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Transcript of the March 18, 2021

Meeting of the

New York City Loft Board

This transcript has been prepared pursuant to Governor Cuomo’s Executive Order 202.1, which suspended Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

The meeting began at: 2:06 PM

1 **Chairperson Hylton:** Good afternoon. My name is Renaldo Hylton, the Chairperson designee of the New
2 York City Loft Board. Welcome to our March 18th, 2021, public meeting. This meeting is being held via
3 teleconference pursuant to Governor Cuomo's Executive Order 202.1, due to the coronavirus
4 emergency.

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

12 I have two announcements. First, at our last Board Meeting, I had announced that Kei Hayashi will be
13 joining us as our Manufacturing Representative starting with today's Board meeting. Although Kei has
14 officially been appointed to the Board, she will not be joining us until our April 15th, 2021, meeting.
15 Second, we have scheduled an additional Board meeting for rulemaking purposes only. And that
16 meeting is to be held next week, Thursday, a week from today, at 2pm. The information for this meeting
17 has already been distributed through the Loft Board Listserv email system, and it has been posted on
18 the Loft Board's website.

19 We first turn to a vote of the minutes of our January 21st, 2021, public meeting. Board members, are
20 there any corrections or comments on the minutes? Yes, Mr. DeLaney. Could you unmute yourself?

21 **Mr. DeLaney:** Yes, thank you. On page 4, I had asked in the January minutes whether there was any
22 update on the case that we discussed in executive session. Is there any update at this point, I wonder?

23 **Ms. Lin:** And no, not yet. I did follow up with Law Department again yesterday, and she will update me
24 when she has any further news to share.

25 **Mr. DeLaney:** Okay. And I'm sorry, by the way, I didn't get a chance to read the minutes until this
26 morning. So normally, I would have sent some of these comments via email so as not to take up meeting

1 time. But on page 8, the summary of Tenants of 475 Kent appears to be incorrect. What we have there
2 repeats the summary of a prior case – case number 6.

3 **Ms. Lin:** Alright, give me a minute. I'm just pulling that up.

4 **Mr. DeLaney:** Yeah, both case 5 and 6 have the exact same summary, which I'm pretty sure pertains to
5 case 6 rather than case 5.

6 **Chairperson Hylton:** Do we have that summary for case 5 that we could probably just read into the
7 record? And we can update that? Do we have that available?

8 **Ms. Lin:** I don't know that we do now. Ms. Lee, do you already have a summary for that case? That was
9 a TM 0099. I think that was yours. Please correct me if I'm wrong.

10 **Ms. Lee:** Yes, that was my case. I don't have a summary on me to read into the record.

11 **Mr. DeLaney:** That's okay. As long as it gets corrected before we finalize the minutes. As I recall, this
12 was another diminution of services with regard to parking spaces.

13 **Chairperson Hylton:** Yes. Okay so with that said, maybe we don't vote on these minutes.

14 **Ms. Lin:** So, we can table the January minutes and see if we can proceed with the February one and
15 maybe bring back the January minutes.

16 **Chairperson Hylton:** Before we do though, are there any other comments or concerns on this, so that
17 we can get all these issues taken care of? Thank you, Mr. DeLaney.

18 **Mr. DeLaney:** There are a couple more typographical odds and ends. But rather than take time on that,
19 I'll just email those in this afternoon.

20 **Chairperson Hylton:** I appreciate that. Board Members, any other comments? Thank you. So, we're
21 tabling the voting on the minutes of the January 21st. So, we now turn to a vote on the minutes of the
22 February 18th, 2021, public meeting. Are there any corrections or comments on these minutes?
23

1 **Mr. DeLaney:** I have just one, which is on page 9. The first full paragraph on that page that starts with,
2 “What the Board members need to do right now is consider...” It says consider the suggestions from the
3 New York City Tenants association, but it's actually New York City Loft Tenants association. So, we just
4 need to add the word Loft please.

5 **Chairperson Hylton:** On page 9, Mr. DeLaney?

6 **Mr. DeLaney:** Yes. Of the February minutes.

7 **Chairperson Hylton:** Am I the only one who can't find that? That's where? Where is that comment?

8 **Mr. DeLaney:** Third line from the top of the page.

9 **Chairperson Hylton:** I'm sorry, I'm looking at the January one. That makes sense. I'm sorry.

10 **Mr. DeLaney:** That'll do it.

11 **Chairperson Hylton:** At least I'm paying attention. Anyway. Yeah.

12 **Mr. DeLaney:** So just add the word Loft at the end of line three, and we're good.

13 **Ms. Lin:** Mr. DeLaney, you're looking at line three?

14 **Chairperson Hylton:** Again, the line is...

15 **Mr. DeLaney:** Page 9. The paragraph that begins, “What the Board members need to do right now.”

16 **Ms. Lin:** Yes. I see it now. Yeah. We will add the word Loft to New York City Tenants association.

17 **Mr. DeLaney:** Great. That's it for me.

18 **Chairperson Hylton:** In fact, since it's mentioned above in brackets there, we could probably just
19 abbreviate it and say NYCLT. Okay, any other comments, corrections to the minutes? So, with that one
20 correction that Mr. DeLaney pointed out, putting the word Loft at the very end of the line -- New York
21 City Loft Tenants association. Is it Tenants or Tenant Mr. DeLaney? Tenants, right? Chuck?

22

1 **Mr. DeLaney:** I'm sorry. I was muted. Tenants with an s.

2 **Chairperson Hylton:** With an s. So, we need to make that correction also. Right, throughout. And that is
3 Tenants association.

4 **Mr. DeLaney:** Yeah. Actually, the word association is not part of the actual name.

5 **Mr. Barowitz:** It's not part of it. No. We should take that out.

6 **Chairperson Hylton:** Yes

7 **Mr. Barowitz:** It's New York City Loft Tenants.

8 **Chairperson Hylton:** I got it. New York City Loft Tenants. Okay. Thank you. Thanks for that. And while
9 I'm not sure if it appears anywhere else, but if it does, Terry, could you please just take a look, and the
10 word Tenant.... First, it needs to be pluralized -- Tenants. And if the word association follows it anywhere
11 else in minutes, could you please remove that? All right, thank you. So, with those corrections, do I have
12 a motion to accept the February 21st minutes?

13 **Mr. Barowitz:** I move.

14 **Chairperson Hylton:** Mr. Barowitz

15 **Mr. Hylton:** Second

16 **Chairperson Hylton:** Mr. Hylton. Miss Rivera, could you please poll the Board members?

17 **Ms. Rivera:** Mr. Barowitz?

18 **Mr. Barowitz:** Yes

19 **Ms. Rivera:** Mr. Roche?

20 **Mr. Roche:** Yes

21 **Ms. Rivera:** Mr. Hylton?

22 **Mr. Hylton:** Yes

23 **Ms. Rivera:** Mr. DeLaney?

1 **Mr. DeLaney:** Yes

2 **Ms. Rivera:** Ms. Torres?

3 **Ms. Torres-Moskovitz:** Yes

4 **Ms. Rivera:** Ms. Roslund?

5 **Ms. Roslund:** Yes

6 **Ms. Rivera:** Ms. Rajan?

7 **Ms. Rajan:** Yes

8 **Ms. Rivera:** Chairperson Hylton?

9 **Chairperson Hylton:** Yes

10 **Ms. Rivera:** Eight in favor.

11 **Chairperson Hylton:** Thank you, Ms. Rivera. We'll now turn over to Ms. Lin, who will read her Acting
12 Executive Director's Report.

13 **Ms. Lin:** Thank you Chairperson. First off on my list is the Governor's Order. On February 14th, the
14 Governor issued Executive Order to 202.94, which suspended the in-person meeting requirements of
15 the Open Meetings Law to March 28th, 2021.

16 Next up, reporting on revenue. The unofficial Loft Board revenue for February 2021 was \$1,150.

17 In terms of enforcement, we issued one violation in February. On February 23rd, 2021, one violation was
18 issued 156-170 North Fourth St, Brooklyn, New York, in unit 16, for lack of running cold water in the
19 kitchen.

20 In litigation, we have three new cases comprised of two Article 78's and one housing court proceeding.
21 The first one is *475 Kent Owner versus Loft Board and Julian Bozeman*, index number 152162 of 2021.
22 Here the owner filed an Article 78, challenging the Board's determination in Loft Board Order 4987,
23 dated June 18th, 2020, which invalidated the prior tenant's sale of rights because she was no longer a
24 residential occupant at the time of sale, and it granted the applicant protected occupant status.

25

1 The second case is *475 Kent Owner versus Loft Board and Rune Knudsen*, index number 152193 of 2021.
2 Here the owner filed an Article 78 challenging the Board's determination in Loft Board Order number
3 4973 dated, May 1, 2020, which found that the applicant's B1/B2 visa did not preclude him from
4 establishing primary residency and granted him protected occupancy status.

5 The third case is a housing court case. That is *Alden et. al. versus The West Paramount LLC, HPD and the*
6 *Loft Board*. That's index number LT 300459 of 2021. And here, the tenants of 117 West 26th Street, New
7 York, New York, filed a housing court proceeding against the owner for failing to provide heat in the
8 building.

9 And last up in litigation, we have one discontinuance. And that's *99 Sutton LLC versus New York City Loft*
10 *Board*, index number 159477 of 2020. Here the owner had filed an Article 78 concerning Loft Board
11 Order 4934, dated January 16th, 2020, which fined the owner \$5,000 for failure to renew the annual
12 registration for the building. Upon review of the Loft Board records, staff discovered that owner
13 submitted his registration renewal prior to the issuance of the Order. So pursuant to a stipulation of
14 settlement, the subject fine is rescinded, and the Article 78 proceeding is discontinued. And that is my
15 report.

16 **Chairperson Hylton:** Thank you, Ms. Lin. I will open up to any questions from the Board members.

17 **Mr. DeLaney:** I just have one question, which is related to the timing of when we think we might be able
18 to resume the enforcement effort that was started several years ago and then discontinued when the
19 staff member who was leading it up left the agency?

20 **Ms. Lin:** That's a very good question, Mr. DeLaney. Unfortunately, I don't think I have an answer for you.
21 That's dependent on a few things. One, getting the new Executive Director on board, and the other is,
22 right now our enforcement attorney is actually out on leave, so we await his return. And then we'll see
23 where we're at when those two things come back into place.

24 **Mr. DeLaney:** Okay, thank you.

25 **Chairperson Hylton:** Also, Mr. DeLaney, as you know, it will also depend on the budget if lines are
26 reopened for us to do that. However, I can tell you, this was discussed, and we do need to start up some

1 kind of enforcement. Loft Board enforcement. So, we'll prioritize and try to get something going. It's
2 just not going to be as robust as we thought we were going to do with that one attorney that we had
3 just for that purpose. But we will regroup and start something soon.

4 **Mr. DeLaney:** Thank you.

5 **Chairperson Hylton:** While we're on that subject of staffing, I just want to not necessarily make an
6 announcement, but I'll just say that we expect we'll have an Executive Director on board soon.

7 **Mr. DeLaney:** Before we go to the cases, if you don't mind, I'd like to just raise one other issue. Re-
8 reading the minutes this morning, I was reminded of my decision to defer the suggestion of a Board
9 resolution on the subject of professional and self-certification because I didn't think it was fair to bring it
10 up at a meeting where there was a new member for the first time, Mr. Hylton. And then reading that, I
11 thought, well, here we go again. We're going to have another new member today. But it turns out, we
12 won't have that new member 'till next month. So, I'm in a bit of a quandary about how to proceed. I'd
13 like to move forward on this at some point in the future, but I'm not quite sure what would be fair under
14 the circumstances. So, I guess I'm asking the Chair and the Acting Executive Director for some guidance.

15 **Chairperson Hylton:** I would maybe ask that we...Can we look, and target this, and put this on the
16 agenda for the May meeting? Is that all right? Is that good? That would give a chance for Ms. Hayashi to
17 start and review whatever you have by May. Could you draft something up, Mr. DeLaney?

18 **Mr. DeLaney:** There are a couple segments in the minutes from both, I think, November and January,
19 that do a pretty good job of it, if I have that right. But I can certainly pull something together. I know
20 that this is also something that Julie had reminded me of. So how does that sound to you?

21 **Ms. Torres-Moskovitz:** Thank you. Sounds fair for the new manufacturing rep to have a month. But
22 then I guess that means in our April meeting we have to brief them, correct?

23 **Chairperson Hylton:** Correct. And I mean, in in your briefing, if you want to have that resolution
24 drafted... I don't think we want to have the staff draft that resolution.

1 **Mr. DeLaney:** Right. No. I took the responsibility for that. So, I'll plan....So perhaps we can put ten
2 minutes for discussion on the April agenda on that topic.

3 **Chairperson Hylton:** Fair enough.

4 **Mr. DeLaney:** Thank you.

5 **Chairperson Hylton:** Okay. All right. Any other discussions prior to going into the cases? So now, we
6 turn to our Appeals and Reconsideration Calendar and the vote on the cases. There is one case on the
7 Appeals and Reconsideration calendar, and that case is

8 Case 1: 99 Sutton, LLC 99 Sutton Street, Brooklyn, New York Docket no. AD-0105

9 Is there a motion to accept this case?

10 **Mr. DeLaney:** I'll move.

11 **Chairperson Hylton:** Mr. DeLaney, so moved. Second, on accepting this case?

12 **Ms. Roslund:** I'll second.

13 **Chairperson Hylton:** I'm sorry, I saw Mr. Barowitz first, Thank you. Does anyone have any comments on
14 this case? Did I miss any comments? No? No hands. Therefore, Ms. Rivera, could you please poll the
15 Board members.

16 **Ms. Rivera:** Mr. Barowitz?

17 **Mr. Barowitz:** Yes

18 **Ms. Rivera:** Mr. Roche?

19 **Mr. Roche:** Yes

20 **Ms. Rivera:** Mr. Hylton?

21 **Mr. Hylton:** Abstain

22 **Chairperson Hylton:** Mr. Hylton, is that abstain? You're muted.

23 **Mr. Hylton:** I'm recused.

1 **Chairperson Hylton:** You're recusing. All right.

2 **Ms. Rivera:** Mr. DeLaney?

3 **Mr. DeLaney:** Yes

4 **Ms. Rivera:** Ms. Torres?

5 **Ms. Torres-Moskovitz:** Yes

6 **Ms. Rivera:** Ms. Roslund?

7 **Ms. Roslund:** Yes

8 **Ms. Rivera:** Ms. Rajan?

9 **Ms. Rajan:** Yes

10 **Ms. Rivera:** Chairperson Hylton?

11 **Chairperson Hylton:** Yes

12 **Ms. Rivera:** Seven in favor, one recused.

13 **Chairperson Hylton:** Thank you, Ms. Rivera. There are three cases on the Summary Calendar, and they
14 are voted on as a group. These cases are

15 Case 2: Matvey Fiks & Vasily Grogol 250 Moore Street, Unit 401, Brooklyn, NY Docket nos.
16 PO-0068, TA-0241

17 Case 3: 100 Metropolitan Ave. Realty Corp. 100 Metropolitan Ave., Unit 6, Brooklyn, NY Docket no.
18 LS-0261

19 Case 4: Mira de Jong & Elae 141 Spencer St., Units 307 & 203, Brooklyn, NY Docket no. TA-0277
20 (Lynne) DaSilva Johnson

21 Do I have a motion to accept these cases?

22 **Mr. Hylton:** Move

23 **Chairperson Hylton:** Mr. Hylton so moves. Is there a second? Mr. Barowitz has seconded. Thank you.
24 Does anyone have any comments on these cases, in any order? Everyone is satisfied? Therefore, Ms.
25 Rivera, could you please poll the Board members.

- 1 **Ms. Rivera:** Mr. Barowitz?
- 2 **Mr. Barowitz:** Yes
- 3 **Ms. Rivera:** Mr. Roche?
- 4 **Mr. Roche:** Yes
- 5 **Ms. Rivera:** Mr. Hylton?
- 6 **Mr. Hylton:** Yes
- 7 **Ms. Rivera:** Mr. DeLaney?
- 8 **Mr. DeLaney:** Yes
- 9 **Ms. Rivera:** Ms. Torres?
- 10 **Ms. Torres-Moskovitz:** Yes
- 11 **Ms. Rivera:** Ms. Roslund?
- 12 **Ms. Roslund:** Yes
- 13 **Ms. Rivera:** Ms. Rajan?
- 14 **Ms. Rajan:** Yes
- 15 **Ms. Rivera:** Chairperson Hylton?
- 16 **Chairperson Hylton:** Yes
- 17 **Ms. Rivera:** Eight in favor
- 18 **Chairperson Hylton:** Thank you. There are two cases on the Master Calendar. The first case is
- 19 Case 5: Ronald Pichler 257 West 19th St., 4th floor, NY, NY Docket no. TR-1334
- 20 Mr. Clarke will be presenting this case.
- 21 **Mr. Clarke:** Thank you Chairperson Hylton, Board members. On June 8th, 2017, the tenant of the fourth-
- 22 floor unit in the building filed an application seeking Article 7-C coverage of the unit and protected
- 23 occupant status for himself. The tenant's sister and his cousin, the co-owners of the building, filed
- 24 answers. The Loft Board transferred the application to OATH for adjudication. For the Board to make a

1 determination on the application today, it must first determine if the building and the unit meet the
2 requirements for coverage; and if so, did tenant satisfy the requirements for protected occupancy.

3 The parties stipulated to most of the coverage requirements; however, owners disputed coverage on
4 two grounds. First, owners argued the Loft Law does not apply to residentially occupied units that have
5 never been used for commercial activity. However, the Loft Board has repeatedly held that applicants
6 do not need to prove prior commercial use of individual units in order to qualify for Loft Law coverage.
7 Next, owners argued that because the building was constructed prior to 1938, and the second-, third-,
8 and fourth-floor units were always used for residential purposes, the building is not required to have a
9 Certificate of Occupancy, pursuant to MDL section 301. Therefore, owner argued, the building does not
10 meet the requirement that it lack a Certificate of Occupancy. The Administrative Code states that a
11 building constructed prior to January 1st, 1938, may continue to be lawfully used or occupied without a
12 Certificate of Occupancy provided there is no change in the existing use or occupancy classification of
13 the building.

14 We agree with the ALJ that the evidence showed that, prior to 1938, the building included a residential
15 unit on the second floor and a residential duplex on the third and fourth floors. However, as early as
16 1964, the third and fourth floors were no longer used as a duplex, but rather as separate independent
17 units. With exceptions that do not apply here, the New York City Charter mandates that no building or
18 structure or part thereof, for which a Certificate of Occupancy has not been previously issued or
19 acquired, shall be occupied or used for any purpose, whatever, where the building has been altered, or
20 converted, so as to decrease or increase the number of living rooms or apartments until a Certificate of
21 Occupancy has been issued. The post-1938 increase in the number of units from a two-family residence
22 to a three-family, multiple dwelling renders all portions of the building unlawful for use for any purpose
23 until it obtains a Certificate of Occupancy. And as a result, the building meets the requirement that it
24 must lack a Certificate of Occupancy.

25 With respect to tenant's protected-occupant status claim, tenant argued he should be the protected
26 occupant on two grounds. First, tenant argued that he became the protected occupant of the second-
27 floor unit when he took possession prior to June 21st, 2010, pursuant to 29 RCNY section 2-09(b)(2)(iii),
28 and that his alleged rights traveled with him when he moved to the fourth-floor unit. However, we

1 agree with the ALJ that any alleged rights tenant might have had in the second-floor unit did not travel
2 with him because he did not move into the fourth-floor unit at the request of, and for the sole benefit
3 of, the owners, as he claimed. To the contrary, the ALJ determined it was more likely that tenant asked
4 his cousin, the co-owner of the building, for a lease or for the fourth-floor for protection against his
5 sister, the other co-owner of the building, who did not want him living in the building.

6 Tenant's second argument is that he is the protected occupant, pursuant to 29 RCNY section 2-09(b)(3),
7 and that he is the prime lessee with the lease currently in effect or he took possession of the IMD unit
8 with the consent of the landlord. We agree that the tenant meets the requirement under this section.
9 Tenant is the prime lessee with the lease currently in effect pursuant to a ten-year lease he signed in
10 November 2013 with the co-owner of the building. Owners argue that one co-owner, as tenant-in-
11 common with another co-owner, did not have the authority to enter into a lease with tenant. However,
12 we do not need to consider this argument because it is undisputed that tenant took possession of the
13 unit with consent of the landlord. Under section 2-02(b) and section 2-04(a), a landlord is defined as the
14 owner of an IMD, the lessee of a whole building, all or part of which contains IMD units, or the agent,
15 executor, assignee of rents, receiver, trustee or any person having direct or indirect control of the
16 building. Tenant took possession of the unit with the consent of his cousin, the co-owner of the building,
17 thus qualifying him for protected occupancy status. Therefore, the Proposed Order before you today
18 grants the application for coverage and deems the tenant the protected occupant of the fourth-floor
19 unit.

20 **Chairperson Hylton:** Thank you, Mr. Clarke. Well put-together. Do I have a motion to accept this case?

21 **Mr. DeLaney:** I'll move.

22 **Chairperson Hylton:** Mr. Delaney has moved to accept. Any second?

23 **Ms. Rajan:** I can second.

24 **Chairperson Hylton:** Thank you Ms. Rajan. Comments on this case? Anyone?

1 **Mr. DeLaney:** I would just comment and agree with the Chairperson that this is a very clearly written
2 Order and commend the staff for it. This certainly has some Family Feud elements to it, but it seems
3 that the right conclusion was reached.

4 **Chairperson Hylton:** Thank you, Mr. DeLaney. Absent any other comment, I will ask Ms. Rivera to
5 please poll the Board members.

6 **Ms. Rivera:** Mr. Barowitz?

7 **Mr. Barowitz:** Yes

8 **Ms. Rivera:** Mr. Roche?

9 **Mr. Roche:** Yes

10 **Ms. Rivera:** Mr. Hylton?

11 **Mr. Hylton:** Yes

12 **Ms. Rivera:** Mr. DeLaney?

13 **Mr. DeLaney:** Yes

14 **Ms. Rivera:** Ms. Torres?

15 **Ms. Torres-Moskovitz:** Yes

16 **Ms. Rivera:** Ms. Roslund?

17 **Ms. Roslund:** I recuse myself.

18 **Ms. Rivera:** Ms. Rajan?

19 **Ms. Rajan:** Yes

20 **Ms. Rivera:** Chairperson Hylton?

21 **Chairperson Hylton:** Yes

22 **Ms. Rivera:** Seven in favor. One recuse.

23 **Chairperson Hylton:** Thank you, Ms. Rivera. The last case on the Master Calendar is a removal case, so
24 there's no staff presentation. The case is

1 Case 6* 54 West 22nd Street Owner LLC 54 West 22nd St., Manhattan Docket no. LE-0715

2 Do I have a motion to accept this case?

3 **Mr. Barowitz:** I so move.

4 **Chairperson Hylton:** Mr. Barowitz moved to accept the case. Mr. Hylton has seconded. Thank you. Do I
5 have any comments on this case? Absent any comments, Ms. Rivera, could you please poll the Board
6 members.

7 **Ms. Rivera:** Mr. Barowitz?

8 **Mr. Barowitz:** Yes

9 **Ms. Rivera:** Mr. Roche?

10 **Mr. Roche:** Yes

11 **Ms. Rivera:** Mr. Hylton?

12 **Mr. Hylton:** Yes

13 **Ms. Rivera:** Mr. DeLaney?

14 **Mr. DeLaney:** Yes

15 **Ms. Rivera:** Ms. Torres?

16 **Ms. Torres-Moskovitz:** Yes

17 **Ms. Rivera:** Ms. Roslund? Ms. Roslund?

18 **Chairperson Hylton:** Heather, are you hearing?

19 **Ms. Roslund:** Yeah. I'm losing signal there for a second. Yes.

20 **Ms. Rivera:** Ms. Rajan?

21 **Ms. Rajan:** Yes

* The Chairperson inadvertently announced the details for Docket Number LE-0715 instead of the intended case, which was "The Broadway Corporate Group LLC, 496 Broadway, Brooklyn, Docket Numbers LE-0722, RG-0211." Please note that documents for LE-0722 and RG-0211 were presented to the Board and voted upon. LE-0715 was not presented. Minutes for this meeting will reflect the Board's vote upon LE-0722 and RG-0211.

1 **Ms. Rivera:** Chairperson Hylton?

2 **Chairperson Hylton:** Yes

3 **Ms. Rivera:** Eight in favor

4 **Chairperson Hylton:** Thank you. So, our next thing on the agenda is rulemaking. I am tempted right now
5 to just take a two-minute recess so people can refresh themselves, and we'll come back. So please, do
6 not do anything with your monitor. Just leave it as it is. Or mute yourselves. Or take your thing off, but
7 we will resume in two minutes, at 2:40.

8 **Chairperson Hylton:** Okay, with a quorum back, we're going to resume this Board meeting. So, the next
9 item -- we're back in session -- the next item on the agenda is rulemaking updates. And Mr. Clarke will
10 lead this discussion. But before he does, I just want to say something. So, I know this rulemaking process
11 has been on-going for quite a while. I'm setting a goal to have our rules finalized by June this year, and
12 to send to Law Department for approval. This is my goal. I would love if it could happen tomorrow, but
13 it's obviously not going to. But the earlier the better. It's my goal to have us wrap up these rules so far
14 and send them to the Law Department.

15 Now, I think it's do-able, right? I believe it's doable, although it's not easy for staff and for the Board,
16 given the staff workload and time constraints. But we all have to strive to make this a priority in the
17 upcoming months. And I really thank you all -- the staff and the Board members -- for your continued
18 efforts in seeing this through. A lot of it, after it leaves us, will depend on Law Department's timing and
19 comments coming back. But it doesn't hurt to set a goal. And I want to set this goal to get these rules
20 wrapped up. At this point, I'm at a loss as to how long we're doing this. I believe it's like four years. We
21 need to get this going, and we need to wrap this up. And so, I'm going to ask everybody to focus on the
22 coming months. So that's why we have set another Board meeting, an extra meeting, to discuss rules. If I
23 assess with staff that we need another one in April, I'll ask for another meeting. But let's see if we can
24 get this done without that. So, with nothing further, Mr. Clarke, the show is yours, sir.

25 **Mr. Clarke:** Thank you, Chairperson Hylton and Board members. So, we are going to pick up with the
26 rulemaking with the comments that we received from OATH, and for your reference, I sent, I think, a
27 two-page document. At the top, it says 1-12 Definitions. And on this document are all the comments

1 we've received from OATH, and we've been going through all of them. Right now, we are in the process
2 of going through 1-27 Hearings, section (e). 1-27(e). And the reason we're going through this again for
3 the public is because we are trying to....The Board members are trying to determine if they want to
4 accept the change in that, if the Loft Board rules are silent with respect to procedural or substantive
5 issues....I'm sorry. I'll start from the beginning:

6 "Where OATH conducts a hearing, and the Loft Board rules conflict with OATH's procedural rules,
7 OATH's procedural rules or practices will apply, unless otherwise provided by state law. Where there is
8 no OATH rule or practice regarding a procedural issue, the Loft Board rules will apply."

9 So, the Loft Board members are trying to determine if they should accept this language here, and for
10 them to be able to do so, they need to look at the procedural rules for OATH and look at the procedural
11 rules for the Loft Board and find out if there are any conflicts before the Board members decide to
12 accept OATH's rules. So, we're in the process of doing that. And we have been using the other
13 document, which I forwarded to the Board members. We've been using this one, and we're going to
14 pick up... We've done most of the comparisons in the document, but we have a little bit more to get
15 through.

16 I'm hoping we can finish that today. And there's one more comment from OATH that was added last
17 week. We'll get to that. And then, once we wrap that up, we'll be finished with all the comments that we
18 received from OATH, and we can move on from there. So, going into the second document that we have
19 been going through--- that chart, the spreadsheet -- we are now picking up at 1-28, Notice of
20 Conference or Trial. That's probably around page 9. I'm sorry, it's not numbered.

21 **Chairperson Hylton:** It's like the fifth page. 1-28 you said?

22 **Mr. Clarke:** Yes. The Notice of Conference or Trial.

23 **Mr. DeLaney:** Excuse me, before we go to 1-28, you were speaking about 1-27(e)? Before Mr. Clarke?

24 **Mr. Clarke:** Yes

25 **Mr. DeLaney:** Is that new language that we're seeing for the first time at the end of 1-27(e)?

1 **Mr. Clarke:** No, that is language that has been there, but the Board members are trying to.... Well, this
2 is new language that we received from OATH, yes. But we got this quite some time ago, and the reason
3 why we have the spreadsheet that we're going over now is because of the new language that OATH
4 recommended.

5 **Mr. DeLaney:** Yes. Okay. Thank you. Thank you for clarifying that.

6 **Mr. Clarke:** No problem. So, are we all on 1-28, Conference and Trial? Okay. So, there are two, sections
7 in this box. There's 1-28, and 1-26(d), Docketing the Case. Now, this is going to cause some conflict,
8 because we've already discussed what the Loft Board rules say about the notices of conference in
9 section 1-27. So basically, the OATH rules require the party that placed the case on the calendar to serve
10 other parties with notice of trial, as well as other documents. So, if we accept, wholesale, all of OATH's
11 procedural rules, OATH says that the party that placed the case on the calendar is responsible for
12 serving the other parties.

13 We previously took some issue with that because that would require....usually, in many cases, it's the
14 tenants that are initiating a case, and it will place the burden on the tenants to serve the parties with
15 notices for that case. We actually discussed this at length, and it's here before us again because OATH's
16 rules... if we accept OATH's rules, OATH is saying the party that places the case on the calendar is
17 responsible for serving the parties. The Loft Board rule says that you have to provide fifteen days' notice
18 to the parties prior to a conference or hearing. And in our rules, right now, it says that the Loft Board is
19 responsible for mailing out these notices. And we discussed this earlier, that we have limited staff.

20 Originally, we changed the language to adjudicator, but we believe we came to an agreement, or an
21 understanding, that our rules currently have the Loft Board taking responsibility for serving these
22 notices. And OATH would like the Loft Board to continue to have this language, with the Loft Board
23 taking the responsibility for mailing these notices out. But again, with this, the problem that we're
24 having here, I'm sure the Board members can see, is that if we accept, wholesale, all of OATH's
25 procedural rules, we're going to run into this issue, with OATH saying that the party that placed the case
26 on the calendar is responsible for service.

1 **Chairperson Hylton:** So, Mr. Clarke, if I'm understanding this right, when our rules were written, the Loft
2 Board was doing its own adjudication, correct?

3

4 **Mr. Clarke:** Correct

5 **Chairperson Hylton:** So, basically OATH has, in practice right now, OATH has adopted Loft Board rules?
6 Correct? Because they're doing the mailings?

7 **Mr. Clarke:** Correct. They've taken on this responsibility.

8 **Chairperson Hylton:** Right. So is it possible, because the Loft Board is not really a party to the suit... I
9 don't know if we're considered party to the suit -- correct me lawyers -- but I think we're not. So, if our
10 rules should stay here, stand here, we would be asking OATH, really, to send these notices out? Right,
11 not the Loft Board?

12 **Mr. Clarke:** The way that it's written now, in our current rules, it would still be the Loft Board's
13 responsibility to mail these out. However, OATH has been doing it ever since the Loft Board has not
14 been conducting their own hearings internally. OATH has taken on that responsibility. But the way that
15 it is written, the Loft Board is responsible for mailing out these notices.

16 **Chairperson Hylton:** So, you think the Loft Board there was meant to be the adjudicating body?

17 **Mr. Clarke:** You're right. At the time this was written, the Loft Board was the adjudicating body.

18 **Chairperson Hylton:** So, I'm sure the intent of the rule was that the adjudicating body would mail out
19 the notices, correct?

20 **Mr. Clarke:** I know. That would make sense to me, but I can't give you a hundred percent....

21 **Chairperson Hylton:** Right. But I'm sure if we were to see or research -- if there's any record of what the
22 intent was -- it would have been just because we were doing it within the Loft Board. We didn't say,
23 adjudicating body; we just said Loft Board, because Loft Board was. So, in essence, these rules were

1 written with the intent that whoever's adjudicating the case would just mail out.... The body will just
2 mail out these notices. And in practice, that's what's happening now, correct?

3 **Mr. Clarke:** Yes, in practice, that's what's happening. Yes.

4

5 **Chairperson Hylton:** So, and if I recall, OATH is actually saying, we'll continue to do that, but we really
6 don't want to be compelled to do it because of staffing issues on our part, right? Is that what it is?

7 **Mr. Clarke:** That's correct.

8 **Chairperson Hylton:** And so, if we don't do that, and OATH next month says that they lost bodies to the
9 pandemic, whatever, however it is, project cuts, and we can't do this notice, it would fall back on the
10 Loft Board, if we leave this language in there, correct?

11 **Mr. Clarke:** Right. But see, the added difficulty with this is embedded in the language and 1-27(e). It's
12 that if the procedural rules conflict, OATH's rules will apply.

13 **Chairperson Hylton:** And what do OATH's rules say?

14 **Mr. Clarke:** OATH says the party that placed the case on the calendar has to serve.

15 **Chairperson Hylton:** I got you. But if we...if the Loft Board.... Okay, so I'm thinking of a compromise
16 here. That's why I'm asking these questions. Because I'm thinking that if the Loft Board were to interject
17 the language in here that says, except in these particular instances, if there's a conflict here... if OATH
18 cannot do it, the Loft Board will assume that responsibility. I know Tina, don't get mad at me here. I
19 know we've got staffing issues, too. But I'm saying if that's the case, if they renege on that -- what
20 they're doing now -- and we can put in the rule that we will pick it up in lieu of making the other party --
21 the party that brought the case -- which would, I'm sure, be burdensome on certain tenants, who don't
22 have the legal coverage and stuff to do this kind of stuff and the financing it takes to do this -- and put it
23 back on the Loft Board to do that. I'm just curious as to any information that you may have on how
24 voluminous this could be.

1 **Ms. Lin:** It could be a lot. Some of these buildings are quite large. And it's supposed to go to everyone--
2 for certain applications -- to go to everyone in the building. So, it could be quite burdensome for the Loft
3 Board to pick it up. But frankly, we don't really have a choice. That's what our current rules say. As it is
4 anyway, we're always responsible for this.

5 **Chairperson Hylton:** Okay. So why don't we keep it our responsibility by putting some exception here
6 that says, except in these matters, Loft Board will continue? We'll find a way to do it. I think a lot of
7 times.... way back, this may have been tedious, but I can see now where software may have been
8 created, I'm sure, to just, basically, spreadsheet-wise, put all the parties in and notices get at least
9 generated. Service is a different issue. But I think this is service by mail, correct?

10 **Mr. Clarke:** (Garbled)

11 **Chairperson Hylton:** So, I don't see how this could be too onerous, even if we had a hundred parties. If
12 we have a list of all the parties in a spreadsheet to just generate a mail-merge document and send out
13 these notices. In fact, we do this now at the Department for violations that we write, and so we could
14 probably assist in that way. All right? So, the Board agrees to find a way to craft this language to say
15 except...or to leave it alone, right? Basically. But to make an exception in this case.

16 **Mr. Clarke:** Right

17 **Ms. Lin:** I think the issue here is crafting language for 1-27(e). I don't know if Mr. Clarke had a chance to
18 look at that... to draft, to create an exception. So, OATH's rules will apply, except for the newest
19 requirements. I'm not proposing the language we should use; I'm just saying that's what the rule should
20 say.

21 **Chairperson Hylton:** Right. I'm going to come to the defense of OATH for a second. And Chuck, you may
22 be mad at me, but they're not trying to get out. They just don't want to be compelled. In our
23 conversation with them, they did say they will continue to do it, correct? If I'm wrong...

24 **Ms. Lin:** They will continue to do it for the time being. I don't think it's a life-long commitment or
25 anything, but they are doing it for the moment.

1 **Chairperson Hylton:** We'll make it lifetime. But what I'm saying is, that's how they feel now. But I said
2 this before, this is the New York... They are a City agency. And so is the Loft Board. The City will find
3 whatever has to come. Will make it happen, that the notices are sent out and not become a burden to
4 anybody else. All right? This is basic notices that go out every time violations are issued; every time
5 cases are put on by some agency. If it's not going to be OATH, it's going to be Loft Board. We'll make it
6 happen. So, I feel confident that if we, just as Tina says, make this exception, if it comes down to it, we'll
7 make it happen. In fact, we'll plan for it. Okay? Mr. DeLaney.

8 **Mr. DeLaney:** Just so I'm clear, Mr. Clarke mentioned that this would put responsibility on the parties?

9 **Chairperson Hylton:** On the party that brings the case.

10 **Ms. Lin:** If 1-27(e) remains as written, as you see on the screen right now, if we say, if it's a conflict
11 between OATH and Loft Board rules, and OATH's procedural rules or practices will apply, that does
12 mean that their regulations, which makes the party serve, would take precedent. So, in order to put that
13 responsibility back onto the Loft Board, if according to our rules, we'd have to make a little carve-out to
14 1-27(e).

15 **Mr. DeLaney:** So, let's just think this through with a hypothetical. A group of tenants in a building files
16 for coverage. In the earliest iteration of the Loft Board, they simply filed twelve copies, and the Loft
17 Board did all the service.

18 **Chairperson Hylton:** If there are twelve affected parties.

19 **Mr. DeLaney:** For whatever reason, back in the 80s, we came up with, provide twelve copies. And I
20 guess if there were more affected parties, the Loft Board made copies. That was the way it stood until
21 about, I want to say 2004, when the rule was changed, so that now the applicant is expected to serve
22 the other affected parties, correct? Which is the way we do it now.

23 **Mr. Clarke:** That's correct. The applicant is responsible for serving.

1 **Mr. DeLaney:** for serving the other parties. So now the case is joined. The parties have been served.
2 Answers start coming in. And currently, the Loft Board sends that whole dossier over to OATH, and
3 OATH takes it from there, correct?

4 **Mr. Clarke:** That's correct.

5 **Mr. DeLaney:** Okay. So now, let's say the OATH judge....If the case goes to OATH, the next thing that
6 happens is there's a settlement conference. Currently, OATH does the notices and the scheduling of the
7 settlement conference, correct?

8 **Mr. Clarke:** Yes.

9 **Mr. DeLaney:** Okay. And if we let this new language go into effect without a carve-out, the first question
10 would be okay, if OATH doesn't want to do it, now, if there's got to be scheduling of a settlement
11 conference with an OATH judge, who's going to do that? Is it the Board? Or is it the party that filed?

12 **Mr. Clarke:** If there's no carve-out, then it's the party that filed. That's what the OATH procedural rules
13 mandate.

14 **Mr. DeLaney:** Okay, so the party that filed would now be responsible for making sure that the other
15 parties to the case -- and now we've got to loop in the settlement judge, because we have to make sure
16 the scheduling fits the settlement judge's calendar, correct?

17 **Mr. Clarke:** Right, yes

18 **Mr. DeLaney:** Okay. And in most instances, it's probably not going to be the parties that would do this,
19 but it would be the attorney who represents the parties, because we want to make sure it's done
20 properly. Is that correct?

21 **Chairperson Hylton:** Maybe pro se?

22 **Mr. Clarke:** So far, yes.

23 **Chairperson Hylton:** There's such a thing as pro se? I'm sorry, Mr. DeLaney.

1 **Mr. DeLaney:** Sure. It's possible that, if I recall correctly, for a party to appear pro se at OATH, they need
2 permission from OATH to do so.

3 **Ms. Lin:** I don't think they do... Anyone can represent themselves at OATH. I think there was an open
4 question as to who you can appoint as a representative.

5 **Mr. DeLaney:** Right. Okay.

6 **Ms. Lin:** But you can certainly go pro se. You're not mandated to get an attorney at OATH.

7 **Mr. DeLaney:** But let's assume you've got a big building and a contentious group of parties. So, in all
8 likelihood, everybody's all lawyered up. So really, what we would be doing in this case would be shifting
9 those I'll call them administrative costs to the...It appears to me that we'd be shifting them to the party
10 who brought the case rather than to the Loft Board. Am I correct there?

11 **Mr. Clarke:** Yes. It would be the responsibility... at that point, the scenario that you gave, yes. The party
12 that brought the case, they would have the financial burden of responsibility of mailing out the notices.

13 **Mr. DeLaney:** And doing it right and suffering the consequences if they don't do it correctly.

14 **Mr. Clarke:** Yes

15 **Mr. DeLaney:** And then, if the parties can't reach a settlement in front of the settlement judge, then it
16 gets referred to another ALJ, and there's a trial. And through that part of the process, it would also be,
17 as I understand it, without some kind of carve-out, it would be on the parties to do all of that, with
18 regard to scheduling trial dates, adjournments, and everything else?

19 **Mr. Clarke:** Yes, that's correct. Yes. It's a lot of notices that go out. From the time it gets to a settlement
20 judge. Scheduling, conferences, hearings, there are a lot of notices that can potentially go out.
21 Especially if it goes all the way to a trial and hearing at OATH. Absolutely correct.

22 **Mr. DeLaney:** And there's really no...there's no supreme court, civil court, housing court, surrogate
23 court. Is there any model where the parties are in charge of doing this kind of stuff? Isn't that generally
24 what's done by the court?

1 **Ms. Lin:** I don't know if there is, because when you initiate a court proceeding, it's the party who
2 initiates the case that's supposed to serve everyone with the court date. And of course, Mr. Hylton,
3 please feel free to chime in, you're an experienced practitioner. And when a court reschedules a
4 hearing, usually the parties are in court. Everyone's there to get the next hearing date. I don't know if
5 the court really mails out additional notices to everybody.

6 **Mr. DeLaney:** Okay. So, it really.... I'm sorry, go ahead. I didn't mean...

7 **Chairperson Hylton:** I didn't interrupt, but I want to take an opportunity here to say this is the way it
8 works in the violation world also. The agency, the arm that brings the charge against the party, issues a
9 violation, mails out that first notice. Adjournments and such that happen in the courtroom is done by
10 the court. At OATH also.

11 **Mr. DeLaney:** But in the model we're describing, it could come to pass that it would not be OATH that
12 was doing that work; it would not be the Loft Board staff; it would be the party that brought the case.

13 **Ms. Lin:** Right. If we let 1-27(e) read as it does now, without any carve-out provision, that's what would
14 happen.

15 **Mr. DeLaney:** Okay, thank you. That makes it clearer to me.

16 **Chairperson Hylton:** I think it's an issue for OATH only because there's the potential for so many parties,
17 and it could become a burden for them. And I think that's what they're scared of -- that in a major
18 building, there could be a hundred parties that are affected, and they would have to do all these
19 hundred mailings. But I think that's an anomaly, so I don't...I'm not scared of the future, of that kind of
20 thing. That's why I'm saying let's do the carve-out; Loft Board will deal with it.

21 **Mr. Clarke:** Are there any other comments?

22 **Mr. DeLaney:** So that requires, if I understand correctly, to take the potential sting to the applicant
23 party out of 1-28, we need to put a carve-out into 1-27(e)?

24 **Chairperson Hylton:** Tina?

1 **Mr. Clarke:** Yes. And that sting would bounce back to the Loft Board instead of the parties.

2 **Ms. Lin:** Yeah

3 **Mr. DeLaney:** Right. Okay. But we don't have language for that as yet?

4 **Mr. Clarke:** That's correct. We'd have to create that carve-out. Either the Loft Board staff can work on
5 that language, or if the Board members have an idea of how....

6 **Chairperson Hylton:** The Loft Board staff will have something by next week. We'll do that.

7 **Mr. DeLaney:** Okay

8 **Chairperson Hylton:** Board members, is that reasonable? Okay. Thank you. Could you move on?

9 **Mr. Clarke:** Okay, so moving on to the next section – that is going to be section 1-43, which is
10 Subpoenas. I think it's around page 16.

11 **Chairperson Hylton:** We're skipping because we've dealt with all this other stuff before, correct?

12 **Mr. Clarke:** That's correct. Everything else, yes.

13 **Chairperson Hylton:** One dash what?

14 **Mr. Clarke:** One dash 43

15 **Ms. Roslund:** Page 9

16 **Mr. Clarke:** So, if we're all here -- The conflict here with the subpoenas is the Loft Board rules allow the
17 parties themselves to issue subpoenas, where the OATH rules require the ALJ to issue them. That's
18 pretty much the major conflict here. If we accept OATH procedural rules, whenever the parties want to
19 get a subpoena, it has to come from the ALJ. Do the Board members have any comments or concerns
20 with this?

21 **Ms. Torres-Moskovitz:** This is Julie Torres-Moskovitz. If you could just run through a scenario kind of
22 like what Chuck was doing? A hypothetical? I don't know how it plays out for you.

1 **Chairperson Hylton:** Before you do that, Mr. Clarke, I have a follow up question. So.... I know there's
2 such a thing... Wouldn't any party who's issuing a subpoena have to get it signed by a judge? I'm just
3 curious. Mr. Hylton? If in a case... a subpoena for records from another party... and one party's
4 subpoenaing another party, doesn't, the judge have to sign?

5 **Mr. Hylton:** Typically

6 **Chairperson Hylton:** There may be exceptions, you think?

7 **Mr. Hylton:** What I'm curious about here is, how does this operate now? Would this change in any way
8 slow down the operation of adjudicating these decisions? And what are some of the issues that may
9 have arisen thus far that precipitates looking at this rule?

10 **Ms. Lin:** I'm not sure there are any consequences. I'm pretty sure that OATH already applies their own
11 procedures and that the judges sign off on the subpoenas. I don't think the parties have been trying to
12 issue their own subpoenas without an ALJ to sign off on it.

13 **Chairperson Hylton:** I mean, are we using...There's such thing as subpoena power. I don't think parties
14 have subpoena powers just because they're being litigated. You can't just say, I need these records from
15 -- unless you can, I don't know -- but you can't just say I'm a party to this lawsuit, and I'm compelling
16 you to give me a copy of these records, without some judge intervening. What if there's a dispute? If
17 somebody disagrees, who rules on it? So, I'm wondering if this in the Loft Board's own rules.

18 **Mr. Clarke:** I think it's possible. As you said, Chairperson Hylton, I can't see...Board member Hylton
19 might be able to weigh in as well, or Tina. A party demanding, issuing, a subpoena on its own, without
20 any type of judge....

21 **Ms. Lin:** Sometimes an attorney can issue a subpoena. There are certain circumstances.

22 **Mr. Barowitz:** It's put into the record, and the judge accepts it, isn't that clear enough? I mean, I'm not a
23 lawyer. It sort of baffles me a little bit. I'm assuming that whatever goes on in the court, you're under
24 oath, and you have to tell the truth. So, if something is submitted, and the judge has accepted, isn't that

1 enough? Without necessarily having it get subpoenaed to begin with? As I looked through the OATH
2 cases, lawyers are constantly mentioning things that seem to be that they have, under oath, testified to.

3 **Ms. Lin:** Well, I think part of the issue here might be, what would be a valid subpoena? If I am litigating
4 my coverage issue, and I am a pro se litigant, and I say you are my neighbor, I'm issuing a subpoena per
5 Loft Board rules for you to give me pictures from 2000 of your apartment, do I have the power to do
6 that? It seems like under OATH rules, it requires an ALJ to sign off on a subpoena before I can issue
7 something like that. And under our rules, arguably, maybe you don't have to. Though I would have to
8 look into whether our rule is even valid. Whether it gives subpoena powers to anyone. And that one
9 I'm not sure. I do think it's enough to say here that adopting OATH's rules here would not be prejudicial
10 to any parties.

11 **Mr. Clarke:** I agree.

12 **Mr. Hylton:** Okay

13 **Chairperson Hylton:** Yeah, and I think that's the bottom line, right? Is it prejudicial to our constituents?
14 Loft Board's.

15 **Mr. DeLaney:** The feedback that I got, was that it was a group... What I heard was that it makes sense to
16 have the ALJ be the one who controls and makes decisions regarding subpoenas. And that there are
17 times when there are discussions about that between the opposing counsels at OATH. And this seems to
18 be an instance where, what I have heard -- and I can't say I've heard from every practitioner on the
19 tenant side -- no one has ever tried to tell the OATH judge, well, you don't have the power to do that,
20 because the Loft Board rules differ, and it says that I can issue a subpoena without you. Nobody's tried
21 that. And I would suspect that this was probably...that the current Loft Board rule was probably not well
22 drafted back in the 1980s, when this was put in. And at that point, some of the Loft Board hearing
23 officers weren't even attorneys; they were just, like, nice people. So, it seems that the feedback I got is
24 that the OATH method makes more sense.

25 **Chairperson Hylton:** I'm going to add that we do have nice people still at Loft Board.

26 **Mr. Clarke:** Okay. Are there any more comments?

1

2 **Chairperson Hylton:** So, we're stuck with this language. We're going to adopt this as acceptable,
3 correct?

4 **Mr. DeLaney:** I guess the attendant thought is perhaps we should look at bringing our rule into
5 conformity with it. So that if there's ever a time when the Loft Board goes back to doing its own
6 adjudication, that we'd have the same provision in our rules.

7 **Chairperson Hylton:** Your question is, are we amending this piece of our rule?

8 **Ms. Lin:** But there's nothing to specifically amend. This all falls under 1-27(e). What you're seeing...
9 What portions deserve a carve-out? Right now, 1-27(e) just says if there's a conflict between OATH rules
10 and Loft Board rules, OATH rules will take precedence. So, we're just making sure that there's nothing in
11 there where we wouldn't want the OATH rule to take precedent. But it seems like we're okay with this.

12 **Chairperson Hylton:** What Mr. DeLaney is asking is, should we be looking to amend 1-27? Oh, we
13 couldn't amend...

14 **Ms. Lin:** That would be a different provision, which we can look into.

15 **Ms. Roslund:** What Mr. DeLaney is saying is later, after we're done with the OATH comments, and we
16 go back to the rules, we look at this particular rule.

17 **Mr. DeLaney:** What I'm saying is we basically lifted the 1980s language that's in 1-06(j)(2)(ii) and
18 repeated it in our proposed rule 1-27(c), which says in pertinent part, "At the hearing, parties may be
19 represented by counsel, issue subpoenas, or request that a subpoena be issued." So, issue subpoena or
20 request that a subpoena be issued seems to say that the party has the right to issue a subpoena. So,
21 maybe we just want to strike three or four words there, so that it would be, the parties may be
22 represented by counsel, request that subpoenas be issued, call witnesses, cross-examine, et cetera, et
23 cetera.

24 **Ms. Lin:** We can look into that piece and see if we can draft that differently. That would be 1-27(c) we'd
25 be modifying.

1

2 **Mr. DeLaney:** Correct

3 **Mr. Clarke:** We'd just be striking out, issue subpoenas.

4 **Ms. Lin:** Well, we still want... Actually, yeah. Because we still have to request that a subpoena be issued.

5 **Chairperson Hylton:** Okay?

6 **Mr. DeLaney:** Just if I could, one more note, as a point of privilege, before we go forward. The device
7 that I'm using is telling me that it's about to run out of power. So, depending how long we go, if I
8 disappear, I'll log in on a different piece of equipment.

9 **Chairperson Hylton:** You just have to let me know by email, Mr. DeLaney, so I can let you back in. Oh,
10 I'm sorry, it's public actually. Never mind. Thank you.

11 **Mr. Clarke:** All right. So, we can move on to the next section, which is 1-45. And this is Failure to Appear.
12 Okay, so this is a pretty extensive rule with respect to the failure to appear. This is, at many different
13 points in the Loft Board's rules, a party can fail to file an answer; can fail to respond; they can fail to
14 appear at a hearing. And in each of those situations, the parties can end up in default. And the way that
15 the OATH rules are written for failure to appear, OATH says that:

16 "Commencement of a trial or any session of trial will not be delayed beyond the scheduled starting time
17 except for good cause as determined in the discretion of the administrative law judge."

18 So, the administrative law judge at OATH has discretion to, basically, vacate defaults. Whereas the Loft
19 Board rules has....It's written down exactly what the parties must do to vacate. It's a little bit more
20 detailed and specific. There are timeframes that the Loft Board has, and it's just not at the discretion of
21 the adjudicator. So that's the major conflict that we have here. Whether or not the Board members are
22 fine with giving the OATH judge the discretion at the hearing portion of the application, or once the
23 application is transferred to OATH, giving the OATH judge the discretion to commence trials without one
24 party that vacated or vacating a default judgment, just leaving that power with OATH. As opposed to in
25 our rules, where we have a specific mechanism in place to vacate defaults.

1

2 I would ask Tina.....As I read the rules, I don't think accepting OATH's procedural rules would be
3 prejudicial on the tenants, but the Board members and anybody else that would like to comment can
4 definitely do so.

5 **Chairperson Hylton:** So as far as I'm reading this, it seems like the Loft Board says if you default, you've
6 got thirty days to, basically, file an application to come back in, correct? And then there's some
7 consideration here, right? Somebody has to rule on that, right?

8 **Mr. Clarke:** Right. Yes. And not only do you have to meet the time requirement, but also there has to be
9 good cause as to why you didn't answer or appear.

10 **Chairperson Hylton:** So, the difference between OATH and us is OATH is saying, there's no time?

11 **Mr. Clarke:** Right. It's at the discretion. It says that it shouldn't be delayed. So, I think in that language, it
12 means you should be doing it as quickly as possible. But there's no written-down time.

13 **Chairperson Hylton:** So, who do you think that would benefit?

14 **Ms. Lin:** I think it benefits the defaulting party. I will say, I do find the thirty-day deadline a little bit
15 stringent. There could be all sorts of reasons why someone doesn't respond within thirty days. They may
16 be hospitalized, or maybe like during COVID, they moved out temporarily, and you don't really quite
17 meet the thirty-day criteria. I do think more flexibility is probably a good thing. So, I do think in this
18 respect, OATH's rule provides more flexibility. It doesn't say that we have to accept the people if they
19 come back in a year later. It just gives the adjudicator the discretion to decide what's reasonable, when
20 to vacate a default.

21 **Chairperson Hylton:** I agree with that.

22 **Ms. Torres-Moskovitz:** Sorry, one thing to clarify for myself. When it says adjudicator, is it always the
23 OATH judge? Or is this a case where the Executive Director of the Loft Board would be given more
24 power and discretion, or not?

1 **Ms. Lin:** So, right now, it's all before OATH, because that's where our hearings go. But the way our
2 current rules are laid out, it does give the Executive Director power to vacate a default. So, I suppose
3 that would be if the hearing is before the Loft Board again, if we develop this hearing unit again, then I
4 suppose the Executive Director would have the power to vacate the default in those circumstances. But
5 right now, it's all before OATH.

6 I'm sorry, actually, let me correct that. I suppose there could be a situation in which someone tries to
7 vacate a default and it hasn't been sent to OATH yet. Any applications still before the Loft Board. If
8 there's no factual dispute, we wouldn't really send it to OATH. So, someone, let's say defaulted in a
9 removal application. Those typically don't go to OATH, so then Executive Director would have the power
10 to vacate a default in that situation.

11 **Chairperson Hylton:** And that was...

12 **Ms. Roslund:** Are we in the same conversation that we're having about the last one? So if, in order for
13 the same rules to apply to Loft Board.... Because right now, we're just talking about whether there's a
14 conflict between OATH rules and the Loft Board rules. Because in order to accept 1- 27, that says OATH
15 rules override Loft Board rules, right? So, in order to accept that section, we're now looking at each of
16 these sections individually. So, we're only discussing whether or not the OATH rule would then apply.
17 So, we're looking at where there's a discrepancy between the two? And then it says OATH, in this case,
18 the OATH rules would apply. So, we're saying, are we okay if the OATH rules apply at OATH. Because
19 that's what we're talking about. The whole discussion is about at OATH. Right?

20 **Mr. Clarke:** Yes

21 **Ms. Roslund:** And that's kind of a yes or no answer. And then the second part of it is, maybe, which is
22 what Chuck said earlier, maybe we should re-look at this section of our rules, so that there could be
23 more discretion or, whatever it is. We might come across those a few more times. But that's a
24 discussion for later, when we're re-reviewing that section of our rules. Because right now we're only
25 reviewing section 1-27 of our rules. Is that correct?

26

1 **Ms. Lin:** Yes. Right now, we are focused on 1-27(e). But I will say, given the state of these rules, and if
2 the Board members do want to change something in our rules outside of 1-27(e), they should probably
3 tell the staff now, so we have time to look at it and bring it back to the Board. It does require fiddling
4 with our rules. And I know this has been going on for some time, and people are eager to get it passed.
5 But if the Board members are thinking about changing the Loft Board's rules, I think you should tell staff
6 now, so we can prepare it and bring it back to you as soon as we can.

7 **Ms. Roslund:** Sure, agreed. So, we should circle this and say, okay, next week when we meet or next
8 month or whenever, let's look at this. But just in terms of our own rules. Yeah?

9 **Ms. Lin:** Yeah, we can delve into the discussions of redrafting at a later Board meeting. So, if that's
10 something that you would like for staff to take a look at, we can try to see about adopting language
11 closer to OATH's language. But for today, I think it would suffice to say that the Board members... It
12 sounds like the Board members are all okay with letting OATH procedures dictate what happens OATH.
13 It seems that Mr. Delaney has lost audio. So, I don't know whether we should move on to the next
14 section or give him the opportunity to come back on with audio.

15 **Ms. Roslund:** I just got a notice that said he left again.

16 **Chairperson Hylton:** Right. So, this is probably what he described earlier. Just give him a chance to call
17 and see if he comes backing in on a different device. He probably lost his power, as he said. Just give him
18 a minute.

19 **Mr. Clarke:** Okay. And as we wait for Mr. DeLaney, with this last section, we will have completed the
20 comparison between OATH's procedural rules and the Loft Board's procedural rules. So, we're done.
21 After this section, if the Board members are fine with this, then we will have completed the comparison.
22 Which is good.

23 **Chairperson Hylton:** I think Mr. DeLaney is the last caller to come in. Somebody just joined. I'm thinking
24 it was Mr. DeLaney. Let me just see if it's him. And then I'll let that person... Mr. DeLaney, is that is you?
25 Mr. DeLaney? Is that you, Mr. DeLaney?
26

1 **A member of the public:** No

2 **Chairperson Hylton:** I'm sorry. Thank you. It was not Mr. DeLaney, so...That's great progress Stephan.

3 We have more to go today, right?

4 **Mr. Clarke:** Yes. After this, there's one other comment that OATH submitted last week, that I'd just like
5 to bring to the Board's attention. I think it's fairly simple. And then we will have completed all of the
6 comments for OATH. Next week, the staff will come back with language for the carve-out, and we'll be
7 done with all of OATH's comments. And we can start moving into Law Department comments.

8 **Chairperson Hylton:** Okay, I see Mr. DeLaney's back in.

9 **Mr. DeLaney:** I hope I didn't miss too much.

10 **Chairperson Hylton:** We're done for the year, I think.

11 **Ms. Roslund:** We waited for you.

12 **Chairperson Hylton:** We paused, so you can go ahead and wrap up your....continue your comments.

13 **Mr. Clarke:** Mr. DeLaney, if you have any additional comments under OATH's rule for 1-45, the Failure
14 to Appear, can you present those comments now?

15 **Mr. DeLaney:** No, I'm good.

16 **Mr. Clarke:** Okay, so with that said, then we've completed the comparison between OATH's procedural
17 rules and the Loft Board's rules. So, it seems like we have a couple of changes that Loft Board staff has
18 taken note of to our rules outside of 1-27(e). However, the Loft Board staff will come back next week
19 with a carve-out for the notices, and we'll be done with 1-27(e). Okay? So, going back to the first
20 document the Board members received....

21 **Chairperson Hylton:** The colorful one

22 **Mr. Clarke:** Yes, the colorful one, with all of the comments. There's one additional comment that OATH
23 brought to us last week.

1 **Mr. DeLaney:** I'm sorry, Stephan. One second. We covered 1-46, 1-49, and 1-51 previously, is that
2 correct?

3 **Mr. Clarke:** Yes

4 **Mr. DeLaney:** Okay. That's what I thought. Thank you.

5 **Mr. Clarke:** Everything else was covered. Yes. Everything in this comparison chart has been covered.
6 Going back to the first document that you received -- the colorful one -- on the second page, the very
7 last section, which is 1-33, the Appeals, OATH recommended that we change one small part in there,
8 when it comes to the appeals:

9 "An appeal from a determination of an OATH Hearings Division hearing officer issued pursuant to..."
10 we have, "a Loft Board rule..."

11 OATH would like to change that to:

12 "The Loft Law must be brought before the OATH Hearings Division in accordance with the applicable
13 rules and provisions established by OATH, as set forth in Chapters 3 and 6 of Title 48 of the Rules of the
14 City of New York."

15 Which is OATH's rules. So that's one small change that OATH would like to make.

16 **Chairperson Hylton:** And what's your analysis of that change?

17 **Mr. Clarke:** Our analysis is that it's not a major issue. It seems that OATH wants to draw the power to
18 appeal from the actual Loft Law, as opposed to any type of rule that the Loft Board makes. I don't think
19 it makes any major difference. But I guess it's just a stronger argument to have the appeal come from
20 the law as opposed to the rule.

21 **Mr. DeLaney:** Just to clarify, am I correct that this is referring to situations where the OATH judge issues
22 some sort of interim determination, rather than the circumstance where an OATH judge issues a report
23 and recommendation, that is then returned to the Loft Board. Is that correct?
24

1 **Mr. Clarke:** Yes...

2 **Ms. Lin:** I don't know if that's really the case here because it refers to OATH's Hearings Division and not
3 the Trials Division, and all our cases actually go to Trials. No, I have to confess, I'm not really sure what
4 this provision does. It's a holdover... this 1-33 is a holdover from our existing Loft Board rules, so it's
5 already in there. So, at a certain point, we decided to put this in there. To my knowledge, we don't really
6 have any Loft Board cases that end up in the Hearings department. But I think this is just a catch-all in
7 case there is a case that ends up going to the Hearings Division, we're going to follow OATH's general
8 procedures for the hearings, which is the appeal goes to someone else within their Division.

9 **Mr. Clarke:** Do the violations go to the Hearings Division?

10 **Ms. Lin:** No, they go to Trials. They can go to Trials.

11 **Chairperson Hylton:** We reserve that right. We can actually take it to Hearings, right? I know we don't
12 have a mechanism to do that. I understand that. But we can, right?

13 **Ms. Lin:** Yeah

14 **Chairperson Hylton:** I don't believe this is right. Because if we do, we'll be bringing violations of rules.
15 We're not going to be citing the Loft Law. We're citing our rules on these violations.

16 **Mr. Barowitz:** What if we used both languages? I mean, the rules or interpretation of the law. So why
17 don't we say, Loft Law and rules?

18 **Chairperson Hylton:** Yeah, I understand. I mean, I can understand, actually, Mr. Barowitz, if they had
19 said to use both. I could see more. But why would they change it from rules to law, when our penalties
20 schedule, or any kind of penalty, would be pursuant to rule? I don't get why they put this in, actually.

21 **Ms. Lin:** I think it's just broader to encapsulate... just in case there's a circumstance in which we bring
22 something that's not...or something ends up in the Hearings Division that's not subject to a rule, but to
23 the Loft Law, itself. I haven't seen that, but I suppose it could be possible. The rules emanate from the
24 law.

1 **Chairperson Hylton:** Yeah, I guess it could be possible, but...

2 **Mr. DeLaney:** So just to recap, the Hearings Division is not the Trials Division, I realize. Is the Hearings
3 Division what took over from the ECB, basically?

4 **Chairperson Hylton:** Yeah, it's the ECB that's in the Hearings Division. Yeah

5 **Ms. Roslund:** Aren't there two things we're talking about right now? So, if you take out some of the
6 extra language, right, it says, an appeal from a determination issued pursuant to the Loft Law -- is what
7 the change is. It's about an appeal of a determination. And then what OATH is changing is if the
8 determination is based on the Loft Board rules or the Loft Law. Their requested change has nothing to
9 do with the Hearings Division or any of that. It's just about where the determination comes from, and
10 what if that one would appeal.

11 **Mr. Clarke:** Yes, that's what it is.

12 **Mr. DeLaney:** Did they explain why they wanted this change?

13 **Mr. Clarke:** They didn't put in an explanation as to why they want it.

14 **Ms. Lin:** I think that they did explain it. They thought it was broader.

15 **Chairperson Hylton:** Listen, I really don't want to spend much time on this. I think we should just not
16 accept that. If you want me to, I can always talk to those guys. I have a lot of experience in the Hearings
17 Division. Making this change makes no sense at this point or to even spend time to debate. So, if you
18 guys will just ride along with me and just reject this change for now, and we'll talk to them about it.

19 **Mr. DeLaney:** Renaldo, I support you, because I think it's very logical. The minimum housing
20 maintenance standards for IMD buildings are spelled out in the Loft Board rules. Not in the Loft Law. The
21 Loft Law doesn't say anything about what temperature a unit has to be or any of the other stuff. So, I
22 agree with you a hundred percent. I think the same way we saw a kind of crafty argument in that first
23 case today, where, oh, by telling me this, then you extended my deadline that ended by that -- you

1 know, somebody could say, well, there's nothing in the Loft Law that talks about that. So, I think Loft
2 Board rule is much more specific to what we're talking about.

3 **Chairperson Hylton:** Trust me, we're not going to go to the Hearings Division on anything in the law.
4 We're going to take stuff in the rules. So, to waste time debating this is not...Maybe they didn't
5 understand. But if we ever were to go to the Hearings Division, which we don't do it now, it would be
6 rules. And as you said, thank you, Chuck, the rules spell out in specific specificity what we're actually
7 charging with. And also, the penalties for which we're charging would be subject to our rules. So, I don't
8 see how we could even make this the Loft Law, unless they're going to interpret this as saying, the Loft
9 Law...Loft Board rules are subject to the Loft Law. Yeah, but the reason why you issue violations is to be
10 specific, not to be obscure about anything.

11 So, we should not change this. I would not support this. I think we move on and not do this, not make
12 this change. Tina, if you need me to talk to anybody there or have my folks talk to them there, we can
13 do that. But I actually served on the ECB Appeals Board for many, many years, representing both Fire
14 and the Building Department, and this change is probably a result of somebody who did not understand
15 what this piece is about. Okay

16 **Mr. Clarke:** Okay, thank you. So that concludes all of the OATH comments in our proposed rules. The
17 next portion of our rulemaking session...The Board members actually did an exceptional job today of
18 finishing up the OATH comments. So, what we're going to be doing next is for the long term. So, let me
19 give you a -- and Tina can jump in here -- What we plan on doing for the next portion of the rulemaking
20 session -- and we can accomplish some of it today with the remaining time that we have left -- but what
21 we're doing now is the Loft Board staff is compiling somewhat of a master set of proposed rules that
22 incorporates all the changes that the Board members have discussed thus far, as well as line edits from
23 Operations, from the Mayor's Office.

24 So, we're in the process of putting that document together into one document, because we feel that it's
25 easier to present to the Board members, for you all to understand, as opposed to trying to go back to
26 old versions, and seeing things that you've already discussed that we know that we're going to change,

1 and they haven't been changed yet. So, we're trying to compile one set of rules that incorporates all of
2 that. And we should have that ready for you at the next Board meeting.

3 But before we do that, with the remaining time that we have, we do have some things that we can
4 discuss with the Board members, some additional changes that were made. But for this, we're going to
5 need to go back to the set of proposed rules that all the Board members should have. I didn't email
6 another copy to everyone, but it's this thick packet with all of our proposed rules. The Board members
7 have this, and it will be easier to reference what I'm going to be going into next. And that's the, Tina, you
8 can correct me, this is the September...The last one the Board members received is the September
9 proposed rules.

10 **Chairperson Hylton:** So, Mr. Clarke, I'm just going to give you a timing. We're going to wrap this up at
11 4:15. Is that 20 minutes from now?

12 **Mr. Clarke:** Yes, that's fine.

13 **Mr. DeLaney:** What's the file name of that document that you want us to refer to?

14 **Chairperson Hylton:** The electronic file name?

15 **Mr. DeLaney:** That would be good for a start. Or if it has a header and a caption, that's fine, too.

16 **Chairperson Hylton:** The top part of it says New York City Loft Board Notice of Public Hearing and
17 Opportunity to Comment. Is that right, Mr. Clarke?

18 **Mr. Clarke:** Yes, but I think it's better to find it under the file name, because they all have that at the
19 top. But I don't have the actual file. I just have the paperwork.

20 **Chairperson Hylton:** Was it an actual file? Or was it a part of the electronic link?

21 **Mr. Clarke:** No, it wasn't... It was an actual file, and it should have a September date and the file name.
22 The file name...Let me see if I can pull it up in my own emails.

1 **Ms. Torres-Moskovitz:** Chairman Hylton, did you see that Tina lost connection? And she said she's
2 going to come right back.

3 **Chairperson Hylton:** I didn't see that. Thank you. Mr. Clarke, why don't you...while Tina...find some
4 time... Alright, so let's take a minute. Okay. Maybe this would be a good time. We'll get back at four
5 o'clock? We'll just take a break, right? Oh, Tina's back.

6 **Ms. Roslund:** But I think I found it. I found it. It's on.... Now I lost it. 2020, 023 miscellaneous rule
7 amendment law. 09012020? Is that it?

8 **Mr. Clarke:** Yes, that's it.

9 **Ms. Roslund:** It was emailed on 10/22.

10 **Mr. Roche:** Mr. Chairman?

11 **Chairperson Hylton:** Mr. Roche? Yes.

12 **Mr. Roche:** I'm just thinking about our new colleague, Mr. Hylton here. Will he have this document that
13 we're looking for?

14 **Ms. Lin:** Yes, a copy was emailed to him when he first joined, but I will recirculate a draft to everyone
15 right now.

16 **Mr. Hylton:** Thank you

17 **Chairperson Hylton:** I still need a minute. Could you please just give me a minute.

18 **Ms. Lin:** Board members, I just sent that email out. If you don't receive it the next couple of minutes,
19 please let me know.

20 **Mr. Barowitz:** I got it.

21 **Ms. Roslund:** Received

22 **Chairperson Hylton:** Okay, I'm sorry. Mr. Clarke, are you ready?

1 **Mr. Clarke:** Yes, we're ready. So, if the Board members can open up that document, the first Law
2 Department comment that we'll talk about briefly is on page 86. The definition of harassment.

3 **Chairperson Hylton:** Excuse me, Mr. Clarke, again. Did we lose Mr. DeLaney or... Is he here? There he is.
4 He just came back. Okay. Thank you. Go ahead, Mr. Clarke.

5 **Mr. Clarke:** Sure. On page 86 of the document that was circulated, under the definition of harassment.
6 So, this was a comment where the Law Department recognized that we already had a definition of
7 harassment in our global definitions. And the Law Department asked that we make the definitions
8 match. So, we just went back and looked at the global definition and the definition that we have here in
9 this section, and we just made sure that they matched. They matched. The language matches, all except
10 for in the block paragraph for harassment, which begins with, "Harassment means any course of
11 conduct." And on the fourth-to-last line, where it says, "...Harassment, if engaged by the Landlord..."
12 We have to include harassment if engaged by the Owner or the Landlord. So, we're just going to add
13 that language, Owner or the Landlord, and the global definition and the definition here will match. So
14 that will take care of OATH's comment there for harassment.

15 **Chairperson Hylton:** OATH's or Law?

16 **Mr. Clarke:** I'm sorry. Law Department. OATH is still on my brain. I'm sorry. You're right. We're done
17 with OATH.

18 **Chairperson Hylton:** We're done. I think we're done with OATH, right?

19 **Mr. Clarke:** Yeah, so that will take care of the Law Department's comment there. If there are no
20 comments or issues with that, we'll move on to....The next issue that we're going to go into is with our
21 email service. We've added language to include consent. So, there are various places in our rules where
22 we needed to add in additional language for consent for email service. So, the first place you're going to
23 see that is on page 18 of your document.

24 Page 18, highlighted in pink, from the Law Department. I'm just going to be adding some additional
25 language there. Under section c(1). Under section c(1), it says, in the copy that you all have, it says,
26 "email, if the affected party has provided the applicant with a current and valid email address."

1 We've added language in there to now read:

2 "email, if the affected party consents to such service and has provided the applicant with a current and
3 valid email address."

4 So, this is the first instance where we're adding the language for consent to email service. We believe
5 that this language is sufficient for us to just add there, because we've already received this language
6 from the Executive Order where the Mayor allowed email service. So, we just took that language from
7 the Executive Order, and I think...

8 **Ms. Lin:** Stephan, let me correct you. It's not from the Executive Order. This is part of the emergency
9 rulemaking that we did back in April of last year. So emergency rules were reviewed by the Law
10 Department at the time, and they seemed to be okay with the language that we put in there at the time.
11 So, we think that should be sufficient. But if it's not, for whatever reason, the Law Department will tell
12 us otherwise.

13 **Mr. Clarke:** Yes, it's the emergency rule. So that's the first instance you will see that.

14 **Mr. DeLaney:** Can you go back to exactly what language you're going to add? Exactly where.

15 **Mr. Clarke:** Sure. On page 18, under Service of Application...

16 **Ms. Lin:** This might be page 17 for some of you. It shows up as 17, for me. I think it depends on
17 whether you're viewing it as a track changes, whether you're seeing it with the markups or not. But for
18 me, I see it on page 17. Its (c)(1).

19 **Mr. Clarke:** Under Services of Application.

20 **Mr. Barowitz:** Service through Financial Hardship? No?

21 **Mr. Clarke:** No, it's c(1). It should start reading, "email, if the affected party has provided the applicant
22 with the current invalid email address." It should be highlighted in pink. You should see that.

23 **Ms. Roslund:** It's yellow on my document.

1 **Mr. Clarke:** So, with that sentence there, after affected party, email, the affected party, we're going to
2 be adding language that says, "consents to such service."

3 **Mr. DeLaney:** So that would read, "...if the affected party has consented to such service and has
4 provided..."?

5 **Mr. Clarke:** That is correct. "...if the affected party consents to such service and has provided the
6 applicant..."

7 **Mr. DeLaney:** And how does one give consent for this kind of thing?

8 **Mr. Clarke:** That is a good question. The staff thought about including or coming up with language to try
9 to address that question. But we decided it might be a little bit complicated to try to put examples of
10 consent into the rules. And since this was already reviewed by the Law Department in the emergency
11 rules, and it passed muster, we just decided to just use that same language and not go into how
12 specifically parties need to prove consent. We also feel that most of the parties that are going to be
13 sending out service are familiar, or have counsel that familiar with, how to properly get consent. Or the
14 parties already know each other. If they have email addresses, it's probably not that complex of an issue
15 for the parties to prove consent. But we didn't draft additional language.

16 **Chairperson Hylton:** I could probably answer that. A party would just email the other one and say, hey,
17 is it okay that I serve you electronically? And their response to that email would be consent.

18 **Mr. Hylton:** Typically, a court will have you consent to electronic disclosures and emails for the
19 remainder of this hearing, and someone responds yes or no.

20 **Chairperson Hylton:** And if there's no response, there's no assumption, right? Outside of the court
21 doing it, Mr. Hylton, if he didn't respond to your email saying he consents, then you know you don't
22 have consent.

23 **Mr. Hylton:** Correct

1 **Chairperson Hylton:** Stephan, I may have missed it, maybe not. Did we make it clear why we need
2 consent?

3 **Mr. Clarke:** We need consent because we don't believe a party has the right to just give email service
4 without another party consenting to that.

5 **Mr. Hylton:** You can't assume another party's utilizing email.

6 **Chairperson Hylton:** You couldn't even.... not even in the rule that, basically, says you can consent? This
7 is the Law Department's comment, right?

8 **Ms. Lin:** It sort of is. It arose (inaudible) out of the Law Department's comments about electronic
9 signatures in general and when we can require the parties to file electronically. Their opinion was that
10 we can't really mandate it, but it can be an option. So, this expanded from that. They haven't explicitly
11 told us to do this, but this was part of the emergency rules. I believe it came up during that portion. I'd
12 have to go back and look at the correspondence between former staff and Law Department to verify.
13 But I believe that's how this came about.

14 **Chairperson Hylton:** I got it, I got it.

15 **Ms. Roslund:** Well, also people, you know....email's a tough one. Like, you have an official address, your
16 physical address. It's on file. It's on your driver's license, it's on your documents, all that kind of stuff.
17 Email's more vague. So, I have, like, seven email addresses. So, it's hard to say that it's... If you sent me
18 something, and I didn't check that email for six months, I could claim I never got it. Isn't that kind of
19 where this is coming from, the consent?

20 **Mr. Clarke:** Yes. I think we're concerned that the party that's receiving the email is aware that they're
21 going to be getting important documents through this type of communication. And they're consenting
22 to it.

23 **Chairperson Hylton:** Yeah. You can expect the mail, the regular mail, but you don't necessarily want to
24 assume that everybody's looking at their email for important messaging like this. But even for rules

1 saying you can serve by email, are you saying if the rule says you can make service by email, it has to
2 have the caveat of upon consent?

3 **Mr. Clarke:** We believe so.

4 **Chairperson Hylton:** As a safety net. So, let's err on the side of caution, right? You say you believe so,
5 but I think you know so, really.

6 **Mr. Clarke:** Right. And we're, basically, mirroring, as Acting Executive Director Tina Lin said, this came
7 from the emergency rule. And the way that the emergency rule was written, it also included this
8 consent language.

9 **Chairperson Hylton:** Which was what the Law Department told us we had to say, correct?

10 **Mr. Clarke:** Correct

11 **Chairperson Hylton:** Thank you.

12 **Mr. DeLaney:** I hate to belabor the point, but, what Heather said, I agree with. I'm sure...I think I still
13 have an AOL email address that's probably out there still collecting junk mail. I don't even remember the
14 password for it. And I probably wrote a complaint to my landlord on it eight or ten years ago about heat.
15 And if he all of a sudden decides that that's adequate service, then there's going to be a problem. And I
16 understand what Mr. Hylton said. If the judge gets everybody together and says, okay, from now on, is
17 this okay, and it's all on the record, then it's clear that people agree, and they know which email address
18 to use. And there must be other agencies that have grappled with this. I would think there would be
19 some best practice out there for how you establish this.

20 **Chairperson Hylton:** But the bottom line is, in this modern world, you want to have the ability to have
21 electronic service. The bottom line, though, is we should definitely have a confirmation from the party
22 or parties, whoever wants to accept it electronically. Simply because, if they do accept service
23 electronically, agree to it, then they'll be looking for that service, right? That's confirmation that they
24 actually read that particular email. It's not just that junk email box that they use to apply for every
25 promotion that comes up, right? We actually have one set aside, officially, for important stuff. So, yeah,

1 I think the bottom line is, it's just good practice, but it's also, I think, legally required, as per the Law
2 Department, that they consent to service. And I think you can... Everybody doesn't have to consent,
3 right? You could have half the parties consenting to electronic service and another half not consenting,
4 and they get served the old-fashioned way.

5 **Mr. Clarke:** That's correct.

6 **Mr. DeLaney:** Well, in this context that we're looking at, which is, I guess is 1-21(c), this is talking about
7 service of the initial application. So, at this point, if I live in a big building, and there are commercial
8 tenants and residential tenants on the initial application, the chances are I don't know everyone's email
9 address to begin with. So, this is not... in terms of providing an answer by email, this is like the initial
10 communication. So, it seems a little far-fetched that I'm going to go up and down the halls knocking on
11 people's doors saying, hey, I want to make sure I serve you as an affected party. What's the right email
12 address? And do you give consent? It's a great way to meet your neighbors I suppose.

13 **Mr. Clarke:** Right, but there are other places where we have added this language, which includes service
14 of the narrative statement. I mean, we can... there's six places in the rules where we've added this
15 consent language. So, the next time you'll see it is on page 19. I mean, actually, on your document, it
16 should be page 19.

17 **Mr. DeLaney:** But I hope you take my point, that once, you know, to quote Sherlock Holmes, the game's
18 afoot, then you kind of know who the players are, and it would be easier to start to have an electronic
19 dialogue. But this is the toss-up at the start of the first quarter of the ballgame.

20 **Ms. Lin:** So, if I could just add to this, Mr. DeLaney, the thought here was just to make it an option for
21 people who do know each other, and the Loft Law only has so many practitioners, and they all know
22 each other. So, the idea is to make it easier for practitioners to serve each other. And a lot of times, you
23 know, if, let's say for example, a tenant wants to file an overcharge claim, and you know who the
24 owner's attorney is, and you know how to serve them by email, and it's much easier for the tenant's
25 attorney to just email the application over. A lot of times the owner's attorney really has no issue with it.
26 The only problem is our rules prohibiting them from doing that. And the goal here is to allow that kind of
27 service to make things more expediently.

1 **Chairperson Hylton:** I just want to put everybody on notice that we're out of time. So, I don't know how
2 much more discussion on this piece, Mr. Clarke, but this will be the last.

3 **Mr. Clarke:** Yes. We just basically wanted to bring to the Board's attention to where we added this
4 language. It's in six different places. We just looked at the first one. The additional places where we
5 made this change, if the Board members would like to look at it now, or we can save it for next week.
6 We can just show the Board where we added this this language of consent. Or we can just wait till next
7 week and pick it up from there.

8 **Ms. Lin:** Why don't we pick it up next week. And in the meantime, Mr. DeLaney, right now, maybe if you
9 want, you can reach out to other practitioners and get their take on it to see whether they think this will
10 be burdensome. But I think the idea behind this was really to make it easier for the frequent petitioners
11 to be able to start applications.

12 **Mr. DeLaney:** Yeah, I'm thinking more of building-wide issues like coverage, where there are affected
13 parties who... But they can be served by mail.

14 **Ms. Lin:** Yes, they can still be served by mail.

15 **Chairperson Hylton:** Right. This is just an optional service, if the party agrees to it. And I suppose if the
16 party bringing the action wants to go around on foot and knock on every door and say, what's your
17 email address, we can't stop them from that. If they want to ask around, as long as it doesn't become
18 harassing.

19 **Mr. DeLaney:** And I agree that if the practitioners -- and it is a small group of individuals -- if they can
20 serve each other because they know who they're representing, by email, and they know there's going to
21 be consent, it'll save on administrative costs. So that's a good thing for the parties that the attorneys
22 represent, presumably.

23 **Chairperson Hylton:** Okay. Mr. Clarke?

24 **Mr. Clarke:** Yeah, so we did a good job today. Got through OATH, and we'll pick it back up next
25 Thursday. We'll have another document that we're going to circulate, so we'll finish up with consent,

1 and we'll go through the line edits from the Mayor's Office. And, hopefully, continue to stay on track
2 with Chairperson Hylton's timeline for completion.

3 **Chairperson Hylton:** I don't want to start having Board meetings on Sundays now, you know, so...Let me
4 ask you, though, in the interest of time, I'm thinking this. These areas where you have to add this
5 language, I mean, the Board members seem to be okay with that piece. Do we need to revisit this, or
6 can we just change it?

7 **Mr. Clarke:** If the Board members are fine with that, we have no problem with it.

8 **Chairperson Hylton:** Okay, why don't we do this then. Julie, I'll get you in a second. Why don't we do
9 this then. Why don't we make those changes and email those around. And if anyone has any questions,
10 we can pick those up. So, we don't revisit this unnecessarily next time, yeah? Okay, Julie?

11 **Ms. Torres-Moskovitz:** Thank you. I think anything related, if the staff could look at, for example, I know
12 in my case, a narrative statement affidavit, where everyone needs to sign something. Does it have to be
13 a wet-ink signature, or can it be digital? We're going digital. The idea is that we need to make things
14 easier for people to be digital. So, if it's related, similar to what we're talking about for emails instead of
15 mailings, I think if there are other issues in the rules that are about real signatures of, say, all tenants
16 needing to be on one piece of paper during COVID -- which is crazy -- that there would be a way to
17 avoid that. To have it as a digital signature.

18 **Chairperson Hylton:** Electronic signature. Is that not something else? A separate type of discussion,
19 Tina?

20 **Ms. Lin:** Yeah, I think it depends on what you're talking about. When some people say electronic
21 signature, they mean you check a box on a web page and say, I affirm this is my signature, instead of
22 writing anything. But here, I think what Julie is talking about is signing something and scanning it. Is that
23 what you're referring to?

24 **Ms. Torres-Moskovitz:** If you have a document where you need ten tenants to sign something, and you
25 collect eight of those signatures as real, because people are around, but it's COVID, and so two of them
26 are digitally attached onto Adobe, until the end sheet is like a digital...Everything's signed, but not a wet-

1 ink signature. That should be fine today, rather than every single original signature. Like the Declaration
2 of Independence, where John Adams and everyone signed for real. We shouldn't have to all sign real,
3 when there's fifty tenants or ten tenants. It's just too much of a burden. So, if there's anything
4 antiquated like that, I feel like it should be clarified.

5 **Ms. Lin:** That's the intent with these proposed rules. That's what we are trying to do. There is some
6 complication with trying to make sure it complies with state law. And we're still looking into that. That's
7 something that, I think, the original staff had not really contemplated when they drafted these rules. So,
8 it's something that we're looking into now. We are trying to make that happen.

9 **Chairperson Hylton:** And Tina, are you saying that you're looking into that in these current rules?

10 **Ms. Lin:** We have to. The Law Department says we have to. They're basically saying, you missed this, so
11 you have to go back and make sure this complies with this. We're trying to do this.

12 **Chairperson Hylton:** You know where I'm going with this, right? I don't want anything holding up our
13 rules.

14 **Ms. Lin:** Yeah, but...I understand, but in order get certification from the Law Department, we have to
15 make sure it's legally compliant.

16 **Chairperson Hylton:** All right. I agree with you, Julie. It's good idea.

17 **Mr. DeLaney:** Before we close out, can I just ask, when can we expect to get the new document that
18 we'll use next week?

19 **Ms. Lin:** I'm going to try to send it out tomorrow. It may not be as clean as I really want it to be. I'm
20 trying to clean it up as best I can. It is kind of a mark-up mess, as you will see, but I'm trying to make it
21 less daunting to look at. But I will try to get a version out tomorrow. I'm also drafting a comparison
22 document to go with that, so I can direct the Board members' focus on specific pages, instead of making
23 us read through these 180, 190 pages. That might not come until next week, the comparison guide. But I
24 will try to get the full document out to everyone by tomorrow.

25

1 **Mr. DeLaney:** Thank you.

2 **Chairperson Hylton:** Okay. Are we all clear hearts everyone? Anyone else wants to say anything else?
3 Mr. Roche is a thumbs up. Everyone else is good? Good. Thank you. Oh, I don't think Easter or Passover
4 is before next week, right? We're still on target. I just want to make sure I'm not wishing anybody
5 prematurely, happy holiday. I think we meet back next week.

6 So, this will conclude our March 18th, 2021, Loft Board meeting. Our next meeting will be held
7 Thursday, that's next week, March 25th, 2021, at 2pm. As you know, the Governor's suspension of the
8 in-person meeting requirement of the Open Meetings Law is in effect until March 28th, 2021. So, we will
9 be holding our next meeting in this forum, virtually. Board members, please remember to sign and email
10 your attendance sheets. Thank you very much, everyone, and have a great week. Thank you.

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