bring to that conversation from the Board, I want to be
13 able to do that.

14 **Chairperson Hylton:** I'm just curious. What cases do they cite that makes them feel that this is necessary
15 to put in a rule? What's illegal somewhere else?

16 **Mr. Schultz:** And not all Loft Board cases, to be clear. General law, that does appropriately say that
17 people can't...

18 **Chairperson Hylton:** Isn't it just plain illegal somewhere, in some rules, some law, that a non-lawyer can
19 give legal advice. You can't ever hold yourself out to be who you are not, anywhere.

20 **Mr. Barowitz:** (unclear) I feel that a non-lawyer can appear in a court representing, let's say, a victim.
21 And if the judge rules a non-lawyer out of order, then he's out of order. Otherwise, you don't need to be
22 a lawyer to defend somebody in court. So I don't know what we need this additional paragraph for.

23 **Chairperson Hylton:** I'm not sure why the Law Department would even do that. Kevin, but to your
24 point, though, what kind of case were they saying? Can you remember?

25 **Mr. Schultz:** I can look...

1 **Chairperson Hylton:** Don't even bother, but I just find this odd that they would want to do this, because
2 this doesn't seem like something that I've even read in any rules -- that we're not setting ourselves, that
3 you actually put in a little parenthetical language here to say if something is illegal, don't do it. I don't
4 know. How does everybody else feel? I don't want Law Department to hold up our rules because of
5 some discretionary thing, so I'm hesitant to say don't change it. But still, I just don't understand why
6 they would even suggest this.

7 **Mr. DeLaney:** If I remember correctly....

8 **Chairperson Hylton:** Sorry, Mr. DeLaney. Obviously, OATH is disagreeing also, and they're the courts.

9 **Mr. DeLaney:** If I remember correctly, we've put this in because when we did the very thorough
10 comparison that Mr. Argov, I think, spearheaded, comparing our rules and OATH's rules, we noticed that
11 OATH had this and we didn't. And it seemed like a good idea to add duly authorized representative. And
12 obviously, in OATH's rules, they don't have all that language that the Law Department would like to see
13 us add. So the fact that they don't think it's necessary, is not surprising, because they don't have it in
14 their rules.

15 **Mr. Schultz:** So I think I want to leave it and pause for a moment to make sure there's not another
16 comment. But I think I got what I wanted, which was -- and again, just hearing from folks who've been
17 here for a while, it's helpful -- that there's nothing about that language that the Board sees valuable.
18 And look, to the extent it becomes an inevitability, I would let this Board know. Otherwise, I'll stand for
19 the proposition that we don't think it's necessary or helpful.

20 **Chairperson Hylton:** Okay, so (unclear). And you'll get back to us?

21 **Mr. Schultz:** Again, I'll pause to make sure there's not another comment, but if it turns out that Law
22 Department will move on this, then you will not see it. If it turns out that Law Department has strong
23 reasons or digs their heels in, or whatever, then I would revisit it as a point of awareness, I suppose.

24 **Chairperson Hylton:** Can I at least get consensus from the Board that if the Law Department feels
25 strongly and makes a point of having to send this back to us, that we just make the change, right? Give
26 Mr. Schultz or the Loft Board (staff) the okay to just go ahead and keep it in if they feel that strongly. We

1 shouldn't have to come back to the Board on this because it's really not killing anything. It's just
2 completely unnecessary, I think. But if they feel strongly, we're not going to come back to the Board to
3 argue this.

4 **Mr. DeLaney:** The note also says that the bright lights at OATH consider this language not only
5 unnecessary, but improper. Would you share with us....

6 **Mr. Schultz:** Those are my words. That might have been editorializing. But I do know that OATH has
7 gone on record saying that it's not needed. And I think what they said was, largely, what I think Mr.
8 Barowitz said, which is that ALJ's have control and authority over those kinds of issues.

9 The good news is, it seems to me the Board is in relative unison here. So I would put this way. If it
10 becomes inevitable and convincing that it needs to be there, I will come here to convince the Board of
11 it, whether on its merits or on the need to remove it.

12 **Chairperson Hylton:** Mr. Schultz, that's my point. I don't want this to have to come back. I think this is
13 not one that you should have to come back to. I think if the Law Department insists, then so be it. I don't
14 think it does anything one way or the other. We're just saying it's not necessary and so does OATH. I
15 don't know why they feel it is absolutely necessary. You can tell them that the Board doesn't want it,
16 and they can say it absolutely has to be there. Then we will just leave it. That's my feeling. How do you
17 guys feel? I don't think this is necessary to come back to us, if they say yes, it has to go there. Because
18 guess what? We're not going anywhere without their approval anyway. And this is not something that
19 changes anything except this.

20 **Mr. Barowitz:** I agree.

21 **Chairperson Hylton:** Thank you, Mr. Barowitz. Anyone else feel the same way?

22 **Various Board members** speak together, saying they agree.

23 **Mr. Schultz:** I understand. Thank you, everybody. I'm going to move on to page 23. This is the second of
24 a series of language that involves OATH. On page 23, in section (f). Actually, let me start over. This
25 doesn't really involve OATH that much. It's section (f) on page 23, and it discusses the authority that the

1 Loft Board staff has to conduct hearings. That has not occurred in my time here. My time is relatively
2 short. But I've also heard it has not occurred in a long time. Our hearings have been transferred to
3 OATH as a practice for a long time. But that is not by requirement. There is the possibility that there's a
4 system where staff members conduct hearings. And Law Department flagged this language because it
5 was written quite restrictively from a resource standpoint, suggesting that if a Loft Board (staff) member
6 conducts a hearing, then that's all they will do for the Loft Board. And I think Law Department's
7 comment was, frankly, less legal than logistical in suggesting that adding language ensuring that there's
8 no conflict would benefit the Loft Board (staff) by giving it flexibility. Before I read the language, I'll
9 pause and say, does everyone understand what I'm talking about? Does anyone have any questions?

10 So the language that should replace it. You'll see it's longer, and it's intended to say that staff members,
11 if they conducted a hearing, are not restricted to doing only hearings, but would rather be required to
12 carry it out in a way that ensures no conflicts. So, I'm going to read that now. The language to consider
13 in section 1-27(f) would read,

14 "Hearings conducted by Loft Board staff member. Where a hearing is conducted by a Loft Board staff
15 member, such staff member may take testimony under oath, consider affidavits and other evidence,
16 submit recommended findings of fact and a recommended decision to the Loft Board, and perform
17 other such duties appropriate and/or necessary to carry out his or her duties as an Adjudicator. While
18 performing such adjudicative duties, such staff member shall not perform any other duties for or on
19 behalf of the Loft Board that could create a conflict of interest or impair his or her ability to impartially
20 carry out his or her adjudicative duties."

21 As I was reading it, I noticed the capitalization of adjudicator, which honestly, I want to check.

22 **Chairperson Hylton:** That's because it's defined somewhere.

23 **Mr. Schultz:** Yes, it's defined.

24 **Chairperson Hylton:** I don't have any problem with that. I think they're saying you can be an adjudicator
25 and make copies for the Loft Board, do something different. So it doesn't bind the Loft Board. But it's
26 very clear here that you can't do anything that would create a conflict of interest in writing decisions

1 and then adjudicating a case that results from an appeal or something like that. I think it's okay. I don't
2 know how everybody feels.

3 **Ms. Roslund:** Yeah, it's actually clearer than the existing language, which both raises the question of
4 why can someone only be assigned to those duties and then what constitutes those duties. As
5 Chairperson Hylton just said, if you were to make copies or something, is that outside of your
6 jurisdiction for that day? It's not clear in the new language.

7 **Mr. Schultz:** Any other comments or questions? Thank you, Ms. Roslund.

8 **Mr. DeLaney:** I agree. I think it's a little more thorough in spelling things out.

9 **Mr. Schultz:** Slow pause, lest there be any other comment... and move on to page 24. This is language
10 relating to settlements on the bottom of page 24, section 1-30. This involves where a matter is sent. It's
11 sent to OATH at this point, but when a matter goes to a hearing.... We've received an application; it's
12 been sent to the hearing officer; instead of having a hearing, the parties have agreed. They've settled;
13 they stipulated. And our rules have language about how the Board will receive a summary of that and
14 then approve it. You've seen that in our agendas. And so, the Law Department has suggested a few
15 changes to this. One is the replacement of the word "made" with "provided," which I thought was just a
16 more formal use. And then there is a change in the second sentence. The effort here, according to Law
17 Department, was not to make legal changes, but to clarify the grammar. I could read the old version if
18 you'd like out loud, but suffice to say there were some ands in there that made it not as clear as the Law
19 Department thinks the current version is. So the effort was to say the same thing and eliminate any sort
20 of confusion as to what was meant here. I'll take a quick pause to see if there's any questions.

21 **Mr. DeLaney:** I think we need a minute to read.

22 **Mr. Schultz:** Sure, take your time.

23 **Chairperson Hylton:** This thing about Loft Board and Loft Board staff, is that how we decided to
24 differentiate between the staff and the Board? Did we say... was it Board or Loft Board? How do you
25 refer to members of the Board elsewhere? Is it the Board or Loft Board?

1 **Mr. Schultz:** I don't know. I will ask the staff if they either know that, to give us some insight, or to
2 maybe do a scan of the language to see if they can find other references to Board, Loft Board, Loft
3 Board members... to see if it's expressed in any particular way throughout.

4 If it's helpful, what the Law Department said was that it was difficult to tell the extent to which the
5 portion about directing staff to reopen a matter related to the language at the end about referring. So
6 it's broken into two sentences on the different language. Ms. Roslund, if you're speaking, we can't hear
7 you.

8 **Ms. Roslund:** I'm just reading to myself.

9 **Mr. Schultz:** Oh, I thought you were getting the right answer. I didn't want to miss it.

10 **Mr. DeLaney:** The way that the comment is structured, it's a little unclear what they think the entire
11 section (a) would read. It's a little unclear to me.

12 **Mr. Schultz:** Repeat that, again. It's a little unclear what they think it would all mean?

13 **Mr. DeLaney:** No, no, no. Right now, (a) is one paragraph. They seem to...The first paragraph in the
14 comment piece, after the word consider, is actually making a small modification to the second sentence
15 in what's in the text, correct?

16 **Mr. Schultz:** Yes, and I realize now that the highlighting is overstated. Language.... Yes. Thank you, Mr.
17 DeLaney. You're absolutely right. The first sentence of section (a) would be unaffected. Yes, you're
18 absolutely correct. The first sentence of section (a) goes unchanged; and then most of the second
19 sentence is unchanged.

20 **Mr. DeLaney:** Well, no, they changed the word made to provide.

21 **Mr. Schultz:** Yes, yes. Most of it remains unchanged.

22 **Mr. DeLaney:** Then, there is a sentence in the comment paragraph. "Upon issuance of an order such
23 summary cases shall be deemed closed." That is what is currently the last sentence in the paragraph.

1 **Mr. Schultz:** Yes. And that's part of...

2 **Mr. DeLaney:** So then the new paragraph they suggest uses part of one of the sentences that's in the
3 existing text.

4 **Mr. Schultz:** And I think that might be at the crux of some of the change because the suggestion that
5 remanding it back results in a case being closed. The last sentence discussing a case being closed after
6 just saying it's going to be remanded I think might be part of the confusion that they were trying to
7 highlight and eliminate by taking the talk of remand and putting it below the talk of closing a matter.

8 **Mr. Barowitz:** I will keep quiet about this from here on in, but I just feel that a lot of this stuff is so
9 unnecessary and confusing. When I was teaching in school, if somebody would write something like this,
10 I would ask him to rewrite it. So, the first sentence says, where the parties resolve a dispute, period.
11 What do you mean to their mutual satisfaction? They've resolved the dispute. You don't need that,
12 right? And then it goes on, and on, and on. So, I'm going to stop doing this now. But if some outsider
13 begins to read this, not familiar with us, not familiar with the law, I think it just gets enormously
14 complicated and confusing. And you come away with it wondering exactly what in the world is the main
15 resource of putting this idea of the settlements in here, which indeed is very, very important. I will keep
16 quiet now.

17 **Chairperson Hylton:** Good point, Mr. Barowitz. It's just that these are written by lawyers. They want to
18 cover everything. I guess it's very possible that you can settle a dispute not to your satisfaction, if a gun
19 was being held to your head.

20 **Ms. Roslund:** It's still settled.

21 **Chairperson Hylton:** Yeah.

22 **Ms. Roslund:** My question is, the sentence that Mr. Schultz just discussed -- Upon issuance of an order.
23 Whose order? What's the order?

24 **Mr. Schultz:** The order of the Loft Board, I'm fairly certain. The Loft Board's order.

1 **Ms. Roslund:** To do what?

2 **Mr. Schultz:** The case. The document that is passed by the Loft Board is called the order. Every time
3 you vote, you vote on an order; a proposed order.

4 **Ms. Roslund:** I guess I'm exaggerating to make a point because it said... All right, so we're talking about
5 a stipulation of settlement, which is then reported to the Loft Board, which includes the type of
6 application, the issues presented, the resolution reached; and then we jump to issuing an order. So it's
7 the process that we go through during our Loft Board meetings. The settlement is presented. We then
8 vote upon an order to accept the resolution, correct? But there it sort of jumps, in my opinion, in this
9 sentence, from something being provided to us -- to the Loft Board -- to the Loft Board doing
10 something.

11 So that's why I'm thinking it was at the end. The stipulated settlement is presented to the Loft Board and
12 the staff; an order is proposed; the Loft Board reviews and votes. And we can either vote to accept the
13 order or remand. Accept the settlement or remand. So, either of those is an order, correct?

14 **Mr. Schultz:** Yes. Upon issuance of an order to accept the settlement...

15 **Chairperson Hylton:** In acceptance of the settlement.

16 **Mr. Schultz:** In acceptance of the settlement, such summary cases shall be deemed closed. To
17 distinguish between the two orders.

18 **Chairperson Hylton:** OATH is not issuing an order, correct? OATH is issuing a recommendation. Mr.
19 Clarke, are you agreeing or not? What is OATH issuing?

20 **Mr. Clarke:** For these summary cases, what OATH does is, they'll send us a cover sheet that says that
21 the parties have...Pursuant to a stipulation, they're sending the case back to us, and they're deeming it
22 resolved. So we get that back. And then we write summary cases based on that.

23 **Chairperson Hylton:** So they're sending us back just a stipulation. They're not really sending anything
24 back, nothing like an order or anything?

1 **Mr. Clarke:** No

2 **Chairperson Hylton:** So what are we remanding?

3 **Mr. Clarke:** In some situations, we've remanded some stipulations, because we've reviewed them, and
4 we deemed them against public policy or something like that.

5 **Chairperson Hylton:** I understand. Okay, so we're not remanding an order. We're just requesting,
6 basically, that they review the matter again, correct?

7 **Mr. Clarke:** Correct.

8 **Chairperson Hylton:** This last sentence needs to be clarified. "Upon issuance of an order, such cases
9 shall be deemed closed." How do we rephrase that, Mr. Schultz?

10 **Mr. Schultz:** Upon issuance of an order in acceptance of the settlement.

11 **Chairperson Hylton:** Upon the Loft Board issuing an order, correct?

12 **Mr. Schultz:** Upon Loft Board's issuance of an order in acceptance of a settlement, such summary cases
13 shall be deemed closed. That seems to speak truth to me, in my understanding of how things work. Mr.
14 Clarke, Ms. Lin, Ms. Lee, does that describe what happens?

15 **Mr. Clarke:** I would say yes.

16 **Chairperson Hylton:** The confusion I'm still having is... I don't understand what the comment is. Are they
17 suggesting we rephrase this to phrase it the way they have it here?

18 **Mr. Schultz:** The Law Department's comment is not intense. And the language change – it was an effort
19 to try to clarify it. I'll put it this way. A lawyer read it and didn't understand it. And so that's not nothing
20 to me.

21 **Chairperson Hylton:** A lawyer wrote it.

22 **Mr. Schultz:** Well, not the same lawyer, right?

1 **Chairperson Hylton:** But Kevin, I'm sorry, I don't mean to interrupt, but what I'm trying to get at is the
2 piece on the comment. I agree with the last language you just wrote for the last sentence. But this
3 whole thing on the right side -- the Law Department's language in the comments piece here -- is that
4 supposed to replace something?

5 **Mr. Schultz:** Yeah, everything. The first sentence, I highlighted poorly, I apologize. The first sentence
6 remains the same. And then everything after that is replaced by what's in the margin.

7 **Chairperson Hylton:** In the margin. And it starts with what? A summary?

8 **Mr. Schultz:** A summary. So you see the second sentence starts with, a summary report of such
9 matters? Most of the language in that sentence is unchanged.

10 **Chairperson Hylton:** Right, except for the word...

11 **Mr. Schultz:** ...made and provided. And then it continues as it's written in the margin. And we just added
12 some words.

13 **Chairperson Hylton:** And then it continues with, where the Loft Board determines that....

14 **Mr. Schultz:** And you'll see that it's largely a reuse of already existing words, just reordered with
15 different punctuation with the effort to make it clearer.

16 **Chairperson Hylton:** Okay, good. So the piece you just read, the last sentence, upon issuance of an
17 order, that new structure we just agreed upon, that's going on in the margin piece. That's correcting the
18 last sentence.

19 **Mr. Schultz:** Yeah, I was editing that, for final consideration.

20 **Chairperson Hylton:** Yes. Thank you.

21 **Mr. Schultz:** I can read that entire section.

22 **Chairperson Hylton:** If you don't mind.

1 **Mr. Schultz:** I don't mind. It would start: "Where the parties resolve a dispute to their mutual
2 satisfaction, a stipulation of settlement setting out all terms of the agreement shall be entered into by
3 the parties and reviewed by the Executive Director." That's the first sentence, unchanged. The second
4 sentence, we'll start to see some changes toward the end. "A summary report of such matters, including
5 the type of application, the issues presented, and the resolution reached must be provided to the Loft
6 Board by the Loft Board staff. Upon the Loft Board's issuance of an order in acceptance of a settlement
7 such summary cases shall be deemed closed." Continuing, and I believe without a new paragraph,
8 actually, now that I look at it: "Where the Loft Board determines that the record in the underlying
9 proceeding has not been fully developed or investigated," comma, "the Loft Board may direct its staff to
10 reopen a matter in whole or in part for further development or investigation." Period. "As part of such
11 investigation," comma, "the Loft Board may refer the matter back to OATH for development of a
12 complete record." Period.

13 **Chairperson Hylton:** Good. I remember this now, that OATH did not want us to use the word remand
14 in there, correct? I Remember that.

15 **Mr. Schultz:** I've heard that. I'll defer to you, folks. That rings true.

16 **Chairperson Hylton:** That sounds good. Thank you, unless someone else...

17 **Mr. Schultz:** To be clear, everyone's going to get another chance to look at this, obviously, incorporated
18 in its totality, and hopefully comparing it to what you have here, and with a few notes that we're all
19 making. Under 1-30 (b), there is the recommendation by the Law Department that the word "must"
20 become the word "shall." I have to confess, no context at this time on that. I do not know if
21 conversations occurred previously on must versus shall. I think either is fine. And going back to what the
22 Chairperson said, I'm not sure this is a hill I would die on. But I'll stop there.

23 **Chairperson Hylton:** I think that's the way they're doing stuff. Now they're using the word shall instead
24 of must. Just legal stylistic language.

25 **Mr. Schultz:** Thank you. I'm going to move on to page 29, the middle of the page. We discussed [this] in
26 September. It was originally just a form issue, and then we had some more talk. The words "code

1 compliance deadlines” needed to be not-bolded and instead italicized. And then in that conversation,
2 we thought, and I think I even suggested it -- I've come a long way in two months -- that we put a (b)
3 there before that because it would look nice. But that would in fact, change the citation retroactively so
4 whenever someone cited this section previously, it would become confusing. So, I'm rescinding that
5 suggestion, lest anyone remember it and thought it was very important. Re-labeling these things with
6 numbers and letters can create retroactive problems. So this is one of the few times where something
7 we talked about, I want to talk about again. Does anyone have any thoughts on that? Wonderful. If it
8 helps, we got through some of the hard stuff already. I think there's some easy stuff coming.

9 Page 45. Okay, here's an easy one. And there's a lot of them. At the very bottom of page 45, we'll see
10 this a lot, and we'll move past it quickly, hopefully. It's simply a matter of form for editing. Deleted
11 language comes before added language. So, you'll see that we added the number (5) and then deleted
12 the word calendar. Law Department has picked out several times where those need to be swapped.
13 And it creates no change to the ultimate language.

14 **Chairperson Hylton:** And it actually makes sense.

15 **Mr. Schultz:** All right, and there's more of those, and I'll note them and move on. Going to page 50. At
16 the top of page 50, there is a note from Law Department that the word “provide”...I'm sorry. The word
17 “provide” is used here, whereas below there's discussion of service... of the narrative statement. So the
18 question becomes, do we want people to serve narrative statements, or do we want people to provide
19 them? And does it matter? And should language be consistent?

20 This is one of several examples we're going to see where, frankly, the feedback that is being
21 recommended to Law Department is that section two is slated for a larger editing effort, a larger
22 amendment effort, and that this kind of review is not going to help us get the sections we need to
23 incorporate the 2019 amendments done. And so in a moment like this, we're simply using the language
24 we've inherited for the most part. There have been some other changes, but use of words -- and as
25 you'll see soon, certain definitions -- is a very deep dive that will take a lot of time to do and to ensure
26 it's done right. My understanding is the Board's preference is to not quibble with those things now, with

1 the understanding that section two will receive a substantive review in the future. And you'll see this a
2 few times, as we discuss.

3 **Chairperson Hylton:** I have a question Mr. Schultz. Narrative statements provided. Do they have to be
4 served in a particular way?

5 **Mr. Schultz:** I'm going to let Mr. Clarke speak. We spoke about this a little bit. The language that
6 currently exists, other than this one time, uses the word service throughout. And you'll see lower on
7 page 50, that they actually think the word service is probably not appropriate because it's used as
8 initiating a legal proceeding, which narrative statements are perhaps not. Suffice to say, either way,
9 these are not the kinds of things we were looking to spend time and energy on in passing this version of
10 the amendments. I understand there was, to some extent, a decision made, that some things would be
11 done piecemeal, and conversations like this would be one of the things to be addressed later, in order to
12 get the 2019 amendment language done. I'll now let Mr. Clarke answer your question. The narrative
13 statement process is referred to as service both in the rules and in practice. Is that fair to say, Mr.
14 Clarke?

15 **Mr. Clarke:** Yes. It's referred to as service.

16 **Chairperson Hylton:** Thank you, Mr. Clarke. So to the extent, then, that we come across it, just put
17 serve.

18 **Ms. Oddo:** When I see the word provide, I interpret that as, it's available but not required to be given.
19 So I do like the word service.

20 **Chairperson Hylton:** A little loosey-goosey, right? Thank you, Nicole. I think you're saying it's a
21 requirement for service. So, you're right. It should just be serve.

22 **Mr. Schultz:** So for consistency, provides should become served. I think the lawyers will give it a look to
23 make sure that it doesn't do undue damage, but this leads to the bottom of the page, where more
24 fundamentally, Law Department thinks service is perhaps inappropriate. Not only do I disagree, but my
25 understanding is, we're not spending the time to analyze these things right now. And that's the
26 feedback.

1 **Chairperson Hylton:** Just point them to the fact that a narrative statement has to be served
2 appropriately, by our rule, right. They're probably just not aware of it.

3 **Mr. Schultz:** Okay, any other comments on the top of page 50?

4 **Ms. Roslund:** Just that it's interesting that they didn't change that must to shall.

5 **Chairperson Hylton:** Where's that?

6 **Ms. Roslund:** Right in front of the word we're looking at.

7 **Ms. Oddo:** Is there another word that says that you have to give something to someone, but isn't the
8 word service, which is also, technically, another term? There has to be another word that's better than
9 provide, which just sounds like it means...

10 **Chairperson Hylton:** Yeah, but I think service, serve is proper here, because there is an actual
11 requirement to serve the narrative statement. So I think, Ms. Oddo, that the word serve here is
12 appropriate.

13 **Ms. Oddo:** Okay

14 **Chairperson Hylton:** So listen, we should change that must to shall. I don't want the Law Department
15 coming back with more objections. But I'm trying to....

16 **Mr. Schultz:** (Let me ask the) staff members about musts and shalls before I showed up. One of you can
17 surely crack the code on that?

18 **Chairperson Hylton:** I understand. I'm sure Mr. DeLaney would know this, but I think the plain language
19 police prefer the word must and the Law Department prefers shall. I believe that's where that came
20 from. But we have to go with what the Law Department wants here.

21 **Mr. Barowitz:** We also had a session about "will."

22 **Chairperson Hylton:** I guess that could be another issue.

1 **Mr. Schultz:** All right. So for consistency and importance, we think serve is better than provide. In the
2 unlikely event the lawyers over here somehow think that does some damage, we'll let you know.
3 Otherwise, we'll go with that. Off the top, I think it's fine.

4 **Chairperson Hylton:** Here's the bottom line, in my own non-lawyerly thinking. If you put the words shall
5 provide there, it just means that I could provide it tomorrow, or I could provide it some other way; I
6 could tell you to go pick it up somewhere. There's no guidance or guideline on how. But since there are
7 guidelines on the proper service of these narrative statements, then it has to be serve. You have to
8 serve them properly, right? Otherwise, you might give it in some format that is not acceptable by rule. I
9 think that's how I would look at it; to say that serve is more proper.

10 **Mr. Schultz:** Thank you. Anyone else? Great. You'll see a couple of matter of form -- deleted language
11 comes before added language -- in that same sentence in that same paragraph. That would just be,
12 again, switching the underlined stuff, putting it after the bracketed stuff, but it has no effective change
13 to the final language. There's another similar such comment lower on page 50 in section (b). And then
14 there is, essentially, the discussion we just had on service discussed there. Whereas I said that Law
15 Department is concerned the word service is inappropriately used, and while I disagree, I think the more
16 important comment is that that is a big conversation to have, and if it needs to happen, it can happen
17 when section two is amended. The word service is working now, and if there's a reason to change it, we
18 can discuss that later so that we can get through the 2019 amendments.

19 Okay, moving on to page 72, let's take an easy one. And this is one we'll see a lot. I almost didn't bring it
20 to you, but I don't want anything to go unmentioned. There are several times throughout here, where
21 there's a bracket that's not necessary. It's just a straight-up typo. At the bottom of page 72, in section
22 (c), we replace small cap occupants with large cap occupants, and there's a little bracket there that
23 needs to go. That should be uncontroversial, because it has no place there, in section (c) on page 72,
24 after the capital letter O, occupants.

25 Now we're going to go to page 78. And this is another one where, I bring this up only to illustrate that I
26 take nothing for granted. There are several times throughout these rules where a bracket is underlined.
27 It's probably a select and replace error or something. Anyplace you see a bracket that's underlined, that

1 would be improper by form, and that will be changed. And there's an example of that on page 78 in
2 section (c) with the word business days. The last sentence of that section (c) on page 78 at the top of the
3 page.

4 **Mr. Barowitz:** There was a time in the English language when all nouns are capitalized.

5 **Mr. Schultz:** A time when all nouns are capitalized.

6 **Mr. Barowitz:** There was a point in the English language when that was the case. It's coming back here
7 perfectly.

8 **Mr. Schultz:** Well, once we define everything in the definition section, that'll be the case again. Moving
9 on to page 83. This is the first of several similar comments. I think about four or five of them. So on page
10 83...

11 **Mr. DeLaney:** I'm sorry, can I interrupt?

12 **Mr. Schultz:** Of course

13 **Mr. DeLaney:** Going back to page 73, where we have various things that need to be done where we
14 refer to them as business days. My recollection is that back when Helaine started this rule redrafting
15 process -- even before the 2019 amendments, because actually these discussions predate that
16 amendment -- we were attempting to get away from the confusion between business days and calendar
17 days. Is that something that the current staff has focused on? Because I notice here on... We're very
18 clear on the top of page 78 -- and thank God for the Law Department, having us make sure that we have
19 the bracketed before the new, and extraneous brackets -- but then we go down in the middle of the
20 page there in (f)(2), we're back to saying, "... may be preceded by informal conference, but in any case,
21 shall be commenced not more than thirty (30) days after the decision by the Executive Director to
22 bifurcate...." So we're back to regular days. I thought at one point -- Elliott, maybe you can help me out
23 here -- that there was a proposed goal of trying to make sure that whenever we used the term, it was
24 the same. Does that ring a bell?

1 **Chairperson Hylton:** It does ring a bell, Mr. DeLaney. But in this particular instance, you're talking about
2 thirty days. I think there's some logic behind it, once it gets up to thirty, that you're not talking about
3 business anymore, you're talking about days. I don't recall that there was a distinction, but for example,
4 you wouldn't have sixty business days to do something. You wouldn't have thirty business days, you'd
5 have thirty days. You'd have five business days, ten business days, fifteen business days. But once you
6 get into a month, you're not talking business days anymore, but actual days. Kevin, you probably want
7 to look at that a little further, but I think that's the distinction here, that it actually got to a certain
8 amount of days.

9 **Mr. Schultz:** That does look to be the consistency to me when days are mentioned. It's usually either
10 five, or thirty, or slightly more than thirty. When it's five, business looks to be designated, and when it's
11 not, just days. And when it isn't designated, there is language in 1-16 that discusses computation of
12 time; that talks about Saturdays, Sundays, holidays, and if something falls, and when it starts, which my
13 usage has proven, so far at least, to confirm or clarify anything that needs to be clarified.

14 **Mr. DeLaney:** Okay

15 **Chairperson Hylton:** I think this is deliberate here, Mr. DeLaney, because it's just right below where we
16 spell out business days. And then here it's left in these two instances where the thirty is just days. And I
17 would think, realistically, after the amount of days hits thirty, then you stop counting business days and
18 go with days.

19 **Mr. DeLaney:** Okay

20 **Mr. Schultz:** What I've seen is what Renaldo says. When it's five or something like that, it says business.
21 And then in the other cases, it goes unsaid, because there's a section that defines it. Take a pause
22 before moving on to page 83.

23 On page 83, at the bottom, we're in Harassment, and there's section (b) *Definitions*. It's being
24 recommended that this language be added, which says, "For the purposes of this section, the following
25 definitions apply." And that is lifted from another place where that same language is used. It's not just
26 for consistency, but it is for delineating any definitions that may be repeated, which is something Law

1 Department has taken issue with in some cases. And our stance, to harken back to what I said before, is
2 that the use of definitions in various places is a complicated business to adjust, and the dive it will take
3 to do it correctly can and will be done in a wholesale amendment of section two. To do it now will slow
4 down the adoption of the vital pieces that incorporate the 2019 amendments. So that is what I have
5 understood the Board to stand for; that is what makes sense to me; and while Law Department's just
6 trying to do its job here, their feedback has been that we need to sort out these definitions here and
7 now can create a real risk of unintended consequences. Right now, every change that has been made
8 does not touch those things. And so it is the current recommendation that we fry those fish later. And
9 language like, "For the purposes of this section, the following definitions apply," and similar language
10 that's in § 1-12 that says, "unless otherwise defined," allows room to have definitions in two places. For
11 the most part, I've done some review, and they do look to be consistent. But where there are
12 differences, perhaps they matter; perhaps they don't. I'll confess, I just got here eight months ago. I
13 don't know yet. I don't want to break anything. It seems like what I inherited felt the same way. Does
14 that make sense?

15 **Mr. DeLaney:** Months are kind of like business days. Fifteen months from now, Kevin, you can't be
16 saying I only got here twenty-three months ago.

17 **Mr. Schultz:** As the number grows, deniability does become less convincing, doesn't it?

18 **Mr. DeLaney:** Calendar months

19 **Mr. Schultz:** Calendar months. I am still afraid to break the rules, to be perfectly honest. These rules
20 were so toiled over, and from the notes and what I've heard from the staff, I have every understanding
21 that the lack of touching the definitions was highly intentional. And so my inclination is to push back on
22 Law Department on this point.

23 **Ms. Oddo:** Just to clarify, comment 67 is what somebody suggested be added? And then comment 68 is
24 saying, no, we shouldn't touch that right now?

25 **Mr. Schultz:** No comment 67 is saying, this is some language we'll add to help ensure that people
26 understand where definitions apply and where they don't. Part of the larger story is that a large, global

1 definition section has been added and changed in section one. Global meaning it defines the terms in
2 section two. And it was done appropriately, and it was intentionally decided that section two would not
3 be changed yet. And so to the extent that there may be nuance and definitions that need to apply in
4 one place and not another, that is an analysis that needs more attention than we want to give it while
5 we prioritize things. So comment 67 says, let's add this language because it will help us make it clear this
6 applies here and that applies there, frankly, even if they look very much the same. But right now, it's
7 going to take some energy to see if those differences matter or not. And then comment 68 discusses
8 how we're not going to do that right now.

9 **Ms. Oddo:** Okay, so 68 is saying let's not do 67 right now?

10 **Mr. Schultz:** No, sorry. 67 is saying, let's do it. And then 68 is saying, as long as we do stuff like that, we
11 don't have to touch the text of the definitions.

12 **Ms. Oddo:** Okay

13 **Mr. Schultz:** So we are touching the definition section by giving it a disclaimer, but we are not going to
14 add, delete, or edit the text of the definitions, other than what you see here, which is cosmetic
15 capitalizations.

16 **Chairperson Hylton:** What are you agreeing to do or not do, Mr. Schultz?

17 **Mr. Schultz:** Adding, after the word definitions, "For the purposes of this section, the following
18 definitions apply."

19 **Chairperson Hylton:** Yes sir. I agree with that.

20 **Mr. Schultz:** Moving on to page 84. This is full of unnecessarily underlined brackets. I'm going to move
21 on to 85, which we actually talked about in September.

22 **Chairperson Hylton:** Mr. Schultz, could you give me second? Can I ask the Board members for a two-
23 minute break? Refresh, please?

24 **Mr. Schultz:** We will not pause the recording.

1 **Chairperson Hylton:** That's right. Thank you. Two minutes and no more please. Thank you.

2 After the break:

3 **Chairperson Hylton:** Mr. Schultz, go ahead.

4 **Mr. Schultz:** The last substantive talk we had was on page 83. Then on page 84, I mentioned that there
5 were some bracket things. Then page 85 was previously discussed. Then moving on, I'm just going to go
6 through quickly, page 86 has a few more bracket form issues, similar to what we've discussed. Likewise,
7 with page 87. And I can confirm that up through page 92, all those comments are duplicative of the
8 bracket-underlining issue. I hope that doesn't require any conversation. Likewise, up to page 95.

9 When we get to page 96, there is something of not great importance. But again, I don't want any
10 changes to happen that the Board is not aware of. The current language literally has the word
11 "promulgated" in brackets within it, which is just simply improper. It's not needed there. It's quite clear
12 that the language was meant to be deleted and just wasn't, because it reads "... certified by the landlord
13 in a form prescribed," brackets, "promulgated by the Loft Board." It was apparent to me that there was
14 a change from the word promulgated to prescribed and that the final text, literally, left that bracketed
15 language in. So I think using brackets, delete, brackets is what they're going to suggest, but they're
16 checking the form on that.

17 **Chairperson Hylton:** Maybe the word promulgated was actually bracketed and left in there. And now
18 they're deleting the word; not just the word promulgated, but the brackets also.

19 **Mr. Schultz:** Every lawyer is convinced that the word promulgated is not needed, is not meant to be
20 there, with or without brackets.

21 Page 100 is another version of what we've already discussed. They noticed that the word family
22 has...We discussed the word family when we went through 1-12. Suffice to say, there's some language
23 here that is not inconsistent, but is different. Law Department points this out, and the answer there is
24 the answer I've given you already, which is, maybe it makes a difference; maybe it doesn't. That will
25 take time to figure out, and we're not going to use that time right now. This language that's highlighted,
26 has not been added or edited. It exists in the rules now. It's either worked or not worked up till now. So

1 the assessment of if and how it works can and will be done when a wholesale review of section two is
2 complete. Again, I bring it up for your awareness. I bring it up as something Law Department has raised.
3 I'm not sure you know exactly where that's going to lead, but my understanding from the Board and
4 what I've inherited is that these are not things we're going to deal with right now. Any comments or
5 questions? We'll see that a couple more times.

6 Page 105. Another underlined bracket. Easy. Page 106 is, again, just definitions. This comes up three or
7 four more times. Law Department mentions that we've got definitions there; we've got definitions in the
8 global section; how do you reconcile? The answer is we will later, but not right now. This one only to
9 note that the language that we added before is already there. "For the purposes of this section, the
10 following definitions apply." So that is the language that we added in the prior definition section. We
11 don't have to add it here because it's already there. Any questions? Excellent.

12 Page 107. Here, there is some language that is slightly different, but it is inherited from the definitions
13 that exist; it was not changed. "The following terms shall have the following definitions unless context
14 clearly indicates otherwise." That's been in our rules for a long time now. Since this was drafted. This is
15 not something that was changed or has been changed. Whether that language is good or bad is
16 something that should get figured out. But not right now is what I've come to understand. Any
17 comments or questions?

18 Moving on to page 115, another easy one. The word "tenant's" is there twice. It's not meant to be. It's
19 there, then it's there in brackets, which means it got bracketed to be deleted, but then it also got not
20 deleted. So you can look at it on page 115 in section (4) (i), three lines down, "... with the terms of the
21 prospective incoming tenant's tenant's offer..." One of those tenant's is quite clearly a typographical
22 error.

23 **Mr. DeLaney:** Can I ask a question about this?

24 **Mr. Schultz:** Sure

25 **Mr. DeLaney:** We're using tenant with a capital T because it's defined.

26 **Mr. Schultz:** Yes

1 **Mr. DeLaney:** And if anyone has a paper copy that's quicker to move around, could we just read the
2 definition of Tenant that's in the definition?

3 **Mr. Schultz:** I can do that. "Tenant refers to a residential tenant and is interchangeable with the term
4 Occupant in Article 7C and this Title."

5 **Mr. DeLaney:** Okay, thank you. The reason I asked is because -- and many of you are not familiar with
6 this, but we're looking now at part of 2-07 I believe, correct?

7 **Mr. Schultz:** 2-07, yes

8 **Mr. DeLaney:** Which relates to the sale of improvements, which is something that doesn't happen that
9 much anymore. The way that it was set up was that if outgoing-tenant-with-a-capital-T wanted to sell
10 his or her fixtures, he or she had to get an offer from a prospective incoming tenant, which the owner
11 would then have the opportunity to match, which almost always happened, as long as the owner was
12 registered and didn't have fines; because if the building wasn't registered, then the owner wasn't
13 allowed to challenge. Therefore, in the history, back in the day of the 80s and 90s, when we actually did
14 this, the prospective incoming tenant, which we used to refer to as the PIT, was really a straw man. It
15 would make an offer, and the landlord always matched the offer, because then the owner could
16 deregulate the building. So, right here, I'm just musing that, in this case, prospective incoming tenant
17 actually is not a tenant. So I'm wondering if making that particular tenant capital T actually makes sense.

18 **Mr. Schultz:** So first of all, thank you for that. I said to some of the staff, I know this rulemaking is
19 tedious, but it does actually also create some opportunity to talk about, to learn about things a little bit.
20 So thank you for that, really. Do you recall that being discussed before, perhaps that's why there's an
21 odd error there, because it was part of a prior conversation that was being bounced around. Do you
22 remember raising this before?

23 **Mr. DeLaney:** No, I don't think we focused on it. But as I'm looking at it now... What is it that turns into a
24 butterfly? A silkworm?

25 **Mr. Schultz:** I didn't do great in science.

1 **Mr. DeLaney:** So a silkworm is a prospective butterfly. But would it be a capital B butterfly if it never
2 becomes a butterfly?

3 **Mr. Schultz:** I'll give one of my favorite answers. I don't know. But we can look into that.

4 **Mr. DeLaney:** Okay, thanks.

5 **Chairperson Hylton:** Chuck, I actually think it's okay to be capitalized here because the word is.... I could
6 be wrong, obviously, but the word here is prospective, incoming. Meaning that, unless we're going to
7 capitalize prospective incoming, defining somebody else...It is pointing to a future state when that
8 capital T does refer to that person. And I understand it's not yet, but it is qualified by the word
9 prospective in front of it. But I think maybe, legally, you're correct. But I still think it's clear by being
10 qualified by the words prospective incoming. So not to belabor it, I know Mr. Schultz will look into it.

11 **Mr. Schultz:** Right. Well, I guess I'll only say that I know I will look into it. If any of our staff members
12 have a memory or clarity on it that I don't have, please speak now. Otherwise, we'll look into it. Okay,
13 great.

14 On to page 122, where we've had this conversation before, there's a definition section. Law Department
15 is not crazy about definitions. We have a global definition section. But one thing that helps is having this
16 language that makes it clear that this language is for this section. And the details will be addressed in the
17 future. So that's on page 122, under 2-08 (a), which has its own definition section. Moving on to 122,
18 there is a small formatting thing in section (1), and then also on 123 in section (2), there is a period
19 there that is inconsistent with other sections similarly numbered. So the brackets would take away those
20 periods. That's page 122 and 23.

21

22 Page 124 continues that trend with removing the periods, but before we get to that, there is a
23 repetition of a rule. And this one is notable because it was added above with some new language, and
24 then as you see by the underlines here on page 124, small Roman numeral two (ii), the words "special
25 permit" are replaced wholesale to match what is used above; which is notable because we made some
26 small changes to that. You recall, special permit, we discussed in September or October -- that special
27 permit would mean an approval granted pursuant to a grandfathering procedure. So because that

1 definition was repeated, we would want to repeat the change we discussed previously. Does that track?

2 Mute if you can. I'm not sure where that's coming from. I just got a loud noise.

3

4 **Chairperson Hylton:** Was someone saying something?

5 **Mr. Schultz:** I had some noise, though I'm not sure from where. So I'm just going to mute some folks.

6 You can unmute yourself if you're a Board member and need to speak. Also, this special permit here,

7 you'll see in the underlining, there's a second sentence that is actually unique to this section. And the

8 reason it exists is because it's being pulled from a footnote. A footnote that actually was, I've come to

9 learn, a bit of a mystery to the staff. Our own Ms. Lee is the one who found it, in an old book – literally, a

10 physical book – and shared it with everyone and let them know where this came from. So it's not new

11 language. The second sentence under little two (i) that reads, “Grandfathering procedures in this

12 classification are designated in the Zoning Resolution and include, but are not limited to, section 74-782

13 As of April 7, 1983, as well as other sections that have been or will be adopted.” That is not actually

14 new. It was moved from a footnote that, as I understand it, has been lost in time. Whether that

15 language is good or not can be reviewed when we review section two in its totality. Thoughts or

16 comments on that?

17 **Chairperson Hylton:** This underline should not be there, you say?

18 **Mr. Schultz:** No, it should be there, because the asterisks have been deleted. So the asterisks led you to

19 that language. But it's being put right in the sections instead of as a footnote. So the deletion of the

20 asterisks call for the inclusion of the language that would lead you to the asterisks.

21 **Ms. Roslund:** The half or two thirds of the second to last line of the last sentence are not underlined. Is

22 that a mistake? It's highlighted but not underlined.

23 **Mr. Schultz:** Are you on page 124?

24 **Ms. Roslund:** Yes

25 **Mr. Schultz:** And you're on Roman numeral two (ii), towards the top of the page?

1 **Ms. Roslund:** Yes

2 **Mr. Schultz:** Okay, I see underlines all the way to the end of the paragraph, on mine.

3 **Ms. Roslund:** Mine, the last sentence says, "Grandfathering procedures underlined in this classification
4 are designated in the Zoning Resolution..." and underlined. Then the whole next line is not underlined.
5 Am I the only one who sees that?

6 **Chairperson Hylton:** Mine is fine. Do you see that, Chuck?

7 **Mr. DeLaney:** Yeah

8 **Chairperson Hylton:** So are we doing PDFs? What version do I have? Because I'm not seeing that. I'm
9 seeing what you...

10 **Mr. Schultz:** We're looking at printouts. So perhaps something happened in the digital version that was
11 unintended.

12 **Mr. DeLaney:** It should all be underlined.

13 **Mr. Schultz:** It should all be underlined. I know, personally, what I'm looking at was printed from the
14 very same one I uploaded for you all. So, I'm going to chalk it up to a digital situation; not by any design.
15 But I'll certainly flag it to make sure that all versions reflect the underlining. Which brings us to the end.
16 Done with page 124, only to note that there is the removal of periods after the number (3) and the
17 number (4) for consistency of formatting elsewhere. Anything else on page 124?

18 Page 126 has one comment that's new in the middle. It's A118 for the members, and it's under section
19 little Roman numeral three (iii), capital (A). And it's simply that amongst some underlying new language,
20 there is a bracketed word shall that needn't be there because the word must is there.

21 **Chairperson Hylton:** So, wait a minute.

22 **Mr. Schultz:** I didn't want to go there. I was just going to remove the brackets.

1 **Ms. Roslund:** Then you have to take out must. You know what? I checked just a while ago while we
2 were talking about this earlier, and both the Zoning Resolution and the New York City Building Code use
3 shall.

4 **Chairperson Hylton:** That's because there are more modern updates, to the Building Code especially,
5 Heather. So they're more consistent with what the Law Department is requiring, which is the word shall.
6 But this is contrary here, right? Is this something that Law Department did not pick up here?

7 **Mr. Schultz:** I can look at their direct comment.

8 **Chairperson Hylton:** Because it seems like somebody's taken the word shall... because "[shall] must"
9 existed there before; the word for "[shall] must." Because they're not adding must. The whole thing has
10 been added.

11 **Mr. Schultz:** The edit the Law Department provides makes no comment on whether shall or must is
12 appropriate. It really is just a line edit that removes the bracketed shall, because it has no place there
13 from a forum standpoint.

14 **Chairperson Hylton:** Their comment is contrary to their stance, right? They prefer shall over must, right?

15 **Mr. Schultz:** I will only comment that there's one part where they changed it, and that's all I know. I
16 haven't nailed it down.

17 **Chairperson Hylton:** They do. They do. The Law Department is using the word shall and not must. I
18 think it's the Mayor's Office that prefers the word must. So, it seems like they're going contrary,
19 especially to the other comments that they made. And so we need to put the bracket around must and
20 leave shall.

21 **Mr. Schultz:** So all else equal, is there a preference for shall by the Board? Is that true?

22 **Chairperson Hylton:** Well, consistency. Unless it changes the thing here, right?

1 **Mr. Schultz:** Well, I'll confess. What I don't know is whether or not there was a discussion where there
2 is a difference in some cases, right? If it matters, I'm not sure I see it that way. But if it is this way, for a
3 reason....

4 **Chairperson Hylton:** It certainly wouldn't matter here, except for consistency, in this reading.

5 **Mr. Schultz:** If shall moves us along, it's good with me.

6 **Chairperson Hylton:** As Ms. Roslund points out, I'm very, very familiar with that in the codes and they've
7 moved to the word shall instead of must.

8 **Mr. Schultz:** I don't think Law Department's going to stop us. So that's fine. I'm going to move on to
9 page 129, which is the fifth period...

10 **Chairperson Hylton:** Before you do, we're moving brackets around must and underlining shall.

11 **Mr. Schultz:** Yes. Using the word shall and deleting the word must. Although we don't need brackets
12 around must; it's new language. We are simply removing the word must and inserting the word shall.
13 Because it's all new language. There'll be no brackets anywhere.

14 **Chairperson Hylton:** No? Oh, I got you. Thank you.

15 **Mr. Schultz:** Page 129 at the top of the page. Study area. We'll do without that period next to the (5).
16 Page 134. There's the word article. This is all new language, so the bracketed word doesn't need to be
17 bracketed. It can just be deleted without a bracket. This is a form issue. There's no language change by
18 this. Page 145. Sorry.

19 **Chairperson Hylton:** Chuck, did you say something?

20 **Mr. DeLaney:** No

21 **Ms. Roslund:** Why are we deleting the full word rather than the abbreviated word?

22 **Mr. Barowitz:** May we go back to 134 for a minute, please?

1 **Mr. Schultz:** Of course

2 **Chairperson Hylton:** Heather, hold your comment a minute.

3 **Ms. Roslund:** Okay

4 **Chairperson Hylton:** Mr. Barowitz

5 **Mr. Barowitz:** I have two questions on page 134. It uses the term Artist in Residence, A.I.R. It does not
6 explain what it is; what it means.

7 **Mr. Schultz:** What part of the page are we on? I'm sorry.

8 **Chairperson Hylton:** At the bottom.

9 **Mr. Schultz:** A.I.R, yes

10 **Mr. Barowitz:** On 1 (a), the term Artist In Residence -- A.I.R -- is used, but it's not explained what it is.

11 **Chairperson Hylton:** It says, "...pursuant to directives of the Department of Buildings..." Is it defined
12 anywhere in our...?

13 **Mr. Barowitz:** (unclear) A.I.R referred to an original agreement back in 1960, between Mayor Wagner
14 and a certain artist group, and it required that if there were two illegal lofts in a building, that there
15 needed to be a designated sign of a certain size down near the door, so the Fire Department, in case
16 there was a fire, could go rescue the two lofts. When the Loft Board came into existence, the two (units)
17 did not adhere to the Multiple Dwelling Law, so all those artists that had made --- and the landlord that
18 maintained legality if only keeping two there -- were left without any protection. So the term A.I.R here
19 is not explained. That's one point.

20 The second point I will make about that is in (1) (b), and it says, "any Residential Unit designated as joint
21 living working quarters for artists pursuant to the Zoning Resolution," that's taken out. So, in other
22 words, the Zoning Resolution, which is something that the city had mandated for the SoHo area, which
23 for reasons that we all know, after a while, everybody shut their eyes to the fact that SoHo and parts of

1 NoHo were artists-only designation, and other people began to move into the lofts there. So now rather
2 than the city taking responsibility for their lack of enforcement of the that original (designation), they've
3 taken out that whole section, pursuant to the Zoning Resolution. And I just find, being somebody
4 involved with all this housing for a long, long time, the two points here really very aggravating. And I
5 suppose nothing can be done about it.

6 **Chairperson Hylton:** Well, let's talk about it. Kevin, could you or someone on staff look up the
7 definition of Residential Unit? I'm wondering if there's reference to that there, in Residential Units.

8 **Mr. Barowitz:** And also, as far as I know -- now I'm not sure about this; maybe Chuck could help me out
9 -- the designation of joint living-working quarters for artists, is this the first time it's ever been used in all
10 loft laws? That is not a term that we have ever really used or adhered to.

11 **Chairperson Hylton:** I'm sorry, Mr. Barowitz. What piece are you talking about?

12 **Mr. Barowitz:** Excuse me?

13 **Chairperson Hylton:** What was the last thing you just said? Could you just say it...

14 **Mr. Barowitz:** I was saying that the term joint living-working quarters for artists, as far as I know, I don't
15 think it's ever been used in the Loft Law until this point. And we certainly have never used this in terms
16 of who and what we have certified in loft living, not only in SoHo-NoHo, but now it's extended to the
17 other boroughs as well.

18 **Chairperson Hylton:** Well, maybe that's good reasoning then to not delete the words "pursuant to the
19 Zoning Resolution," because that's where...

20 **Mr. Barowitz:** What I'm saying is, they're taking it out because the city is now covering itself up in the
21 fact that they have not conformed to the law of the artists-only district in SoHo and, partially NoHo. And
22 we all know that a lot of people have moved into that area that are not artists. On the other hand, it
23 looks like the City Council will confirm the new SoHo-NoHo and Chinatown designation. It also says in
24 that resolution, if an artist owns a space in SoHo or NoHo and then sells it to a non-artist, they have to
25 pay \$100 per square foot to some city agency, going into some of the primary institutions of art in the

1 city. So, I must say that, being involved in this thing for so many years, and then when I suddenly read
2 this in the Loft Law, I get really suspicious about why this was put in, particularly towards the end to the
3 whole...

4 **Mr. Schultz:** (unclear) language, actually. And I see in un-underlined language references to it on page
5 135, where it's cross-referenced here

6 **Ms. Roslund:** As someone who only anecdotally understands A.I.R. and the joint living-working
7 quarters, and (who is) not so familiar with what the qualifications or the process of becoming certified
8 as such are, is it because those laws don't..... Do they recognize someone as living in a commercial space
9 as opposed to someone living in a residential space?

10 **Mr. Barowitz:** The answer to that is neither. Except that in 1981, the Loft Law was passed, and those
11 that were living in either commercial or industrial spaces in SoHo and NoHo, then were able to confirm
12 themselves under the Loft Law. And as a result, most of those buildings in SoHo and NoHo have been
13 out of the Loft Board at this point. And they're all basically legal now.

14 **Ms. Roslund:** Yeah, I guess my question is....so coming. Elliott, your question is, why is this language in
15 here?

16 **Chairperson Hylton:** It's not new.

17 **Ms. Roslund:** It's not new, right? He asked, why was it put in here? Let's take the why was it put in here;
18 but then the question of why is it in here at all? He also said, in no other place in the rules are these
19 designations referred to or in the Loft Law -- are these particular designations referred to. So it's raising
20 the question of why, in this section, are they referred to? Sorry, I have to keep toggling between... So if
21 a residential unit just requires that someone be using it residentially, then why does it specifically
22 reference these specific types of occupancy? And my thinking... or I'm wondering, is there something in
23 those specific types of occupancies that specifically preclude them from a residential definition?

24 **Mr. Barowitz:** Heather, I really don't understand what to say. The area of SoHo, as we know, is,
25 generally speaking, made up of loft buildings, most of which were used some for commercial, others
26 industrial. Something was going on. That happened to be the hat-and-feather area of New York City or

1 America. So, there were hat manufacturers and feather manufacturers. And what has happened over
2 the years is that a lot of those manufacturing areas that were in the lofts of SoHo moved out. Basically,
3 they moved out because they realized that vertical buildings are a little bit more difficult to produce
4 whatever they were producing. So they moved out to flat buildings, which were a little bit more efficient
5 for their enterprises. But in any event, artists began to move into those areas before 1960. And when
6 the Loft Law came into effect, the Loft Law was able to certify those artists that live there and made
7 their living in those buildings, that were mostly commercial and industrial, legal.

8 **Chairperson Hylton:** Thank you, Mr. Barowitz. I think I have a clearer understanding of why this is here.
9 So if you look at the very top, it talks about, "For purposes of counting Residential Units to determine
10 whether the building qualifies for coverage..." Itemized under (1) are instances where they do count,
11 right? Occupancies that will qualify for coverage. And they're saying, (a) "' Artist in Residence' as
12 pursuant to any DOB directive," because maybe there was a DOB directive that counts these as Artists in
13 Residence. And secondly, under (b), "...Residential Unit designated as JLWQ -- joint living work quarters
14 for artists -- also is there. And then "...any other residential units occupied by a sub-tenant or assignee
15 of the prime tenant of such unit." So it's just saying that these instances, they do qualify for coverage,
16 right? These occupancies do qualify for coverage.

17 **Ms. Roslund:** Right, but why are they specifically called out?

18 (Ms. Roslund and Mr. Barowitz speaking simultaneously. Unclear)

19 **Mr. Barowitz:** (unclear) New York buildings did not qualify for coverage. Because they were not interim
20 multiple dwellings. And that's not true.

21 (Many speaking simultaneously).

22 **Ms. Roslund:** We just read the rule.

23 **Mr. Barowitz:** (unclear), and as a result, they're not covered by the Loft Law.

24 **Chairperson Hylton:** Mr. Barowitz, these rules are not new.

1 **Mr. Barowitz:** Pardon?

2 **Chairperson Hylton:** These rules are not new. This is not new. This has been here. This is not something
3 new. Are you saying that they've never qualified for coverage? These instances?

4 **Mr. Barowitz:** They apparently...Rather recently, there was one area in Chelsea that covered a two-unit
5 building for coverage. Otherwise, that was not the case. And I remember when that happened. I don't
6 know if it was 2015, 2016. There was just one area of the city that allowed (inaudible) to be covered by
7 the Loft Law.

8 **Chairperson Hylton:** I got you.

9 **Ms. Roslund:** That's a different point than whether or not an A.I.R is allowed to be counted as a
10 residential unit.

11 **Chairperson Hylton:** For the purpose of coverage.

12 **Mr. Barowitz:** You're conflating residential with what we're doing with the Loft Board and making it
13 legal to live there. A.I.Rs are illegal to this very day to live there, even though they're there. Even though
14 buildings that have that sign A.I.R (inaudible) are living there, they don't come under the Loft Law.

15 **Chairperson Hylton:** This rule is saying...

16 **Mr. Barowitz:**except for the one small area of Chelsea in Manhattan.

17 **Ms. Roslund:** So, Chairman, I'm wondering if it allows you to register without going through the proving-
18 out process. To prove that there's a residential....

19 **Chairperson Hylton:** Exactly, because they are illegal, right? Because they're illegal is why this rule is
20 saying to make an exception here for these occupancies to be counted for purposes of coverage. This is
21 not new. It's there. Whether or not it's necessary to be there anymore, because there may or may not
22 be that many, but whatever, but it's not something new, and it's just that they're making these three
23 exceptions -- three, I believe, right? For purposes of coverage of the building, these occupancies will
24 count. This is not before us now, I don't think, right? This is not new language. It's not for us to debate.

1 **Mr. Barowitz:** That is very true. On the other hand, I don't know, I've been sitting here for at least
2 fifteen years, or thereabouts. We have never come across something called A point, I point, R point...

3 **Chairperson Hylton:** Exactly, because it's nowhere in the Loft Board's rules or anything like that. As
4 they say here, pursuant to any directives of the DOB. Apparently, somewhere in the DOB directives,
5 there may be some reference to A.I.R. And somewhere before your time, I guess, this rule wanted to
6 count them for coverage. So this rule was.... Mr. DeLaney, do you have any recollection of this at all?

7 **Mr. DeLaney:** Yes

8 **Chairperson Hylton:** Please, you have two minutes. And then Mr. Schultz will close up in five minutes
9 after that. Thank you

10 **Mr. DeLaney:** Because of the awareness of the Multiple Dwelling Law potentially applying to these loft
11 buildings that started in the late 70s with a ruling by a judge named Leonard Cohen, a lot of landlords
12 went through different posturing. I'll rent you a space and you can subdivide it, but I don't know about
13 it. So it's only going to be one unit, even if you move somebody in. That would be covered by (c) in this
14 calculation. So what we have here is the legacy of the legal mind of Carl Weisbrod trying to clarify, back
15 in 1983, various types of units that would count toward meeting the necessary number of three for Loft
16 Law coverage. And rather than have people argue, oh, it's not a residential unit, it's an A.I.R unit, the
17 Board at that time spelled out that A.I.R units would count, just as subdivided spaces would count, and
18 anything that was designated joint living-work quarters, which I think, actually, comes from Article 7-B,
19 would count. So, it was just kind of an early 80s effort to try to shut down arguments before they came
20 up.

21 **Chairperson Hylton:** Thank you. I thought that's what it was. But Mr. Barowitz, I hope you understand,
22 this is not something new before us to argue right now. And I think the Board still wants to keep this in. I
23 don't see why we want to remove it or even try to modify this language. We can't do it right now,
24 actually, but thank you, Mr. DeLaney, for clarifying that. Board members, I really do want to have
25 respect for your time and that of the public. So, Mr. Schultz unless someone else wants to say
26 something....

27

1 **Ms. Roslund:** This is quick. I'm wondering why we're replacing the full word Article with the
2 abbreviated A,r,t period. Which maybe is not simple but again, to be consistent with other codes and
3 regulations... It an odd decision in my mind.

4 **Chairperson Hylton:** I'm sorry, where are you referring to?

5 **Ms. Roslund:** We started talking about the...

6 **Mr. Schultz:** It's everywhere. So the answer I can give, it's consistent. How it happened, would frankly
7 predate me. Fewer letters? If anyone remembers how or why that happened...? In this draft, I see it
8 several times. And I see it changed throughout.

9 **Chairperson Hylton:** Yeah, look at the very top of that page. Heather. You'll see the very top it says
10 new language, I guess, from Art. for Article 7-C. So....

11 **Mr. DeLaney:** I think this is the Law Department in its first pass wanting to shorten Article to Art. to...

12 **Ms. Roslund:** It's not what I would choose to do, but whatever.

13 **Chairperson Hylton:** Yeah, I got it. They do some things consistently inconsistent in a way. I don't know
14 what they would...

15 **Ms. Roslund:** I'm all for consistency, but I guess I would go the other way. I would make everything....

16 **Chairperson Hylton:** We use the Art. here, except where it means something else somewhere else.
17 Maybe we can confirm the...

18 **Mr. Schultz:** I'm guessing it's not a hill we're going to die on.

19 **Chairperson Hylton:** Kevin I've eaten up some of your five minutes. Could you please just see where you
20 could wrap this? Are you of the opinion that we could probably wrap the rest of this up at the next
21 Board meeting?

22 **Mr. Schultz:** Yes, certainly. There's not more to get through that we wouldn't be able to do our normal
23 business at the next meeting and then this. Shall I continue?

1 **Chairperson Hylton:** Until 4:30? Unless the Board members...

2 **Mr. Schultz:** I didn't know if I should stop or are not.

3 **Chairperson Hylton:** Board members, this is where the Chair is being very democratic here. Does
4 anyone feel like they wouldn't go into 4:30? I'm fine with it. Yes?

5 **Mr. Schultz:** All right. So there aren't a lot of hard turns left. In fact, we might get through it. Page 145 is
6 another matter of form, deleted language comes before added language. Page 151 is a bunch of
7 underlined brackets, nothing to talk about. Page 152 is the same. More underlined brackets. Page 165 --
8 and just to be clear, when I skip pages, there is no comment that we haven't already talked about, if any
9 comment. Page 165. There's a comment here that I'm not sure is ripe, actually, for me to give a
10 recommendation. Law Department has asked, when we say, insert a date, what the intended date is.
11 Often there's language surrounding it that says, insert date within ninety days of the passage of this rule,
12 or otherwise. Here and in other places, I've seen deleted language that gave me some indicia of what is
13 intended here. I do not know what is intended here, to be perfectly honest. I think unless someone has
14 an instant suggestion, I will reserve this till next time, when I can come with a recommendation. If we
15 had more time, I might ask veteran members for thoughts on it, but I don't think we're at a point in the
16 meeting where that's going to be productive.

17 Suffice to say, the date needs to be clarified, and I don't yet know what the right answer is. So that will
18 probably be tabled, unless someone has the answer now. And I will say, you can see items here that I
19 included, yet they're not resolved with a recommendation. That is because I want you to have
20 everything Law Department has shared is in front of you now. This is the universe. I did it piecemeal up
21 until now, but this is everything. Page 166 is more underlined brackets.

22 **Chairperson Hylton:** Back to 165. Is there a reason why we couldn't find that out easily, in terms of (D),
23 the date the IMD unit becomes covered under 281(5)?

24 **Mr. Schultz:** I am guessing, and I don't want to guess publicly, that it's going to be the date of the
25 passage of this rule. That's the trend I think I see in (A) through (C).

26

1 **Chairperson Hylton:** Right. So, isn't that something we could put in now until the rule is actually
2 passed? Is that what you're saying?

3 **Mr. Schultz:** Well, it's supposed to indicate the date that this rule will be passed, I think, right? And so
4 whether it's a side note or something, I think the Law Department wants to know what date is intended
5 there. Which is a fair question. And the fact that it can't be answered immediately means it's a good
6 question. And I don't want to tell you until I'm sure, and I didn't have time to get sure before today.
7 That's it. I think it will be the date that the rules are passed, because previously, it discusses September
8 11, 2013, which is the prior rulemaking amendment adoption date. But I don't want to be wrong.

9 **Chairperson Hylton:** So what the Law Department is saying is -- if what you're saying here is correct --
10 what we should be putting here is insert the date, the effective date of the amended rule. That language
11 should be right there.

12 **Mr. Schultz:** Yeah, and adding that language is helpful, because if they had added it under (C) back in
13 2013, I'd know what the trend is. So when someone adds another one after it in the year 2035, they'll
14 know why that date matters with a lot of specificity.

15 **Chairperson Hylton:** Okay

16 **Mr. Schultz:** It's not a ripe recommendation yet. But I'm inclined to think that's going to be the inclusion
17 of that language that's in the margin.

18 **Chairperson Hylton:** So that's something you and your staff need to iron out?

19 **Mr. Schultz:** Yes, that's correct. And I'll make it my goal to do before November 18th, if I can. Any
20 comments or questions on that? Page 166 and 167 are underlined brackets. Page 168 is the inclusion of
21 some language. This goes back to what I just said. This is where the previous iteration -- Sorry, I'm in
22 section (b) (1) with Roman numerals one through four (i-iv). There's basically a section there for each
23 iteration of the MDL. And to update it consistently, it should say under Roman numeral four (iv), "MDL
24 2-81(6), which occurs on or after insert date, the effective date of this amended rule." So it's simply the
25 insertion of the word amended, which is consistent with other sections. And it's consistent with what
26 you see directly above that's been deleted. So it's adding the word amended for consistency's sake.

1 I'm going to skip page 169, because I made an error in my comment, and it's just going to be simpler to
2 fix it for next time than to try to explain it, because we're going to have at least a couple things to talk
3 about next time. So if you don't mind, I'm going to save page 169, that comment, for next time. And
4 page 171, Prime Lessee should be underlined. It's been defined and capitalized, so it needs to be
5 underlined as added language, at the bottom of page 171, small section three (iii). It's a format form
6 change, not a language change.

7 And my last tab is on page 175, which is what we've already talked about. Page 175 under Rent
8 Adjustments, section 2-12 is another definition section, where it's recommended that we add the
9 language, for the purposes of this section, the following definitions apply. And then we do not move,
10 alter, delete, change or add whatever is already in the current version of the definition. Changes that are
11 in those definitions are cosmetic for consistency, and substantive review can wait until we get the 2019
12 amendments passed. I know I went fast there at the end...

13 **Ms. Roslund:** We have one more minute.

14 **Mr. Schultz:** We can certainly revisit anything that I went too fast on. Please, you can follow up with me
15 directly or we can talk about it at the next meeting.

16 **Mr. DeLaney:** Can you quickly explain what 179 through 182 is attempting to do?

17 **Mr. Schultz:** Yeah, it's all deleted. When we spoke in September, the definition of the word family was
18 talked about. And I included this not as any sort of amendment; it was for reference, and I put it on the
19 same document to try to make life easy. It is simply a copy and paste of a section of our rules that is not
20 being amended. But for that conversation we had in September, I thought perhaps members would
21 want to reference it. I will remove it, lest it accidentally show up. There's no changes there. Thank you,
22 everybody. Any other questions?

23 **Chairperson Hylton:** Very good, Mr. Schultz. You did excellent.

24 **Mr. Schultz:** Thank you. Thank you, everybody. I always learn a lot when I do this with you.

25 **Ms. Roslund:** Interesting session

1 **Chairperson Hylton:** Yeah, it was really great, spirited, and I appreciate everybody's involvement in the
2 rules. Starting to like lawyers. Just joking. We're going to close now. Before we wrap up, are there any
3 comments from anyone? We should be familiar with each other nowadays. We're meeting very
4 frequently. So any comments from anyone? I certainly want to thank Mr. Schultz and his staff.

5 **Mr. Schultz:** I need to interrupt you because I need to say I don't get here without the staff. A lot of the
6 untangling that I just said out loud, that was a lot of behind-the-scenes assistance from the staff. Mr.
7 DeLaney mentioned the work Mr. Argov had done with OATH; there was the big discovery Ms. Lee made
8 about grandfathering going back a while; and Mr. Clarke and Ms. Lin sat here in my office and fed me
9 the right answers to give you here today. In fact, some very big ones. They gave me course and
10 direction from both their experience and instincts. I cannot thank them enough. I did all the talking, but
11 I did not do all the work. Far from it.

12 **Chairperson Hylton:** Thank you. And thank you to both legal and administrative staff for putting this all
13 together. I appreciate it. I think we did make headway in getting to where we are. I realize we're not
14 done yet, but there's some light at the end of the tunnel. So I appreciate that.

15 This will conclude our November 4th, 2021, Loft Board meeting. Our next public meeting will be held
16 two weeks from now, on Thursday, November 18th, 2021, at 2pm. The Governor's suspension of the in-
17 person meeting requirement of the Open Meetings Law is in effect until January 15th, 2022. So at this
18 time, we anticipate that Loft Board meetings will continue to be held virtually. Information will be
19 updated on the Loft Board's website, and also an email update will be sent through the Loft Board's
20 announcements, Listserv. Board members, please sign and email in your attendance sheets. Thank you,
21 everyone. Have a great afternoon.