MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting
Held at 22 Reade Street, Main Floor, Spector Hall

December 5, 2019

DRAFT

The meeting began at: 10:00 AM

Attendees: Elliott Barowtiz, Public Member; Richard Roche, Fire Department's *ex officio*; Charles DeLaney, Tenants' Representative; Julie Torres-Moskovitz, Public Member; Renaldo Hylton, Chairperson Designee; and Helaine Balsam, Loft Board, Executive Director.

INTRODUCTION:

Chairperson Hylton welcomed those present to the December 5, 2019, public meeting of the New York City Loft Board. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board; and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

THE CASES:

Master Calendar

Mr. Hylton: As there are no meeting minutes to approve, we turn our attention to the Master Calendar Cases. All of the Proposed Orders are to owners who have failed to renew their registrations. There are twenty-four cases on this list, but some will be removed, as they've since been settled, and one of them, number 9, is being tabled. They are voted on as a group. The cases are:

	Applicant(s)	Address	Docket No.
1	ROYAL EQUITIES OPERATING LLC	151-155 West 25th Street, Manhattan	FO-0807
2	191 CHRYSTIE, LLC	191-193 Chrystie Street, Manhattan	FO-0808
3	CAMILLA SHAH, PRESIDENT OF CONDO ASSOC.	354 Bowery, Manhattan	FO-0816
4	HAIMIL REALTY CORP.	209 East 2nd Street, Manhattan	FO-0819
5	388 BROADWAY OWNERS, LLC	388 Broadway, Manhattan	FO-0820
6	BRIDGE ASSOCIATES OF SOHO, INC.	533 Greenwich Street, Manhattan	FO-0823
7	WANG & ASSOCIATES, LLC	145 Grand Street, Manhattan	FO-0825
8	282 NEVINS STREET LLC	280 Nevins Street, Brooklyn	FO-0828
9	99 SUTTON LLC Tabled	99 Sutton Street, Brooklyn	FO-0829
10	20 GRAND LLC	20 Grand Avenue, Brooklyn	FO-0832
11	SANI PROPERTIES CORP.	169 Spencer Street, Brooklyn	FO-0833
12	177 WATER LIMITED PARTNERSHIP	53 Pearl Street, Brooklyn	FO-0834
13	BOX ST LLC	70 Commercial Street, Brooklyn	FO-0836
14	39 AINSLIE STREET LLC	39 Ainslie Street, Brooklyn	FO-0837
15	657-665 5TH AVENUE, LLC	657-665 Fifth Avenue, Brooklyn	FO-0838
16	AVIGDOR FREUND	276-278 Broadway, Brooklyn	FO-0839
17	BAIS RUCHEL TAAFFE INC.	54-90 Taaffe Place, Brooklyn	FO-0841
18	GOLD TILLARY REALTY LLC	170 Tillary Street, Brooklyn	FO-0842

19	DASA REALTY CORP	401 Wythe Avenue, Brooklyn	FO-0844
20	400 SOUTH 2ND STREET REALTIES, L.P.	394-400 South 2nd Street, Brooklyn	FO-0846
21	450 BROADWAY OWNERS, LLC	450 Broadway, Manhattan	FO-0847
22	COLUMBUS PROPERTY MANAGEMENT LLC	10 West 18th Street, Manhattan	FO-0848
23	COLUMBUS PROPERTY MANAGEMENT LLC	54 West 22nd Street, Manhattan	FO-0849
24	COLUMBUS PROPERTY MANAGEMENT LLC	53-55 West 21st Street, Manhattan	FO-0850

Mr. Hylton asked for a motion to accept these cases, and for a second.

Mr. DeLaney moved to accept these cases, and **Mr. Barowitz** seconded.

Mr. Hylton asked if there were any comments on the cases.

Mr. DeLaney asked, first, for confirmation that cases 1, 17, 20, 22, 23, and 24 have been removed, and for the reason why they were removed.

Mr. Hylton and **Ms. Balsam** confirmed that they were removed because they had paid.

Mr. DeLaney: Where does it state that that is a required practice?

Ms. Balsam: It doesn't.

Mr. DeLaney: So at our discretion, we've set up a system that says, you're supposed to register July 1 and pay this. Around November, we start to take action. Our staff goes through all the work of handling these things; but then you can come in at the last minute and pay. In essence, we've done a lot of work, spent a lot of money, and we've given you an interest-free loan.

Ms. Balsam: It's not interest-free. They pay late fees.

Mr. DeLaney: Right. If they don't pay the not-terribly-significant late fee.

Mr. Barowitz: What did they pay (those who came in at the end)? Because I noticed in some instances the late fees were more than the $25,000 that we were charging everybody.

Ms. Balsam: They would pay whatever they owed, which was on their bill. They would have to have paid whatever previous fines or penalties there were, or they wouldn't have been taken off the list. At a minimum, they would pay whatever the registration is, which $500 per unit, plus late fees is for this year; and if they still owed late fees from other years, they would have to pay that, too. As an example, if you look at 533 Greenwich Street, they've never paid. They're also in bankruptcy.

Mr. DeLaney: I guess my question is two-fold. Number one, I question whether this is the correct practice. Technically, it seems to me that, once a case is put on the Calendar, it's up to the Board to act on it. Whereas in these circumstances, the staff has just withdrawn them; which is different than the way we settle other cases.

Ms. Balsam: These are not applications filed by outside parties. They're staff-initiated proceedings. That's the distinction. But if the Board wants to discuss whether or not those cases should be removed and take a vote on it….

Mr. Hylton: This is not the first time we've done this. This is what the Board's practice has been. This is enforcement's discretion, whether or not we want to send these violation notices out and have them corrected. (To Ms. Balsam) If they pay the penalty, is this a curable violation?

Ms. Balsam: Yes. It gives them time to come in and pay.

Mr. Hylton: So if what we're going to do is send out violations and give them time to come in and pay, then why do that here? We can consider changing our rules, but for now, it doesn't make sense to issues violations to these people, give them thirty days to cure, and we're back at the same result.

Ms. Balsam: The notices we send out say, we're starting a proceeding and you have thirty days to pay. And those people paid within thirty days.

Mr. DeLaney: I'm troubled by the fact that the registration is due July 1, but we don't really get moving on it until now.

Mr. Hylton: I think your issue is, should we be doing these things a little sooner.

Mr. DeLaney: The reasons to compel registration, aside from the payment of fees, are, for one, to be sure we have the proper contact information for the owner. We have at least one case on here where the owner has never registered.

Mr. Hylton to **Ms. Balsam:** What can we do about that?

Ms. Balsam: Do you mean 533 Greenwich?

Mr. DeLaney: Yes, I think so.

Ms. Balsam: That's complicated, because they're in bankruptcy.

Mr. Hylton: Is there anything else we can use to compel them to register?

Ms. Balsam: I would have to look into what other enforcement would be available. We could certainly send the debt over to the Law Department and ask them to collect; but my understanding is that, in the past, they've settled cases for much less money. That's why the Board stopped doing that.

Mr. DeLaney: So my concerns are, first, they're not paying on time; second, we can't be sure we have the correct registration information; and third, I know that even when the Board's staff is fully manned, it has a lot of work on its plate. So to have someone spend all this time and effort trying to secure payment from people who can just wait until the last minute to come in and pay the piddling sum of $25 late fee per unit for the first month, and $5 per unit for the subsequent months…. Columbus Property Management has three buildings. So this is not some single person who may be getting on in years….

Mr. Roche: Wouldn't we have to change the rules to make this more stringent?

Ms. Balsam: To up the late fees, yes, we would have to, because those amounts are in the rules. We could also pass a rule that eliminates the thirty days. The idea is to get the registration. And they are registering; albeit

late; but they are doing it and paying the late fees for that. Maybe the solution is to have higher late fees to offset the costs of preparing and then withdrawing the cases.

Mr. DeLaney: I think that would be a good first step. But if we could also start the process sooner…

Ms. Balsam: The problem with that, to be perfectly honest, is that we have a lot more people who don't pay. But we could start in September, because we usually do calls in August. We call everyone who hasn't paid to tell them they have a payment due. Theoretically, we could start in September. And that would roll it back a month.

Mr. DeLaney: So of the twenty-four buildings on the agenda, over twenty-five percent came in and paid. How many do you think were initially delinquent, say on July 15?

Ms. Balsam: A lot.

Mr. DeLaney: A hundred?

Ms. Balsam: More. It's in the meeting minutes. In my report, I give the status of the registrations, how many notices went out, how many people paid, etc. I have that information, just not in front of me.

Mr. DeLaney: I'm just looking for a rough idea. That we give them thirty days to cure seems fair, but it would be good if we could find a way to send the notices sooner and raise the fines somewhat, so they begin to be commensurate with the amount of staff time that goes into this.

Ms. Balsam said she would look into doing both, but noted that the Board needed to complete this round of rule-making first. Changing the rules to align with the new Law should be the Board's highest priority. Once these rules are published, the Board can continue with rule-making to address the various other items that have come up.

Mr. DeLaney: Case number 9, 99 Sutton, has been tabled?

Ms. Balsam: They filed an answer yesterday, so we need to take a look at it.

Mr. DeLaney: And yesterday was the thirtieth day? What was their answer?

Ms. Balsam: I'm not sure. I haven't looked at it yet, but I think there were problems with the amount of the bill. This is a case where we had imposed fines for not filing monthly reports, then we rescinded the fines, but the bill didn't reflect that. The bill shows two years outstanding, but they're claiming that they've paid that. So we really have to look at it.

Mr. DeLaney: Next – and I'm putting on Mr. Carver's hat here – it appears that there are some buildings that last registered for 2019, so they missed one year, and we're fining $5,000; and others that have missed one year that we're fining $10,000.

Ms. Lee explained that $10,000 would be imposed for those who did not register for two years.

Mr. DeLaney: But Royal Equities, which was pulled, was a ten-thousand-dollar fine, and it says it was last registered for fiscal year 2019.

Ms. Lee: There could also have been previous penalties that were not paid for previous years, so that would be considered a year in which they were not, technically, registered.

Mr. DeLaney: So if it says they last registered for 2019, it may be a clean issue, or there may be extra baggage from prior years that would cause us to levy a higher fine?

Ms. Balsam: Right.

Mr. DeLaney: So we do not necessarily view all one-year delinquencies as being equal?

Ms. Balsam: There's a difference between paying registration fees and being registered. In order to be registered, you have to pay your registration fees and any outstanding fines or penalties. So someone who pays their registration fees, but doesn't pay their outstanding fines and penalties is not registered.

Mr. DeLaney: So similarly, case 3, which is still on the agenda, Camilla Shah, 354 Bowery, last registered for fiscal year 2018, and we're fining her $17,500. That, again, is due to other factors?

Ms. Lee: Right.

Mr. DeLaney: And I guess that brings us to 657-665 Fifth Avenue, Brooklyn. We're fining the owner $17,500, and it appears this is another case where…

Ms. Lee explained that this was a similar situation (as mentioned above).

Mr. DeLaney: But it looks like this building never registered.

Ms. Lee: Has it been three years?

Mr. DeLaney: What we're saying here is, "According to the Loft Board's records, the Loft Board directed Owner to register the Building within thirty (30) days of the mailing date of Loft Board Order No. 4523 (May 19, 2016)." It has an IMD number, because we did it. So therefore, the owners never registered. So in a case like that, we're not even confident that we have the right contact information?

Ms. Balsam: We have whatever information is available to us. They can always come back and challenge the Order and say, you didn't have the right information. But we have whatever is in our records and we also check the Secretary of State records.

Mr. DeLaney: Right, and you include all that in your summary. This owner really hasn't done anything. Am I correct in having that impression? In the notice we sent out, we advised that owner that they could be liable for fines up to $25,000. Which is the amount the fine was increased to in the legislation passed this summer. Why are we not fining the owner that amount in this circumstance?

Ms. Balsam: Because we have a rule with a penalty schedule that states $17,500 is the max. So we need to change that.

Mr. DeLaney: And that is something you want to leave for a subsequent session?

Ms. Balsam: We actually did previously propose some changes to the penalty schedules, so theoretically, we could add that, and that would be an easy one to add. If the Board wants to do that, we could certainly up all the penalties in the schedules up to the max of $25,000.

Mr. DeLaney: I realize that being short-staffed has sidetracked our enforcement initiative, but in this case, if we can fine up to $25,000, but we're not doing it because our schedule doesn't permit it, then it would be worth making that change. Because we have some buildings that are really just ignoring the Loft Board and the whole system. Again, speaking as Robert Carver, if we fine them $25,000 as opposed to $17,500, is it really going to matter? But if we're waving the club around, we might as well use it.

Ms. Balsam: OK. We can do that.

Mr. Hylton asked if there were any other comments on these cases (none).

The vote:

Members concurring: Mr. Barowitz, Mr. Roche, Mr. DeLaney, Ms. Torres, Chairperson Hylton

Members dissenting: 0

Members abstaining: Mr. Hernandez

Members absent: Mr. Carver, Mr. Schachter

Members recused: 0

Mr. Hylton then turned the floor over the Ms. Balsam for rule-making.

RULE-MAKING:

Ms. Balsam directed the Board to page 81, line 12 and said: This is the access rule, where the owners are required to give the tenants notice of when they're going to be working. There's nothing on the rest of page 81. The changes are actually on page 83, and are about whether or not we want to change the notice provisions. Right now, if the owner is going to serve an access application because the tenant has, theoretically, denied access, the owner has to serve the occupant by "(A) personal service or (B) certified or registered mail, return receipt requested, with an additional copy sent by regular mail." And the occupant can file an answer. We've changed all of the other notice and service provisions to allow for electronic service (email), and when staff was discussing what to do with this particular rule, we thought we should leave it as-is, because someone can be evicted for not providing access. We were concerned about whether or not electronic service would be sufficient. We could add an additional requirement for electronic service, but our feeling at the time was that we should just keep it as-is. We can also add certified messenger and the like, as we've done with the other

rules. But I wanted to raise this to the Board because it's different from what we've done everywhere else. That's the rationale behind it. If the Board wants to change it, we can, but I would say keep personal service or certified or registered mail, plus electronic notification, if there is an email address available.

Ms. Torres-Moskovitz and **Mr. Hernandez** said they agreed with this, in light of the eviction consideration.

Ms. Balsam: So it would read, "by (A) personal service or (B) certified or registered mail, return receipt requested, with an additional copy sent by regular mail, and if available, to an email address." I'll add some language there. And then for the answer, the occupant has to serve the owner by regular mail at the address on the application. We could also require the occupant to serve by email, if they know a valid email address.

Mr. Hylton clarified that this would be in addition to regular mail. That they should serve by regular mail.

Ms. Balsam: Yes, I would say "and." But they should serve by regular mail.

Mr. Hernandez: I just want to be sure, "and," doesn't imply one or the other?

Ms. Balsam: Correct.

Mr. DeLaney: Regular mail is required. Email is optional, if it's available.

Ms. Balsam: Then on line 21, we're changing a cross-reference, from RCNY § 1-06 to 1-21.

Mr. Hylton: On the occupant response, can they also serve personally?

Ms. Balsam: They could, but it says they must serve by regular mail. So I don't know if we'd want to put that burden on them.

Mr. Hylton noted that if the owner is in the same building, it might be more convenient. So maybe this should be added as an option.

Ms. Balsam: If the owner is an individual, it's not so problematic. But if you have personal service applied to an owner who may be a corporation or an LLC, or a partnership, this is more problematic. Who exactly is it delivered to? It could be too difficult for the tenant to figure out. So they'll just send a letter. We could put it in, but …

There was some discussion among the Board members of this and of various means of mailing notices. It was agreed that the only change would be adding, "…and if available, to an email address."

Ms. Balsam: On the next page (84), line 1: "The necessary and reasonable cost of bringing and pursuing a Loft Board access proceeding…" We could just say, "pursuing an access proceeding." Or we could just leave it. It's fine. On line 27, there's a change in a cross-reference. On the next page (85), line 10: This paragraph, above line 10, talks about the situation where IMD units are added after building permits have already been issued. Since the owner and existing tenants have already gone through the Narrative Statement process, what rights does this new occupant have? This section says that "…an occupant of such an IMD may file an application pursuant to this subdivision (h) on the grounds that the scope of the work approved under the permit constitutes an unreasonable interference with the occupant's use of its unit." So even though the owner has

pulled a building permit, this new occupant still has some rights, but not the full rights that everyone else had at the very beginning of the process. The section says, "This subparagraph (i) is not applicable to IMD units subject to Article 7-C pursuant to MDL § 281(5)." We're going to add, or § 281(6), because the next sections deal with §§ 281(5) and 281(6). So we'll change this to read, "…pursuant to §§ 281(5) or 281(6)."

Ms. Balsam continued: If we go to the next page, on line 1, we have the additional sections for *IMD Units Subject to Article 7-C pursuant to MDL § 281(5) as a result of the 2015 amendments.* Then on line 11, we have *IMD Units Subject to Article 7-C pursuant to MDL §§ 281(5) and 281(6) as a result of the 2019 amendments.* And that language is just carried over from the previous sections. It's the same language, but particular to those sections. Are there any questions about this?

Ms. Torres-Moskovitz: That's fine. But I'm not familiar with anyone ever filing unreasonable interference. Have you seen that?

Ms. Balsam: Not that often, but yes, we've seen it. Actually, we had a case. The Brigham case dealt with unreasonable interference with use.

Ms. Torres-Moskovitz: Did he have a Tenant Protection Plan in place?

Ms. Balsam: In that case, he was supposed to be out for three months, and he was then out for ten months or something like that. They took away five feet of the wall. And there were a couple of other things.

Ms. Torres-Moskovitz recalled that case, but that it wasn't the same kind of situation.

Ms. Balsam clarified the circumstances outlined in the rule: that of an IMD designated after the building permits have been pulled and the work has started. What rights does that person have? She continued:

And the rationale behind the rule at the time it was enacted – and correct me, Mr. DeLaney, if I'm wrong – was, we want to give them a say, but we don't want the owner to have to stop the legalization work. So the vehicle for that was allowing them to file an unreasonable interference application.

Ms. Torres-Moskovitz: But if they're not contesting anything, but just want to know what's going on…

Ms. Balsam: The owner has to amend the plans to include their unit, so, clearly, there will be a discussion. Ideally, that's the best way to do it. For everyone to sit down at the table and for the owner to say, this is what we want to do to legalize your unit, and for the tenant to say, I think that's good, bad, whatever.

Ms. Torres-Moskovitz: And now we might see a lot of **n**ew coverage applications, right? When we get a new application, is there automatically a conversation with staff, or does the occupant have to file an unreasonable interference application in order to do that?

Ms. Balsam: I haven't actually encountered this – where we have an active permit with work underway, and a unit is added. But certainly if everyone wanted to sit down and talk, we would facilitate that. Why make someone file an application? It's a hassle for everyone. Owners as well. They have to answer; they have to go to OATH. Who wants to do that, if you can just work it out?

Ms. Torres-Moskovitz: Is there language anywhere that addresses that?

Ms. Balsam: No there isn't. Basically, this rule says that the only remedy that's available in the rules to file an unreasonable interference application.

Ms. Torres-Moskovitz felt that since the option of, "Let's talk. You're new to the team. Let's bring you up to speed," was easier and less confrontational than filing an unreasonable interference application, perhaps the former could be mentioned or included in the rule as a first step.

Mr. DeLaney: If there's a way to get the discussion going without the new applicant having to file an unreasonable interference application, and to put that in the rules, I agree, that would be preferable.

Ms. Balsam: I guess we could add language that says, at the request of the parties, the Loft Board will schedule a conference. I'm not against doing that, if that's what you want to do.

Ms. Torres-Moskovitz felt it would be much easier for someone filing a new coverage application to just find out what's going on in the building, what would happen with their apartment, etc.; rather than filing a unreasonable interference claim.

Ms. Balsam: This gives them the right to do that, if they need to. It's a balancing of interests. You don't want to stop the legalization work, but you do want the new tenant to have some say.

Ms. Torres-Moskovitz: I agree with that. But just for the sake of teamwork, clarity….It's very confusing for tenants and landlords, so I think if they were entitled to a meeting. I don't know who would be at the meeting…

Ms. Balsam: I think this kind of meeting would be to discuss this particular unit, so those are the only parties who would have to be there. If they're the last unit to apply in a ninety-six-unit building, the other ninety-five tenants would not have to be there, unless their unit was going to be affected.

Ms. Torres-Moskovitz: That's another question. How would you handle meetings if, for example, eight units in that building were applying at once? Would each have a separate meeting?

Ms. Balsam: It would be better to have one meeting than eight, I think. We could say, may. At the request of the parties, the Loft Board may schedule a conference.

Mr. Hernandez: So you're just putting it out there that this is available to you? They don't have to do it.

Ms. Balsam: Right. And I would want to make it at the parties' request.

Mr. DeLaney: So what is the language we're looking at?

Ms. Balsam: It would be something like, at the request of the parties, the Loft Board may schedule a conference to discuss legalization issues.

Mr. DeLaney: This is part of the fact that there's no official summary of the Narrative Statement conference.

Ms. Balsam: There was language that we added to the Narrative Statement, where if the parties needed additional time… On page 66, lines 25 through 27: "Upon the request of the owner or the occupant(s), the Board may schedule a conference for any IMD unit for which 29 RCNY § 2-01(d)(2) does not apply." I would use

that language. That makes it one or the other could request the conference, but in this situation, I think we would want both parties. But if the Board wants one or the other, I'm fine with that, too.

Mr. DeLaney: The language on page 66 says "the owner and the occupant(s)."

Ms. Balsam: But the Board changed that to or. Both of them have to be at the conference, but only one party needs to request the meeting.

Mr. DeLaney: Oh, right. So where are we inserting this? In (iv) at the top of page 86?

Ms. Balsam: I would put it on line 9, at the end, after unit; and the same on line 20.

Mr. DeLaney asked for a reading of the new language.

Ms. Balsam: "Upon the request of the owner or the occupant(s), the Board may schedule a conference for any IMD unit for which 29 RCNY § 2-01(d)(2) does not apply." And that's actually a cross-reference to these people. OK? Moving on, § 7 of the proposed rules begins on line 22 on page 86. These are changes to Sections 2-01(i)(2). These are basically formatting changes. Beginning online 27, we're changing the font to the correct font. Then on page 88, lines 25 - 26, are cross-reference changes. The same on page 89, line 8, a change to a cross-reference. On page 92, lines 25 through 27, some formatting changes.

Mr. Barowtiz: On line 16, why is it suddenly, "him"?

Ms. Balsam: That's how it reads now. Do you want to change it?

Mr. DeLaney: Yes.

Ms. Balsam proposed: If the Executive Director obtains any other relevant information to assist in making a recommended determination under this clause (E)…, and the Board agreed.

Ms. Balsam: Nothing on page 93 or 94. On page 95, line 28, a change to a cross-reference. Nothing more until page 97, where there are changes to cross references on lines 2 and 4. Then, on line 15, we come to Monthly Reports. The Board had expressed interest in discussing whether they needed to remain monthly or be changed to quarterly. This proposal is to make them quarterly, with the Board requiring the owner to file additional reports if necessary. Sometimes we do want them to do that, if they're asking for LONO.

Ms. Torres-Moskovitz: I don't remember when we last talked about this. Monthly sounds like a lot of reports, but you're saying that for certain buildings, quarterly wouldn't be enough?

Ms. Balsam: Once we've issued certification, theoretically, the owner is supposed to file monthly reports saying, here's the progress we've made. And it has to be signed-off by an architect. It's very burdensome, on the architect and the owners and on the staff, in terms of processing them.

Ms. Torres-Moskovitz: How many are actually filing them?

Ms. Balsam: I don't have those statistics available, but whoever has gotten certification is supposed to be doing it, and we've issued several rounds of violations for failing to file monthly reports. I'd like to think it's well over a hundred buildings. I'd like to say it's closer to two hundred, but I'd have to check. I think everyone agreed that having to deal with this every month is very burdensome. The reason we want it is so we can keep the owners moving, but we could check on their progress quarterly. But we want to keep open the option -- if they're requesting a LONO or an additional certification – we want to be able to ask them to file a report. If their last report was in January, and now it's mid-March, and they're asking for a LONO, but we don't know what's happened in between, we want to be able to say, you need to file a monthly report so we can see what kind of progress you've made. That's how this is drafted, on lines 15 through 23. It changes it to quarterly filing, the first business day of January, April, July, and October. And we can ask for additional reports if we want to.

The Board members were all fine with this.

Ms. Balsam: Then, at the top of the next page, I didn't make the change to indicate quarterly, but will have to: "The Executive Director may issue a fine in accordance with 29 RCNY § 2-11.1 for failure to file the legalization report for each report not filed on the first business day of…" and it should be, each quarter. Then in the next section, where it says, "The filing of a false statement in the monthly report…" could be changed to just, in a report. Eliminate monthly; and continue with, "…may result in fines in accordance with 29 RCNY § 2-11.1 for each false statement in...." Again, just say, a report. Because that would include reports that are additional reports as well. So at the top of page 98, (D) would read: The Executive Director may issue a fine in accordance with 29 RCNY § 2-11.1 for failure to file the legalization report for each report not filed on the first business day of each quarter. And then (E), we're going to change to: The filing of a false statement in the report may result in fines in accordance with 29 RCNY § 2-11.1 for each false statement in the report.

The Board members were all fine with this.

Ms. Balsam: OK. In the harassment rule, we're just changing cross-references. They begin on page 100 and are on lines 2, 15, and 17. And then on line 25, it now says, "Inclusion of the Loft Board's approved Instruction Form with the application at the time of service constitutes compliance...." But it should be, the Loft Board's Answer Form, because they're required to send an answer form, not just the instruction form. They're required to attach a copy of the Answer Form to the application. The way it was, you had to attach an Instruction Form, and on that it said you have to attach an Answer Form. That didn't seem to me to be very transparent – that you have to look somewhere else to find out what you need to do to comply with the rule. What we want them to do is put in an Answer Form, so that the tenant has the form they need to answer.

Mr. Barowitz: Well, that certainly needs work. Lines 24 and 25 make no sense.

Ms. Balsam read the revised wording: Inclusion of the Loft Board's approved Answer Form with the application at the time of service constitutes compliance with this paragraph, and said, it's how to file an answer.

Mr. Barowitz said that perhaps the word "an" should be added before approved, so that people know that such a form exists.

Ms. Balsam reviewed the language beginning from line 20, and said: I would just say, "an" answer form. On line 20, take out, "Instructions for filing an answer form," and make it, "(A)n answer form must be enclosed with the copy of the application sent to the affected parties."

Mr. Barowitz: And on line 25.

Ms. Balsam: On 25, the sentence starts on line 24: "Inclusion of the Loft Board's approved Answer Form with the application at the time of service constitutes compliance with this paragraph." So I don't know if you need an "an" there. Do you want me to re-phrase that?

Mr. Barowitz: It just makes it clearer.

Ms. Balsam: Oh, I see. "Inclusion of the Loft Board's approved Answer Form…" Take out approved, and make it, Inclusion of an Answer Form…Yes. OK.

Ms. Torres-Moskovitz: Can I go back to pages 98 and 99, definitions of harassment? Is this ever updated to coincide with any other tenant-related rules? Or is this stand-alone language?

Ms. Balsam: This is stand-alone language. I don't think there's a need to do that. And it's pretty comprehensive.

Ms. Torres-Moskovitz: I'm just wondering if there are other definitions of harassment being used by lawyers elsewhere in the city.

Ms. Balsam: I'm sure there are, but I don't know where.

Ms. Torres-Moskovitz: Because we have this definition section, and then we're defining harassment here.

Ms. Balsam: But in this case, I really think we need to keep it here, because this is a stand-alone issue with a lot of ramifications.

Mr. DeLaney: How does our definition of Landlord and Occupant comport with the definitions?

Ms. Balsam: We don't have a definition of Landlord in the front. Occupant is the same as in the front.

Ms. Torres-Moskovitz: I guess we should, right?

Ms. Balsam: We can add that to the definition section. Occupant is there, and we'll add Landlord.

Ms. Torres-Moskovitz: And harassment. Should we refer people to that section?

Ms. Balsam: It's there, on page 5. And it's the same definition.

Mr. DeLaney: So now, in the definitions we have Owner and Landlord.

Ms. Balsam: Yes. And that's fine, because in the definition of Owner on page 7 of the definition section, we're distinguishing between an Owner and New Owner, in terms of who can file an application for an extension. That's where those definitions came from. But the harassment rule uses Landlord, and I think that's fine. I don't know that we use Landlord anywhere else, so I don't see a conflict with that. Actually, the definition of Landlord here is closer to the definition of Responsible Party, which is on page 8. But for the purposes of this rule, the way the term Landlord is defined is good, and we should leave it.

Ms. Torres-Moskovitz: Just for my edification, a responsible party – that could be a tenant who then sublets?

Ms. Balsam: Yes, it could be. A responsible party is the owner of the freehold, "… or the lesser estate therein," which would be someone like a prime lessee who then subdivides.

Mr. Barowitz: Is that more specific than Responsible party?

Ms. Balsam: Responsible party we used in other parts of the rule where we wanted to encompass people other than the owner. We had a case – which really turned out to be a sham – where there was a net lessee, who transferred to another net lessee, but actually it wasn't an arms-length transaction; they were all related to each other. So we had some issues with the concept of Owner and New Owner. That was why we made the distinction up front. Responsible party we were using as a larger term for situations where people who are responsible in the building need to do things. That's why we developed the term, Responsible party.

Ms. Torres-Moskovitz: I like that term, because I do know of cases where it's the prime lessee that's overcharging or whatever. So I want to be sure that the definition is broad enough to allow a sub-tenant to tell the Loft Board that they're being harassed by the prime lessee.

Ms. Balsam: Right. If you look at the definition of Landlord on page 99, it's "…the owner of an IMD, the lessee of a whole building all or part of which contains IMD units, or the agent, executor, assignee of rents, receiver, trustee, or other person having direct or indirect control of such building." So that doesn't actually cover that. It may be in another section.

Mr. Barowitz: I don't like the term. We are pinning on whoever the prime lessee is as the Responsible Party, but the person says, no, I'm not responsible. And where does that leave us? I've leased this space. I'm not responsible.

Ms. Torres-Moskovitz: The term Responsible Party bothers you?

Mr. Barowitz: It's too vague, as far as I'm concerned.

Ms. Torres-Moskovitz: To get the actual owner or landlord of the building…but if there is a tenant with a lease harassing a sub-tenant….

Ms. Balsam: I think it's somewhere in §2-09. We do have it somewhere in the rules, about not being able to harass sub-tenants. I can't put my finger on it at the moment, but I know it's in there.

Ms. Torres-Moskovitz asked Ms. Balsam if she could think about the use of Responsible Party in the harassment section or adding some language to the definition of Landlord that would clarify the fact that a prime lessee can be considered a Landlord.

Ms. Balsam: The definition now covers a net lessee. But let me get back to you with where the harassment of sub-tenants is in the rules, and you can see if that's satisfactory. Because I think this rule works well, so if we don't have to change it, I'd prefer not to.

Ms. Torres-Moskovitz: But just in terms of the definition section, we've just encountered definitions of Responsible Party and Landlord that are similar, but….

Mr. DeLaney: We now have three definitions: Owner, Landlord, and Responsible party.

Ms. Balsam: Yes, we do. But if we don't put it up front, Landlord would only apply to this section.

Ms. Torres-Moskovitz: Really?

Ms. Balsam: Yes, because it's part of this rule. So let's hold off on whether we're going to add this up front, and I'll get back to you on the harassment issue.

Mr. DeLaney: Before we leave, the definition of Occupant in the front says, "eligible for or qualified for;" whereas here (the definition of Occupant on page 99) it's just "qualified for."

Ms. Balsam: Because here (page 99), it would have to already be an IMD. So it wouldn't be just eligible for. I think that's why there's a distinction. Are you concerned that the definition isn't the same?

Mr. DeLaney: Just pointing it out.

Ms. Balsam: Because if you look on page 7, it says, "Occupant, unless otherwise provided." Page 99 is an example of where it's otherwise provided.

Ms. Balsam continued: Returning to page 100, line 29, we have "Five copies of the answer with proof of service…shall be filed." It really should just be, Copies of the answer with proof of service…shall be filed. Because we're no longer requiring five copies; we're requiring one electronic and one paper copy. Then it cross-references 29 RCNY § 1-22(c), which tells people what they have to file.

Mr. DeLaney: Going back to lines 20 to 26, where did we end up with that?

Ms. Balsam: It's going to be, "An answer form must be enclosed with the copy of the application sent to the affected parties. Instructions for filing an answer must advise the owner that a finding of harassment may affect the owner's ability to decontrol or to obtain market rentals for covered IMD units pursuant to MDL §§ 286(6) and 286(12)" -- and the instructions are now in the forms, themselves. They're not separate sheets – "and the Loft Board's rules. Inclusion of an answer form with the application at the time of service constitutes compliance with this paragraph."

Mr. DeLaney: And now is Answer Form lower case?

Ms. Balsam: Yes.

Ms. Balsam also recapped for Ms. Torres-Moskovitz why the change was made: to eliminate the need to go from one form to another to find the instructions. So that the instructions for completing and filing the required form were right on that form.

Ms. Torres-Moskovitz: So if someone asks for a form?

Ms. Balsam: It's on the web site, and the instructions are on the form. What happens when we have fillable pdfs is another issue. But we're not there yet. Because the instructions will be a separate click from the form, itself; so you can have both open at the same time.

Ms. Balsam continued: Page 101, lines 2 and 19, are changes to cross-references. Nothing until page 105, where there's a change to a cross-reference on line 1; we're changing 1-06 to 1-21. Page 106, line 3, and page 107, line 12, are changes to cross-references.

Mr. Barowitz pointed out the wording on page 107, lines 23 through 25: "The prime lessee has paid all civil penalties assessed in the order of harassment, and there are no other orders of harassment outstanding for the prime lessee."

Ms. Balsam: Oh, maybe this is where it is. Page 106, line 15 is, "(e) *Harassment by prime lessees.*"
And then on page 107, lines 18 through, it says, "The Loft Board may grant such relief if it finds that:

(A) Since notification of the order the prime lessee has not engaged in the prohibited conduct and has not engaged in any other conduct which constitutes harassment, and

(B) The prime lessee has paid all civil penalties assessed in the order of harassment, and there are no other orders of harassment outstanding for the prime lessee."

Ms. Balsam: What is your question here? This is about terminating a harassment finding.

Ms. Torres-Moskovitz: It's good that this is included here, but should it also be included in the definitions in the beginning?

Ms. Balsam: Prime lessee?

Ms. Torres-Moskovitz: Yes.

Ms. Balsam: The definition of prime lessee is actually an open issue in the definition section, because that dealt with whether or not the lease was currently in effect. Here, we're talking about a prime lessee who's not occupying the unit. It's more specific. It's whether they've subdivided, and there's someone else there.

Mr. DeLaney: Maybe that suggests that on page 7 we need, unless otherwise provided.

Ms. Balsam: Yes, I agree.

Ms. Torres-Moskovitz: It would be extremely helpful to understand all the nuances of the definition. Are they living in the space or not? Is the lease old, or…?

Ms. Balsam: It's still an open issue as to whether or not we're going to include whether the lease remains in effect. That's the question on page 7. But this particular section on page 106 is dealing with the exact situation you were talking about.

Ms. Balsam continued: We're changing cross-references on page 109, line 21, and on page 111, line 12. Then regarding Housing Maintenance Standards (line 23, page 111), the change here is on page 112. In 2017, Local Law 86 changed the requirements for the provision of heat. The changes in the chart and the text above it, on page 112, are to incorporate those changes into our rules, as we had never changed our rules.

Mr. Barowitz: This applies to all lofts?

Ms. Balsam: This applies city-wide to all residential buildings. But yes, it applies to all our covered buildings. From 6:00 AM to 10:00 PM, if it's below fifty-five degrees, the temperature inside is supposed to be at least sixty-eight; and from 10:00 PM to 6:00 AM, regardless of the outside temperature (this was a change), it should always be at least sixty-two degrees (that was the other change).

Mr. Barowitz: I think that's great, but all I can say about it is, ha.

Ms. Balsam: It's nice to bring us up to speed with what happened in 2017. Now, on the top of page 113, I think this is because we had things in the current rule that should have been struck, but never were. So, starting on line 1: (b) *Procedure for Filing Registration Application.* The following instructions constitute the procedures for registration of buildings, structures or portions thereof, pursuant to MDL § 284(2)." That's fine. "Applications for registration shall be certified by the landlord in a form…" and then it has both "prescribed" and "promulgated." It should be "prescribed by the Loft Board." And it actually says, "Instructions – Interim Multiple Dwelling Registration Application Form." That should be stricken, as it's not part of the rule. I'm not sure why it's there. The second sentence, beginning on line 3, would read: "Applications for registration shall be certified by the landlord on a form prescribed by the Loft Board." And that's it.

The Board members agreed with that.

Ms. Balsam: On page 114, lines 14, 24, 29 are changes to cross-references. Then, beginning at the bottom of line 14 and on to the top of page 115, we're striking the language that says, "…including, without limitation, the deadline for filing coverage applications set forth in MDL § 282-a, 29 RCNY § 1-06.1, and the Loft Board's website." We're deleting that language because there no longer is a deadline for filing coverage applications.

Ms. Balsam continued: On lines 12 to 13, page 115, we have some additional language here. These are the documents required for a registration application. "(iii) for registration applications filed pursuant to MDL § 281(5)," we're asking them to give us the lease in effect on June 21, 2010, and if no lease existed on that date, "the owner must attach a signed statement outlining the rental agreement." Then on lines 17 through 21, we're adding, "… or for registration applications filed pursuant to MDL § 281(6), the lease in effect on June 25, 2019, if different" that is, different from the current lease, "and if no lease existed on June 25, 2019, the owner must attach a signed statement…" and then it just mimics the information for 281(5). Are we clear through line 21?

The Board confirmed they were.

Ms. Balsam: Then on line 23 (page 115), for "… commercial, manufacturing and industrial activity in the building on June 21, 2010," we're adding, "for registration applications filed pursuant to MDL § 281(5) or June 25, 2019, for registration applications filed pursuant to MDL § 281(6)." We need that now that we have a new Window Period. Same thing on lines 26, 27, and 29 to the top of page 116.

Mr. DeLaney: Can you refresh my memory? Why are we requiring leases for units engaged in commercial manufacturing?

Ms. Balsam: I wasn't here when that was put into the rule, but I assume it had to do with the inherently incompatible uses.

Mr. DeLaney: Did we get those into the rule?

Ms. Balsam: Yes. They're required to file it, so they file it. I think it could also be helpful in trying to figure out where units are and which units are which in the building, because sometimes we have issues with changing designations of units. So to the extent to that unit five had a commercial lease and unit six had a residential lease, it might be helpful in differentiating.

Ms. Balsam continued: On page 116, line 6, again, we're adding a reference to MDL § 281(6): "…or June 25, 2019, for units seeking coverage pursuant to MDL § 281(6)."

Mr. DeLaney: On line 1. I'm trying to remember why we called out, "For cooperatives, legible copies…"

Ms. Balsam: You mean as opposed to everyone else? If you look on page 115, line 6, you'll see that everyone else has to file legible copies, too. "Legible copies of the following must be attached." And I can tell you, having looked at some of these leases, legibility is an issue.

Ms. Balsam asked if everyone was OK so far (to line 6, page 116), and the **Board** members confirmed they were.

Ms. Balsam: Line 11, page 116, we're adding a reference to § 281(6). Then the next change is regarding incompatible use. What they have to file with us. Lines 18 through 27 lists the criteria:

(A) are in Use Group 18, as defined in the zoning resolution of the City of New York on June 21, 2010, and

(B) are in legal operation, and

(C) create an actual risk of harm that cannot be reasonably mitigated, and

(D) are continuing at the time of the submission of an application for coverage by any party,

the owner must submit, along with its registration application, a certification to the Loft Board, signed by a New York State licensed engineer or registered architect, that such commercial, manufacturing or industrial use is not an inherently incompatible use under subdivision (k).

Ms. Balsam continued: We require that now, but here we're narrowing it to Use Group 18 and the other conditions that were added by the new Law. All of that language, from line 12 through 27, captures that whole concept in the new Law and the changes to what constitutes an inherently incompatible use. I think we already discussed this language when we did 2-08(k).

Mr. DeLaney and **Mr. Barowitz** had questions about the formatting.

Ms. Balsam proposed moving the language on lines 24 through 27 [above, "the owner….subdivision (k)] up to the end of line 17. Beginning on line 14, she read the following new language, with which the **Board** members agreed:

"…if there are any commercial, manufacturing, or industrial uses in the non-residential units in the building as of June 21, 2010, for buildings in which coverage is claimed under MDL § 281(5) or June 25, 2019 for buildings in which coverage is claimed under MDL § 281(6), the owner must submit, along with its registration application, a certification to the Loft Board, signed by a New York State licensed engineer or registered architect, that such commercial, manufacturing or industrial use is not an inherently incompatible use under subdivision (k). The certification must state whether those uses:" Followed by the list of items (A) through (D) above (lines 18 through 23).

Mr. Hylton noted that a similar adjustment should be made at (v) on line 12, **and Ms. Balsam** agreed.

Ms. Torres-Moskovitz questioned the "in legal operation" item -- whether an architect should be trusted with evaluating whether or not the operation is legal.

Ms. Balsam: "In legal operation" has not been defined yet. That was one of the open issues in the Law that the legislature included, and we asked them, what does legal operation mean? Does it mean it's on the Co of O, if it has to be on the C of O? Does it have all its permits, if it needs permits? And they said, we're including it.

Mr. Hylton: Can we define it?

Ms. Balsam: The definition has to evolve through case law.

Mr. Hylton: Can we put it in the rule?

Ms. Balsam: Do you know how many hours of research that would take? I don't think we should go there. Let a case come up, and we'll make a rule at that time. How many of these situations will we see? Do we even have any buildings with Use Group 18 conditions? Will we ever? So why spend so much time on this?

Mr. Hylton and Ms. Balsam recalled how much effort had gone into asking the legislature to either take the term out (legal operation) or define it.

Ms. Torres-Moskovitz and Mr. Hylton also made the point that there's a difference between being a legal operation and operating legally; and **Ms. Balsam** agreed.

Mr. DeLaney: Are we in sub-division (k)?

Ms. Balsam: No, we're not. We already did sub-division (k). There, we talked about what now constitutes an inherently incompatible use, after the new amendments to the Loft Law. This section is about, what do we want them to file with us when they're registering the building? This document is reflective of what constitutes an inherently incompatible use, as defined in sub-division (k).

Mr. DeLaney asked for clarification again of the re-arranged language (lines 14 through 27, page 116), and **Ms. Balsam** complied.

Ms. Balsam: On page 117, I made a change. Line 16 began, "That number, the IMD Registration number…" I removed "That number," so the section (lines 14 through 17) would read, "If the registration application form is accepted by the Loft Board staff, a copy of the form with the assigned IMD Registration Number will be returned to the applicant. The IMD Registration Number must be included on all future correspondence with the Loft Board regarding the building."

Mr. Hylton asked if the IMD Registration Number was defined anywhere.

Ms. Balsam said it was a good question, but noted that IMD is defined there, within the language. "If the registration application form is accepted by the Loft Board staff, a copy of the form with the assigned IMD Registration Number will be returned to the applicant." We could say, the staff will assign an IMD Registration Number and return the form.

Mr. Hylton said his question was really about the inclusion of the word, Registration. Was that used only here, or throughout the document? Because it's usually referred to simply as the IMD Number, which is simpler.

Ms. Balsam confirmed and continued. We're making some changes on the bottom of page 118 (line 25). This particular section applies to the Loft Board notice that has to be posted in the buildings. Our enforcement program was fairly successful in actually getting people to post the notices. Currently, we just say, "A notice," had to be posted; and it didn't say how it had to be posted. So we wanted to strengthen the wording about where it had to be posted. To be perfectly honest, some of this language is taken from the rule about Sanitation Recycling notices.

Ms. Balsam read passage with the changes:

"One or more notices, in the form prescribed by the Loft Board as designated on the Loft Board's website, must be conspicuously posted inside each entrance to the IMD building" – now it's just one entrance -- "and in common areas of the IMD building such as the resident mailbox area(s), the lobby or other public area in the building routinely visited by building residents."

We want to give as much notice as possible to the tenants that this is an IMD building, under the Loft Board's jurisdiction. Reach out to us if you have questions.

"The owner or responsible party must post the notice(s) within five (5) business days after the issuance of the IMD Registration Number." Then, we're changing the size. "Notices must be at least 8 1/2 by 11 inches in size, use lettering of a conspicuous size and be framed or laminated." And that is the result of visiting a building and seeing a crumpled- up notice taped to the wall.

Mr. Hylton questioned, "lettering of a conspicuous size," and **Ms. Balsam** agreed, saying that since now the notice is a form provided by the Loft Board, those words, as well as those about the size, were no longer necessary.

Ms. Torres-Moskovitz said that the Tenant Protection Plan also contains wording about the hanging of notices. She also had a question: On line 20 (page 118), where it says, "as it may be amended from time to time," is that just to educate people – to tell them that sometimes Housing Maintenance is updated?

Ms. Balsam: It's to avoid the idea that, if we change § 2-04…For example, we're going to change the heating requirements. You wouldn't want a landlord to say, you made that change after I registered the building, so therefore I don't have to comply with that heat requirement. This is making clear that if we update § 2-04, you are required to follow and make those updates, even if you registered before that change.

Ms. Torres-Moskovitz: The way you just stated that is more explicit than what it says here. "From time to time…"

Ms. Balsam said "from time to time" could be removed, and continued: At the top of page 119, we're going to take out , "…at least 8 1/2 by 11 inches in size, use lettering of a conspicuous size," and leave it as, "Notices must be framed or laminated." Because they're using a Loft Board form.

Mr. DeLaney: Returning to the bottom of page 118, line 25: "One or more notices, in the form prescribed by the Loft Board…" Should really be supplied by the Loft Board, shouldn't it?

Ms. Balsam: I think we do send them a copy of the notice when they register the building, but they can also download it from the web site.

Mr. DeLaney noted that prescribing indicates telling or defining what the form should be; whereas the Loft Board wants the owner to use the form created by – and supplied to them -- by the Loft Board

Ms. Balsam and Mr. Hylton discussed this and suggested, "...the form designated by the Loft Board."

Ms. Balsam read the passage with the new language (page 118, line 25 through page 119 line 3):
"One or more notices, in a form designated by the Loft Board on the Loft Board's website, must be conspicuously posted inside each entrance to the IMD building and in common areas of the IMD building such as the resident mailbox area(s), the lobby or other public areas…… Notices must be framed or laminated."

Ms. Balsam continued on page 119: Lines 12 through 14, I highlighted just to note the end of the section, but the question is in my comment. We've had some discussion about whether or not listing an occupant on the registration form makes that person a Protected Occupant, because currently it says that the occupants who were there during the Window Period and those there on the date of registration are Protected Occupants. It's always been our policy to name as Protected Occupants those there on the date of registration, unless there's some reason not to. However, this is not necessarily transparent, because it doesn't say on the form, itself, "Protected Occupants." So do we want to add something to say that listing these people as the current occupants would make them Protected Occupants, absent some other reservation by the landlord? And we have had landlords who've listed the current occupants, but circled the name(s) and said they reserve the right to protest this. It is an issue that's come up a couple of times, so the Board should decide what to do about it.

Mr. Hylton: You're saying that just listing these people on the application as occupants automatically makes the Protected Occupants?

Ms. Balsam: Absent some reason not to, yes. They would be listed in the Loft Board's records as Protected Occupants. And I think landlords should be put on notice about that.

Mr. Hylton: Is this going to encourage landlords to leave people off the application?

Ms. Balsam: Theoretically, yes, it could.

Mr. Hylton asked what makes someone a Protected Occupant. Either the landlord decides or the Loft Board lists them at registration?

Ms. Balsam: That's pretty much it.

Mr. Hylton: Is there another way to do it?

Ms. Balsam: I don't know. That's my question. We could put another column on the registration form that says, Protected Occupant. Window Period Occupant, Current Occupant, Protected Occupant. Protected Occupants are different? I don't know. But I think some transparency is called for, because the issue has come up a couple of times. Owners say they are asked for a list of everyone that's there, and they provide it…

Mr. Hylton: What's wrong with that?

Ms. Balsam: Because by listing them, they become Protected Occupants. Unless there's a Board Order that says something else. Let's take 110 Bridge Street as an example, where there is every Protected Occupancy scenario you could possibly have. We have a husband and wife. The husband is protected; the wife is not. But the application asks for Current Occupants. So you would list the both, but it's really only the husband who's protected, because we have a Board Order that says that. But if we didn't have that Board Order, and the owner listed both the husband and wife, which would be the right thing to do, because they're certifying that the information is accurate, then we – the Board – would put both of them in as Protected Occupants. So there's a conflict that the Board needs to resolve for owners who are coming and registering.

Mr. Hylton: So the owner can decide who is protected?

Ms. Balsam: Yes.

Mr. Hylton: So they could say, for example, Renaldo and wife occupy unit 1A, but I'm only protecting Renaldo?

Ms. Balsam: Yes, they could do that. But obviously, your wife would have a right to contest that. We actually have such a case pending. She can file an application for protection, saying I should also be a Protected Occupant. And remember, the initial registration is supposed to be sent to/ served on everyone.

Ms. Torres-Moskovitz: When you say, Board Order….?

Ms. Balsam: Let's take 110 Bridge Street, the case the Board just decided. In that Order, we said the husband is prime lessee and Protected Occupant; the wife is not, but may have succession rights. What if we didn't have an Order? What if the owner just came in and registered the building and the people. The way the form reads now, it says Window Period Occupant, Current Occupant. The owner would list both the husband and wife as Current Occupants, because they are. And when we put that information into our records, we would list both of them as Protected Occupants.

Ms. Torres-Moskovitz: That's good.

Ms. Balsam: I don't know that that's good.

Mr. Barowitz: Do we do that?

Ms. Balsam: That's what we've been doing. We've been taking the Current Occupants and throwing them in with the Protected Occupants.

Mr. Barowitz: What about children?

Ms. Balsam: We had a case with a child. But in that case, there was a Board Order that said the husband, wife, and child were Protected Occupants. But the owner had listed all of them on the application. So it's the same thing. Don't you think, in all fairness, that if an owner is listing all these people on the registration form as Current Occupants, he or she should be made aware that, in the Loft Board's eyes, all of them will be considered Protected Occupants? I think they should have some notice, and that we should have a rule that says that.

Mr. Hylton again stated his concern that this may encourage owners to leave names off the application, because they must list all the occupants. He suggested having all of the Current Occupants listed, but with a way to indicate which of them – in the owner's opinion -- is protected, perhaps by a box to be checked next to the name.

Ms. Balsam: We don't necessarily have to do this. I just thought, since it's come up, that we should look at it, but I'm fine with leaving it alone. We have some case law…

Ms. Torres-Moskovitz: We have expressed frustration with the case law that's forcing us to split up husband and wife.

Ms. Balsam: But the Board has already agreed that we're going to change § 2-09 to include prime lessees and spouses.

Mr. DeLaney: I think what we're doing is moving on to a large issue, that's still not a hundred percent resolved, based on what is, in essence a foot note. So my suggestion would be to leave this open until we clarify what we

want to do. I agree with you. In my mind, the hypocrisy of what we're doing now is that the owner lists Julie and her husband as Protected Occupants, they're both Protected.

Ms. Balsam: Listed as Current Occupants.

Mr. DeLaney: But we would treat them as Protected Occupants. But if Julie had to apply for coverage to OATH, OATH would have found her to be the prime lessee, and we would have adopted an Order saying your husband is not a Protected Occupant, but may have succession rights. Which is what we just did.

Ms. Torres-Moskovitz: So if the landlord wants to fight it, that's where they do it. Or if they don't care…

Ms. Balsam: The Protected Occupancy claims will be decided if they're raised and there's a trial. This comes up when the owner comes in and voluntarily registers. Because if we have a case that came through OATH, we're going to have the Board's decision on those issues. And we want owners to come in voluntarily and register.

Ms. Torres-Moskovitz: I think that's their time to come clean. Just do it, and not go through years of….

Ms. Balsam: Let's just leave it open.

Mr. Hylton: How does the rest of the Board feel about leaving it open?

The Board members agreed to leave it open.

Mr. DeLaney: One thing, it seems to me oddly placed….

Ms. Balsam: I just threw it in there at the end. It doesn't correspond to what I highlighted. This is the end of the section that says, this is what you need to write on a registration form. Then we're moving on.

Mr. DeLaney: So this is new language?

Ms. Balsam: (14), which I highlighted, is already there.

Mr. DeLaney: Yes, but it seems to me that having this after a section on the signage in the building…I would think it should be after (10), because it's addressing what needs to be filled out on the form. Does that make sense?

Ms. Balsam: Yes. So we could eliminate number (14) altogether, and put that language at the end of (10), which would be on page 118, line 19. ["(14) If additional space is required to respond to any of the questions set forth on the registration application form, the applicant shall attach a signed separate sheet of paper to complete the response."]

Mr. Hylton and Mr. DeLaney: And leave it highlighted.

Mr. DeLaney: Mr. DeLaney also noted that there were many usages of Loft Board, as opposed to Board.

Ms. Balsam: I know. Actually, I was thinking that we shouldn't do that; we should take out the definitions of Board and Staff because after we had that whole discussion, I realized that there are a lot of rules we're not changing; and this could create ambiguity. But I'll get back to you about this. I'm still thinking it through.

Ms. Balsam continued: On page 120, *Deadlines for Filing Initial Registration Application after June 21, 2010.* On line 15, we're adding § 281(6), and taking out the statute of limitations, which was removed from the law. Then on page 121, line 8, we just adjusted the language to make it clearer. There is no change to the meaning. "The Loft Board must not process any applications filed by or on behalf of a landlord of an IMD building, unless the registration renewal application is current and all applicable fees and penalties have been paid in full as of the date of filing such application. An application is not deemed filed until the Loft Board receives payment of all outstanding fees, fines and penalties."

At this point, the Board took a brief recess.

The Board reconvened:

Ms. Balsam: On page 124, starting on line 4 and continuing to the top of page 126: "§ 2-06.3 Interim Rent Guidelines and Rent Adjustments pursuant to MDL § 286(2)(i) for Units Subject to Article 7-C pursuant to MDL § 281(6)." Basically, I copied everything from § 281(5) and made it applicable to § 281(6). It's all exactly the same, but with the date is adjusted. It's the rent that was in effect on June 25, 2019. It doesn't include use-based escalators and garbage escalators. And no increases permitted above the total rent as defined in Article 7-C, pursuant to MDL § 281(6). There are earlier buildings, where landlords received bumps in rent because rents were so low. But in most buildings now, rents are at or close to market-rate, so I don't think there's a policy reason to supply landlords with additional rent over and above what they were getting in June 25, 2019. On line 24 on page 125, we have to insert the effective date of the rule, which will be soon.

Ms. Balsam clarified for Ms. Torres-Moskovitz that these pages contained all new language, which pertains to buildings coming in under § 281(6). It involves what rent the landlord can charge during the legalization process. It's the same language that's there for § 281(5), except the dates changed. And the most important piece of it is that they're not getting any specific increase, other than the legalization increases they're normally entitled to.

Mr. DeLaney: The § 281(5) language appears where?

Ms. Balsam: In § 2-06.2 I think. It isn't in this document, because it's not a change.

Mr. DeLaney: Right. And § 2-06.2 would apply to a building that applies now under § 281(5).

Ms. Balsam: Correct.

Mr. DeLaney: We don't need to amend that?

Ms. Balsam: No. I don't think we'd want to. If it's a § 281(5) building, it should be the rent that was in effect on June 21, 2010. I think one of the reasons that landlords with pending coverage applications brought under § 281(5) are coming in and registering under § 281(6) is exactly this. So I think changing §2-06.2 would be patently unfair to people who've been fighting for years.

Ms. Balsam clarified for the Board: Basically, § 2-06.2 says for buildings covered under § 281(5), the rent that will be paid will be the rent that was in effect June 21, 2010. Until the owner legalizes and obtains the increases he's entitled to under the law. Now, people who were foreclosed from applying for a couple of years are applying again. But you have tenants who've had applications pending for years and years, and you have tenants coming in now applying under § 281(5). So what rent are they going to pay? For the § 281(5) buildings, it should still be the rent that was in effect on June 21, 2010. That's what it should be, because it's a § 281(5) building.

Ms. Torres-Moskovitz: Because their application wasn't processed?

Ms. Balsam: Right. Even if it wasn't, if they're entitled to coverage as of June 21, 2010…Let's say they come in today, and they're filing under § 281(5), it would still be whatever the rent was.

Ms. Torres-Moskovitz: I wasn't sure they could do that.

Ms. Balsam: If they want to, they can.

Ms. Torres-Moskovitz: Just like there are some people from § 281(1).

Ms. Balsam: This particular section that we're adding is for § 281(6) buildings. So is everyone OK with this?

Ms. Torres-Moskovitz: Just to clarify, the sections about the escalators, out of the rent – that's completely separate from the costing at the end, when you're legalized?

Ms. Balsam: Yes. But these are usually commercial leases, where you're paying additional charges for certain services. That's what all these things are. And I think it actually says this (page 125, line 13). "Total rent shall not include use-based escalators or garbage escalators." And line 17:

"(d) *Permissible Rent Levels.* An owner of a unit subject to Article 7-C pursuant to MDL § 281(5) may not charge a residential occupant more than:

(1) Total rent, as defined above; plus
(2) Any other rent adjustments authorized pursuant to Article 7-C and these Rules, including allowable rent adjustments authorized pursuant to 29 RCNY § 2-12; plus
(3) Use-based escalators, if any; plus
(4) Garbage escalators, if any."

They can charge that, but it's not part of the total rent. It's on top of the total rent.

Ms. Torres-Moskovitz: One question. These buildings have residential trash pick-up, right?

Ms. Balsam: Yes, they can.

Ms. Torres-Moskovitz: Or they can opt to still get private commercial?

Mr. Hylton: But a commercial entity can't get residential service, right?

Ms. Balsam: Yes. But if there were commercial units in the building, they would not be eligible for sanitation pick-up. So in mixed-use buildings, it would be problematic.

Ms. Torres-Moskovitz: I know of a landlord who prefers commercial pick-up, even though he could do residential now that the building is an IMD.

Ms. Balsam: Right. For the residential portions of the building, you can. You have to file a certified copy of the registration with Sanitation.

Ms. Torres-Moskovitz: So there's no real reason why a tenant should have to pay for trash pick-up, right?

Mr. Hylton: If the landlord chooses commercial, it shouldn't be pushed onto the tenant.

Ms. Balsam: Remember that these are arrangements that were in effect prior to when the building became an IMD, so many of them have leases that include escalators. This rule says the landlord can charge for them, if they're there. But there doesn't have to be any.

Ms. Torres-Moskovitz: If it's residential, there shouldn't be any, right?

Ms. Balsam: I would agree, but there are so many different scenarios, I don't want to go on the record saying, there would never be.

Ms. Torres-Moskovitz felt that tenants should be made aware that they shouldn't have to be paying for trash removal, now that they're a residential building; that the landlord shouldn't be charging them.

Ms. Balsam: In defining garbage escalators, the rule actually does say that garbage escalators do not include services provided by New York City Department of Sanitation at no cost to the owner. So the tenants are on notice that they can get sanitation service.

Ms. Torres-Moskovitz made the point that, nevertheless, most tenants don't understand the details of the services they receive.

Ms. Balsam and Mr. Hylton agreed that this was an educational issue, and is something that should go into the brochure.

Mr. Barowtiz: In my building, which is a condo, there are commercial and loft tenants. And the amount of garbage in front of our building is horrendous, but it all gets picked up by the city. So I wonder why anyone would pay for it. The city will pick up any garbage that's on the street.

Mr. DeLaney explained that in his building, the commercial tenants put their garbage on one side of the building; the residents put theirs on another; and each is picked up separately by commercial and city services.

Ms. Torres-Moskovitz: One thing architects don't do is consider how waste is handled in the building, so often, there's no space for recycling, etc. When loft buildings convert, does the staff deal with areas for trash?

Ms. Balsam: Oh yes. Sometimes garbage disposal is a big issue in Narrative Statement conferences.

Ms. Torres-Moskovitz: So if you are working on a brochure, I think it's a perfect topic. DSNY would work on it, too.

Ms. Balsam: The target audience for the brochure is IMD tenants, to inform them of their rights.

Ms. Torres-Moskovitz explained how the Department of Sanitation was approaching the situation. Part of their mission to was reach X number of buildings, to educate them about how to deal with trash and recycling. And she thought that information would be good to include in the brochure.

Mr. DeLaney: Before moving on, I don't know if it's in the amended rule, but the look-back period on rent overcharges has changed in the Rent Stabilization Law. And some of the tenant attorneys have suggested we take a look at that.

Ms. Balsam: I have that as an open issue that was raised by Mr. Carver about a year and half ago. But we never got back to it. I think we had eliminated the rent-overcharge period altogether, and he was wondering why. I said I wasn't a hundred percent sure, but that the Board should certainly consider it. It wasn't clear that it's a change. It is in here, and we will get to it.

Ms. Balsam continued: So that's § 2-06.3. Then we have the Sale of Improvements rule (page 126, § 2-07). In most of this, there are no changes. But line 17, page 133, deals with the sale from an out-going tenant to an incoming tenant, and the rights the latter has. We're adding that the incoming tenant may be subject to "Any increases permissible pursuant to 29 RCNY §§ 2-06, 2-06.1, 2-06.2, or 2-06.3…" So we're just adding 2-06.3.

Mr. Hylton asked what the difference was between §§ 2-06 and 2-06.1 through .3.

Ms. Balsam explained that they deal with different Window Periods, and continued: Page 134 deals with whether or not there would be deregulation under certain circumstances. Each of the Window Periods is enumerated, and we're adding the newest Window Period. So on line 8, if the building had fewer than six residential units "…on June 25, 2019, for a unit covered by MDL §§ 281(5) or 281(6) that became subject to Article 7-C pursuant to Chapter 41 of the Laws of 2019;" we're adding that language. And below, on lines 21 and 22.

Mr. DeLaney: So here's an instance where we pick up new § 281(5) buildings?

Ms. Balsam: Yes. This is a sale of improvements in a building covered by § 281(5), pursuant to Chapter 41 of the Laws of 2019. And also § 281(6), but the point you're raising is about § 281(5), right?

Mr. DeLaney: Yes.

Mr. Hylton asked if "the Laws of 2019" was used elsewhere.

Ms. Balsam reviewed the previous language of the section and said that there are different ways it could be subject to § 281(5). She asked if there were any questions on page 134.

Ms. Torres-Moskovitz: Do you ever have cases where we see this kind of sale of rights (from an out-going tenant to an incoming)?

Ms. Balsam: Yes. I hadn't seen any, but in the last year, I've seen four or five.

Ms. Balsam continued: At the top of page 135, again, these are notices. This deals with how the owner and the out-going and incoming tenants are communicating with each other. What it says now is (lines 3 through 5), "Service by the parties will be effectuated either (1) by personal delivery or (2) by certified or registered mail, return receipt requested, with an additional copy sent by regular mail." Do we want to keep it like this, or do we want to add, and by email, if the address is known, as we've done in other sections?

Mr. DeLaney: The one issue I would raise is that there is quite a package of stuff that's created here, with the detailing of improvements. It might get a little cumbersome. It seems to me this is one place where having it all in an envelope might be the best method.

Ms. Balsam: Ok, we can leave it.

Mr. Hernandez suggested that the information could be sent by email in addition to the hard copies, which should be primary.

Ms. Torres-Moskovitz wondered why it needed to be sent by both certified and regular mail.

Ms. Balsam explained that some people fail to pick up certified mail at the post office. She then continued: Page 136, line 12, we eliminated "five calendar" days and just left it, days, because we define days as calendar days, unless otherwise stated. We're also changing cross-references on lines 14 and 20.

Mr. DeLaney: This isn't new language, but have you had to hire an appraiser recently?

Ms. Balsam: The only case where it actually came up would have been Bikman, but there was no reason to hire an appraiser, because the fixtures had all been removed. So we didn't have to hire an appraiser, and I hope we never do.

Ms. Torres-Moskovitz asked about the case.

Ms. Balsam: Yes. It's very complicated. It was an improvements case, and ultimately the Board awarded the estate a certain amount of money for the deceased protected occupant's improvements. And it's still in litigation.

Ms. Balsam continued: This brings us to page 141, which is § 2-08, which we've already done. We can also skip § 2-09, because we only have a few minutes left, so we can do something that's less controversial. That will bring us to § 2-10, Sale of Rights, which starts at the bottom of page 189, but is really on page 190.

Mr. DeLaney asked if Ms. Balsam thought the Board could get through all the rest in the remaining fifteen minutes.

Ms. Balsam asked if the **Board** members wanted to try to do this, and they agreed.

Ms. Balsam continued: Regarding the right to sell improvements, line 9, on page 190, deals with limitations. If you made an agreement "…prior to the following dates in which an occupant purported to waive rights…" that agreement won't be given any effect. It's just a change in the language, but it adds, "June 25, 2019, for units covered by MDL §§ 281(5) or 281(6) that became subject to Article 7-C pursuant to Chapter 41…." I changed the structuring of the sentence, moving the language in which an occupant purported to waive rights up to the top, then listed the dates and added June 25, 2019. If you had a sale prior to that, but you're covered under § 281(6), it doesn't count as a sale. In terms of the filing requirements, we added MDL § 281(6), "which occurs after" and again, we need to insert the effective date of the rule.

Ms. Balsam continued: The changes on page 191 are more substantive. Some is just language changes, but beginning on line 4: "The owner or authorized representative must include documentation supporting the sale. Supporting documentation should include, a fully executed sales agreement and proof of payment of the sales price (if applicable)." Because you could have a consideration that isn't actually money. The is new language, and it arises out of all the problems we've been having with the sales records -- whether or not there's any consideration at all; the whiting-out of the consideration being paid, etc. And we suspect these are not knowing and intentional waivers of Loft Law rights. We re-drafted this to say, "The sales agreement must include a full description of the consideration, including the amount of monetary compensation, if any, supporting the sale." That's problematic, because one tenant can look at what another tenant was paid, and say, he got $2000, why can't I get $2000? So it may cause some disturbance in the loft community for both tenants and owners, but I think from our standpoint, we want to know that they received something. "Staff must reject any sale of rights that does not include a full statement of the consideration supporting the sale. The refund of a security deposit, or a portion thereof, is inadequate consideration to support a sale." And then I wanted to add what we had done in the 99 Sutton case (line 14): "The occupant must be residing in the unit at the time of the sale. Sales occurring after an occupant has vacated the unit are invalid." I see these as very important changes.

Mr. Hylton felt the language about the security deposit could be stronger; such as, is not consideration, or cannot be considered consideration. It seemed to him that the way it is worded leaves to the door open to it being allowed as a piece of the consideration.

Ms. Balsam agreed to state simply: The refund of a security deposit, or a portion thereof, is not consideration to support a sale. And she was certain there will be comments on this at the public hearing. She then asked if the Board members were in agreement with (line 14): "The occupant must be residing in the unit at the time of the sale. Sales occurring after an occupant has vacated the unit are invalid."

Mr. DeLaney: We struck, "If the occupant refuses to sign…"

Ms. Balsam: I think there's a difference between a refusal to sign and the owner didn't have the forms executed. We could put that sentence back in (lines 15 through 19): "If the occupant refuses to sign the form, the owner or its authorized representative must file with the form a sworn statement identifying the occupant, the reasons given by such occupant for refusing to execute the form and proof of the sale of rights, including supporting documentation." I would like to take out (lines 19-20): "If the prior occupant could not be found, the

owner or its representative must provide a description of the reasonable efforts....” No. If they’re living there, get them to sign the form. And if they refuse…. So yes, we should put that first sentence back in (lines 15 through 19).

Ms. Torres-Moskovitz: How do you have a valid sale if, for example, the tenant has to leave immediately for a job in another state?

Mr. DeLaney: I think that tenant abandoned.

Ms. Balsam: Yes, that’s true.

Mr. DeLaney: So I would not restore that first sentence.

Ms. Balsam: Really? Because, theoretically, you can’t have a sale if they’re refusing to sign the form.

Mr. DeLaney: I, as the landlord, am going to give Elliott money without requiring him to sign the form…

Ms. Balsam: No. You’re saying to him, I’m going to give you $50,000, and Elliott’s saying, fine, I’ll take the money, but I’m not signing any form. I don’t believe in government, and I won’t sign any form that will be on file with the government. I live off the grid, etc., etc. That’s the scenario this is intended to address. What does the Board want to do?

Ms. Torres-Moskovitz asked for clarification on abandonment: The tenant had to leave quickly for a new job, is now living in another state, and hasn’t been able to communicate with the landlord to strike some kind of deal. They’re no longer physically in the space. So what happens? Can they still negotiate?

Ms. Balsam: No. The owner can file for abandonment, saying the tenant abandoned this unit. We couldn’t strike a deal, and I want to deregulate it.

Ms. Torres-Moskovitz: Deregulate it? Not ghost it?

Ms. Balsam: My understanding of ghosting is that you have a prime lessee that’s not actually there.

Mr. Barowitz: The owner has to go through a whole series of difficult things before abandonment can become official.

Ms. Balsam: Right. It’s not that easy.

Ms. Torres-Moskovitz was still concerned about the tenant who had to move in a month. How would they negotiate a sale of rights in that time period?

Mr. Barowitz: If the tenant goes to California for one or even six months, they still live there. The landlord has to prove that they’ve moved to a new address permanently.

Ms. Balsam explained: Imagine you're a landlord collecting $2000 a month rent for the apartment, and the market rate is $3500. A tenant comes to you and says, I'm moving in thirty days, why don't you buy me out? As the landlord, you're going to want to do that, because you want the deregulation. And because it says in the rule that the tenant has to be residing in the unit at the time of the sale, the landlord is incentivized to negotiate and make that sale in that thirty-day period, before the tenant moves.

Ms. Torres-Moskovitz: Couldn't he just file for abandonment?

Ms. Balsam: No. If it was easier to do that, then there'd never be any sales.

Ms. Torres-Moskovitz: What are the options when a tenant leaves a unit? Sale of rights, then market-rate; abandonment, and….

Ms. Balsam: Or it could be rented again at the regulated rate to another tenant, who could be made Protected Occupant. The landlord could do that, if, say, he or she didn't have the money to buy the tenant out, but doesn't want to go for abandonment. So the first tenant would leave, and the next person moving in would have the same $2000 rent. If the landlord charged more than that, the tenant would have the opportunity to file for a rent-overcharge. I'm trying to think whether they'd have to file a Protected Occupant application.

Ms. Torres-Moskovitz: So that makes the new tenant the de facto protected occupant?

Ms. Balsam: That's what I'm trying to figure out.

Ms. Torres-Moskovitz: I'm really interested in this, because that's what happens with rent regulation. That information gets lost between the old tenant and the new one.

Ms. Balsam: I think that happens and may be happening more and more.

Ms. Balsam continued, saying that this would be a good place to stop (page 191), and when the Board meets again, they can pick up on page 193 with updating the penalty schedule.

Mr. Barowitz: We're going to stop when we only have five pages left?

Ms. Balsam: I have to prepare a draft for the penalty schedule, and there really isn't anything else to review. A few changes to cross-references, adding § 281(6),…

Mr. Hylton agreed, there was nothing really left to do.

Ms. Torres-Moskovitz asked where the Board would be starting in January, relative to §§ 2-09 and 2-10.

Ms. Balsam: We'll pick up on page 191, which is § 2-10, and we'll go through all the way to the end of page 197. Then we can go back to 2-09 and our open issues.

Ms. Torres-Moskovitz: Which are?

Ms. Balsam: There are not that many.

Ms. Torres-Moskovitz asked what the next steps would be, if the Board completed this work at the next session.

Ms. Balsam: After we finish everything, I'll come back to you with a clean draft of all of the changes. The Board will vote on publishing that, and then we'll publish. We have to allow thirty days for our public hearing.

Mr. Hylton further clarified, saying after the Board votes, it has to go through the Law Department and the Mayor's office, which will get back to the Board with any comments they might have.

Mr. DeLaney said that it doesn't go out for a public hearing until after those reviews.

Ms. Torres-Moskovitz: And in the meantime, coverage applications are coming in? If you applied last week for coverage, and we haven't passed rules…

Ms. Balsam: They're following the current rules, but if our rules conflict with what's in the new Law, that Law takes precedence.

Mr. Hylton: So we'll be able to implement the Law, regardless of where our rules stand.

Mr. Hylton then thanked Ms. Balsam for her leadership and all the work she and the staff had done this past year, and closed the meeting: This will conclude our December 5, 2019, Loft Board meeting. Our next public meeting will be held on Thursday, January 16, 2020, at 2:00 PM at 22 Reade Street, Spector Hall.

The End