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

January 30, 2020

The meeting began at: 1:20 PM

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

INTRODUCTION:

Chairperson Hylton welcomed those present to the January 30, 2020, 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.

LOFT BOARD WEB SITE:

Mr. Hylton reported that there was to be a presentation today about the web site, but due to technical difficulty with internet access, it was being postponed. He noted that the site was about to the go live, but he wanted the Board to see it first.

EXECUTIVE DIRECTOR'S REPORT:

Ms. Balsam:

Staffing: We have a new Deputy General Counsel, sitting to my right. Her name is Tina Lin, and she came to us from Queens Legal Services, where she was a tenants' rights attorney since 2015. Prior to that, she was a Section Eight hearing officer at the Department of Housing, Preservation, and Development. We're very happy to have her here, and she's already proven to be a valuable asset, even though she's only been here a couple of weeks.

Web site: We've been told it's going live today, and we've been checking all day. Hopefully that will happen by the end of the day. So take a look, and when it's there, start surfing. It's pretty cool, actually.

Mr. Hylton noted that the site was now up and encouraged the Board to take a look and provide Ms. Balsam with their feedback.

Before starting rule-making, **Mr. DeLaney** asked if there was any new information regarding Ms. Torres-Moskovitz's question about self-certification.

Mr. Hylton replied that there was no further update, but that he would inquire immediately following this meeting and send an email to the Board with the response.

RULE-MAKING:

Ms. Balsam: We're going to tackle § 2-09 today, which is on page 172. It really starts several pages before, but except for the title, all of that has been deleted. The new proposed text starts on page 172. We've already discussed line 1 at great length, so I'd like to move to line 2.

Mr. DeLaney: Forgive me, but I'd like to talk about it just a little.

Ms. Balsam: Again?

Mr. DeLaney: The line we're talking about is, **"**A protected occupant(s) must be a natural person(s)." I'm not clear on the why this is necessary.

Ms. Balsam: The unit is supposed to have people living there; and while corporations are legal entities, they are not people; and we want people living in these units.

Mr. DeLaney: I think my concern stems partially from the fact that a lot of these original, bogus leases were sometimes signed by an entity the tenant formed – a corporation or an LLC.

Ms. Balsam: That's OK, but the protected occupant is going to be the tenant.

Mr. DeLaney: Well yes, and in my linear thinking and rabid adherence to the way we did things for the first thirty years, my concern is, now that we have all this case law that's evolved in terms of who the prime lessee is, if the only lease is in the name of a corporation or an LLC…the need for this sentence confuses me.

Ms. Balsam: If the lease is in the name of a corporation or an LLC, then the corporation or LLC would not qualify for protection and the prime lessee would not be protected, because they're not a natural person. The tenant would be protected. That's how it would work. Isn't that the result you want?

Mr. DeLaney: In my entire time on the Loft Board, I've never seen an application for protection as a residential occupant filed by a corporation --- or a dog or a cat. It just seems so obvious….

Ms. Balsam: We have had owner's who've wanted to register corporate tenants, as opposed to people. So we wanted to make it clear that they need to register people, and that it's the people who are protected, not the corporation.

Mr. DeLaney: Right. And person doesn't suffice? It has to be natural person?

Ms. Balsam: If you look in the definitions section, person is broader and does include other legal entities. We've already had this discussion.

Mr. DeLaney: Yes, I recall. We had a big debate on this last February 14th. So some of this has been sitting around for more than a year.

Mr. Hylton: I think natural just means you have blood running in your veins.

Ms. Balsam: Yes.

Mr. Barowitz asked why we don't just use human being.

Ms. Balsam: Because natural person is a legal term.

The **Board** accepted this, and was ready to move on.

Ms. Balsam: Line 2. This should actually say, *Place holder for prime lessees* and their spouses/ domestic partners *with lease in effect being protected occupants to the exclusion of everyone else if applicable.* This was something the Board had not decided on. That's why it's there as a place-holder. There was a lot of discussion about this, and you have to decide if you want to go that way or not.

Ms. Balsam further clarified, for Ms. Torres-Moskovitz: I don't know if you were here when Mr. Carver was talking about Aunt Fran. If Aunt Fran happens to live with them, do we want Aunt Fran to be covered; do we want roommates to be covered, etc. That was the back-and-forth. So I left this in there for discussion, and when the Board decides what it wants to do, we'll either put in text that says that, or remove this altogether and renumber the rest.

Ms. Torres-Moskovitz said she did recall a debate with Mr. Carver and thought the staff was going to research the question of expired leases. She recounted knowing someone who has a ten-year-old expired lease, who's been living in LA for five years and subletting the unit. She wondered how much power an expired lease has.

Ms. Balsam: I think you're asking two different questions. The first question is, under our rules, currently, would he still be protected? And the answer is yes, because the definition of prime lessee includes someone who had a lease, even if it's now expired. Theoretically, he's not a protected occupant under our rules, because he hasn't been living there, and from what you're saying, he hasn't complied with the subletting regulations. He's been gone too long and didn't reclaim the space. As to whether or not the provisions of the lease carry over -- which is one of the things Mr. Carver had asked about -- we did have someone research that, but I'm going to ask Ms. Lin to address that, as she's in the best position to do so.

Ms. Lin: And the answer is, it depends. But in theory, yes, it should. When we have a written contract, it usually doesn't renew by itself. But in the landlord-tenant situation, the terms and conditions of a lease should continue, unless something changes to create a new, implied contract between the two of them. So the terms should carry over, unless someone does something to suggest there's a change in the terms.

Ms. Balsam: But it's a month-to-month tenancy, right?

Ms. Lin: Yes. I think it would depend on the specific situation, but very generally, courts have read terms into leases that have expired.

Ms. Torres-Moskovitz: What if you had a landlord in a loft building, making new leases with tenants who are not IMD tenants? Their units are not covered, but the owner is making residential leases. They're probably phony commercial leases, but people are living there.

Ms. Balsam: If they're not covered units, those are illegal leases and illegal occupancies. If you have five covered units in a building of ten apartments, then you have units that are in the process of becoming legal residences, and five that are illegal.

Ms. Torres-Moskovitz asked if the commercial template leases for the illegal units would have any power.

Ms. Balsam: I think it would be up to the people in those units to file for coverage, which they could now do if they were there in 2015/ 16.

Ms. Torres-Moskovitz said her point is that she doesn't want the units to be empty. The prime lessee now living in LA won't be there, and the current tenants are removed because the units are illegal.

Ms. Balsam: This is one of the reasons we would want to be able to cover the people living there – the sub lessees. Because they are the people who are there. The owner could sue them, but the tenant could bring a proceeding. If it's not the prime lessee's primary residence, and it's a covered IMD….

Ms. Torres-Moskovitz: If it's not a covered IMD, can those sub-tenants apply, even if there's an old lease existing somewhere, held by someone else?

Ms. Balsam: Yes. It would be an issue in the case, but yes, they could apply. We have had the situation of what I think is called ghost tenancy? No, illusory tenancy.

Ms. Torres-Moskovitz: I'm speaking of a case I know about, but I think it applies to many situations. So thank you for clarifying that. I just want to be sure the rules don't prevent a case from proceeding or someone from living in a space.

Ms. Balsam: The question for the Board is whether or not you want to allow what I've written here. That the prime lessee and their spouse or domestic partner trumps all. If you don't want that, we'll take this out and move on. If you do, then we won't. There is also a question about the definition of prime lessee. And that would probably be less important if we don't have this clause. We still need a definition of what it is, but you wouldn't have to change the definition if you don't have this particular clause.

Mr. DeLaney: I think my preference would be to leave this open for the moment, until we go to the guts of the issue. I apologize to the members of the Board, but in my mind, the staff now has four attorneys, including our Deputy General Counsel, who is experienced in Housing Court, so I will try to very succinctly summarize the problem I have with this section as it currently reads. When the Loft Law was passed in 1982, rather than being a series of numbered rules, the Board actually adopted a sequence of regulations, which were later re-codified and placed under New York City Rules. The regulation that became this section was originally called, Rules on Subletting, Subdivision, and Assignment. It was developed only to address situations where there was an active fight over who was the protected occupant among competing residential occupants.

For example, I sublet my loft for the entire 1980-81 Window Period to someone else. There were no rules as to how long I could sublet; it was all very informal. So that person said, I'm the protected occupant. That's a subletting example. Subdivision is when I was an entrepreneurial tenant. I created two or three units on a floor. Invested capital and fixtured the place, and became what was called a mini-landlord. The questions there were how the subtenants would come under privity with the landlord and what the rent would be. Because in those

days, I was paying $1000 for the floor, and I created three other units, each paying $800; so I was coming out $1400 ahead every month, which to me was fair, because of the investment I had made. The third issue that rule was intended to address was the question of assignment. Frequently what happened was the tenant who was leaving sold his/her fixtures to the incoming tenant for a fixture fee or key fee. Which is how I came into my loft in 1975.

So the entirety of that rule was devoted to solving issues of competing interests. And portions of it still read well, when you read it for this purpose. What is now § 2-05, on registration, was the rule called Coverage at the time. Up until about 2014. So the first thirty years of the Loft Law's existence, if two people shared a unit, and they applied for coverage, and they could both prove that that was where they lived, they were both considered covered (protected) occupants. The fact that one of them signed the lease with the landlord and the other didn't was ignored. But what's happened since 2014, or a bit earlier, is that this rule has been viewed as addressing not only contested space in terms of subletting, subdivision, and assignment, but it's also now become part of determining who's a protected occupant.

Particularly the question of who is the prime lessee if the lease is expired. I can see the logic of that applying to a commercial lease. I rent an office for year; there are these provisions; my lease expires; the landlord kicks me out; or I'm on month-to-month. It's an office and I'm renting it as an office. I'm a residential tenant in a two-family building; I had a lease; it expires; and I continue as month-to-month. But here, at least in the early era, and I believe, to a large degree, in the current era, if leases were given, they included terms that never applied. The most common term permitted by law and put in the standard Blumberg loft lease: we both agree this is going to be an art studio. And I swear I don't live here. I live with my parents, etc. So reading § 2-09 in its entirety again this week, it struck me as trying to address two sets of issues in one rule. I grant that the way it worked for thirty years did not take into account the bigger buildings in Brooklyn with more units. And it did not take into account people like a fellow I knew from my college days who, for twenty years, was living in the Albany area, but continued to sublet his apartment in the city for a profit all that time. I think that's reprehensible. I'm not out to defend tenants profiteering off the landlord's property.

But that's why, at its inception, the rule was intended to address one set of circumstances. Now, it's trying to deal with two different issues. I almost feel like the part that sorts out who's protected and who's covered in instances where there's no battle between the parties should actually be moved into § 2-05. And this should just retain it's original purpose. Because it's really complicated, the way it weaves in and out, and I question why we've got all this in one place. In this instance, I also sense that the lease was a sham to begin with. We've had cases where someone had a lease for one year in 2005, that got covered under 2010, and now it's 2020, and we're going to look back to that one-year lease in 2005? It doesn't make sense to me. So I'm sorry. I know some of you have heard me sing this song far too many times.

Ms. Torres-Moskovitz: No, it's good to hear all this. Is it possible to move some of the material?

Ms. Balsam: Yes, it is. We can definitely move some of this somewhere else. I'm fine with that. I think one of the reasons we wanted to limit the rule just to the lease in effect is because there are contractual expectations, and you could wind up with constitutional issues. I think the Law Department was concerned about that. And so I think we felt if we had to limit it somehow, we would limit it to when the lease was in effect, and that's it.

Mr. DeLaney: Bear in mind that by the time the original Loft Law passed in 1982, almost all of the original five- and ten-year leases had expired. Literally hundreds of buildings were in litigation. Everything was being determined based on decisions in Housing Court and Supreme Court. There were buildings where the landlord had turned off the water. It was a very peculiar situation, and it is different today. But I think if we did tease apart the significant portions of §2-09 that are involved with competing interests among occupants and let that stand on its own; and put whatever we decide on everything else in § 2-05, it would be a lot clearer.

Ms. Balsam: Fine. That's not a problem.

Mr. DeLaney: And I also question how much weight to give an expired lease. If I signed a lease that expired in 1997 that said I wasn't going to live there….

Ms. Balsam: I'm in favor of saying that if the lease is expired, the contract is done. And the fact that there is some sort of legal mechanism that says it might continue --I think the circumstances have changed. Particularly in a Loft Law coverage issue. I'm not a big fan of continuing, if the lease is expired. That contract's over, and you move on and cover and protect as many people as possible. That's why it says, "prime lessees with lease in effect." When the lease is in effect, we're stuck. There's not much we can do about it. It's a legal contract.

Mr. DeLaney: I agree. Certainly, when the law initially passed in 1982, there were still leases in effect between the prime lessee and the sub-divided-space tenants. Those leases were allowed to play out, and that's appropriate. The sub-tenants wanted the Loft Board to break the leases and re-figure the rent immediately. But as you say, that gets into contractual issues. The battle over sub-divided space was one of the most painful parts of the institution of the original Loft Law. The landlord didn't necessarily want to have all these tenants to have privity. Then the landlord has to deal with Chuck and his problems as well as those of Chuck's three sub-tenants. But the carrot that was given the landlord was we're not going to recalibrate the tenants' rent. So the windfall that was going to the prime tenant now goes to the landlord.

Ms. Balsam: So what does the Board want to do? Should we draft something that says that the prime lessee and their spouse or domestic partner with a lease in effect is the protected occupant to the exclusion of other residents?

Ms. Torres-Moskovitz: OK, so a current, in-effect lease? That would be a couple or individual who has roommates, because they can't afford to live there alone?

Ms. Balsam: They can still have roommates.

Ms. Torres-Moskovitz: And if they invested money in the space and fought for IMD coverage, now their roommate, who may have only been there a year, could be an equally protected tenant, right?

Ms. Balsam: If the lease expires?

Ms. Torres-Moskovitz: If we didn't say this.

Ms. Balsam: If we didn't say this, yes, that's correct.

Ms. Torres-Moskovitz: And if they end up in a fight, that would be figured out in another court?

Ms. Balsam: Yes. Another example that was given is if someone takes in a roommate just prior to when coverage is granted. It's one thing if you've had a roommate for ten years. You know each other pretty well; you get along; and there's a great likelihood that that will continue. But what if someone moves in the month before coverage? Then everyone in the unit is protected, but the relationship doesn't work out so well. Now you have a real problem, because you can't get rid of that person. Again, whatever you want to do is fine. Those are just some examples of what could happen.

Ms. Torres-Moskovitz: I remember when we talked about the goal in re-writing the rules, which is to protect more people. So to protect more, you would not do this.

Ms. Balsam: I'm concerned about not doing something for when the lease is in effect. I am concerned about that. Because the prime lessee pretty much controls what happens in that unit, when the lease is in effect. In essence, it's their property for that period of time.

Mr. DeLaney: One of the things we need to think about there is – and again, this then-regulation-now-rule was written with the idea that Chuck created separate units on the floor. Which is different from circumstances that we read about and have heard about in some of the larger footprint buildings in Brooklyn. Thames Street comes to mind. There are seven of us. We're all here, and there are two bathrooms and one kitchen and whatever else, and we all consider ourselves to be family. That's very different from I'm the landlord of these three little units that I created.

Ms. Balsam: Right. At some point, the rule was amended, and it now says, protected occupants and more – privity, subletting, etc. But the question is, what should we do now? We have a slate? What do we want to write on it? We need to resolve it. But if we can't resolve it, then let's leave it as it is, and amend the current b(4) to say, the prime lessee and their spouse or domestic partner, and move forward. I would rather the Board come to an agreement and make some of the changes, because I think they're good changes.

Mr. DeLaney: Again, I would encourage taking a step back and considering taking those changes and putting them in § 2-05.

Ms. Balsam: We can do that. We could take page 172 down to line 18 on page 173, and put that in § 2-05. We'd have to rename that section, but that's fine. We can move the title down from page 169, and change it back to Privity, Subletting, whatever. Moving it isn't the issue. It's, even if we move it, what should it say? We have (2), which is a place-holder, but what about the rest of it?

Mr. DeLaney: I would submit that the way the Loft Board originally cut the Gordian knot of sub-divided space – that is, sub-tenants who say, I was here throughout the whole Window Period, so it's my unit, even though you developed it – I think that works. It's been upheld in courts, and if it stands alone, then this becomes a lot easier to read, because you don't keep stumbling into things that are really all about that fight and not the question of, there are eight of us in the unit. Who's covered? (Protected). I'm happy to explore that, as a separate issue. I think it's much better to have them separate.

Ms. Balsam: OK, fine. But that still leaves us with the text from line 1 on page 172 to line 18 on page 173. Is that what we want to move into § 2-05? I think that accomplishes what you want to do. The subdivision part is basically staying the same.

Mr. DeLaney: Yes, I agree.

Ms. Balsam: Except for a little re-wording in what is now sub-paragraph six on line 19, the rest of it going to stay the same, with some minor additions to cover § 281(6). That's fine. But what do you want to do with the first part? It's up to the Board. The legislature didn't define "occupant qualified for protection." They left it to the Board to define by rule. I think everyone feels the rule we have is not adequate. So what do we want the rule to be? I think this reflects all of the discussions we've had, including the points and the lines, etc. Is this OK? Do we want number (2)? And if so, we'll flesh-out some language.

Mr. Barowitz: The whole sub-lessee issue was problematic. He mentioned that when the Loft Law was first proposed, many tenants didn't want it, because they had all kinds of special deals with the landlord. Sometimes subletting is simple and straightforward, as when someone has to leave town for a while and sublets their place with every intention of returning. But other times, as with an unlimited number of roommates, or vaguely defined family members, or the sub-division of spaces – all for the tenant's own profit -- it's much more complicated. He said the sub-lessee issue has been weighing on his mind since he began sitting on the Board, and he really doesn't like it.

Ms. Balsam: At this point, the focus for me isn't the subletting part. That's basically going to stay the same, except for what we need to add regarding § 281(6). The focus is before we even get to the sublet. It's who is the protected occupant? Who is the occupant qualified for protection?

Mr. DeLaney: Let's consider it as a hypothetical. We're dealing with one unit, with one front door, one kitchen, one or two bathrooms, but everyone can come and go. This isn't four separate units on a floor. This type of arrangement seems to be more popular in the newer buildings, partly because the spaces are larger and the rents are a lot higher. What I hear us saying so a far is, if the lease is still in effect, we'll look to the lease and take the prime lessee into account and spouses and domestic partners. And if the lease is not in effect…

Ms. Balsam: Then it's whoever was there on the effective date of the law. And if they came after the effective date of the law; and are there with the consent of the owner; and if they were using the unit as their primary residence on the date they filed the application for protected occupancy. That's what this says. And that's your point, right? The date?

Mr. DeLaney: Yes, yes.

Ms. Torres-Moskovitz: And what's the date of the current Window Period?

Ms. Balsam: June 25, 2019.

Ms. Torres-Moskovitz: So that's clear. Someone's living there. And if someone moved in in December, 2019, with the consent of the other roommates…

Ms. Balsam: With the consent of the owner. Sometimes one person leaves and another person comes, and the new person enters into a lease with the owner. If the owner isn't bothering to buy out the person who's leaving, then the new person should be the protected occupant.

Mr. DeLaney: Assuming there's one person.

Ms. Balsam: Yes. It's whoever is a prime lessee, right? Yes, assuming that there's one person. I guess it gets more complicated….Let's say you had one person who's the prime lessee, who had three roommates. The lease has expired, the prime lessee has left. Now there are just two roommates. Then one of them leaves, and then the other one came. But I think you could still sort that out, based on the language of this rule.

Ms. Torres-Moskovitz explained the way she's seen these rentals work. A fellow has gone to California and sublet the space to people, who are constantly moving in and out, finding replacements as they go.

Ms. Balsam: "Running the unit," was the term at 401 Wythe. "I'm running the unit."

Ms. Torres-Moskovitz: That's how it works**.** So if they moved in in December…

Ms. Balsam: I think the question in that situation would be who has the consent of the landlord? Because it's after the effective date of the law. If you have someone who is "running the unit," who may be an ex-roommate of the prime lessee, who is gone...Who is the landlord collecting rent from? Who is the landlord dealing with? All of those will be issues of fact that will have to be determined. If you have one person living there – and please, you have to be living there -- and in charge, and that's the person the landlord is dealing with, then that's probably going to be the person now considered the prime lessee, if everyone else came later.

Ms. Torres-Moskovitz: What if that person is living in another state and the people in the space are mailing him cash…

Ms. Balsam: Then it's up to someone who's actually living there to assert that claim. Someone has to bring that to the owner's or the Loft Board's attention and say, we have an illusory tenancy here.

Ms. Torres-Moskovitz: And in terms of units that are not yet covered?

Ms. Balsam: This rule would apply to both. This rule (3) says, if you're living in a unit that's not an IMD, and you want to be protected by the Loft Law, you have to apply for coverage either before you apply for protected occupancy or at the same time.

Ms. Torres-Moskovitz: So coverage for the unit is easier than coverage for protected occupancy?

Ms. Balsam: Yes. But you have to prove all the coverage requirements. And if the building is already covered, it's easy.

Mr. Barowitz: If the building and the unit are covered, and the prime lessee moves out, and there's five sub-tenants, then what happens?

Ms. Balsam: Depending on how this rule is drafted, I think it would depend on when they came and who the landlord is dealing with. If there are five of them left, and one says, OK, I'm going to be in charge, and they all agree and pay rent to that one person, and that person then pays the landlord, then maybe that person should be the protected occupant. But if the Board says no, it should be everybody, that's OK too. I'm OK with protecting more people. I think everyone is. But yes, protecting more people is going to create a whole host of issues, and that's OK. We'll deal with those issues.

Mr. DeLaney: It seems like whatever we do, we're going to create a host of issues. It's just a question of whether they're over here or over there.

Ms. Balsam: Right. I guess if all five remaining people in Mr. Barowitz' example then become protected, that could get thorny when talking about sales of rights. But we have cases already where we've said, you have to buy out everyone who's protected. We could entertain applications for protected occupancy and see how the cases play out. It isn't written in stone, that if we do this now we can't change it later. Not that I'm advocating we do that, but it would be nice to come up with something workable now, that fits everybody as best as we can.

Ms. Torres-Moskovitz: As we get further away from June 25, 2019, there's going to be hundreds and hundreds of people applying, as the years go by, right? And in terms of the person who will have the least power in these situations, that would be the person who comes in after this date, right?

Ms. Balsam: Right.

Ms. Torres-Moskovitz: But they can still be a roommate there?

Ms. Balsam: Of course.

Ms. Torres-Moskovitz: They're just not protected?

Ms. Balsam: Correct.

Ms. Torres-Moskovitz: They're not being evicted?

Ms. Balsam: That would depend on whoever is running the unit. But yes, I don't think there's any reason they couldn't live there.

Ms. Torres-Moskovitz: I just don't want to see a case where everyone who's living there disappears, then it becomes market-rate.

Ms. Balsam: There would have to be a deregulating event for that to happen. I suppose if everyone abandoned the unit, the owner could then file an abandonment proceeding. That could happen. Would it? I don't know. But it could.

Ms. Roslund: Is there anywhere in the law in general, where a person is multiple persons? So if you have four people, would there ever be a scenario where they're one occupant?

Ms. Balsam: Not for the purpose of protected occupancy, but they could all be protected occupants. They could all qualify for protected occupancy. Let's say there was a prime lessee, and the prime lessee left, and the lease is no longer in effect. The four people living in the unit file for coverage, and they were all there prior to the effective date of the law, so all four of them would qualify as protected occupants. I think that's what we want. I think that's what it was before, and that's what we want to get back to.

Mr. DeLaney: We took a step in the wrong direction with 79 Lorimer Street, as I recall. The tenants advocated for more people being covered than we found to be covered.

Ms. Balsam: I believe we had a line of cases that were evolving. You can't just say, because you want it, we're going to do it. We can't just ignore our rules and how we've interpreted them. The proper solution to the 79 Lorimer paradox is to change the rule. And that's what we're trying to do.

Mr. DeLaney: Well, there are those who, like me, have had their heels dug in since 2014, and complained about every one of these cases.

Ms. Balsam: I understand that, but this is where we are now. The Board is a majority, and at that time, it didn't go your way. So let's go back. Let's revisit it.

Mr. DeLaney: I'm not bitter about it; I'm just… I spoke to someone this summer before Chapter 41 passed, who said, I developed this unit; I've had a variety of roommates; I've explained to each of them that I put all the investment into this and they're just a roommate; I asked them to sign an agreement saying they won't apply for coverage (protection). What do you think my chances are under the Loft Law? And I said, I don't know and I wouldn't give you any advice. I'm not a lawyer. But even free legal advice from a photographer --- I don't know. Obviously, and particularly in these bigger units, where you need roommates to make the rent, I grant that it's not 1982, when gas was forty-nine cent a gallon and the New York Times was fifty cents. But even I have to admit those days are gone.

Ms. Balsam: No one is saying you can't still have roommates. The issue is, who are we going to say can be protected?

Ms. Torres-Moskovitz: Is there a limit to the number of roommates?

Ms. Balsam deferred to Ms. Lin for a response.

Ms. Lin: The law says, if you have one person on the lease, you're entitled to one roommate; and the roommate's family, as well. So if it's your name on the lease, you can have yourself and your family and your roommate and their family. If you have two people on the lease, it's a little dicier. It's not as clear-cut.

Mr. DeLaney: The Multiple Dwelling Law says up to four boarders, right?

Various Board members responded yes.

Mr. DeLaney: And we've got a case on Thames Street where the judge said seven are a family.

Ms. Torres-Moskovitz: Because they were a family.

Ms. Lin added that the different limits might be due to safety issues. You and your roommate can have your families, assuming it's not over-crowded.

Mr. Barowitz pointed out that at 79 Lorimer St, there were five people, five units, one kitchen, and one bathroom. And he didn't have a problem with that, as long as everyone is comfortable.

Ms. Balsam: But comfort isn't the issue. The issue is, who of those five are we protecting? All of them? One of them? And what criteria are we using to decide?

Mr. Barowitz: That's a good question. And we can't protect five, can we?

Ms. Balsam: The way the rule is written now, if there's no prime lessee, and there are five people there on the effective date of the law, they all qualify. That's what we do right now, under the current rule. So yes, we can protect five.

Mr. Hylton: So if there's no lease, and there are five residential occupants, they're all protected?

Ms. Balsam: If they were there on the effective date of the law, yes.

Mr. Hylton: But if there is a lease, the protected person is the prime lessee?

Ms. Balsam: Right. Or prime lessees, as there could be more than one person on the lease. And their spouses or domestic partners.

Mr. Hylton: And if the lease has more than one name on it, all of those folks are protected?

Ms. Balsam: Yes.

Mr. Hylton: So, why are we arguing? Why don't we just leave it the way it is?

Ms. Balsam: Because the current rule says that the prime lessee is the protected occupant and, though it doesn't exactly say so, it has been interpreted to mean that the prime lessee is the protected occupant to the exclusion of everyone else. And the definition of prime lessee includes whether or not the lease is still in effect. So that's Mr. DeLaney's example…

Mr. Hylton: Then what we need to do is take that part out, right?

Ms. Balsam: That's another way to approach it. Leave it as is….but I would want to remove the "except" language. It starts with, "Except as stated below." That's caused a lot of confusion, so I would still want to reword at least that part. But yes, one way to handle it would be to change the definition of prime lessee to say that it applies only when the lease is in effect, and see what happens. Maybe we'll be challenged in court, but I don't think so.

Mr. DeLaney asked where the except language was in the draft.

Ms. Balsam: 2-09(b)(1). Page 169, line 18.

Mr. DeLaney: And that language is designed to set up the subletting, subdivision and assignments concepts.

Ms. Balsam: I understand what you're saying. Clearly, we've gotten away from that. But we have to figure out the way to get back. That's what we're here to work on.

Mr. DeLaney: Right, and I think the idea of figuring out what we agree on moving on to § 2-05 is a great idea. That way, § 2-09 stands clear.

Ms. Balsam agreed.

Mr. DeLaney: So let's go back to the hypothetical. Leaving the issues of Lorimer Street aside, which seems to be an outlier -- you've got four people living there, and let's say they're covered under § 281(5), and were all there during the Window Period. Maybe some of them helped build the place; maybe some didn't; none of them are married to each other; and the rent goes from one person to the landlord.

Ms. Balsam: Is there a lease in effect?

Mr. DeLaney: Which way would you like to start?

Ms. Balsam: No lease.

Mr. DeLaney: No lease.

Ms. Balsam: I think they're all protected.

Ms. Torres-Moskovitz: That's what I was wondering. But is there a limit, in terms of number of people relative to square-footage?

Ms. Balsam: I don't think we have to be concerned with that. If someone wants to assert that, then let them assert that. We don't necessarily have to police that. There are other mechanisms for that to be policed. When we tried to police it, the court struck us down. I think it was 13-15 Thames Street.

Mr. DeLaney: So in my example of the person who did all the work in the unit and struck an agreement with each roommate that they would not make a claim for protection: Presumably, if one of the roommates did make a claim, both sides would present their arguments; OATH would make a recommendation; and it would come to us to decide.

Ms. Balsam: Right.

Mr. DeLaney: So if we take a broader view of who's protected, we're running the risk that there will be squabbles among the individual occupants.

Ms. Balsam: Correct.

Mr. DeLaney: And they could come to us?

Ms. Balsam: I don't see how they would come to us. We're going to follow what our rule says. If the person who did the build-out entered into a private agreement with a roommate, and the roommate violates that agreement, the remedy for the tenant who did the build-out is to go to court and say, we had an agreement; I gave you consideration for that agreement; so you can't do this.

Ms. Torres-Moskovitz: Let's say there's a single person with a lease, and they need three or four roommates to survive. From what Ms. Lin described, they can only have one roommate. People ask me about this all the time…

Ms. Balsam: There is an MDL (Multiple Dwelling Law) definition, and it does talk about boarders. I think the maximum is four unrelated people. The prime lessee plus four.

Mr. DeLaney: Is there a conflict then, between the RPL (Real Property Law) and the MDL?

Ms. Lin: I'd have to look at the specifics of the code, but that's not a mechanism you can cite in Housing Court to evict someone. If you're a landlord, you can try to evict someone from a residential unit for having more people than you think is allowed; but the tenant has protection in that they're allowed to have a roommate. If you're a landlord, you can't evict someone for having a roommate. That's what the RPAPL (Real Property and Procedure Law) says.

Ms. Torres-Moskovitz: What if you had three roommates?

Ms. Lin: Arguably, the RPAPL does not protect you from having three roommates. You can do it, if the landlord lets you. But the RPAPL won't protect you from that.

Ms. Balsam and Ms. Roslund: It's the definition of family in the MDL.

Ms. Lin: Again, the MDL is separate from the RPAPL. I have not seen a landlord try to evict someone based on a definition in the MDL. I don't think they can. There is case law that says only city agents can enforce the MDL. Or the RPL. I think it's § 235(f).

Ms. Balsam: I have it:

> A family is either a person occupying a dwelling and maintaining a household with not more than four boarders, roomers or lodgers; or two or more persons occupying a dwelling, living together and maintaining a common household with not more than four boarders, roomers or lodgers. A boarder, roomer or lodger residing with a family shall mean a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.

That's what a boarder, roomer or lodger is. That's the definition of family in the MDL, and that's what we're talking about.

Ms. Roslund: But where in the MDL rules that is has to do with the definition of Multiple Dwelling is. Dwelling contains a family, so in order to have a multiple dwelling – three or more units -- you need one family (in each dwelling). And then it takes you to the definition of what a family is. So it could almost be used for both arguments, because similarly, in order in order to be a unit, it needs to have a family.

Ms. Balsam: Yes, but that's not the rule we're talking about.

Ms. Roslund agreed, but I wanted to point out that when architects are designing new multiple dwelling units, they're following certain requirements, codes, to file with the DOB or the state. They're not considering, at that stage, who will be in all those bedrooms.

Ms. Balsam: Right. That's why the Loft Law is drafted on to that. That's one of the reasons why, I think, it was placed in the Multiple Dwelling Law. But again, the legislature did not define, "occupant qualified for protection." They left it to the Loft Board to make those determinations through rule-making. We have a rule that doesn't appear to be working for a lot of people. We want to change that rule, so we have to change it.

Mr. DeLaney: It looks like we're moving, collectively, in a direction that protects more people, and that we're more or less in agreement.

Ms. Balsam: With the exception of (2) on page 172, line 2, I have this language, which I think codified what the Board wanted.

Mr. DeLaney: I have a question on (3); about making the coverage application and protected occupancy application into separate applications. As some of you have heard me say many times, this was created by the Board's staff around 2014, without any hearings or discussion. The reason given was that, at that time, there was a window of opportunity to file for coverage. So we said, if the building is already covered, you can still apply to be protected occupant. I question why, at this point in time, now that coverage is open and there's no limit on it, we keep those applications separate.

Ms. Balsam: Here's why. Let's say you have a unit that's already an IMD. And someone moves out and someone else moves in. That person can't apply for coverage, because the unit's already covered. They can only apply for protected occupancy. I also think it's a different standard. One of the things we talk about for coverage is that you have a residency requirement during the Window Period, but it doesn't have to be your primary residence. That's well-established. But I think it's different for protected occupancy. If you want to be a protected occupant, you should be there. That I feel very strongly about.

Mr. DeLaney: The law has been on the books for twenty-five/ thirty years that, yes, if you're a protected occupant under the Loft Law, then you have to be using the unit as your primary residence. There's no dispute about that. What I'm questioning is this: A new unit, covered under 281(6), however many people are involved, why do they have to file two separate applications? What's the point?

Ms. Balsam: Because there are different legal standards. And as we've seen, you could cover a unit and not protect a person. We've done that. Because some people who file for coverage don't necessarily qualify for protection, because they live in Long Island. Or with their girlfriend. These are real cases.

Ms. Torres-Moskovitz: Then what happens to that unit?

Mr. Hylton: The protection is extended to someone else.

Ms. Torres-Moskovitz: Whoever leases it next? Unless the landlord doesn't rent it again.

Ms. Balsam: I guess that's possible. The landlord could just warehouse it, I guess.

Ms. Roslund: It just means the contract is dead?

Ms. Balsam: Yes. It will become rent-stabilized when it's legal. The owner still has to legalize the unit, even if there isn't a protected occupant. It's a covered unit; the owner has to legalize it; and yes, whoever rents it will get a rent-stabilized lease. We just did that.

Mr. DeLaney: We had a case last month, where we were originally just going to have the owner register the one occupied unit. Then we said you've got to register all four. The other three were subject to § 286(12) buy-outs; therefore, you can rent them residentially at market rate. But once you bring the building up to code, you will have to offer a rent-stabilized lease for those three units?

Ms. Balsam: No. you will have to offer a rent-stabilized lease for just the one.

Mr. Hylton: He can rent it at market rate until it's legal? An IMD?

Ms. Balsam: Yes, as long as there's a buy-out.

Mr. DeLaney: We could originally do that if it was abandoned, too. But we changed the rule.

Ms. Balsam: They have to file for abandonment first.

Mr. DeLaney: But they have to bring it up to code before they can go market rate.

Ms. Balsam: So are we OK with (3)?

Mr. Hylton: It's what we've just discussed.

Ms. Balsam: You can't be a protected occupant if the unit's not covered. Coverage is a condition.

Ms. Balsam continued: Line 8, (4)(i). This is actually just re-codifying what we have now. If they use the unit on the effective date of the law, they don't need owner consent.

Mr. DeLaney: Here's a place where we're tracking subletting, subdivision and assignment; which, in terms of the one big happy unit, is not germane.

Ms. Balsam: If we're moving this to the other section, we could change this to

> If the individual used the unit as a primary residence on the effective date of the law, lack of consent of the owner or the holder of the owner's interest does not affect the rights of the individual to protection.

Mr. DeLaney: Would that be in conflict with (2), if we brought in (2), the way we discussed it? And how many significant others can I have, by the way?

Mr. Hylton: One.

Mr. DeLaney: Really? Where does it say that?

Ms. Balsam: In the Domestic Relations Law. In New York, you can still only have one spouse or domestic partner.

Ms. Balsam continued, noting she would make the change to the language as suggested above, and she re-read it for the Board (as written above).

Mr. DeLaney called attention to the new term, "holder of the owner's interest."

Ms. Balsam said that this was at Mr. Carver's suggestion, and explained: Originally, we had owner or responsible party, but responsible party didn't quite fit.

Mr. DeLaney: OK. And I'll try to make this the last time I bring this up. Our intent would be to move the amended language into § 2-05?

Ms. Balsam: Correct.

Mr. DeLaney: Whereas, we will leave this language in § 2-09?

Ms. Balsam: Do you want to leave it in § 2-09?

Mr. DeLaney: Well in § 2-09 – to a sublet, assignment, and subdivision -- is part of the whole scheme.

Ms. Lin: I thought we were taking out the line about sublet, assignment, and subdivision ?

Ms. Balsam: Right.

Mr. DeLaney: It is relevant…

Ms. Balsam: …if there is a sublet, assignment, or subdivision.

Mr. DeLaney: …if you isolate the issues of subletting, subdivision and assignment, and keep that in § 2-09.

Ms. Lin: I see.

Mr. DeLaney: And if you move the question of the one big happy unit into § 2-05, then it should be stricken.

Ms. Balsam: But does the Board want to leave some language to protect people who sublet or assign or subdivide, if they don't have owner consent? If the Board wants to leave some language in this section about that, we can do that as well.

Ms. Torres-Moskovitz asked for clarification in terms of their earlier discussion about the person who moves in after the effective date of the law; who's running the unit; and the consent of the owner.

Ms. Balsam: That's the next section – if you moved in after the effective date of the law. But for this section, the question is, if you are prime lessee, you're somebody who lives there; you have a sublet; the prime lessee assigned the lease to you; you're an occupant of a subdivided space; you were there prior to the effective date of the law, you don't need owner consent to be the protected occupant.

Ms. Torres-Moskovitz asked where all of the circumstances around the effective date of the law are given.

Ms. Balsam: On page 172, lines 8, 9, 10, and 11, the way it currently reads, it includes all of those other things.

Ms. Torres-Moskovitz: Where does it say June 25, 2019?

Ms. Balsam: It says, the effective date of the law, which is different for different Window Periods.

Ms. Balsam continued: (4) totally deals with, do you need to have the owner's consent or not. That's what (4) is all about. It's when the owner says, no, I didn't allow this; they shouldn't be protected. And I think the import here was, but wait a minute, they've been there forever; they were there prior to the law; you let them be there prior to the law. Whether or not you knew is a different issue. They should be able to be protected, and you shouldn't be able to kick them out.

Ms. Torres-Moskovitz: But the day after the law…

Ms. Balsam: That's why you need consent. The landlords didn't necessarily know that this law was going to be a law. They were doing things perhaps on an ad hoc basis, and they didn't know. But now there's a law, so they have notice. If you know there's a law – and even if you don't know, you're supposed to know – but you're doing it anyway --- well, that person's protected and has rights. Because you did it anyway, and you knew there was a law.

Ms. Torres-Moskovitz: But the day after the law is when the landlord can say, no; and consent to no one.

Ms. Balsam: Right.

Ms. Torres-Moskovitz: And the person who lives there is dependent on roommates to survive….

Ms. Balsam: No, no. The protected occupant can always bring in roommates. That's not the issue. The issue is, say someone is living there 2015 -2016, and then they move…

Ms. Torres-Moskovitz: I just don't understand why the owner would ever consent.

Ms. Balsam: Because they get rent.

Ms. Roslund: There could be a scenario where someone is protected occupant, and they bring in a roommate to help defer costs for a certain time period. They don't want that person as a permanent roommate…

Ms. Torres-Moskovitz: But you're single and your roommate's left, so you bring in your best friends. But they move in after the effective date of the law. So you ask the landlord, can I please have this additional person/ additional people. The landlord's never going to say yes.

Ms. Balsam: I think it's hard to say what an individual landlord is going to do in an individual circumstance, but from what I've seen in the larger buildings in Brooklyn – and we have had a case about this – these landlords are converting these buildings for residential use, and they're giving leases to people. We had a case where someone moved into a covered unit and wanted to be a protected occupant, and the owner alleged that there had been a sale; that the photographer had died, and he had bought the estate's rights. But we found no, and she was protected. Now, the owner had entered into a lease with her. The owner didn't say, I'm not going to give you a lease. They do it. Whether they should or shouldn't, I don't know. I'm not their lawyer. But they do.

Ms. Torres-Moskovitz: I guess I'm forgetting that this is all meant to die out. Not perpetual protection.

Ms. Balsam: Never. It would be wonderful if someone out there would create new and affordable live-work space, and we didn't need the Loft Law, but I don't think that will happen in my lifetime.

Ms. Roslund: Not in New York.

Ms. Balsam: So, (4): We'll take out that piece. I'm not sure we need it in the subletting section, but we can take a look at that. (4)(ii): This is when they move in after the effective date of the law, and they need landlord consent. How do we know if the landlord consented? These are factors, which are indefinite, but that's the whole point. Did the owner or responsible party accept rent from the occupant? And to be consistent we should use holder of the owner's interest instead of responsible party.

Mr. Hylton: Couldn't we define owner as the actual owner?

Ms. Balsam: No. Because the problem is there is an MDL definition of owner, and in a lot of these buildings, there are net lessees and all kinds of arrangements.

Mr. Roslund: Could the owner be a managing agent?

Ms. Balsam: Yes. But a managing agent is a holder of the owner's interest, right?

Mr. Roslund: If a less saavy building owner engages a less than scrupulous building management company to manage his building, he could end up inheriting a lot of huge responsibilities that he didn't know he was inheriting?

Ms. Balsam: I guess that could happen. I would say, choose your managing agent carefully.

Mr. Roslund: Right. I'm not defending that. Just asking the question. So buyer beware.

Ms. Balsam: I think that's certainly a possibility.

Ms. Balsam continued: So, the owner or holder of the owner's interest accepted rent. How much rent do they have to accept? Does one rent check count? Do five rent checks count? Does rent for years count? I know that question was raised, and that's why they're factors. They can go one way or the other, and there's going to have to be a factual determination.

Ms. Torres-Moskovitz: From OATH?

Ms. Balsam: From the Loft Board. We receive a recommendation from the OATH judge, but ultimately, it will be the Board that decides.

Mr. Roslund: And this is when there's not a lease in effect?

Ms. Balsam: When there's not a lease in effect.

Mr. Roslund: If there were a lease in effect, it would have to be the holder of the lease?

Ms. Balsam: If it there were a prime lessee, yes. If there were a prime lessee, who was asserting rights.

Ms. Lin: If this is meant for no-lease purposes, we might have to change it to use and occupancy.

Ms. Balsam: We could change the definition of rent, or put in a definition of rent, if we don't have one.

Mr. Roslund: Are you saying the owner or the HOI (holder of the owner's interest), accepted rent…

Ms. Balsam: …from the occupant. And "(B), the owner or HOI contacted the occupant for access to the unit." If they only contact them once, does that count? Again, factual determination. That's why they're factors. "(C) The owner or responsible party listed the occupant on Loft Board filings." I think that counts. And any other factor the Board deems relevant. It certainly shows that the owner knows they're there. I guess the owner could say, I listed the person on the Loft Board filing, because I have to list every affected party, and I thought this person was an affected party. But I never consented. That could be an issue in a case, but it's just a factor to be considered.

Ms. Roslund asked Ms. Lin: Going back to line 17, were you saying that it should be, accepted rent from the occupant for use and occupancy?

Ms. Lin: There's a concept in Housing Court called use and occupancy. It's when you don't have an official lease and you pay money to the landlord. They don't always call that rent; they might call that use and occupancy. The rent is tied to a fixed dollar amount in a lease somewhere. So if you don't have a lease, you might still owe use and occupancy.

Ms. Balsam: But if there was a lease that expired, then it would be rent?

Ms. Lin: I think so.

Ms. Balsam: OK. Let's leave it as rent for now. If later, we feel we need to change it, we can.

Ms. Roslund: If you have a two-family home, and the lease expires, but you allow the tenant to stay on, on a month-to-month basis…

Ms. Lin: That should still be considered rent. Use and occupancy covers a situation when there's really no tenant-landlord relationship.

Ms. Balsam: Now we come to (5)(i), on page 172. And I'm just noticing some small adjustments I want to make to this language.

There was some discussion among the Board members of these minor adjustments to be made or not made here. The cross-references will have to be changed when this is moved, but for the moment, the result was:

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

Ms. Balsam continued: In Mr. DeLaney's line versus point, this is the point.

Ms. Torres-Moskovitz: And that's so that the person applying doesn't have to supply years of documents, right?

Ms. Balsam: Right. Let me just say that we did have a case last year where someone moved out, then moved back after the date they filed the application for protected occupancy. We protected them under the current rule, but under this rule, we would not. I feel compelled to point that out.

Mr. DeLaney: I think Hughes is still on appeal, isn't it?

Ms. Balsam: I'd have to look it up. He may have filed under § 281(6). It may have been settled.

Mr. DeLaney: I wouldn't blame him for doing that. But the attorney in the original case said, we didn't know; there's no rule. So as much as I would prefer primary residency only being an issue after you become the protected occupant, this is much better than the indeterminate time period stretching back to the prior decades. And while I don't like it, it does make sense. Get your house in order. If you finishing up your teaching residency at Berkeley, where you had a lease on a house, come back and then apply. Even though you might win, you won't have to have that fight.

Ms. Balsam: Right.

Ms. Torres-Moskovitz: I like that.

Ms. Balsam: OK, great. The next section (starting at the top of page 173) is about how you determine whether someone is using the unit as a primary residence or not. We took some factors from our case law, from Housing cases, and the Board had worked through some of these already in prior discussions. I think they're pretty straightforward and clear; and again, they are factors. They can go one way or the other, and you weigh the totality. It could be everything. It could be a few things. It could be one compelling item. So if there's anything you want to add or change.

Mr. Barowitz felt that personal effects was enough, but **Ms. Balsam** made the point that you could leave a toothbrush somewhere, but not live there.

Ms. Balsam reminded the Board that these are factors; not absolute determinants, and continued: In the Hughes case, it was his cat! He left his cat.

The Board agreed that was very significant, but **Ms. Balsam** countered: But he wasn't living there.

Ms. Balsam continued reading the other factors:

> (C) Whether the individual lists the IMD unit as the address of the individual's child, if any, on the child's school records; (We had discussed in the past)
>
> (D) Whether the individual listed the IMD unit as a residential address on official documents filed with government agencies. Such documents may include, but are not limited to, a tax return, a motor vehicle registration, a driver license, or a voter registration;
>
> (E) Whether the individual subleased the unit to another in violation of law or the Loft Board's rules; and
>
> (F) Any other factor the Board deems relevant.

Mr. Barowitz asked if there wasn't another form of registration (ID) beyond voter registration and drivers licenses.

Ms. Balsam and Ms. Roslund replied that, "Such documents may include, but are not limited to," allowed for that possibility.

After some other inquiries from **Ms. Torres-Moskovitz** about the effects of certain factors, **Ms. Balsam** said: I want to reiterate that the ultimate decision on this is the Board's.

Mr. DeLaney: But her (Ms. Torres-Moskovitz) point is what I was trying to express, particularly during the extended session we had on proof of primary residency. There are lawyers who will make outrageous demands for all kinds of documentation. So I agree that, where we can avoid creating ambiguity that will just allow a sharp litigator to force a tenant to fold their hand because they can't afford representation, we should do so. Let's try to keep it as clear as possible.

Ms. Balsam: Do you want to take this out?

Ms. Lin added her observations in terms of how these factors compare to those she has seen in Housing Court: (A), (B) and (D) are always factors, no matter the circumstance. (C), I've never seen anyone raise that alone. It's not a standard go-to in Housing Court. I do wonder why it's there. Maybe we can take it out.

Mr. Hylton offered an example where the child's school records could be an important factor. If the parent was temporarily transferred to another state for work, the landlord might try to claim they no longer lived there. But if the child stayed behind, attending school as always, that is a powerful factor in proving continuous primary residency.

Mr. DeLaney: Wouldn't (C) be subsumed into (D), under "official documents filed with government agencies"?

Various Board members responded that it could only be applied if the child was attending a public school. And as they moved toward agreeing to leave (C) in (with the removal of "if any")...

Ms. Lin cautioned that it might lead a lawyer who hadn't thought of considering school records, to do so.

Mr. Hylton made the point that, as these are factors, the tenant could say to that attorney, my child's school records are none of your business; and I can qualify according to several other factors.

Ms. Balsam: OATH could actually issue a subpoena for those documents. But again, you're only proving it on the date of the application. It's not for a long period of time anymore. So I think it's OK. But if it's going to be controversial, let's just take it out, because I want to finish this.

The Board agreed to remove (C).

Ms. Balsam recapped: So returning to (2) on page 172, we're going to draft language that says:

> A prime lessee and their spouse or domestic partner, with a lease in effect, is the protected occupant to the exclusion of everyone else.

The Board agrees to this?

Mr. DeLaney: The consequence of this is we're letting spouses and domestic partners sneak in under the tent, but we're saying if I had a long-term roommate, who is not on the lease-in-effect, that person is not a protected occupant?

Ms. Balsam: Right. You might want to become domestic partners.

Ms. Torres-Moskovitz: And it's not sneaking in under the tent. They should be able to walk in the door.

Mr. DeLaney: Well, we've had a half-dozen that we've slammed the door on. That's why.

Mr. Hylton reminded Mr. DeLaney that the reasoning behind this was that the prime lessee might not want that roommate to be a protected occupant, and we don't want to force them to do that.

Mr. DeLaney: So beyond the purpose of not splitting spouses apart, what is the purpose of number (2)? Why are we doing this?

Ms. Balsam: Because there's a contract. The lease is in effect. And a prime lessee has rights under that lease. That's why.

Mr. DeLaney and Ms. Torres-Moskovitz: In effect when?

Ms. Balsam: On the date of the application. That's the date we used below: the filing date of the application for protected occupancy. Everyone will wait until their lease has expired to file. Or, the flip side: they'll run in, because they don't want their roommates to be protected.

Mr. DeLaney: As long as we make it clear.

Ms. Balsam: Right. So why don't we just mirror the language below: the lease in effect on the filing date for protected occupancy. That's how we said it in (5).

Ms. Torres-Moskovitz: In general, most people have an expired lease. So all those spouses…

Ms. Balsam: If the lease is expired, it could be anyone.

Ms. Torres-Moskovitz: But Mr. Carver always argued that an expired lease has the same power as a current one.

Ms. Balsam: That is his argument, and there is some merit to it. But I think the Board can take a chance and see what happens if we're challenged.

Ms. Roslund: What does the law say about adding people to your lease?

Ms. Lin: In general, you have to have the landlord's consent. In a rent stablized lease, you can add your spouse as of right.

Mr. DeLaney: At the expiration of the lease.

Ms. Lin: Yes.

Ms. Roslund: So in terms of the roommate clause we were discussing earlier, the lease can be amended as long as both parties agree, right? But is there any way to force a building owner to accept…?

Ms. Lin: No. You can't force an owner to add someone to a lease.

Ms. Balsam: You can marry your roommate, in which case the owner would be legally obligated.

Ms. Lin added that the rent stabilization code does not cover domestic partners; only spouses.

Ms. Roslund: You still have to file with the city Clerk.

Ms. Balsam: Yes. I do think the mechanism still exists, though it's probably not used as much now that there's same-sex marriage.

Mr. Barowitz: So the domestic partner would be out of luck if the partner died or moved out?

Ms. Lin: Under the rent stabilization law, yes. But now they can get married, so….

Ms. Balsam: But they could still argue that they were family though, right?

Ms. Lin: Yes. You can't force the landlord to add you to the lease, but you have succession rights.

Ms. Torres-Moskovitz inquired about the difference between domestic partnership and common law.

Ms. Balsam explained that a domestic partnership required the filing of documents, because it affects things like healthcare and pensions.

Mr. DeLaney asked if domestic partnership still existed as a legal entity, now that same-sex-marriage is legal.

Ms. Balsam said she believes it does, but she will check to be sure. If it no longer exists, the term will be removed from the rule.

Before the recess, the Board briefly discussed the status of the drafts they have been working on; the progress made so far; and what remained. The Board felt confident they would finish § 2-09 today, and pledged to do so.

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After the recess:

Ms. Balsam: We're going to have to change the definitions in § 2-09(a), and I suggest moving them to the front, to the definition section. We have to discuss prime lessee, and we'll get to that in a minute. Privity and tenant are also definitions in § 2-09(a), so I think we should move them to the front, if we're moving this section to § 2-05.

The Board agreed.

Ms. Balsam: On page 173, line 19 is going to be the start of what will remain § 2-09. We can leave the definitions here, and also move them to the front.

> (6) The Loft Board may find a prime lessee or a sub-lessor, either of whom does not residentially occupy a covered unit, to be a protected occupant only if the individual proves that such unit is the individual's primary residence. If the individual fails to prove that such unit is a primary residence, any rights of such individual to recover the unit are extinguished.

I think we can go back to calling this section *Privity, Subletting and Recovery of Subdivided Unit,* which is what it used to be called.

Mr. Barowitz: Why is only in there? Is that necessary?

Ms. Balsam replied that it was, as it expresses a legal condition. She then advanced to page 174 and said:

This has to do with a prime lessee recovering space that had been sublet. We're adding the date for § 281(6). The same on page 175. Nothing on 176 or 177. I don't have anything until page 181.

Ms. Torres-Moskovitz had a question about page 175, lines 12 – 16.

Ms.Balsam: That deals with subdivision. Where you have a prime lessee who has, for example, subdivided a floor they leased into three smaller units, this rule says they are only qualified for protection in the unit they are actually living in. Or living/ working in. For example, if you, the prime lessee, have a dance studio in unit A, where you also live; and you've created and sublet two smaller units, B and C, you're only protected for unit A. So you lose the right to protection in B and C, because you're not living there.

Ms. Roslund: What if you were working in B and C?

Ms.Balsam: Well then is anyone living there? If other people are living there, that you work there doesn't matter.

Ms. Roslund: So, there are three dancers who want to start a school. They create a dance studio with three little apartments across the back. So who gets the dance studio?

Ms.Balsam: That's a good question, and the Board has gone a couple of ways. In that situation, with three parties, the Board might just say they each get to keep their unit, but the dance studio is a separate commercial space. But recently, as a matter of fact, we had a situation where you had to walk through the commercial space to get to the residential space, and we covered the whole thing. So I can't answer the question. We have to consider whatever proof is presented in the case.

Mr. DeLaney: On page 174, line 11: "…pursuant to Chapter 135 or 147…" It strikes me it should be 135 and 147. Because 135 was all about coverage and 147 was all the exclusions.

Ms.Balsam agreed, and advanced to page 181, (beginning on page 180, line 23): *Lease Between Prime Lessee and Landlord No Longer In Effect and Prime Lessee Wants to Recover Subdivided Portion.*

Ms. Balsam continued: This is the date they would have to do that by. And that will be sixty days after the amended date of this rule, etc. So again, just adding that to cover the § 281(5) and § 281(6) units that are covered by the 2019 amendments. Similarly, page 182, is for factors to consider when the prime lessee seeks to recover the subdivided space. Then, on page 183, for a couple of iterations, we have the interim rent guidelines, so we had to add them for § 281(6). The Board already approved that as § 2-06.3. We added all of the references to § 2-06.3 where required. The same on pages 184, 185. On page 186, we again have that sixty days

after the effective date of the amended rule for the effective date of rent adjustments; and a similar concept on line 19, page 187.

Ms. Balsam clarified for **Ms. Torres-Moskovitz** that this meant sixty days from the effective date of this rule, which is unknown at the moment, and acknowledged that the Board may receive many applications once this goes into effect.

Ms. Balsam continued: The same on page 188: "for an IMD unit covered by MDL § 281(5) that became subject to Article 7-C pursuant to Chapter 41 of the Laws of 2019 or a unit covered by MDL § 281(6);" This is a limit to rights compensation. Again, this is dealing with that whole concept Mr. DeLaney was talking about or subletting and subdividing.
Ms. Torres-Moskovitz asked how information gets to the public that they will only sixty days to act.

Ms. Balsam: That's a good question, and we need to address that. We need to have someone do outreach.

Mr. DeLaney: Wasn't DOB working on a tenants' rights briefing?

Ms. Balsam: I know there was a meeting about it, but I don't know where it is now. I'll find out.

Mr. DeLaney to Ms. Torres-Moskovitz: To a certain extent, I think that lies with the tenant community, too. To get the word out.

Ms. Torres-Moskovitz: But this affects landlords as well.

Mr. DeLaney: Right. Particularly with subdivided space, it's going to affect landlords, because all of the sudden, they're going to have privity with more people.

Ms. Balsam: Yes, we do need to do outreach. Let's get the rules to more finalized form, then we can start talking about what the outreach should look like. And that, I think, brings us to the end of § 2-09. Now to our open issues. And some are not really open issues; they're just things I added and wanted you to know.

Page 4, lines 26-27, I added the date, June 25, 2019, for units covered pursuant to MDL §281(6).

Page 7 -8, the definition of the prime lessee, which I think is going to change now, to:

> **Prime Lessee,** unless otherwise provided, means the party with whom the owner entered into a lease or rental agreement for use and occupancy of a portion of an IMD, which is being used residentially, while the lease is in effect.

Mr. Hylton: So an IMD can be used non-residentially?

Ms. Balsam: I don't know. I think that's the way it read before.

Ms. Balsam to Ms. Lin: This is a rental agreement for use and occupancy. Isn't that interesting?

Ms. Lin: The combination is a little bit weird.

Ms. Balsam clarified: Following is the way the rule currently reads, showing the deletion and replacement:

> **Prime Lessee,** unless otherwise provided, means the party with whom the owner entered into a lease or rental agreement for use and occupancy of a portion of an IMD, which is being used residentially, ~~regardless of whether the lessee is currently in occupancy or whether the lease remains in effect~~ while the lease is in effect.

Ms. Torres-Moskovitz: So first it's determined that they're in an IMD…

Ms. Balsam: Yes, it's always coverage first, then protection. It can be in the same proceeding, but it's two separate applications.

Mr. DeLaney: The implication is that, once the lease expires, I'm no longer a prime lessee?

Ms. Balsam: I think you're a former prime lessee.

Mr. DeLaney: I'm just asking a question; I don't have a point here.

Ms. Balsam: I think for the purpose of the Loft's Board's rules, you're no longer a prime lessee. I would answer yes to that question. That's why we have to change the definitions.

Mr. DeLaney: I'm sure we'll get to hear opinions about this at the public hearings.

Mr. Hylton: And then we can make changes?

Ms. Balsam: Yes, we can.

Ms. Balsam: So I think we can add the definitions of privity and tenant here, in their respective places. We'll carry them over from what was § 2-09(a), which is going to change.

Ms. Balsam reminded the Board that they are taking the definitions from § 2-09 and moving them here. Because it's coming out of § 2-09 and going into § 2-05.

Mr. DeLaney: Can you tell me where to find the definition of tenant?

Ms. Balsam: It's not in here, because this only has proposed changes. So it's § 2-09(a):

> **Tenant** refers directly or implicitly to a residential tenant and is deemed interchangeable with the word "occupant" in Article 7-C and these rules.

Next, page 14, lines 25 -29. This was an issue we had left open:

> Representatives of the Special Interest Groups may in their absence, designate substitutes to participate in discussions at the Loft Board meetings, when the Loft Board, by vote, requests

such participation. Such designated substitutes may participate only to the extent permitted by the Loft Board and shall not have the right to vote.

The question is, are we going to leave this in or take it out?

Mr. DeLaney: I posed this question to the tenants, and the general consensus was that it remain; the thinking being that if anyone is going to be out for an extended period of time, it's important that their constituency be represented. I know we were left with an odd taste in our mouths over the way things unfolded with Mr. Carver's representative, just this past summer.

Ms. Torres-Moskovitz: That was more than an odd taste. That was awful, and I never want to experience anything like that again. I would say, take it out, or allow the representative to be present, but not speak.

Ms. Balsam: Well then there's no purpose.

Mr. DeLaney: I would not suggest Michael Kozek or Margaret Sandercock, because of the obvious conflict of interest. The reason we had such an unpleasant experience was because the appointee was an owner's rep. Now, we have a couple of owners who seem to attend meetings regularly, and if the owner's representative had designated a building owner, we might have taken a different stance.

Ms. Torres-Moskovitz: I can understand the need for them to be here and take notes and stay up on the issues. But they're not allowed to vote, so giving them the floor when they haven't had a background check… I question that. To allow them to use this as a pulpit for lobbying…

Mr. Hylton pointed out that if the person can't speak, then they're just like anyone in the audience, and the Board would not have the benefit of their input. However, he added that he had also been affected by what transpired over the summer and said: first, the Board is clearly capable of functioning and making decisions over the long-term without all members being present; and second, if you're going to be out for an extended period of time, you should have a conversation with the Chair; and if your absence is going to adversely affect the Board, then you should step aside or the mayor's office can be asked to appoint someone to replace you, temporarily.

Mr. DeLaney asked if that was really possible to do, in a reasonable amount of time.

Mr. Hylton: A temporary position could be a quicker vetting process. I don't think we should go down this road again. But if we are going to leave it in, we should add some restrictions. Perhaps not what Ms. Torres-Moskovitz is saying, but something. Maybe restrictions depending on what type of business…

Ms. Balsam: I think that would be very difficult to craft. The reason that it was left that the Board could decide whether or not to seat the person and decide how much they can do was to give the Board that

leeway without actually saying it. It would be very hard to distinguish between groups of people, and I don't want to do that. I don't think it would survive a challenge.

Ms. Torres-Moskovitz asked how important it is that the special interests positions be filled. She wondered if a special interest Board member retired, would replacing them be a priority?

Mr. DeLaney: Speaking practically, the manufacturers' seat was empty for maybe eight years. And after the first owners' representative, for whom this was crafted, stepped down, initially, there was a period when we felt that we didn't want to do many cases without the owners' seat being filled. Now, obviously, having someone sit in for the owner, or the tenant, or the special interest who can't vote, doesn't completely address that issue. It's a tricky question. It was written to accommodate the owners' representative who had an ailing sister in Australia, so he was traveling a lot. And the Board was in the midst of writing the rules. But during our experience this summer, the new Chapter 41 was pending in Albany. It was a crucial moment, and to have someone come in who did see it as an opportunity to use the position as a pulpit...I understand why people have misgivings.

Ms. Balsam: So what would you like to do?

Mr. Hylton: I think we should take it out. We have so many ways of communicating; I don't think this is necessary any more.

Ms. Torres-Moskovitz offered an alternative to someone sitting in but not being allowed to speak. A representative sits in on the meetings, takes notes, etc., and report back to the person they're sitting in for, who can then contribute their comments to the Board in writing or by other means. With access to the meeting minutes and the videos, they could do their job from Australia if they had to. They don't have to be present for the Board to hear their opinions. Her main point was, if someone really cares about the position and the work, it's not difficult for them to stay current with what's happening and communicate their thoughts and opinions to the Board. She was fine with someone sitting in for a missing representative, but not being allowed to speak. Otherwise, she'd prefer the clause be removed.

Ms. Balsam and Mr. DeLaney reiterated that having someone there who couldn't contribute at the meeting was meaningless.

Ms. Torres-Moskovitz continued: Right now, we have no rep for the manufacturing industry, and I would like to have the representation at every single meeting. And we don't.

Mr. Roche clarified Ms. Torres-Moskovitz's point by saying that the Board receives the information on the cases enough in advance that there is plenty of time to read and digest them. So if someone could not attend a meeting, there is enough time for them to write Ms. Balsam or Mr. Hylton with questions or comments they would like addressed at the Board meeting.

Mr. Roche continued: I'm really surprised that there's not an attendance mandate on this Board. I have nothing against these individuals, but the lengthy absences deny us their perspective. So I would support the Chairman if he feels this language should be removed. I think it's more problematic than it's worth.

Mr. Barowitz asked where the number that constituted a quorum was stipulated.

Ms. Balsam replied that it was governed by law, and it's in the rules now.

Mr. Barowitz asked Mr. DeLaney if it was in the rules in 1982.

Mr. DeLaney: In terms of the quorum definition, I agree that it's governed by law….

Mr. Hylton: It's in the Loft Board rules, but it's also mandated by law.

Ms. Balsam: I think it's part of the Open Meetings Law.

Mr. Hylton asked Mr. Barowitz why he was asking.

Mr. Barowitz: I'm curious about when this was inserted, and why.

Mr. Hylton asked Mr. Barowitz if he wouldn't mind holding that thought for a moment, because he wanted to clarify the point the Board had been addressing before it was forgotten.

Mr. Hylton continued: But we need to move on. And then we can return to Mr. Barowitz's concern.

Ms. Torres-Moskovitz wanted to give a final, clarifying example. She noted that she is a tenant, as well as a Public Member of the Loft Board. If at some point, years from now, when she is no longer a Board member, Mr. DeLaney (the Tenant Representative), should have to be away for an extended period and asked her to sit in on the meetings, take notes and report what happened, she would be more than happy to sit here, pay attention, and not say anything, for the sake of the tenants he represents and whom she cares about.

Mr. Hylton: So you're saying just to be viewed? That someone is sitting in that spot?

Ms. Torres-Moskovitz: Yes, just to show someone is paying attention on the tenants' behalf.

Mr. Roche: I'm not against what you're saying, but how would you report it that would be better than watching the video of the meeting?

Ms. Roslund: Because she brings her perspective. The next day she has dinner with Mr. DeLaney and a conversation about…

Ms. Torres-Moskovitz: Or an email debrief

Mr. Hylton repeated that he was for removing the clause, because with the speed at which detailed information is made available today, there's really no longer a need for it.

Ms. Torres-Moskovitz: If there was someone in the manufacturing rep's seat right now, sitting in for the member who can't be here, I would feel there's some strength there. There's power. He couldn't make it to the meeting, but someone else is taking the time to be there. It would be the same for any other member. I think representation matters.

Ms. Balsam: The way the rule is drafted now – if the language remained as-is -- that could be done. The rule says that they can participate only to the extent permitted by the Board. So the Board can say, we will let your representative sit here, but they cannot say anything.

Mr. Hylton: There's no other Board that does this. You can't just say, I can't be there, so I'm putting my friend there. Why are we doing this? You are all vetted for conflicts of interest, etc. But we have no real understanding of who your friend is.

Mr. DeLaney wanted to make a couple of points: Number one, if you're in a situation similar to what we've often been doing the past year – meeting twice a month, and we may be coming to some substantive votes -- to say, rely on the minutes and rely on the video….It takes a significant period of time to obtain those things. So there could be circumstances where having someone sitting there or here who could brief me or Mr. Carver, etc. would be beneficial. But obviously the legislature mandated special interest representatives, which suggests that they might have a different role to play than a public member or an *ex officio* member, of which we now have two. So, the other thing I would ask that we explore is whether the special interest members would be allowed to vote in absentia.

Ms. Balsam (and others): Without being at the meeting?

Mr. DeLaney: Chuck went skiing in Vermont. His leg is in a cast. Why should he not be allowed to cast a vote?

Ms. Balsam: You mean attend remotely?

Mr. Hylton: Congress does that.

Ms. Balsam: Can I just remind everybody that we promised to finish, and we're stuck.

Mr. Hylton offered something else: In appointing a representative in your place, are you usurping the power of the mayor?

Ms. Balsam: No, because they can't vote.

Mr. Barowitz: If you're appointed to the Board, then you should be here. You know it takes place at a particular time on a particular day…And as Mr. DeLaney said, we functioned without a manufacturing representative for years.

Mr. Hylton: Let's take it out. I think it's the best resolution for today.

The Board members briefly discussed whether or not a vote should be taken on this.

Mr. DeLaney said as the only special interest member present to comment on this, he would vote no.

Ms. Torres-Moskovitz: I would walk out the door the second something like what happened last summer happened again. That was the most outrageous thing I've ever seen.

Mr. Hylton: I've made my point clear, that I would like it removed. But can I have a vote to see how many of you would be in favor of removing the following language, from page 14, lines 25 – 29:

> Representatives of the Special Interest Groups may in their absence, designate substitutes to participate in discussions at the Loft Board meetings, when the Loft Board, by vote, requests

such participation. Such designated substitutes may participate only to the extent permitted by the Loft Board and shall not have the right to vote.

Mr. Roche: May I offer a possible win-win for everyone? Can we try to redraft that?

Mr. Hylton: No. We should just eliminate it. It's only going to lead to a lot more debate, and we really do need to move on.

Mr. Barowitz suggested that, instead of a vote, the Board just have a ladies' and gentlemen's agreement about it.

Mr. Hylton: A straw poll.

Mr. Barowitz: Out

Mr. Roche: As it exists, I have to go with deleting.

Ms. Roslund: I think I'm ambivalent.

Mr. DeLaney: I've made it clear, I don't participate in straw polls in the private or public meetings. If you want to make a motion, make a motion, then I'll vote.

Mr. Hylton asked for a motion to remove the specified language.

Ms. Torres-Moskovitz moved to delete the language specified language (page 14, lines 25 – 29), and **Mr. Barowitz** seconded.

The vote:

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

Members dissenting: Mr. DeLaney,

Members abstaining: Ms. Roslund,

Members absent: Mr. Carver, Mr. Hernandez

Members recused: 0

Mr. Hylton: The motion did not pass.

Mr. Barowitz made the point that this is why absences matter so much.

Ms. Balsam: The language stays. But we can revisit this in the future. We are going to do more rule-making in the future. There are a few more open items we said we were going to put aside, so we can get past this for now and we talk about it again in the future.

Ms. Balsam advanced to page 18, lines 7 – 10.

> (4) An Application for rent overcharges must be filed within four years of such overcharge. An award by the Loft Board for rent overcharges may only include overcharges within the four years immediately preceding the date of the application.

There are two issues here. Number one, the look back period in the Rent Stabilization Law was changed from four to six years, right? (to Ms. Lin).

Ms. Lin: The statute of limitations is four to six years. The look back period - there's no look-back period in the sense that you can now go as far back as you need to establish a rent but the statute of limitations has been changed from four to six.

Mr. DeLaney: So under Rent Stabilization now, if you're over-charged for eight years….

Ms. Lin: You can recover for six. It's the same as contract law. The statute of limitations makes sense.

Mr. DeLaney: And in Rent Stabilization, for over-charges, is there treble damages?

Ms. Lin: Willful overcharges?

Mr. DeLaney: Willful overcharges.

Ms. Lin: That's limited to three or four years. I'd have to double-check the time period but it's shorter than the full period.

Mr. DeLaney: And we have no treble damages?

Ms. Balsam: We have no treble damages.

Mr. Hylton to Ms. Balsam: So you're saying we should make it six years?

Ms. Balsam: Yes. Within the six years immediately preceding.

Mr. DeLaney: If you believe in, *in pari materia*, then yes.

Ms. Balsam: Second, there is one other thing Mr. Carver pointed out ages and ages ago, and I promised I would raise it to the Board when we revisited this. Currently, the rule says that "overcharges shall not be awarded for the period prior to the date of filing of the coverage or registration application." We deleted that, and I'm not a hundred percent sure what we were thinking at the time when we did that. But it does make sense to keep it in, because the owner isn't actually obligated to freeze the rent until either of those things are filed. So I think we should add it back in.

Mr. Hylton asked where this was deleted from.

Ms. Balsam: Now it just says it must be filed "within four years of such over-charge." And the award can go back six years. But we should probably add back in that you can't go back to before the filing of a coverage or registration application.

Mr. DeLaney: As opposed to the effective date of the law?

Ms. Balsam: That goes to the fundamental idea of, are you an IMD by operation of law? In which case, you should have been doing everything right from the beginning. Or, do you have to wait until the Loft Board or the law says, yes, you're an IMD? And then all your obligations come into effect. And there really isn't an answer to that. There are two different philosophies.

Mr. Hylton: When does the law say you're an IMD?

Ms. Balsam: The law says, if your building qualifies, you're an IMD, and you have sixty days to register.

Mr. Hylton: And when does the Loft Board say you're an IMD? When the owner registers the building….

Ms. Balsam: That's not what the law says.

Ms. Roslund: You're asking the question wrong. You're saying, when are you an IMD? Not, when are you registered as an IMD.

Ms. Balsam: Right.

Mr. Hylton: I thought you were an IMD when the Loft Board says you are, or when the owner voluntarily registers.

Ms. Balsam: No. Actually, the law – and this is 284.2 -- requires

> Every owner of an interim multiple dwelling, every lessee of a whole building part of which is an interim multiple dwelling, and every agent or other person having control of such a dwelling, shall, within sixty days of the effective date of the act which added this article, file with the loft board or any other authority designated by the mayor a notice in conformity with all provisions of section three hundred twenty-five of this chapter and with rules and regulations to be promulgated by the loft board.

So, actually, the way the law is structured, it says to the owner: Within sixty days of the effective date of the law, you are supposed to register your building and start legalizing. That's how the law is structured. But from a practical standpoint, it really doesn't work that way. No one's going out looking for plants on fire escapes, as they used to. This is what Mr. Carver raised, and I promised him I would bring it to you. It makes sense to me that the date should be when the Loft Board puts its imprimatur on it in some way shape or form. So you're filing a coverage application; you're filing a registration application; that's when your obligation to freeze the rent starts.

Mr. Delaney: When we look to what the rent should be, we look to the rent as of the effective date of the law.

Ms. Balsam: Yes. It's just a question of how far you can go back. Can you go back to before you filed the coverage application? Should the tenant be allowed to recover a rent over-charge from a time period before they even filed a coverage application? That's the question.

Mr. Delaney: Sure!

Ms. Roslund: If you sign a lease in an already-residential, residential building; and you file for a rent history through DHCR; and it's determined that the tenant before you was paying X and you're paying Y – I'm just thinking out loud -- it's for the entire time you were in possession of the apartment, but it looks back to when the rent was legal for that unit.

Ms. Lin: It looks to the last reliable rent. Whatever that is, if they can find one. It's a different question than the statute of limitations, which is what we're dealing with.

Mr. DeLaney: It seems to me that in this case, a little research would be helpful.

Ms. Balsam: What are we researching?

Mr. DeLaney: Well, first, in lines 7 – 10, at the moment, if we changed four years to six years…

Ms. Balsam: Yes, we're doing that.

Mr. DeLaney: On both lines 7 and 9?

Ms. Roslund: In both places, or just one? Isn't line 7 the statute of limitations and line 9 the look-back? Or are they the same thing?

Ms. Balsam: I think they should both be six.

Ms. Lin: There really isn't a look-back period for us.

Ms. Balsam: That's the issue. That's what we're debating. The look-back period.

Ms. Lin: It's the same thing, because there is no look back period for us – how we set the rent isn't a question.

Ms. Balsam: That's the issue that we're debating.

Ms. Lin: No, I mean how you set the rent is a different question. The question of how far you look back to set the rent isn't a question for us.

Ms. Roslund: So even if the rent was illegally changed ten years ago by someone else, and that other person is overpaying, and then you take over or you get a lease…no matter what the situation, you determine the rent from when it should have started ten years ago?

Ms. Lin: Right, so in rent stabilization apartments, that's how they start calculating – that's how you set the rent

Ms. Roslund: But then you only get back six years' worth of rent.

Ms. Lin: Right.

Mr. Hylton: How far do we look back is the question?

Ms. Lin: No. That has to do with how you set the rent.

Ms. Balsam: Right. We know how to set the rent. The law tells us how to set the rent. The issue is, does the tenant get to go back prior to when they filed the coverage application. So in a six-year period, if they filed their coverage application four years ago, under the current rule, they could only go back those four years. If we change it to six, they could go back and get the additional two. And the argument is, if they hadn't even filed a coverage application, the landlord had no obligation to freeze the rent.

Mr. Hylton It should be back to the coverage application, even though the building is a de facto IMD.

Ms. Roslund concurred.

Ms. Balsam: So I will put that language back in.

Considering the hour, **the Board** realized they would have to finish the rule-making at the next meeting, after the cases.

Ms. Torres-Moskovitz: I know time is short, but I do want to say one thing. I don't believe that the tenant should have to share the the owner's cost of legalization work. Is that the law?

Ms. Balsam: Yes, it is.

Ms. Torres-Moskovitz: So that would have to be changed through the legislature? I know there's only been one case.

Ms. Balsam: Yes, it would. And there have been many cases where owners have filed for these expenses. The unique thing about the case you're thinking of is that the owner asked for financing as well.

Ms. Torres-Moskovitz: Right. If all of the sudden, my rent tripled, I'd be out of there in a second. So I don't understand why tenants would have to take on an owner's financing, and they can then sell the building for millions, and the tenant gets nothing.

Ms. Balsam: You don't get nothing. You get a legal, rent-stabilized apartment.

Ms. Torres-Moskovitz: That's your cut?

Ms. Balsam: Yes.

Ms. Torres-Moskovitz: At $3500 a month, that's not such a big cut. And if your rent became it $10,000 a month? That makes it impossible to stay in the city.

Ms. Hylton: I think the point Ms. Balsam is making is that we can't even consider….

Ms. Torres-Moskovitz: I just wanted to know if that was a legislative issue.

Ms. Balsam: Yes, it is.

Mr. Hylton: This will conclude our January 30, 2020, Loft Board meeting. Our next public meeting will be held on Thursday, February 20, 2020, at 2:00 PM at 22 Reade Street, Spector Hall.

The End