ADAM LEITMAN BAILEY, P.C.

NEW YORK REAL ESTATE ATTORNEYS

NEW POLICIES IMPACTING REAL ESTATE DEVELOPERS & LANDLORDS

BY ADAM LEITMAN BAILEY

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The New Rules of Seeking or Obtaining a Buyout of A Rent Regulated Tenant

January 31, 2019

BY ADAM LEITMAN BAILEY AND DOV TREIMAN

One of the most fascinating parts of being a real estate lawyer is negotiating the selling of rights to a rent regulated tenancy to a landlord. These deals have seen tenants made multi-millionaires and landlords given the ability to build high rise buildings after such buyouts. Now, this symbiosis of dreaming dreams and making them come true is under threat by existing case law and new laws already enacted and politically promised.

Under these threats, in the New York City real estate industry, both from landlords who seek to free their apartments from regulation and from tenants who wish to cash out the value of their apartments' potential unregulated value, there is pressure to reach deals rapidly, before, if as promised in recent campaigns, the reasons for the deal are rendered obsolete.

However, between recent changes to the New York City Administrative Code and a recent decision in the Appellate Term, First Department, landowners who seek to buy out the rights of tenants in occupancy face a minefield of requirements and restrictions. Done properly, the landowner can recapture the apartment for other uses and seriously increase the rent. Done improperly, the landowner will still have the tenant, may be facing crippling fines, and, at least in certain parts of the City, may be prevented from effecting even the most benign improvements to the building where the apartment is located, having to surrender the building to considerably more rigorous regulation.

Buyout Agreements—Basic Rules

The most common form of regulation in New York City is Rent Stabilization. Under Rent Stabilization Code (RSC) §2520.13, waivers of protections under the Code are void as against public policy. Draper v. Georgia Props. Inc., 230 A.D.2d 455, 660 N.Y.S.2d 556 (1st Dep't 1997). While it is generally believed that §2520.13 allows for agreements, provided they are either before a court or the DHCR, in fact, the exception §2520.13 carves out is only for agreements where the tenant is represented by counsel and the agreement is withdrawing a

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complaint before the DHCR. There is no generalized provision in the Code allowing for agreements to be enforced merely because they were before the Court or the DHCR. Actual practice reveals, however, that the courts are more inclined to enforce agreements where there are attorneys on both sides and for this reason, landlord's counsel seeking to negotiate a buyout agreement is well advised to insist on having a licensed attorney on the other side, even if the landlord has to pay for it.

On its face, it would appear that a tenant who agrees to move out of a rent stabilized apartment at all would be bumping up against §2520.13. However, such is not the body of case law. Once the tenant moves out, the tenant is theoretically1 no longer a "tenant" and therefore has no protections under the RSC to waive. However, tenants who remain in residence remain protected under the law to their last minute. The challenge to both landlord's counsel and tenant's is to devise agreement structures that are both enforceable and give word to the parties' desires.

If there is a genuine dispute about entitlement to the apartment, or the tenant is actually in arrears, this is readily accomplished. Merwest Realty v. Prager, 264 A.D.2d 313, 694 N.Y.S.2d 38 (1st Dep't 1979). The landlord can bring an eviction proceeding that can be settled on terms that actually include the eviction. Draper, supra. RSC §2520.13 by its terms make court-supervised surrender agreements fully enforceable, but only as to the tenant who is involved in the negotiations, not as to any subsequent tenant. While under current law, a current tenant whose rent is below the deregulation threshold receives a path to perpetual regulation if the tenant consistently takes one year lease renewals, the opportunity for deregulation between tenancies remains landlords' principal motivation to buy tenants out of their tenancies. (Bailey & Treiman, "Altman" Alters Vacancy Deregulation, NYLJ 5/2/18)

Absent a genuine controversy between the parties other than how much the landlord is willing to pay to recapture the apartment, an agreement calling for eviction may not be enforceable. The lower courts take the authority from Draper to examine whether the agreement was coercive in nature and their resultant findings are not necessarily predictable.

Without certainty that the court will enforce the deal, the agreement must contain incentives sufficient to entice the tenant to comply with the contractual obligation to vacate. These incentives therefore make substantial up-front payments ill-advised. On failure of the tenant to vacate, the courts may render a money judgment for the return of any funds the landlord advanced, but even that modest relief to the landlord is not assured. Grasso v. Matarazzo, 180 Misc.2d 686, 689, 694 N.Y.S.2d 837 (App. T. 2nd Dept. 1999) holds that where the landlord has acted seriously coercively, the courts will not even direct return of the funds. Landlord's counsel are therefore advised to keep up-front payments small or tied to securing the services of movers and to keep the bulk of the funds to be remitted upon departure, with or without escrowing of the vacatur funds in the meantime. Tenants' counsel wisely require the landlords' counsel escrow the vacatur funds and notify tenants' counsel early in the period from execution of the deal until actual surrender of the apartment that the funds have reached the escrow account. If the escrow agent is a reputable firm, there is no need that the actual remittance to the tenant be in certified funds.

New Anti-Buyout "Harassment" Laws

Lumped into the definition of "harassment" in New York City's Administrative Code (§27-2004(a)(48)), are specific regulations, nearly all of them effective within the past year, regarding the having of buy-out conversations with tenants. In a list of activities explicitly set forth as not being exclusive, activities prohibited include:

(1) Reaching out to the tenant to make a buyout offer within six months after the tenant has informed the landlord in writing not to unless revoked in writing or a court orders otherwise; NYC Admin. Code §27-2004(a)(48)(f-1);
(2) Reaching out to the tenant to make a buyout offer without informing the tenant (at least every six months) (a) the reason for reaching out; (b) the tenant can turn the landlord down harmlessly; (c) the tenant can seek legal counsel and should go to a city maintained website; (d) that it is the landlord reaching out; (e) that the tenant has the rights outlined in (1) above; NYC Admin. Code §27-2004(a)(48)(f-2);
(3) Making the buyout offer while (a) threatening, intimidating, or using obscene language; (b) initiating communication at odd hours or in an (undefined) abusive or harassing manner; (c) initiating communication at the tenant's job without prior written consent; (d) lying; NYC Admin. Code §27-2004(a)(48)(f-3); and
(4) Repeatedly contacting the tenant on weekends, holidays, outside normal banking hours unless the tenant previously approved outside-work-hour contact in writing, or in an (undefined) abusive or harassing manner. NYC Admin. Code §27-2004(a)(48)(f-4).
Particularly noteworthy is the last paragraph of these requirements in which a landlord is mandated to limit its contacts with the tenant for buyout purposes to those times when the tenant is least likely to be at the apartment.
While some of these behaviors are clearly "harassment" in any dictionary understanding of the term, some of these are more in the nature of strict liability. Take for example, the requirement that a landlord not initiate a buyout conversation with a tenant for 180 days after the tenant has advised in writing not to. In the dictionary understanding of harassment, there is no actual difference between contacting the client on the 179th day or the 181st. But, although there is, as yet, no appellate case law construing these provisions, it can be assumed that the deadlines will see strict enforcement, including such things as 180 days, prohibited initiated contact during the ordinary business day, and lying, where the regulation prohibits "knowingly falsifying or misrepresenting any information." Since it is "falsifying or misrepresenting," courts, under the doctrine that every word must be accorded a meaning, Centennial Restorations Co. v. Wyatt, 248 A.D.2d 193, 669 N.Y.S.2d 585 (1st Dep't 1998) will likely find a distinction between "falsifying" and "misrepresenting." Perhaps that distinction will be between those things that are demonstrably false—falsifying—and those things that are merely speculative or impossible for the landlord to know if true—misrepresenting. Perhaps, instead, the distinction can be drawn at falsifying being the creation of a forgery and misrepresenting being lying about a situation.

Location, Location

The rules described in this article apply exclusively to the entire City of New York. They are not part of the suburban counties that enforce the Emergency Tenant Protection Act of 1974 or the other statewide counties that have rent control. However, under the City's Local Law 1 of 2018 ("LL1") the fact that these rules are part of the definition of "harassment," carries significance both in rent regulated housing where there are special penalties for harassment and in seeking and receiving building permits which throughout the City requires non-harassment in Single Room Occupancy ("SRO") buildings and under LL1 in certain specified neighborhoods of the City, any targeted residential multiple dwelling, regardless of whether it is an SRO. The rules for buying out tenants are the same throughout New York City, but LL1 targets specific buildings within specific neighborhoods for stiffening the penalties for violating those rules.
LL1 states, "The purpose of this local law is to provide for the implementation of such a program as a geographically targeted and time-limited pilot program to allow an evaluation of the program's accuracy and efficacy in targeting and addressing harassment in particular buildings."
LL1, effective September 27, 20182, occupies some 6000 new words of the Administrative Code at §27-2093.1. Under it for Bronx Community Districts 4, 5 and 7; Brooklyn Community Districts 3, 4, 5, and 16; Manhattan Community Districts 9, 11, and 12; and Queens District 14 all buildings and selected buildings throughout the City, neither construction nor the issuance of certificates of occupancy can take place until certain further procedures are in place. The lack of a certificate of occupancy in a residential building means the landlord cannot sue for rent. MDL §302. These further procedures entail employing the now familiar "Certificate of No Harassment" (CONH) procedure, previously applicable only to SRO buildings and described at length in Bailey and Treiman, Understanding Single Room Occupancy Laws, NYLJ 2/10/16. Under LL1, a finding of "harassment" will deny the CONH and potentially prevent a building from getting building permits, a certificate of occupancy, and collecting rent. Thus, aside from the fines, penalties, and litigation entailed in a finding of harassment, if a building is inside this pilot project, a single finding of harassment by breaking the rules with regard to buyouts can result in a building's complete loss of its income stream.
However, the DOB will issue building permits in targeted buildings if the landlord "cures" the harassment. However, the "cure" is not a cure at all. It is instead a coerced entry into a more restrictive form of regulation. Under the Administrative Code provision, the landlord must enter and record an agreement to provide within the community district housing square footage devoted to low income housing of at least 25% of the target building's square footage. The rents for such unit are set at maxima described in NYCRR HPD Rules §53-12. The expenses associated with constructing such housing may not, under the program, receive 421-a benefits, but it is clear that the low income housing provided under this program is intended to be like that of 421-a. There is no provision in the anti-harassment statute for what happens if there is nowhere available where such construction could take place. However, since, under the pilot program, a building may pass in and out of being targeted for these provisions, lenders may become reticent about lending in these designated community districts or may require affidavits of no harassment from the tenants as a prerequisite to closing on a loan at the time of sale of the building.
As to harassment, regardless of whether it takes place where the pilot program is in effect, Administrative Code §27-2115 imposes fines for harassment at a minimum of $2000 and a maximum of $10,000. If the court finds that there was any harassment under these Administrative Code provisions, it is compelled to impose the $2000 minimum, without the discretion to waive it completely. ABJ Milano LLC v. Howell, 61 Misc.3d 1037 (Civ. Ct. NY Cty. 2018). Since harassment under these provisions is a violation of the New York City Housing Maintenance Code, Civil Court Act §110(a) empowers the New York City Civil Court to enjoin further violations of these provisions.

With Whom To Negotiate

In Hui Zhen Wei v. 259 E. Broadway Assoc. LLC, 57 Misc. 3d 136, the Appellate Term for the First Department upheld the claim of the wife of the tenant of record in a lockout proceeding brought under RPAPL §713(10). The landlord had, upon the surrender of the apartment to the landlord, simply changed the locks to the apartment without any court proceeding. According to the court, without stating any other facts, "the hearing evidence showed that petitioner's husband, the sole record tenant, formally agreed to surrender the apartment in exchange for compensation, petitioner was not a party to the agreement, and was in China visiting her family when the agreement was executed and possession surrendered." The court held that the lock-out of the non-tenant wife was improper because "owner was previously advised by (the wife) that she was asserting possessory rights and that respondent, in fact, made several buyout offers directly to (her), the most recent such offer (having been) made only the month before she left on her trip."

Thus, like the lease, the husband and not the wife was a party to the surrender agreement. Had the landlord actually brought a summary proceeding, it could have been brought successfully

against only the husband without naming the wife. Immediate family members living with the tenant of record by virtue of their family relationships are not necessary parties to summary proceedings. Flak v. Kaye, NYLJ 12/9/91, 28:2, 19 HCR 718B (App.T 1st Dept. 1991). Yet, under Hui Zhen Wei they are necessary parties to surrender agreements. Absent their participation in the agreement, the landlord cannot count upon reliably cutting off any claim they may have to possession. Under Hui Zhen Wei this class of persons whom the landlord will need to join the agreement includes all persons who could claim succession to the apartment. Under rent regulation, even minors can validly assert (or have asserted on their behalf) valid succession claims, Doubledown Realty Corp. v. Harris, 13 HCR 83A, 128 Misc2d 403, 494 NYS2d 601, NYLJ 4/4/85, 5:4 (AT1 1985). Thus, even minors have to be added to these agreements and that could conceivably entail the need for an infant's compromise proceeding for a Court to approve the agreement (CPLR 1207, 1208).

Further, these authors' experience teach them that offers of payment to persons with dubious claims do not necessarily mean that their claims are actually taken seriously and the industry often uses small buyoffs of dubious tenancy claims. However, under Hui Zhen Wei, one makes such trivial offers only at one's peril.

Conclusion

For the past several years, landlords and tenants have had a shared interest in having the landlord buy the tenant out of the value the tenant is sitting on in the apartment. Navigating the highly restrictive new landmines and curtailments on these negotiations will not only affect the actual agreements but treatment by lenders, government agencies and officials. Practitioners and their clients must tread carefully.

ENDNOTES:

1 This theory is almost completely swallowed by its exceptions.

2 The implementing rules appear at Chapter 53 of the Rules of the Department of Housing Preservation and Development.

section 27-2093 of article one of subchapter four of this code, the term "owner" shall be deemed to include, in addition to those mentioned hereinabove, all the officers, directors and persons having an interest in more than ten per cent of the issued and outstanding stock of the owner as herein defined, as holder or beneficial owner thereof, if such owner be a corporation other than a banking organization as defined in section two of the banking law, a national banking association, a federal savings and loan association, the mortgage facilities corporation, savings banks life insurance fund, the savings banks retirement system, an authorized insurer as defined in section one hundred seven of the insurance law, or a trust company or other corporation organized under the laws of this state all the capital stock of which is owned by at least twenty savings banks or by at least twenty savings and loan associations or a subsidiary corporation all of the capital stock of which is owned by such trust company or other corporation.

46. Summer resort dwelling shall mean a dwelling, located in a summer resort community, which is occupied in whole or in part for living purposes only for a seasonal period of the year between June first and September thirtieth, other than by the family of the owner or the family of a caretaker.
47. This code shall mean the housing maintenance code.
48. Except where otherwise provided, the term "harassment" shall mean any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and (ii) includes one or more of the following acts or omissions, provided that there shall be a rebuttable presumption that such acts or omissions were intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, except that such presumption shall not apply to such acts or omissions with respect to a private dwelling, as defined in paragraph six of subdivision a of section 27-2004:
    a. using force against, or making express or implied threats that force will be used against, any person lawfully entitled to occupancy of such dwelling unit;
        a-1. knowingly providing to any person lawfully entitled to occupancy of a dwelling unit false or misleading information relating to the occupancy of such unit;
        a-2. making a false statement or misrepresentation as to a material fact regarding the current occupancy or the rent stabilization status of a building or dwelling unit on any application or construction documents for a permit for work which is to be performed in the building containing the dwelling unit of any person lawfully entitled to occupancy of such dwelling unit if such building if governed by the New York city construction codes;
    b. repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit;
        b-1. an interruption or discontinuance of an essential service that (i) affects such dwelling unit and (ii) occurs in a building where repeated interruptions or discontinuances of essential services have occurred;
        b-2. repeated failures to correct hazardous or immediately hazardous violations of this code or major or immediately hazardous violations of the New York city construction codes, relating to the dwelling unit or the common areas of the

building containing such dwelling unit, within the time required for such corrections;

b-3. repeated false certifications that a violation of this code or the New York city construction codes, relating to the building containing such dwelling unit, has been corrected;

b-4. engaging in repeated conduct within the building in violation of section 28-105.1 of the New York city construction codes;

c. failing to comply with the provisions of subdivision c of section 27-2140 of this chapter;

d. commencing repeated baseless or frivolous court proceedings against any person lawfully entitled to occupancy of such dwelling unit;

d-1. commencing a baseless or frivolous court proceeding against a person lawfully entitled to occupancy of such dwelling unit if repeated baseless or frivolous court proceedings have been commenced against other persons lawfully entitled to occupancy in the building containing such dwelling unit;

e. removing the possessions of any person lawfully entitled to occupancy of such dwelling unit;

f. removing the door at the entrance to an occupied dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying a key to the new lock to the persons lawfully entitled to occupancy of such dwelling unit; or

f-1. contacting any person lawfully entitled to occupancy of such dwelling unit, or any relative of such person, to offer money or other valuable consideration to induce such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, for 180 days after the owner has been notified, in writing, that such person does not wish to receive any such offers, except that the owner may contact such person regarding such an offer if given express permission by a court of competent jurisdiction or if notified in writing by such person of an interest in receiving such an offer;

f-2. the purpose of such contact,

(2) that such person may reject any such offer and may continue to occupy such dwelling unit,

(3) that such person may seek the guidance of an attorney regarding any such offer and may, for information on accessing legal services, refer to The ABCs of Housing guide on the department's website,

(4) that such contact is made by or on behalf of such owner, and

(5) that such person may, in writing, refuse any such contact and such refusal would bar such contact for 180 days, except that the owner may contact such person regarding such an offer if given express permission by a court of competent jurisdiction or if notified in writing by such person of an interest in receiving such an offer;

f-3. offering money or other valuable consideration to a person lawfully entitled to occupancy of such dwelling unit to induce such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy while engaging in any of the following types of conduct:

(1) threatening, intimidating or using obscene language;

(2) initiating communication with such frequency, at such unusual hours or in such a manner as can reasonably be expected to abuse or harass such person;
(3) initiating communication at the place of employment of such person without the prior written consent of such person; or
(4) knowingly falsifying or misrepresenting any information provided to such person;

f-4. repeatedly contacting or visiting any person lawfully entitled to occupancy of such unit (i) on Saturdays, Sundays or legal holidays, (ii) at times other than the hours between 9 a.m. and 5 p.m. or (iii) in such a manner as can reasonably be expected to abuse or harass such person, provided that if such person has notified such owner in writing that such person consents to being contacted or visited at specified hours or in a specified manner, such owner may also contact or visit such person during such specified hours and in such specified manner, and provided further that an owner may contact or visit such person for reasons specifically authorized or mandated by law or rule; or

f-5. threatening any person lawfully entitled to occupancy of such dwelling unit based on such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, uniformed service, sexual orientation, alienage or citizenship status, status as a victim of domestic violence, status as a victim of sex offenses or stalking, lawful source of income or because children are, may be or would be residing in such dwelling unit, as such terms are defined in sections 8-102 and 8-107.1 of the code;

f-6. requesting identifying documentation for any person lawfully entitled to occupancy of such dwelling unit that would disclose the citizenship status of such person, when such person has provided the owner with a current form of government-issued personal identification, as such term is defined in section 21-908, unless such documentation is otherwise required by law or is requested for a specific and limited purpose not inconsistent with this paragraph.

g. other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy.

b. Except as otherwise provided herein, all terms used in this chapter shall be construed in a manner consistent with their use in the multiple dwelling law.

SUBCHAPTER 2
MAINTENANCE, SERVICES, AND UTILITIES

ARTICLE 1
OBLIGATIONS OF OWNER AND TENANT: DUTY TO REPAIR

§27–2005 **Duties of owner.**

a. The owner of a multiple dwelling shall keep the premises in good repair.

Certification of No Harassment or Exemption Application

You must have a Certification of No Harassment or Exemption from the Department of Housing Preservation and Development before you can receive a permit from the Department of Buildings (DOB) to alter, demolish, or change the shape or layout of a single room occupancy (SRO) multiple dwelling or a multiple dwelling in the following locations:

- The Special Clinton District
- The Special Hudson Yards District
- Preservation Area P-2 of the Special Garment Center District
- The Greenpoint-Williamsburg anti-harassment area
- The Special West Chelsea District

If you receive Certification, you still must follow all other laws and regulations that relate to construction work in the building, including the Building Code, the Rent Stabilization Law, the Rent Control Law, and the Real Property Law. Certification is valid for 3 years. You must file a new application every 3 years to continue certification.

Learn more about Certification of No Harassment or Exemption.

Also Found In:

Housing & Development Building Management Resources Information & Assistance

Housing & Development Building & Construction Professional Resources Licenses, Permits & Inspections

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2018

No. 1

Introduced by Council Members Lander, Chin, Johnson, Reynoso, Rosenthal, Mendez, Menchaca, Rose, Williams, King, Levin, Rodriguez, Cornegy, Levine, Torres, Van Bramer, Gibson, Richards and Kallos (by request of the Manhattan Borough President).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring a certification of no harassment prior to approval of construction documents or issuance of permits for demolition or renovation of certain buildings

Be it enacted by the Council as follows:

Section 1. Legislative findings. The Council has found and is concerned with the association between various characteristics of building distress, and the likelihood of suspected or reported harassment against tenants, and has an interest in finding ways to protect tenants at risk of displacement due to landlord harassment. Current Certification of No Harassment ("CONH") requirements apply only to single room occupancy buildings and to all buildings in select special purpose zoning districts under the Zoning Resolution. In general, the program requires an investigation into whether harassment has occurred during a prescribed time period, and is triggered when an owner makes a permit application to the Department of Buildings for a material alteration of a building.

The Council finds that outside of these single room occupancy buildings and the buildings in special zoning districts, buildings with high rates of physical distress or ownership changes are typically associated with suspected or known harassment patterns. Areas targeted for rezoning see

an increased rate of change in ownership. The effects of such rezonings stretch beyond the rezoned blocks into surrounding neighborhoods. Because community districts are drawn specifically to capture communities of shared interest, they provide readily administrable boundaries for delineating where a rezoning in one part of a neighborhood is most likely to have effects outside the rezoning area. A limited pilot expansion of the CONH program to include buildings potentially at risk of harassment in particular neighborhoods where buildings with the highest rates of physical distress or ownership changes are located, or in city-sponsored neighborhood wide rezoned areas where heightened protection against harassment is essential to equitable development, would enable the Council to determine if expanding the CONH program could reduce the risk of harassment for tenants in such buildings and provide valuable feedback on its effect on tenant protection and housing conditions. The purpose of this local law is to provide for the implementation of such a program as a geographically targeted and time-limited pilot program to allow an evaluation of the program's accuracy and efficacy in targeting and addressing harassment in particular buildings.

The current Administrative Code provisions that apply to single room occupancy multiple dwellings consider incidents of harassment that occurred within three years of an application for development as indicative that such harassment was motivated by the redevelopment. The Council is concerned that redevelopment-motivated harassment may occur even earlier than three years before a redevelopment occurs. Thus, the pilot program proposes to lengthen this period to five years.. The current Administrative Code provisions also require that once a CONH has been denied, no development is allowed at the site for a specified period of time. The pilot seeks to determine the impact on a legislative CONH program of allowing owners of buildings where a

CONH is denied to proceed with development if they agree to construct floor area of low income housing within the building or within any new building within the same community district, similar to what is allowed under zoning resolution CONH requirements. In accordance with the Council's goal of equitable development, priority in allocating such units would be given to qualified tenants who resided in the building during the time the acts of harassment occurred.

§ 2. Article 1 of subchapter 4 of chapter 2 of title 27 of the administrative code of the city of New York is amended by adding a new section 27-2093.1 to read as follows:

§ 27-2093.1 Certification of no harassment with respect to pilot program buildings. a. Definitions. As used in this section the following terms have the following meanings:

Building qualification index. The term "building qualification index" means an index created by the department and promulgated in rules to evaluate prospective pilot program buildings for distress based on the department's records of open and closed hazardous and immediately hazardous violations of the housing maintenance code, records of paid and unpaid liens for expenses incurred by the department for the repair or elimination of dangerous conditions under the emergency repair program, change of ownership or any other factor that reasonably indicates distress and would qualify such building for the certification of no harassment pilot program as determined by the department.

Certification of no harassment. The term "certification of no harassment" means a certification by the department that no harassment of any lawful occupants of a pilot program building occurred during the 60 month period prior to the filing of an application for such certification pursuant to this section.

City-sponsored neighborhood-wide rezoning area. The term "city-sponsored neighborhood-wide rezoning area" means an area of the zoning map for which:

(1) amendments to the zoning regulations pertaining to such area were proposed by the City;

(2) the city planning commission approved or approved with modifications such amendments for a matter described in paragraph 3 of subdivision a of section 197-c of the charter;

(3) the city planning commission decision was approved or approved with modifications by the council pursuant to section 197-d of the charter and is not subject to further action pursuant to subdivision e or f of such section;

(4) the zoning map amendments increased the permitted residential floor area ratio within the rezoned area by at least 33 percent; and

(5) the amendments involved at least 10 blocks of real property in such area.

Covered categories of work. The term "covered categories of work" has the meaning set forth in section 28-505.3.

Harassment. The term "harassment" has the meaning set forth in subdivision 48 of section 27-2004.

Low income housing. The term "low income housing" means dwelling units that, upon initial rental and upon each subsequent rental following a vacancy, is affordable to and restricted to occupancy by individuals or families whose household income does not exceed an average of 50 percent of the area median income, adjusted for family size, at the time that such household initially occupies the dwelling unit, provided that with respect to low income housing units provided pursuant to a cure agreement in accordance with subdivision e of this section, one-third of such low income housing units shall be available at 40 percent of the area median income,

one-third of such units shall be available at 50 percent of the area median income and one-third of such units shall be available at 60 percent of the area median income.

Pilot program building. The term "pilot program building" means a multiple dwelling included on the pilot program list.

Pilot program list. The term "pilot program list" means a list of multiple dwellings with six or more dwelling units meeting the criteria set by the department in accordance with subdivision b. Such multiple dwelling shall remain on the pilot program list for 60 months, or until expiration of the local law that added this section, whichever is later. Such list shall be published and maintained on the websites of the department and the department of buildings. Such list shall not include any multiple dwelling that:

(1) is subject to any other provision of law or rules, including the zoning resolution, that requires a certification of no harassment as a condition to obtaining approval of construction documents or an initial or reinstated permit in connection therewith from the department of buildings;

(2) is the subject of a program approved by the commissioner and related to the rehabilitation or preservation of a single room occupancy multiple dwelling or the provision of housing for persons of low or moderate income, other than a program consisting solely of real property tax abatement or tax exemption pursuant to the real property tax law, and has been exempted from the provisions of this section by the commissioner;

(3) contains dwelling units that are required to be and actually are restricted based on income pursuant to an agreement pursuant to the mandatory inclusionary housing program or the voluntary inclusionary housing program and the income-restricted units that are required

pursuant to such agreement are occupied at the time of application for a certification of no harassment;

(4) is an exempt luxury hotel as defined by the department in rules;

(5) is a rent regulated institutional residence, the occupancy of which is restricted to non-profit institutional use exempted from the requirements of this section by the department;

(6) is owned by the city or other governmental entity;

(7) is a clubhouse; or

(8) is a college or school dormitory.

Tenant harassment prevention task force. The term "tenant harassment prevention task force" or "task force" means representatives of city and state agencies that combine to combat tenant harassment through coordinated enforcement actions.

b. Pilot program list. The department shall compile and publish a pilot program list. The criteria used to select buildings to be included on the pilot program list shall be promulgated by the department in rules and shall be limited to:

(1) Buildings with scores on the building qualification index indicating significant distress as determined by the department, and located within:

(i) Bronx community district 4,

(ii) Bronx community district 5,

(iii) Bronx community district 7,

(iv) Brooklyn community district 3,

(v) Brooklyn community district 4,

(vi) Brooklyn community district 5,

(vii) Brooklyn community district 16,

(viii) Manhattan community district 9,

(ix) Manhattan community district 11,

(x) Manhattan community district 12,

(xi) Queens community district 14, and

(xii) Any community district where any part of such district is subject to a city-sponsored neighborhood-wide rezoning after the date of enactment of the local law that added this section.

(2)(i) Buildings where a full vacate order has been issued by the department or by the department of buildings, or (ii) buildings where there has been active participation in the alternative enforcement program for more than four months since February 1, 2016; and

(3) Buildings where there has been a final determination by New York state homes and community renewal or any court having jurisdiction that one or more acts of harassment were committed at such building within the 60 months prior to the effective date of the local law that added this section or on or after the effective date of the local law that added this section. The department shall establish a method of identifying buildings where there have been adjudications of harassment after the effective date of the local law that added this section, and may request the cooperation of the tenant harassment prevention task force to establish and effectuate such method. The department shall add a building to the pilot program list within 30 days after it is identified in accordance with such method.

c. Certification of no harassment required. (1) In accordance with article 505 of chapter 5 of title 28, a pilot program building shall be required to obtain a certification of no harassment or waiver of such certification as a condition to obtaining approval of construction documents or an

CITY OF NEW YORK
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
RULES PERTAINING TO
CERTIFICATIONS OF NO HARASSMENT

CHAPTER 10
ADMINISTRATION OF APPLICATIONS FOR CERTIFICATIONS OF NO HARASSMENT

§10-01 Definitions. Whenever used in this chapter:

"Administrative Code" shall mean the New York City Administrative Code.

"Access authorizer" shall mean the person who authorizes HPD to enter the property, which person shall be an individual natural person who either (i) has legal possession of all common areas of the property, or (ii) is authorized to sign on behalf of and bind the persons or entities who have legal possession of all common areas of the property

"Affidavit of no future harassment" shall mean an affidavit affirming that no future harassment will occur at the property during the period for which a certification or waiver remains in effect.

"Applicant" shall mean the person who executes an application, which person shall be an individual natural person who is either (i) an owner, or (ii) a principal or officer of an owner who is authorized to sign on behalf of and bind such owner.

"Application" shall mean an application for a certification, waiver, or exemption submitted to HPD, unless the context clearly indicates reference to an application for a permit submitted to DOB.

"Building loan contract" shall have the meaning set forth in Section 22 of the Lien Law.

"Certification" shall mean a certification of no harassment.

"Commencement of substantial work" shall mean (i) if the alterations and/or demolition work for which a certification or waiver was granted is financed by a recorded building loan contract, the date upon which a lender has advanced funds in an amount that is not less than 50% of the total amount of such building loan contract and actual construction work has commenced at the property using such funds, or (ii) if the alterations and/or demolition work for which a certification or waiver was granted is not financed by a building loan contract, the actual performance and payment of not less than 50% of the total cost of such alteration and/or demolition work.

"Commissioner" shall mean the Commissioner of HPD or his or her designee.

"DHCR shall mean the Division of Housing and Community Renewal of the State of New York.

"DOB" shall mean the Department of Buildings of the City of New York.

"Dwelling unit" shall mean a dwelling unit or rooming unit, as such terms are defined in Administrative Code §27-2004.

"Exemption" shall mean a determination by HPD that a certification pursuant to the terms of the Administrative Code or the Zoning Resolution is not required.

"Fee" shall mean a sum in the amount of (i) $500 if the property contains 1 to 10 dwelling units, (ii) $1,500 if the property contains 11 to 30 dwelling units, (iii) $2,500 if the property contains 31 to 50 dwelling units, and (iv) $3,500 if the property contains more than 50 dwelling units, which amount is a fee to offset all or part of the administrative cost to HPD of processing the application.

"HPD" shall mean the Department of Housing Preservation and Development of the City of New York.

"Inquiry period" shall mean (i) with respect to an application submitted pursuant to any provision of the Zoning Resolution, the period of time therein defined as the inquiry period, and (ii) with respect to an application submitted pursuant to Administrative Code §28-107.1 et seq. and Administrative Code §27-2093, a period commencing three years prior to submission of the application and ending on the date that HPD issues a final determination on the application.

"Luxury hotel" shall mean a single room occupancy multiple dwelling in which the rent on May 5, 1983, exclusive of governmentally assisted rental payments, charged for 75% or more of the total number of occupied individual dwelling units was more than 55 dollars per day for each unit rented on a daily basis, or more than 250 dollars per week for each unit rented on a weekly basis or more than 850 dollars per month for each unit rented on a monthly basis. For computation purposes, the rental value of units which were vacant on May 5, 1983 shall be deemed to be the rent charged for comparable occupied units in the property on such date.

"Owner" shall mean (i) the holder of title to the property, (ii) a contract vendee of title to the property, or (iii) the lessee pursuant to a net lease of the entire property with an unexpired term of not less than ten years from the date of submission of the application.

"Property" shall mean the real property that is the subject of an application.

"Residential kitchen" shall mean (i) a kitchen that is located within a dwelling unit, or (ii) a kitchen serving residential occupants that is not located within a dwelling unit.

"Residential bathroom" shall mean (i) a bathroom that is located within a dwelling unit, or (ii) a bathroom serving residential occupants that is not located within a dwelling unit.

"Waiver" shall mean a waiver of the requirement for a certification pursuant to the terms of the Administrative Code.

"Zoning Resolution" shall mean the New York City Zoning Resolution, as amended.

§10-02 Scope of Rule.

(a) The requirements of this chapter apply to certifications, exemptions, and waivers pursuant to Administrative Code §28-107.1 et seq., Administrative Code §27-2093, Zoning Resolution §96-110, Zoning Resolution §93-90, Zoning Resolution §98-70, Zoning Resolution §23-013, and any subsequently enacted provision of the Administrative Code or Zoning Resolution which authorizes HPD to make determinations concerning certifications, exemptions, or waivers.

(b)(1) With regard to single room occupancy multiple dwellings, a certification shall be required where mandated pursuant to Administrative Code §28-107.1 et seq. and Administrative Code §27-2093. In accordance with the authority of the Commissioner pursuant to Administrative Code §28-107.3(4) to prescribe by regulation other types of alteration work, a certification shall be required where the application and plans filed with DOB seek to:

(i) increase or decrease the number of dwelling units;
(ii) alter the layout, configuration or location of any portion of a dwelling unit;
(iii) increase or decrease the number of residential kitchens or residential bathrooms;
(iv) alter the layout, configuration or location of any portion of a residential kitchen or residential bathroom;
(v) demolish or change the use or occupancy of any dwelling unit and/or any portion of the building serving the dwelling units.

(2) Where the application and the accompanying plans submitted to DOB do not provide for any such changes, a certification shall not be required pursuant to Administrative Code §28-107.3(4), but may be required pursuant to other provisions of Administrative Code §28-107.1 et seq. or pursuant to the Zoning Resolution.

(c) With regard to properties located in the Special Clinton District defined in Article XI, Chapter 6 of the Zoning Resolution (§96-00 *et seq*), a certification shall be required where mandated pursuant to the terms of such Article and Zoning Resolution §96-110.

(d) With regard to multiple dwellings located in the anti-harassment area defined in Zoning Resolution §93-90 (Hudson Yards/Garment Center), a certification shall be required where mandated pursuant to the terms of such section.

(e) With regard to multiple dwellings located in the anti-harassment area defined in Zoning Resolution §23-013 (Greenpoint-Williamsburg), a certification shall be required where mandated pursuant to the terms of such section and New York City Zoning Resolution §93-90.

(f) With regard to multiple dwellings located in the anti-harassment area defined in Zoning Resolution §98-70 (West Chelsea), a certification shall be required where mandated pursuant to the terms of such section and New York City Zoning Resolution §93-90.

§10-03 Application.

(a) An application shall contain such information, in such form, as HPD shall require.

(b) An application shall be executed by an applicant. If the applicant is not an access authorizer, the application shall also be executed by an access authorizer.

(c) An application may be submitted to HPD (i) by hand delivery on business days, during such hours and in such location as HPD shall determine, (ii) by mail, or (iii) by private courier.

(d) The submission of any application shall be accompanied by certified check, bank check, or money order in the amount of the fee made payable to New York City Department of Finance.

(e) Following the submission of an application, HPD may request any additional information that HPD determines is relevant to the certification. If HPD sends a written request for additional information to the applicant by regular or certified mail at the address of the applicant set forth in the application, and HPD does not receive such additional information within thirty days following the mailing of such request, HPD may (i) reject the application, or (ii) review the application without such information and draw a negative inference with respect to the missing information.

(f) An application shall be deemed to be complete when the completed application, the fee, and the necessary supporting documentation have been received and acknowledged as sufficient by HPD.

(g) If HPD determines at any time that an application contains a material misstatement of fact, HPD may reject such application and bar the submission of a new application for a period not to exceed three years.

(h) HPD may refuse to accept, or to act upon, an application for a certification pursuant to the Zoning Resolution where HPD finds at any time that (i) taxes, water and sewer charges, emergency repair program charges, or other municipal charges remain unpaid with respect to the multiple dwelling, (ii) the multiple dwelling has been altered either without proper permits from DOB or in a way that conflicts with the certificate of occupancy for the multiple dwelling (or, where there is no certificate of occupancy, any record of HPD indicating the lawful configuration of the multiple dwelling) and such unlawful alteration remains uncorrected; or (iii) HPD has previously denied an application pursuant to the Zoning Resolution.

(i) If any information stated in an application changes at any time before HPD makes a final determination, the applicant shall promptly update the application with such new information and submit it to HPD. If such changed information includes any facts that would render the original applicant ineligible to submit the application, HPD may require that the amended application be executed by an individual who is at that time eligible to submit the application.

§10-04 Investigation.

(a) Except as otherwise provided in these rules, HPD shall conduct an investigation of each application for a certification.

(b) HPD shall publish a notice in The City Record and such other publications as HPD shall determine seeking public comment regarding whether there has been harassment of the lawful occupants of the property during the inquiry period.

(c) HPD shall send notices to the local Community Board and such other organizations as HPD shall determine seeking comments on any application for a certification.

§10-05 Initial Determination.

(a) Upon the completion of the investigation of an application for a certification, HPD shall either (i) reject such application as provided in Section 10-03 of this Chapter, (ii) determine that there is not reasonable cause to believe that harassment occurred during the inquiry period at the property, (iii) determine that there is reasonable cause to believe that harassment occurred during the inquiry period at the property, or (iv) determine that DHCR or a court having jurisdiction has found that there has been harassment, unlawful eviction, or arson at the property during the inquiry period.

(b) If HPD rejects an application as provided in Section 10-03 of this Chapter, HPD shall send written notice of such determination to the applicant.

(c) If HPD determines that there is not reasonable cause to believe that harassment occurred during the inquiry period at the property, HPD shall (i) send written notice of such determination to the applicant, and (ii) grant the certification in accordance with the terms of Section 10-08 of this Chapter.

(d) If HPD determines that there is reasonable cause to believe that harassment occurred during the inquiry period at the property, HPD shall send written notice of such determination to the applicant and shall comply with the procedures set forth in Section 10-06 and Section 10-07 of this Chapter.

(e) If HPD determines that DHCR or a court having jurisdiction has found that there has been harassment, unlawful eviction, or arson at the property during the inquiry period, HPD may deny the certification without a hearing and issue a final determination in accordance with Section 10-07 of this Chapter. In such event, HPD may combine the initial determination pursuant to this section and the final determination pursuant to Section 10-07 of this Chapter into a single document.

§10-06 Hearing.

(a) When HPD has determined in accordance with Section 10-05(d) of this Chapter that there is reasonable cause to believe that harassment occurred at the property during the inquiry period, HPD shall schedule a hearing before the Office of Administrative Trials and Hearings at which the applicant will have an opportunity to challenge such determination.

(b) HPD shall serve a notice of hearing by regular mail upon the applicant and any other individual or entity as determined by HPD. Such notice shall state the date, time, and location of hearing and shall inform the applicant that he or she may be represented by counsel and may present witnesses and other evidence.

(c) Upon conclusion of such hearing, the hearing officer shall make a report and recommendation to the Commissioner whether an application should be granted or denied.

(d) Notwithstanding anything to the contrary in this section or these rules, an applicant may waive its right to a hearing before the Office of Administrative Trials and Hearings.

§10-07 Final Determination.

(a) When HPD has determined in accordance with Section 10-05(d) of this Chapter that there is reasonable cause to believe that harassment occurred at the property during the inquiry period and a hearing has been held before the Office of Administrative Trials and Hearings in accordance with Section 10-06 of this Chapter**,** the Commissioner shall review the report and recommendation of the hearing officer and make a final determination to grant or deny the application.

(b) When HPD has determined in accordance with Section 10-05(d) of this Chapter that there is reasonable cause to believe that harassment occurred at the property during the inquiry period and the applicant has waived its right to a hearing before the Office of Administrative Trials and Hearings in accordance with Section 10-06(d) of this Chapter, the Commissioner shall make a final determination to grant or deny the application.

(c) When HPD has determined in accordance with Section 10-05(e) of this Chapter that DHCR or a court having jurisdiction has found that there has been harassment, unlawful eviction, or arson at the property during the inquiry period, the Commissioner shall make a final determination to grant or deny the application. In such event, HPD may combine the initial determination pursuant to Section 10-05 of this Chapter and the final determination pursuant to this section into a single document.

(d) HPD shall provide the applicant with written notice of the final determination.

§10-08 Certification.

(a) A certification shall be effective for three years from the date upon which such certification is signed by the Commissioner, which period shall be stated in such certification. Such certification shall apply to any plan approval, any alteration or demolition permit application, or any renewal of a permit issued for such plan approval, alteration or demolition permit application that is submitted to DOB during such period.

(b) HPD shall not issue a certification unless HPD has received an affidavit of no future harassment executed by one or more individual natural persons who are, at the time of execution of such affidavit, either (i) all of the owners of the property, or (ii) principals or officers of all of the owners of the property who are authorized to sign on behalf of and bind such owners.

§10-09 Waiver or Exemption.

(a) Notwithstanding any provision of these rules to the contrary, if an application is for a waiver or exemption, (i) HPD may, but shall not be required to, waive the fee, and (ii) if HPD does not waive the fee, but subsequently grants such waiver or exemption, HPD may, but shall not be required to, return such check or money order to the applicant.

(b) Notwithstanding any provision of these rules to the contrary, HPD may grant a waiver or exemption at any point following the submission of an application therefor.

(c) A waiver or exemption shall be effective for such period and subject to such conditions as HPD shall determine, which period and conditions, if any, shall be stated in such waiver or exemption. Such waiver or exemption shall apply to any plan approval, any alteration or demolition permit application, or any renewal of a permit issued for such plan approval, alteration or demolition permit application that is submitted to DOB during such period which complies with such conditions, if any.

(d) HPD shall not issue a waiver unless, in accordance with Administrative Code §27-2093(e), the current title holder of record of the property (i) was the title holder of record of the property prior to May 5, 1983, (ii) entered into a contract of sale for the purchase of the property which was recorded prior to May 5, 1983, (iii) held a mortgage on the property recorded prior to May 5, 1983 and thereafter acquired the property as a result of the foreclosure of such mortgage, or (iv) is a lending organization described in Administrative Code §27-2093(e)(2)(ii), granted a mortgage commitment on the property recorded prior to May 5, 1983, thereafter granted a mortgage on the property pursuant to such commitment, and thereafter acquired the property as a result of the foreclosure of such mortgage.

(e) HPD shall not issue a waiver unless HPD has received an affidavit of no future harassment executed by one or more individual natural persons who are either (i) all of the owners of the property, or (ii) principals or officers of all of the owners of the property who are authorized to sign on behalf of and bind such owners.

§10-10 Suspension and Rescission.

(a) HPD may rescind a certification, waiver, or exemption at any time if HPD determines that the application for such certification, waiver, or exemption contained a material misstatement of fact.

(b) If HPD determines that there is reasonable cause to believe that harassment has occurred after the date that HPD issued a certification or a waiver, HPD may suspend such certification or waiver. If the certification or waiver was granted solely pursuant to the Administrative Code, HPD shall not suspend such certification or waiver pursuant to the preceding sentence unless HPD determines that there is reasonable cause to believe that such harassment occurred before commencement of substantial work.

(1) If HPD determines that there is reasonable cause to believe that harassment has occurred after the date that HPD issued a certification or a waiver, HPD shall deliver a notice of suspension to the applicant and to the owner and will refer the matter for hearing at the Office of Administrative Trials and Hearings.

(2) HPD shall serve a notice of hearing by regular mail upon the applicant and any other individual or entity as determined by HPD. Such notice shall state the date, time, and location of hearing and shall inform the applicant that he or she may be represented by counsel and may present witnesses and other evidence.

(3) Upon conclusion of such hearing, the hearing officer shall make a recommendation to the Commissioner whether or not the certification should be rescinded.

(4) The Commissioner shall make a final determination whether to rescind such certification, and shall provide the applicant with written notice of such determination.

§10-11 Miscellaneous.

(a) Any determination by HPD pursuant to this Chapter shall be in the sole discretion of HPD.

(b) An application may not be withdrawn after HPD issues either (i) an initial determination that there is reasonable cause to believe that harassment occurred during the inquiry period at the property, or (ii) a final determination that harassment occurred during the inquiry period at the property.

STATEMENT OF BASIS AND PURPOSE

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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Understanding Single-Room Occupancy Laws

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BY ADAM LEITMAN BAILEY AND DOV TREIMAN

Single-room occupancy housing, or more commonly called SROs, exist throughout New York City. When purchasing such a dwelling without the proper paperwork, you will not be able to obtain a permit to do renovations, a buyer cannot evict the residents who are rent-regulated tenants, and the owner may be required to maintain the upkeep for the tenants in possession which may include maid service and changing the tenants' linens. Most of these dwellings contain single rooms without a bathroom, kitchen or shower which resides on another side of the floor in a shared capacity. SRO buildings are a relic of a past city hanging onto to a way of living that has long been abandoned. This article attempts to explain the laws of single-room occupancy buildings standing in the shoes of the purchaser or owner attempting to turn these dwellings into one-family or multi-family housing without restrictions.

Adam Leitman Bailey

Dov Treiman

Governing SRO Laws

The laws governing SROs are divided among the Administrative Code, Multiple Dwelling Law (MDL), and the Rent Stabilization Code (RSC). As a result, SROs exist in apartment hotels, lodging houses, rooming houses with fewer than 30 units, and residential buildings. While certain laws seek to hold steady the number of SROs, the law has also placed barriers upon their construction and conversion. The NYC Administrative Code (Admin. Code) §27-2077(a) states, "no rooming unit which was not classified…prior to May fifteenth, nineteen hundred fifty-six, shall be created in any dwelling, whether such conversion is effected with or without physical alterations."[1]

Qualifying as an SRO Tenant

The MDL §4(16) defines an SRO as being "the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment." The bulk of the law describing the basic requirements for an SRO is to be found in MDL §248,[2] a statute specifying everything from towels to fire proofing in such dwellings.

While the overwhelming majority of SRO units in the city are occupied by single persons, MDL §248(12) does allow two adults, an adult plus a child who is 12 years old or more, an adult plus two children under 12 (but over two years old), or the previous combinations plus any number of toddlers under two years old. That said, the social welfare agencies strongly discourage any minors being in occupancy at all.

Under RSC §2520.11(g), for coverage, an SRO building must house six or more units, have been built on or before July 1, 1969, where the rent at that time was not greater than $88 weekly, or $350 monthly, and is occupied by a permanent tenant. The RSC covers both MDL class "A" and "B" dwellings, provided the dwelling meets the requisite demands of time and rent charged.[3] Under MDL §248, the building owner must provide certain necessary amenities such as heating, lighting, available laundry services, means of egress for each sleeping room, hot and cold water in the restrooms, a competent manager, and competent watchmen in charge of the premises.[4]

Permanent Tenants

Under RSC §2520.6(j), individuals and their families may become permanent tenants in one of three ways: Residing in a "hotel" continuously for six months;[5] requesting a lease of six months or more, which the landlord must then furnish within 14 days; or residing in a property pursuant to a lease of six months or greater.[6] When an occupant becomes a permanent tenant, owners must then take caution when they seek to alter, demolish, or convert the building that they comply with the Administrative Code, with specific regard to obtaining a Certificate of No Harassment (CONH). However, Admin. Code §26-521 combines with the RSC to prohibit evictions of SRO tenants where the tenant has lawfully occupied the premises for 30 consecutive days, while permitting eviction prior to 30-days occupancy.[7]

Where an SRO unit comes under rent stabilization, the usual rules requiring a tenant to use the premises as his/her primary residence, refrain from subletting, and pay rent on time come into play. If the unit is not subject to rent stabilization, the owner has no motivation to recover the unit on any theory more elaborate than that the term for the unit has simply come to an end.

Certificate of No Harassment

The obtainment of a certificate of no harassment is the gateway into turning a highly regulated, alteration-prohibited building into a free-market class A multiple dwelling. It should be noted that even after a certificate is granted, any current tenants retain their rent-regulated status, but vacant apartments are no longer

rent regulated and can be rented as free-market apartments once construction into Class A apartments has been completed.

An owner's ability to convert or demolish an SRO is also contingent upon the owner receiving a CONH from the New York City Department of Housing Preservation and Development (HPD) under Admin. Code §27-2093, unless HPD grants the owner a waiver, or exemption.[8] Harassment is defined as the act to evict, or attempt to evict any permanent tenant by engaging in conduct that interferes with the tenant's enjoyment of the premises, or engaging in, or threatening to engage in any other conduct that would induce the tenants to vacate the premises.[9]

In order to obtain a CONH, the owner of the SRO building must apply to HPD. Upon receiving the application, the commissioner publishes notice for seven days to notify the occupants, if any, and the owner that an investigation will commence. This gives the occupants 30 days to give comments to HPD regarding their living conditions, specifically whether the occupant feels that a form of harassment has taken place. Importantly, the investigation looks to the three years prior to the application to determine whether harassment has occurred, and all occupants, current and former, are able to come forth to allege harassment.

Harassment hearings take place before the Office of Administrative Trials and Hearings (OATH) without the formal rules of evidence.[10] Unless the owner has obtained affidavits from all present and findable recent tenants that no harassment has taken place, the bulk of these hearings deny issuing the CONH [11]

Upon the conclusion of the comment period and investigation, the commissioner may grant the CONH, request a hearing to determine if harassment has occurred, or deny the CONH outright, without a hearing. Moreover, the commissioner has the right to rescind or suspend any CONH if there is a reasonable belief that harassment has occurred after the granting of the CONH, but prior to "substantial work beginning."

Denial of the CONH results in the owner being prohibited from acting to convert, or demolish the building for 36 months, at which point the owner would be able to submit another application.[12] Absent the above described affidavits, CONHs on such reapplications are exceedingly rare. Martha Washington Tenants Ass'n v. Roberts,[13] holds that a hearing on an application for a CONH is not mandatory so long as HPD conducts an investigation of the tenant's charge of harassment. In judicial review of an adverse finding, the owner would have to demonstrate to the court that the agency was arbitrary and capricious or was unsupported by substantial evidence—[14]an exceedingly difficult standard to satisfy.

The city states that it takes three to six months to get a CONH, but only if the application is complete. However, the city is extremely exacting as to what constitutes a complete application. Thus, if the owner cannot provide the city with the name and social security number of three years of building managers or affidavits of no harassment from the tenants for that same period, it can delay the application. If the building is of an age that it does not have a certificate of occupancy (CO), then the application will add the time it takes for the owner to get a "letter of no objection" (LNO) from the Buildings Department. The LNO is essentially not a "letter" at all, but a document that stands in stead of a certificate. It tells HPD the legal configuration and use of the property which HPD compares to the actual use, which the application must set forth. While the city claims an LNO takes only a few days to issue, experience shows that it can take up to more than a month.

If an owner shows a good faith intention to demolish a hotel in order to build a new commercial building on the site, after offering a relocation plan, the CONH is properly issued.[15] The mere fact that there are nonhazardous violations in a building seeking a CONH will grant the owner the CONH, so long as the owner can show ongoing maintenance of essential services.[16]

When CONH's Are Denied

The Administrative Code is clear in outlining the procedural steps that an owner must take to obtain a CONH. However, even for clear law, there are very few cases construing it.

There is a statutory presumption that acts of harassment are with the intent of causing lawful occupants to vacate their units or surrender their rights in relation to occupancy. When such a pattern was the doing of a former owner, without regard to the new owner's fault, or lack of fault, acts of harassment by the old owner, are attributable to the new owner. Thus, for example, if the former owner failed to provide heat, and other essential services during the three-year inquiry period, the new owner will be denied the CONH.[17]

In HPD v. Zimmerman,[18] it was held that "new" SRO owners must rebut the statutory presumption that acts of harassment committed by old SRO owners were with the intent to cause the lawful occupants to vacate their units or surrender their rights in relation to occupancy. Without regard to the new owner's fault, or lack of fault, acts of harassment by the old owner were attributable to the new owner that the acts of harassment committed by the old owner were with the intent of causing tenants to vacate and as such, the new owner was properly denied a CONH. The petitioner proved the previous owner failed to provide heat, and other essential services during the three-year inquiry period. Upon sale of the building to the new owner, denial of the CONH was warranted.

Where the building includes failures to maintain basic services such as the failure to keep public bathrooms and hallways clean, eradicate vermin, repair holes in the ceiling and prevent overcrowding, and there are numerous violations in the building, harassment is properly found.[19] Where there is evidence of deplorable physical conditions within the premises or and where the landlord attempted to intimidate the tenants into leaving, HPD appropriately refuses a CONH.[20] When the landlord makes repeated buy-out offers making a tenant feel threatened, so too, HPD properly refuses a CONH.[21]

Admin. Code §27-2093 permits HPD to rescind or suspend certificates after they have been issued if there is reason to believe harassment occurred prior to the commencement of substantial work.[22]

In HPD v. Gill,[23] it was held that commencing the conversion of an SRO into a Class A apartment, while the certificate is pending and has not yet been obtained, creates a reasonable inference of harassment. In Gill , respondent purchased the building and within weeks, removed over 26 tenants, and began to convert the building after the application had commenced, but prior to its conclusion.

Additionally, OATH decisions have weighed in on rescission, and suspension of CONHs, though these decisions have not yet gone on appeal. Admin. Code §27-2093 permits HPD to rescind or suspend certificates after they have been issued

if there is reason to believe harassment occurred prior to the commencement of substantial work.

In HPD v. 331 West 22nd Street,[24] substantial work was defined as commencing "upon payment of the first advance by a lender on building loan contract which is financing the alterations or demolition for which a certificate of no harassment was granted." Further, substantial work has occurred "upon an 'actual expenditure' of more than fifty percent of the total cost of alteration or demolition."

Lastly, OATH has sought to clarify other SRO-related issues. One issue being, for example, that there is no time frame within which HPD must complete its investigation. In HPD v. Fenelon,[25] there was a two-and-a-half-year lag between the filing of the application and an OATH hearing. However, it was held that respondent was barred for three years from the time of final determination, and not the filing of the application, when the certificate was denied.

Vacating an SRO Building

The same laws used to evict rent-regulated tenants using their apartments or occupancy illegally applies to SROs. This includes eviction through non-primary residence, illegal sublet, demolition, chronic nonpayment, nuisance, and all other laws listed in the rent stabilization code.

Where an SRO unit is subject to rent stabilization, it is subject to being recovered for the owner's own use, just like any conventional apartment which would allow a property owner to recover all the units in the building for his or her private or family use once a certificate of no harassment has been issued.

Conclusion

Single-room occupancy laws are one of the most misunderstood and least known regulatory laws. At the same time, there is a record number of filings to convert these buildings into Class A apartment houses. This article attempts to navigate the SRO buyer, owner and practitioner to their desired goal.

ENDNOTES:

1. Admin. Code §§27-2077(a)(2) & (3).

2. Inside New York City, the Multiple Dwelling Law applies. Outside New York City, municipalities may elect the Multiple Dwelling Law, a statute lacking an SRO provision.

3. Gracecor Realty, v. Hargrove, 90 N.Y.2d 350 (1997) (holding that the RSC may cover class "B" units).

4. MDL §248(15) really does specify that these two workers must be "competent," a rare requirement in the law.

5. "Hotel" is something of a technical term. It requires a front desk and certain other amenities, but bears little other resemblance to the average reader's idea of a hotel.

6. RSC §2520.6(j).

7. RSC §§2524.3(a) & (b); Admin. Code §26-521(a)(1).

8. Admin. Code §27-2093(f)(1); See also, NYCRR §10-02 – §10-11.

9. Id.

10. Id.

11. Developers frequently require such affidavits and a vacant building prior to taking title to SRO buildings.

12. Id.

13. 292 A.D.2d 225(1st Dept. 2002).

14. CPLR 7803.

15. Baba v. 113 Bldg. Corp., 210 A.D.2d 6 (1st Dept. 1994).

16. Breslin Tenant Assn'n v. HPD, 67 A.D.3d 522 (1st Dept. 2009).

17. HPD v. Zimmerman, OATH Index No. 347/05 (Oct. 4, 2004).

18. OATH Index No. 347/05 (Oct. 4, 2004).

19. Hersch v. HPD, 44 A.D.3d 525 (1st Dept. 2007).

20. Matter of 235 Hotel v. HPD, 309 A.D.2d 587 (1st Dept. 2003).

21. Vaughan v. Michetti, 176 A.D.2d 144 (1st Dept. 1997).

22. HPD v. 331 West 22nd Street, LLC, OATH Index No. 912/06, mem. Dec. (Dec. 29, 2006).

23. OATH Index No. 2729/09 (July 30, 2009).

24. OATH Index No. 912/06, mem. Dec. (Dec. 29, 2006).

25. OATH Index No. 1525/04 (Oct. 6, 2004).

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Rules Governing the Speculation Watch List

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development ("HPD") by Section 1802 of the New York City Charter and Section 27-2109.52(b) of the Administrative Code of the City of New York, and in accordance with Section 1043 of the City Charter, HPD is adding a new Chapter 52 to Title 28 of the Rules of the City of New York.

A notice of proposed rulemaking was published in the City Record on June 4, 2018. A public hearing was held on July 10, 2018.

Statement of Basis and Purpose

Local Law 7 of 2018 enacted article 3 of subchapter 4 of chapter 2 of title 27 of the Administrative Code of the City of New York ("Act"). The Act requires HPD to establish a "Speculation Watch List" within 300 days. The Speculation Watch List is comprised of certain multiple dwellings that contain six or more dwelling units, the majority of which are rent regulated. The Act provides that HPD shall promulgate by rule the criteria for a multiple dwelling's inclusion in or removal from the Speculation Watch List. HPD is adopting a new chapter 52 of title 28 of the Rules of the City of New York ("Speculation Watch List Rules") to implement the Act.

The Act requires HPD to create the Speculation Watch List by analyzing the Capitalization Rate for Qualified Transactions involving certain multiple dwellings and applying the Speculation Watch List inclusion criteria HPD has promulgated by rule. The Act requires HPD to define the term "Qualified Transaction." The Act also provides that criteria for Speculation Watch List inclusion may include the number of dwelling units and the amount or ratio per dwelling unit of open hazardous and immediately hazardous violations and paid or unpaid emergency repair charges. The Act requires HPD to update the Speculation Watch List on at least a quarterly basis.

The adopted rules provide for the inclusion in the Speculation Watch List for a given fiscal quarter of certain recently sold multiple dwellings with a majority of rent regulated units if such multiple dwellings' Capitalization Rates fall below the median capitalization rate for the respective boroughs in which they are located. Such below average Capitalization Rates suggest purchase prices exceeding the value of these properties, which is based upon their net operating income. When a purchaser is willing to pay more than the property value, it indicates a greater potential for tenant harassment so that the purchaser can recoup its inflated purchase price through forcing tenants out in order to escalate rents. Based on HPD analysis, it is expected that, pursuant to the adopted rules, approximately 150 multiple dwellings would be added to the Speculation Watch List annually, depending on market conditions. The adopted rules also provide the criteria for removal from the Speculation Watch List.

HPD's authority for these rules is found in sections 1043 and 1802 of the New York City Charter and section 27-2109.52(b) of the Administrative Code of the City of New York.

New material is underlined.
[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 28 of the Rules of the City of New York is amended by adding a new Chapter 52 to read as follows:

Chapter 52
SPECULATION WATCH LIST

§ 52-01 Definitions. As used in this chapter, the following terms shall have the following meanings. Capitalized terms not specifically defined in this chapter shall have the meanings set forth in the Act.

Act. "Act" means article 3 of subchapter 4 of chapter 2 of title 27 of the administrative code of the city of New York, as may be amended.

Affordable Housing. "Affordable Housing" means Dwelling Units for which occupancy or initial occupancy is required to be restricted based on the income of the occupant or prospective occupant thereof as a condition of (i) a loan, grant, tax exemption or conveyance of property from any state or local governmental agency or instrumentality pursuant to (A) the Private Housing Finance Law, other than article 8-B of such law, or (B) the General Municipal Law, or (ii) a tax exemption pursuant to section 420-c of the Real Property Tax Law. "Affordable Housing" shall not include Dwelling Units for which occupancy or initial occupancy is required to be restricted based on the income of the occupant or prospective occupant thereof as a condition of (i) a tax exemption pursuant to section 421-a of the Real Property Tax Law, or (ii) generating a floor area bonus for the provision of affordable inclusionary housing or providing mandatory inclusionary housing pursuant to the Zoning Resolution.

Borough Capitalization Rate. "Borough Capitalization Rate" means the median Capitalization Rate of all Qualified Transactions in a given borough during the four most recent Fiscal Quarters, as calculated by HPD.

DOF. "DOF" means the Department of Finance of the City of New York or any successor agency or department thereto.

Dwelling Unit. "Dwelling Unit" means a dwelling unit as defined in section 27-2004 of the Housing Maintenance Code.

Fiscal Quarter. "Fiscal Quarter" means any one of the following periods: (i) the period beginning on the first day of July and ending on the last day of September; or (ii) the period beginning on the first day of October and ending on the last day of December; or (iii) the period beginning on the first day of January and ending on the last day of March; or (iv) the period beginning on the first day of April and ending on the last day of June.

Fiscal Year. “Fiscal Year” means the fiscal year of the City of New York, which commences July 1 and ends June 30.

HDC. “HDC” means the New York City Housing Development Corporation.

HDFC. "HDFC" means a housing development fund company organized pursuant to Article 11 of the Private Housing Finance Law.

HPD. "HPD" means the Department of Housing Preservation and Development of the City of New York or any successor agency or department thereto.

Internal Revenue Code. “Internal Revenue Code” means the United States Internal Revenue Code of 1986, as amended.

List. “List” means the speculation watch list that is published during each Fiscal Quarter and includes all Multiple Dwellings that (i) were the subject of Qualified Transactions and (ii) HPD has determined to be at risk of tenant harassment in accordance with the criteria established in Section 52-02 of this chapter.

Listed Building. “Listed Building” means a Multiple Dwelling included on a List.

Local Supervision. “Supervision” means monitoring of the performance and regulatory compliance of Affordable Housing by HPD’s Division of Asset Management, HPD’s Division of Housing Supervision, or HDC Asset Management, or their successors.

Multiple Dwelling. “Multiple Dwelling” means a multiple dwelling, as defined in section 4 of the Multiple Dwelling Law:

(i) in which a majority of Dwelling Units are Rent Regulated;

(ii) that appears on the most recent DOF final assessment roll;

(iii) for which, during the Fiscal Year of the most recent DOF final assessment roll, DOF has recorded a notice of property value that lists numerical values greater than zero for both estimated gross income and estimated expenses;

(iv) for which the final assessment roll for the Fiscal Year immediately preceding the most recent notice of property value lists a tentative actual assessed value of greater than $40,000;

(v) that either (a) is exclusively residential with eleven or more Dwelling Units or (b) contains seven or more Dwelling Units and one or more commercial units;

(vi) that is not providing Affordable Housing subject to Local Supervision;

(vii) that is neither (A) fully exempt from real property taxation under any applicable law or (B) partially exempt from real property taxation pursuant to article 2, 4, 5, or 11 of the Private Housing Finance Law or section 420-c of the Real Property Tax Law; and

(viii) that is not receiving benefits pursuant to section 11-243 of the Administrative Code of the City of New York for any eligible work that was carried out with the substantial

assistance of grants, loans or subsidies from any federal, state, or local governmental agency or instrumentality.

Qualified Transaction. "Qualified Transaction" means the sale of a Multiple Dwelling that:

(i) occurred during the most recently concluded Fiscal Quarter;

(ii) has a sale price greater than $10,000;

(iii) is entirely contained within a single tax lot;

(iv) did not involve any federal, state, or local agency or instrumentality as either the purchaser or the seller; and

(v) did not involve an HDFC as the purchaser.

Rent Regulated. "Rent Regulated" means subject to rent regulation under the Rent Stabilization Law of 1969, the Rent Stabilization Code, the Private Housing Finance Law, or the Emergency Tenant Protection Act of 1974, all as amended, together with any successor statutes or regulations addressing substantially the same subject matter.

Zoning Resolution. "Zoning Resolution" means the Zoning Resolution of the City of New York, as amended.

§ 52-02 Criteria for inclusion. A Multiple Dwelling that is the subject of a Qualified Transaction and that has a Capitalization Rate less than the applicable Borough Capitalization Rate shall be added to the List. HPD will post a public e-mail address on its website through which HPD may be alerted as to any Multiple Dwelling that was either included on the List that allegedly did not meet the criteria for inclusion at the time of its inclusion or omitted from the List that allegedly did meet the criteria for inclusion.

§ 52-03 Criteria for removal. A Listed Building shall be removed from the List if, subsequent to the Qualified Transaction:

(a) it begins providing Affordable Housing subject to Local Supervision;

(b) it receives a full or partial exemption from real property taxation pursuant to article 2, 4, 5, or 11 of the Private Housing Finance Law or section 420-c of the Real Property Tax Law; or

(c) it receives benefits pursuant to section 11-243 of the Administrative Code of the City of New York for any eligible work that was carried out with the substantial assistance of grants, loans or subsidies from any federal, state, or local governmental agency or instrumentality.

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2018

No. 7

Introduced by Council Members Torres, Garodnick, Williams, Chin, Rosenthal, Mendez, Gibson, Cornegy, Salamanca, Johnson, Crowley, Menchaca, Miller, Maisel, Van Bramer, Kallos and the Public Advocate (Ms. James).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to creating a program for evaluation of certain multiple dwellings and transactions to establish a speculation list.

Be it enacted by the Council as follows:

Section 1. Subchapter 4 of chapter 2 of title 27 of the administrative code of the city of New York is amended by adding a new article 3 to read as follows:

Article 3

Speculation Watch List

§ 27-2109.51 Definitions.
§ 27-2109.52 Speculation watch list.

§ 27-2109.51 Definitions. For the purposes of this article:

Capitalization rate. The term "capitalization rate" means, with respect to a multiple dwelling, the quotient obtained when the net operating income of such multiple dwelling, as calculated by the department of finance, is divided by the sale price of such multiple dwelling's most recent arms-length sale.

Qualified transaction. The term "qualified transaction" means a multiple dwelling sale transaction as defined by department rule pursuant to subdivision b of section 27-2019.52.

§ 27-2109.52 Speculation watch list. a. Within 300 days after the effective date of the local law that added this section, the department shall establish a speculation watch list. Such speculation watch list shall comprise certain multiple dwellings that contain six or more dwelling units in which a majority of such units are rent regulated, and shall be created by analyzing the capitalization rate for qualified transactions involving such multiple dwellings and applying the criteria promulgated by rule pursuant to subdivision b of this section.

b. The department shall promulgate by rule the criteria for inclusion of a multiple dwelling on the speculation watch list established pursuant to subdivision a. Such rules shall define a qualified transaction for purposes of analyzing capitalization rate, and may also include, but need not be limited to, establishing the amount or ratio per dwelling unit of open hazardous and immediately hazardous violations, the amount or ratio per dwelling unit of paid or unpaid emergency repair charges, and the number of dwelling units, for purposes of including a multiple dwelling on the speculation watch list. The department may also promulgate by rule the criteria for removal of a multiple dwelling from the speculation watch list in instances where the department's analysis of the multiple dwelling has changed, or the multiple dwelling has entered into a regulatory agreement with the department requiring the operation of such building as affordable housing or the stabilization of rents in such building, or the multiple dwelling has obtained a certification of no harassment from the department.

c. The department shall post the following on its website:

1. The speculation watch list established pursuant to this article;

2. The criteria for inclusion on such list promulgated pursuant to subdivision b; and

3. The capitalization rate for each qualified transaction in a non-proprietary format that permits automated processing, to the extent that the disclosure of such information is not prohibited by any other provisions of law.

d. Such buildings on such list may be prioritized by the department for preservation programs or initiatives or may be subject to referral for appropriate enforcement of all applicable laws and rules.

e. The department shall update the speculation watch list on a quarterly basis or, in the department's discretion, more frequently.

f. Where a building is the subject of a regulatory agreement with the department requiring the operation of such building as affordable housing or the stabilization of rents in such building, in a manner determined by the department, such building shall not be included on the speculation watch list.

g. On or after January 1, 2021, the department may change the methodology for identifying multiple dwellings for inclusion on the speculation watch list by amending its rules promulgated under subdivision b of this section to provide for alternative criteria, including but not limited to replacement of the capitalization rate as a criterion, for inclusion on the speculation watch list. In the event the department replaces capitalization rate as a criterion for inclusion on the speculation watch list, the department shall provide a report to the council at the same time that includes its rationale for such replacement, and shall substitute the posting of the capitalization rate provided for in paragraph 3 of subdivision c of this section with the posting of the metric replacing the capitalization rate as a criterion for inclusion on the speculation watch list.

§ 2. This local law takes effect immediately after it becomes law

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on November 30, 2017 and returned unsigned by the Mayor on January 5, 2018.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 7 of 2018, Council Int. No. 1210-A of 2016) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEVEN LOUIS, Acting Corporation Counsel.

NEW YORK STATE OF OPPORTUNITY. Department of Financial Services

MEMORANDUM

TO: **Chief Executive Officers (or Equivalents) of New York State-Chartered Banks & Credit Unions**

FROM: **Maria T. Vullo, New York State Superintendent of Financial Services**

DATE: **September 25, 2018**

RE: **Guidance on Permissible Lending Practices Regarding Rent-Stabilized Multi-Family Residential Buildings**

The New York State Department of Financial Services (the "Department") has received various complaints and has followed reports alleging that certain owners of rent stabilized multifamily residential buildings may have obtained loans, directly or indirectly, from New York State chartered banking institutions for the purchase or renovation of buildings whose landlords have engaged in inappropriate practices including tenant harassment and unsafe living conditions. The Department issues this guidance to ensure that New York state chartered institutions are following best practices in lending to owners of rent stabilized buildings, ensuring that state-chartered banking institutions do not knowingly or unknowingly facilitate landlords' schemes to harass tenants and violate New York rent regulations.

New York State has enacted the Rent Stabilization Code, which covers many of New York City's large apartment buildings in order to prevent landlords from obtaining unjust, unreasonable and oppressive rents and rental terms and agreements, and to stop them from profiteering and engaging in conduct that can cause a threat to public health, safety, and well-being.

For example, it has come to the Department's attention that certain landlords of rent stabilized buildings routinely have been deferring necessary and required maintenance and property costs needed to operate the multifamily residential buildings they own, thus violating tenant leases and disturbing their right to quiet enjoyment of their homes; that certain landlords have forced eviction or buy-out of tenants from their apartments, including those protected by New York's affordable rent regulations; and that certain landlords have used the proceeds from their bank loans to renovate such apartments in order to lease them out to new tenants at higher rents as quickly as possible in order to remove the apartments from rent stabilization.

It has further been alleged that lending institutions may have knowingly or unknowingly facilitated misconduct by these landlords. For example, the terms of a loan may have required a landlord of a rent stabilized building to embark on a hyper-aggressive plan to drive up rents in some of these buildings in order to pay off the loan within a relatively short period of time, which the lender should have known could not be executed without disregarding tenant rights and landlord obligations to pay taxes, utilities and other costs that are standard for a New York City landlord. It has also been alleged that, in some instances, the lending institutions should have known or predicted at the outset that a landlord default is likely based on the real rent rolls of the building, resulting in mismanagement of the building and other violations.

The Department is concerned about these matters and issues this guidance to assist regulated banking institutions in their lending activities involving landlords of rent stabilized or rent regulated multifamily residential buildings in New York and expects enhanced due diligence of such landlords. There can be no excuse that a lender was unaware of misconduct by a landlord if the lender failed to diligently follow up on red flags suggesting potential misconduct.

BEST PRACTICES:

A. Pre-Loan Due Diligence

1. Lenders should conduct appropriate due diligence on property owners, including when the lender's role is providing indirect financing to the property owner through a third-party vehicle, as if the end user is the lender's customer. For example, lenders should conduct background checks and lien searches, engage with tenant organizations, review information available from tenants and tenant organizations, search for the existence of any tenant lawsuits, and review available tenant complaints, available landlord alert lists, media coverage concerning property owners or problems at the property, and otherwise evaluate experience and reputation of property owners.

2. Lenders should conduct appropriate due diligence on properties, including when the lender's role is providing indirect financing to the property owner through a third-party vehicle, as if the end user is the lender's customer. For example, lenders should inspect and review the property's condition prior to closing, conduct due diligence regarding outstanding housing code and building violations with New York City's Department of Housing Preservation and Development or other applicable housing authorities, and conduct due diligence regarding building permits, eviction rates, high vacancy rates, and loss of rent regulated units. This shall include enhanced diligence when a property has a relatively high number of violations. If feasible, lenders providing indirect financing should conduct their own due diligence on properties. If it is not feasible for such lenders to conduct their own due diligence on properties, they should seek the results of due diligence from the direct lenders.

3. Lenders should ensure realistic and sound underwriting terms for any loan involving a multifamily residential building. Examples to help lenders achieve this outcome include:

a. Hiring reputable, independent appraisers to provide accurate property appraisals, such as the use of Member of the Appraisal Institute peer-reviewed appraisers;

b. Establishing a debt service coverage ratio that is based on the specific facts of each loan and on realistic assumptions, subject to documentation, that utilize only current in-place rents (including preferential rents) and legally permitted rent from existing vacancies at the time of closing without any assumption that the owners will increase rents on the turnover of the currently occupied rent-regulated units;

c. Use of realistic operating expense levels supported by appraisals and cost averages, such as those published by New York City, including reserves for normal maintenance and capital expenditures; and

d. Ensuring that additional debt is not placed on a property without the lenders' prior consent.

4. Lenders should ensure that their loans do not become displacement financing, for example, using the loan for the purpose of tenant buyouts that may lead to their displacement.

B. Post-Loan Monitoring

1. Lenders should establish covenants or procedures to ensure that emergency and hazard repairs, including current and prior year violations of class "C", "B" and applicable "I" violations, are corrected within six months of the loan closing.

2. Lenders should take into consideration the level of responsiveness and willingness of a property owner in addressing concerns about building code violations, as a factor for future loans to the property owner.

* * *

The Department takes violations of New York laws and regulations that are designed to protect New York consumers from harm very seriously. The Department also appreciates the important role that our banking institutions play in providing financing, which is critical in improving and increasing housing stock and access to reasonably priced housing in New York. With this guidance, the Department expects that New York State chartered banking institutions are fully aware of the problem of landlords that engage in inappropriate or illegal activities and therefore avoid being used as facilitators in schemes designed by unscrupulous landlords to harm New Yorkers.

ARTICLE 2
CIVIL PENALTY

§27–2115 **Imposition of civil penalty.**

(a) A person who violates any law relating to housing standards shall be subject to a civil penalty of not less than ten dollars nor more than fifty dollars for each non-hazardous violation, not less than twenty-five dollars nor more than one hundred dollars and ten dollars per day for each hazardous violation, fifty dollars per day for each immediately hazardous violation, occurring in a multiple dwelling containing five or fewer dwelling units, from the date set for correction in the notice of violation until the violation is corrected, and not less than fifty dollars nor more than one hundred fifty dollars and, in addition, one hundred twenty-five dollars per day for each immediately hazardous violation, occurring in a multiple dwelling containing more than five dwelling units, from the date set for correction in the notice of violation until the violation is corrected. A person willfully making a false certification of correction of a violation shall be subject to a civil penalty of not less than fifty dollars nor more than two hundred fifty dollars for each violation falsely certified, in addition to the other penalties herein provided.

(b) The department shall serve a notice of violation upon the owner, his or her agent or other person responsible for its correction. The notice shall identify the condition constituting the violation, the provision of law applicable thereto, the department's order number, the classification of the violation according to its degree of hazard, the time for certifying the correction of such violation, and the amount of the possible penalty. It shall also advise that the department will, if requested, confer with the owner or his or her representative concerning the nature and extent of the work to be done to insure compliance and the methods of financing such work. In any case where the provisions of this section authorize the service of such notice by mail, the statement of any officer, clerk, or agent of the department, or of anyone authorized by the department to mail such notice of violation, subscribed and affirmed by such person as true under the penalties of perjury, which describes the mailing procedure used by the department, or by the department's mailing vendor, or which states that these procedures were in operation during the course of mailing a particular cycle of notices of violation, shall be admitted into evidence as presumptive evidence that a regular and systematic mailing procedure is followed by the department for the mailing of its notices of violation. Where the department introduces into evidence the business records which correspond to the various stages of the mailing of a particular cycle of notices of violation, pursuant to subdivision (c) of rule forty-five hundred eighteen of the civil practice law and rules, then a presumption shall have been established that the mailing procedure was followed in the case of such cycle, and that such notice of violation has been duly served.

(c) The said notice of violation shall also specify the date by which each violation shall be corrected. Such date shall be:

(1) ninety days from the date of mailing of the notice in the case of non-hazardous violations;

(2) thirty days from the date of mailing of the notice in the case of hazardous violations; and

(3) twenty-four hours in the case of immediately hazardous violations in which case the notice shall be served by personal delivery to a person in charge of the premises or to the

person last registered with the city as the owner or agent, or, by registered or certified mail, return receipt requested, to the person in charge of the premises or to the person last registered with the department as the owner or agent; provided that where a managing agent has registered with the department, such notice shall be served on the managing agent. Service of the notice shall be deemed completed five days from the date of mailing. The department may postpone the date by which a violation shall be corrected upon a showing, made within the time set for correction in the notice, that prompt action to correct the violation has been taken but that full correction cannot be completed within the time provided because of technical difficulties, inability to obtain necessary materials, funds, or labor, or inability to gain access to the dwelling unit wherein the violation occurs or such other part of the building as may be necessary to make the required repair. In the case of immediately hazardous violations such showing must be made prior to the close of business on the next full day the department is open following the period set for correction. The department may condition such postponement upon the applicant's written agreement to correct all violations placed against the premises by the department or other appropriate governmental agency and to satisfy within an appropriate period of time, all sums owing to the department for repairs made to said premises. The department may require such other conditions as are deemed necessary to insure correction of the violations within the time set by the postponement. The department shall prepare a written statement signed and dated by the person making such decision setting forth the reasons for the postponement of the date by which a violation shall be corrected or the reason for the denial of such application for postponement and said written statement shall be part of the record of the department.

(d) On or before September first, nineteen hundred seventy-two, the department shall classify all violations of the multiple dwelling law, the housing maintenance code and other applicable state and local laws as non-hazardous, hazardous and immediately hazardous, secure the approval thereof by the advisory council to the housing part of the civil court of the city of New York and publish such classification in the City Record. Such classification shall be based on the effect of the violation upon the life, health or safety of the occupants of the building and upon the public. After October first, nineteen hundred seventy-two and prior to October fifteenth, nineteen hundred seventy-two, the department shall hold a public hearing on the proposed classifications. Notice of such public hearing shall be published in the City Record not less than thirty days prior to the hearing. Within fifteen days after the conclusion of the said hearing, the department shall forward to the advisory council the list with such proposed changes as it may recommend for their approval. Within ten days of the receipt of such list, the advisory council shall advise the department as to which changes they have approved. The department shall thereupon, within five days, cause the list, together with such changes as have been approved to be published once each week for two successive weeks in the City Record. Any person who may be aggrieved as an owner or tenant may, within thirty days of such first publication seek a review of the department's action, provided that no such review shall stay the effectiveness of such list or the operation of the housing part of the civil court of the city of New York. Thereafter, and from time to time, the department may modify the list with the approval of the advisory council after publication, and public hearing as provided for the original list.

(e) In the event the department fails to promulgate such list as above provided, or to take any step in connection therewith within the time provided, the administrative judge of the civil

court and the judicial conference may take such action as they deem necessary to insure the establishment of the housing part of the New York city civil court and its operation on April first, nineteen hundred seventy-three, as provided by law.

(f)

(1) The notice of violation shall direct that when any violations of a particular class have been corrected, they may be certified at one time to the department or, in the alternative, each violation may be separately and independently certified. Such certification shall be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent except that, in the alternative, such certification may be submitted in an electronic form in accordance with the rules of the department which shall provide a mechanism for authenticating the source of the electronic submission; the department shall be required to accept such electronic submissions if submitted in accordance with such rules on and after the effective date of the local law that added these provisions authorizing such electronic submissions. Such certification shall be delivered to the department in person or electronically and acknowledgement of receipt therefor obtained or shall be mailed to the department by certified or registered mail, return receipt requested, no later than fourteen days after the date set for correction in the case of non-hazardous and hazardous violations, and no later than five days after the date set for correction in the case of immediately hazardous violations, and shall include the date when each violation was corrected. Such certification of correction shall be supported by a sworn statement, which may be submitted in an electronic form in accordance with the rules of the department, by the person who performed the work if performed by an employee or agent of the owner.

(2) A copy of such certification shall then be mailed not more than twelve calendar days from the date of receipt of notification to any complainant by the department.

(3) Such violation shall be deemed corrected seventy days from the date of receipt of such certification by the department unless the department has determined by a reinspection made within such period that the violation still has not been corrected and has recorded such determination upon its records and has notified the person who executed the certification by registered or certified mail to the address stated in the certification that it has been set aside and the reasons therefor; a copy of such notice shall be sent to the complainant.

(4) If the department does not inspect the premises after notification by the complainant that a violation has not been corrected, any tenant affected by such false certification shall have the right to apply to the court for a determination of violation as provided in subdivision (h) of this section, at which time the court shall assess appropriate penalties as provided in this section for any willfully false certification it finds.

(5) Upon receipt of notice that the certification has been set aside the owner or his or her agent shall then have a right to apply to the court for a determination that such violation was corrected. Notice of such right shall appear on each notice that a certification has been set aside.

(6) Notwithstanding the foregoing, in the event an owner files with his or her certification a copy of a contract of sale or letter of commitment for a mortgage or refinancing of a mortgage covering the premises and further certifies that such sale or mortgage transaction is to occur within one hundred days of such certification, such violation shall be deemed corrected thirty days from the date of receipt of such certification by the

department, unless the department has determined by reinspection made within such period that the violation still has not been corrected, has recorded such determination upon its records and has given notice of such determination to the owner, and has thereafter brought an action within thirty days to set aside such certification, to impose a penalty for false certification and to collect such other penalties as have accrued, provided that in all such cases, the department shall make such reinspection.

(7) Failure to file such certification of compliance shall establish a prima facie case that such violation has not been corrected.

(8)

(i) Notwithstanding any other provision of law, where

(A) the department has performed two or more complaint-based inspections in the same dwelling unit within a twelve-month period,

(B) each such inspection has resulted in the issuance of a hazardous or immediately hazardous violation, and

(C) not all such violations have been certified as corrected pursuant to this section, the department may impose an inspection fee of two hundred dollars for the third and for each subsequent complaint-based inspection that it performs in such dwelling unit within the same twelve-month period that results in the issuance of a hazardous or immediately hazardous violation, provided that the department may by rule increase the fee for inspections performed during the period of October first through May thirty-first. Such inspection fee shall be in addition to any civil penalties that may be due and payable.

(ii) Such fee shall not be applicable to inspections

(A) performed in a multiple dwelling that is active in the alternative enforcement program pursuant to article ten of subchapter five of this chapter,

(B) performed in a multiple dwelling that is subject to a court order appointing an administrator as the result of a proceeding brought by the department pursuant to article seven-a of the New York state real property actions and proceedings law,

(C) performed pursuant to subparagraph iv of paragraph one of subdivision k of this section,

(D) resulting exclusively in hazardous or immediately hazardous violations for inoperable smoke detectors, inoperable carbon monoxide detectors, double cylinder locks on entry doors of dwelling units, illegal window gates, absence of window guards, or such other hazardous or immediately hazardous violations that the department specifies by rule or

(E) where an owner has notified the department of his or her objection to such fee pursuant to section 27-2129 of this code, has provided such documentation to the department as it shall prescribe by rule regarding such owner's attempted access for the purpose of making repairs to the dwelling unit that is subject to the inspection fee, and the department has reviewed and approved such objection.

(iii) All fees that remain unpaid shall constitute a debt recoverable from the owner and a lien upon the premises, and upon the rents and other income thereof. The provisions of article eight of subchapter five of this chapter shall govern the effect and enforcement of such debt and lien.

(g) When there are a number of separate instances of a single condition which violates any housing standard established by law, such separate instances shall be treated collectively as a

single violation with respect to any one dwelling unit, or with respect to the public area of a building, but nothing contained in this subdivision shall limit the number of violations for which a penalty under this section may be collected with respect to each dwelling unit or the public area of a building.

(h)

(1) Should the department fail to issue a notice of violation upon the request of a tenant or group of tenants within thirty days of the date of such request, or if there is a notice of violation outstanding respecting the premises in which the tenant or group of tenants resides, or, if there is a claim of harassment pursuant to subdivision d of section 27-2005 of this chapter, the tenant or any group of tenants, may individually or jointly apply to the housing part for an order directing the owner and the department to appear before the court. Such order shall be issued at the discretion of the court for good cause shown, and shall be served as the court may direct. If the court finds a condition constituting a violation exists, it shall direct the owner to correct the violation and, upon failure to do so within the time set for certifying the correction of such violation pursuant to subdivision (c) of this section, it shall impose a penalty in accordance with subdivision (a) of this section. Nothing in this section shall preclude any person from seeking relief pursuant to any other applicable provision of law.

(2)

(i) Notwithstanding the provisions of paragraph one of this subdivision, where one or more allegations of harassment pursuant to subparagraphs b, c and g of paragraph 48 of subdivision a of section 27-2004 of this chapter is made, to the extent that any such allegation is based on physical conditions of a dwelling or dwelling unit, such allegation must be based at least in part on one or more violations of record issued by the department or any other agency. Where any allegation of harassment is based on more than one physical condition, the existence of at least one violation of record with respect to any such physical condition shall be deemed sufficient to meet the requirements of this paragraph.

(ii) The provisions of subparagraph i of this paragraph shall apply to any counterclaim or defense presented by a tenant in any proceeding in the housing part of the civil court if such counterclaim or defense is based on one or more allegations of harassment. In the event there is no violation of record with respect to at least one physical condition alleged by such tenant such counterclaim or defense shall be dismissed without prejudice.

(i) In the event an owner fails to correct a violation within the time specified in a notice of violation sent to the owner, his or her agent or other person responsible for its correction pursuant to subdivision (b) of this section, or within any additional time granted pursuant to subdivision (c) of this section, and no certification of correction with respect to such violation has been filed by the owner or his or her registered managing agent in accordance with the provisions of subdivision (f) hereof, then at any time after thirty days have elapsed from the date such violation was to be corrected, any tenant or group of tenants who requested that the violation be issued may apply individually or jointly, to the housing part for an order directing the owner and the department to appear before the court. Where the violation is hazardous or immediately hazardous, the thirty-day requirement shall be waived. Said order shall be issued by the court for good cause shown. If the court finds that the violation has not been corrected, that more than thirty days have elapsed since the time to

correct same has expired where a violation is non-hazardous, and that no certification of correction has been filed in accordance with the provisions of subdivision (f) hereof, then it shall direct the owner to correct the violation and shall assess penalties as provided in subdivision (a) of this section.

(j) If a tenant seeks an order directing the owner and the department to appear before the court pursuant to subdivision (h) or (i) of this section, the court may allow service of the order by the tenant by certified or registered mail, return receipt requested.

(k)

(1)

(i) Notwithstanding any other provision of law, a person who violates section 27-2028, subdivision a of section 27-2029, section 27-2031 or section 27-2032 of this chapter shall be subject to a civil penalty of not less than two hundred fifty nor more than five hundred dollars per day for each violation from and including the date the notice is affixed pursuant to paragraph two of this subdivision until the date the violation is corrected and not less than five hundred nor more than one thousand dollars per day for each subsequent violation of such sections at the same dwelling or multiple dwelling that occurs within two consecutive calendar years or, in the case of subdivision a of section 27-2029, during two consecutive periods of October first through May thirty-first. A person who violates subdivision b of section 27-2029 of this chapter shall be subject to a civil penalty of twenty-five dollars per day from and including the date the notice is affixed pursuant to paragraph two of this subdivision until the date the violation is corrected but not less than one thousand dollars. There shall be a presumption that the condition constituting a violation continues after the affixing of the notice.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph and section 27-2116 of this chapter, the civil penalties set forth in subparagraph (i) of this paragraph shall be deemed satisfied for a first violation of section 27-2028, subdivision a of section 27-2029, section 27-2031 or section 27-2032 of this chapter if a notice, in a form prescribed by the department, that such violation has been corrected by the owner or an agent or employee of the owner within twenty-four hours of the affixing of the notice of such violation pursuant to paragraph two of this subdivision, and a payment of two hundred fifty dollars, are submitted to the department within ten days of affixing the notice of such violation. A person who submits a false notice of correction shall be subject to a civil penalty of not less than two hundred fifty dollars for each false notice of correction, in addition to the other penalties herein provided. If the notice of correction and payment are not received within such ten-day period then the penalties set forth in subparagraph (i) of this paragraph shall be applicable to such violations and the department may commence a proceeding for an order to correct and to recover such penalties in accordance with this section and section 27-2116 of this chapter. A person who has violated section 27-2028, subdivision a of section 27-2029, section 27-2031 or section 27-2032 of this chapter may allege as a defense or in mitigation of liability for civil penalties, compliance with the notice of correction and payment requirements of this subparagraph in any proceeding brought by the department seeking civil penalties under this subdivision. The process for submission of the notice of correction and payment set forth in this subparagraph shall not be available if a violation of section 27-2028, section 27-2031 or section 27-

2032 of this chapter occurred at the same dwelling or multiple dwelling during the prior calendar year or, in the case of subdivision a of section 27-2029 of this chapter, if a violation of such subdivision occurred at the same dwelling or multiple dwelling during the prior period of October first through May thirty-first.

(iii) Notwithstanding any other provision of law, within five business days from the date of receipt of the notice of correction by the department, the department shall mail to the occupant of any dwelling unit for which such violation was issued notification that the owner has submitted a notice of correction for such violation. The notification to the occupant shall include information on when the violation was reportedly corrected and how the occupant may object to such notice of correction. In addition, the provisions of paragraphs 4 and 5 of subdivision f of this section shall also be applicable to a notice of correction submitted in compliance with subparagraph (ii) of this paragraph.

(iv) Notwithstanding any other provision of law, a person who, after inspection by the department, is issued an immediately hazardous violation for a third or any subsequent violation of section 27-2028, section 27-2031 or section 27-2032 of this chapter at the same dwelling or multiple dwelling within the same calendar year or, in the case of subdivision a of section 27-2029 of this chapter, at the same dwelling or multiple dwelling within the same period of October first through May thirty-first, shall be subject to a fee of two hundred dollars for each inspection that results in the issuance of such violation as well as any civil penalties that may be due and payable for the violation, provided, however, that such fee shall not be applicable to inspections performed in a multiple dwelling that is included in the alternative enforcement program pursuant to article ten of subchapter five of this chapter. All fees that remain unpaid shall constitute a debt recoverable from the owner and a lien upon the premises, and upon the rents and other income thereof. The provisions of article eight of subchapter five of this chapter shall govern the effect and enforcement of such debt and lien.

(2) Notwithstanding any other provision of law, the department shall serve a notice upon the owner, his or her agent or other person responsible for the correction of violations by affixing such notice in a conspicuous place on the premises. The notice shall identify the condition constituting the violation, the provision of law applicable thereto, the date the violation was reported and set the penalty attendant thereto.

(3) Notwithstanding any other provision of law, the owner shall be responsible for the correction of all violations placed pursuant to article eight of subchapter two of this code, but in an action for civil penalties pursuant to this article may in defense or mitigation of such owner's liability for civil penalties show:

(i) That the condition which constitutes the violation did not exist at the time the violation was placed; or

(ii) That he or she began to correct the condition which constitutes the violation promptly upon discovering it but that full correction could not be completed expeditiously because of technical difficulties, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit wherein the violation occurs, or such other portion of the building as might be necessary to make the repair; or

(iii) That he or she was unable to obtain a permit or license necessary to correct the violation, provided that diligent and prompt application was made therefor; or

(iv) That the violation giving rise to the action was caused by the act or negligence, neglect or abuse of another not in the employ or subject to the direction of the owner; or

(v) That in addition to any other defense or mitigation set forth in subparagraphs (i) through (iv) of this paragraph, with respect to an owner who may be subject to the penalty of not less than five hundred nor more than one thousand dollars per day with respect to a subsequent violation pursuant to paragraph one of this subdivision, documentation of prompt and diligent efforts to correct the conditions that gave rise to an initial violation and that such conditions were corrected. Where demonstrated, such subsequent violation shall be treated as though it was an initial violation. However, this defense or mitigation may not be asserted or demonstrated where the initial and subsequent violations occurred in the same calendar year or, in the case of violations of subdivision a of section 27–2029, during the same period of October first through May thirty-first.

Where the aforesaid allegations are made by way of mitigation of penalties, the owner shall show, by competent proof, pertinent financial data, and efforts made to obtain necessary materials, funds or labor or to gain access, or to obtain a permit or license and such other evidence as the court may require.

If the court finds that sufficient mitigating circumstances exist, it may remit all or part of any penalties arising from the violation, but may condition such remission upon a correction of the violation within a time period fixed by the court.

(l)

(1) Notwithstanding any other provision of law, when the department serves a notice of violation to correct and certify a condition that constitutes a violation of article fourteen of subchapter two of this chapter, the notice of violation shall specify the date by which the violation shall be corrected, which shall be twenty-one days after service of the notice of violation, and the procedure by which the owner, for good cause shown pursuant to this subdivision, may request a postponement. The notice of violation shall further specify that the violation shall be corrected in accordance with the work practices established in accordance with section 27-2056.11 of this code. The notice of violation shall be served by personal delivery to a person in charge of the premises or to the person last registered with the department as the owner or agent, or by registered or certified mail, return receipt requested, or by certified mail with proof of delivery, to the person in charge of the premises or to the person last registered with the department as the owner or agent; provided that where a managing agent has registered with the department, such notice of violation shall be served on the managing agent. Service of the notice of violation shall be deemed completed three days from the date of mailing. Notification, in a form to be determined by the department, of the issuance of such violation shall be sent simultaneously by regular mail to the occupant at the dwelling unit that is the subject of such notice of violation. The department may postpone the date by which a violation shall be corrected upon a showing, made within the time set for correction in the notice, that prompt action to correct the violation has been taken but that full correction cannot be completed within the time provided because of serious technical difficulties, inability to obtain necessary materials, funds or labor, inability to gain access to the dwelling unit wherein the violation exists, or such other portion of the building as may be necessary to make the required repair. Such postponement shall not exceed fourteen days from the

date of correction set forth in the notice of violation. The department may require such other conditions as are deemed necessary to insure correction of the violations within the time set for the postponement. The department may grant one additional postponement of no more than fourteen days for the reasons authorized by this section so long as the paint or other condition which is the subject of the violation has been stabilized. The department is also authorized to promulgate rules establishing criteria for a postponement of the time to correct for a longer period of time where such postponement is requested because of one or more substantial capital improvements will be made that will, when completed, significantly reduce the presence of lead-based paint in such multiple dwelling or dwelling unit including, but not limited to, a requirement that the paint which is the subject of the violation is stabilized. The department shall provide to the owner and the occupant a written statement signed and dated by the person making such decision setting forth the reasons for each postponement of the date by which a violation shall be corrected or the reason for the denial of such application for a postponement. Said written statement shall be part of the records of the department.

(2) Notwithstanding any other provision of law, the notice of violation shall direct that the correction of each violation cited therein shall be certified to the department. Such certification shall be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent. Such certification shall include a statement that the violation was corrected in compliance with paragraph one of subdivision a of section 27-2056.11 of this code and shall include a copy of the lead-contaminated dust clearance test results. All certifications shall be delivered to the department and acknowledgment of receipt therefor obtained or shall be mailed to the department by certified or registered mail, return receipt requested, no later than five days after the date set for correction, and shall include the date when each violation was corrected. Such certification of correction shall be supported by a sworn statement by the person who performed the work if performed by an employee or agent of the owner. A copy of such certification shall be mailed to the complainant by the department not more than twelve full calendar days from the date of receipt of such certification by the department. Failure to file such certification shall establish a prima facie case that such violation has not been corrected.

(3) Whenever the department shall issue a notice of violation to correct a condition that constitutes a violation of section 27-2056.6 of article fourteen of subchapter two of this chapter, the department shall within fourteen days after the date set for the correction of such violation conduct a final inspection to verify that the violation has been corrected. Where, upon conducting an inspection, the department determines that a violation has not been corrected, the department shall correct such violation within forty-five additional days of such inspection or in such shorter time as is practicable.

(4) Notwithstanding any other provision of law, the department shall not remove a violation from its records nor shall it be deemed that such violation has been corrected unless the records of the department contain written verification that the department has conducted a final inspection of the premises and that such inspection verifies that the violation has been corrected, and copies of lead-contaminated dust clearance test results whenever such tests are required by applicable law, rule or regulation. A copy of the report of the final inspection of a dwelling unit and the status of the violation shall be mailed or delivered to the occupant and the owner.

(5) Notwithstanding any other provision of law, a person making a false certification of correction of a violation issued pursuant to article 14 of subchapter 2 of this chapter, in addition to any other civil penalty, shall be subject to a civil penalty of not less than one thousand dollars nor more than three thousand dollars for each false certification made, recoverable by the department in a civil action brought in a court of competent jurisdiction. If the person making such false certification is an employee of the owner then such owner shall be responsible for such civil penalty. In addition, any such person making a false certification of correction shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars or imprisonment for up to one year or both.

(6) Notwithstanding any other provision of law, a person who violates article fourteen of subchapter two of this chapter by failing to correct such violation in accordance with paragraph one of subdivision a of section 27-2056.11 of this code shall be subject to a civil penalty of two hundred fifty dollars per day for each violation to a maximum of ten thousand dollars from the initial date set for correction in the notice of violation until the date the violation is corrected and certified to the department, and in addition to any civil penalty shall, whenever appropriate, be punished under the provisions of article three of subchapter five of this code. There shall be a presumption that the condition constituting a violation continues after the service of the notice of violation. The owner shall be responsible for the correction of all violations noticed pursuant to article fourteen of subchapter two of this chapter, but in an action for civil penalties pursuant to this subdivision may in defense or mitigation of such owner's liability for civil penalties show:

(i) That the condition which constitutes the violation did not exist at the time the violation was placed; or

(ii) That he or she began to correct the condition which constitutes the violation promptly upon discovering it but that full correction could not be completed expeditiously because of serious technical difficulties, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit wherein the violation exists, or such other portion of the building as might be necessary to make the repair, provided that a postponement was granted pursuant to this subdivision; or

(iii) That he or she was unable to obtain a permit or license necessary to correct the violation, provided that diligent and prompt application was made therefor; or

(iv) That the violation giving rise to the action was caused by the act of negligence, neglect or abuse of another not in the employ or subject to the direction of the owner, except that the owner shall be precluded from showing in defense or mitigation of such owner's liability for civil penalties evidence of any acts occurring, undertaken, or performed by any predecessor in title prior to the owner taking control of the premises. Where the aforesaid allegations are made by way of mitigation of penalties, the owner shall show, by competent proof, pertinent financial data and efforts made to obtain necessary materials, funds or labor or to gain access, or to obtain a permit or license and such other evidence as the court may require.

If the court finds that sufficient mitigating circumstances exist, it may remit all or part of any penalties arising from the violations, but may condition such remission upon a correction of the violation within a time period fixed by the court.

(7) Notwithstanding any other provision of law, failure by the department to comply with any time period provided in this section relating to responsibilities of the department shall

not render null and void any notice of violation issued by the department or the department of health and mental hygiene pursuant to such article or section, and shall not provide a basis for defense or mitigation of an owner's liability for civil penalties for violation of such article.

(m)

(1) Notwithstanding any other provision of law, a violation of subdivision d of section 27-2005 of this code shall be a class c immediately hazardous violation and a penalty shall be imposed in accordance with this section, provided, however, that such violation shall not be deemed a continuing class c violation of record beyond the time that the conduct constituting such violation occurred.

(2) If a court of competent jurisdiction finds that conduct in violation of subdivision d of section 27-2005 of this chapter has occurred, it may determine that a class c violation existed at the time that such conduct occurred. Notwithstanding the foregoing, such court may also issue an order restraining the owner of the property from violating such subdivision and direct the owner to ensure that no further violation occurs, in accordance with section 27-2121 of this chapter. Such court shall impose a civil penalty in an amount not less than two thousand dollars and not more than ten thousand dollars for each dwelling unit in which a tenant or any person lawfully entitled to occupancy of such unit has been the subject of such violation, and such other relief as the court deems appropriate, provided that where a petitioner establishes that there was a previous finding of a violation of subdivision d of section 27-2005 against such owner and such finding was made (i) within the preceding five year period and (ii) on or after the effective date of the local law that added this clause, such court shall impose a civil penalty in an amount not less than four thousand dollars and not more than ten thousand dollars. It shall be an affirmative defense to an allegation by a tenant of the kind described in subparagraphs b, c and g of paragraph forty-eight of subdivision a of section 27-2004 of this chapter that (i) such condition or service interruption was not intended to cause any lawful occupant to vacate a dwelling unit or waive or surrender any rights in relation to such occupancy, and (ii) the owner acted in good faith in a reasonable manner to promptly correct such condition or service interruption, including providing notice to all affected lawful occupants of such efforts, where appropriate.

(3) An owner may seek an order by the court enjoining a tenant from initiating any further judicial proceedings against such owner pursuant to this section claiming harassment without prior leave of the court if (i) within a ten-year period such tenant has initiated two judicial proceedings pursuant to this section against such owner claiming harassment that have been dismissed on the merits and (ii) a third or subsequent proceeding initiated by such tenant against such owner pursuant to this section claiming harassment during such ten-year period is determined at the time of its adjudication to be frivolous. Except for an order on consent such order may be sought by such owner simultaneously with the adjudication of such third or subsequent judicial proceeding.

(4) Where the court determines that a claim of harassment by a tenant against an owner is so lacking in merit as to be frivolous, the court may award attorneys fees to such owner in an amount to be determined by the court.

(5) Nothing in paragraphs three or four of this subdivision shall be construed to affect or limit any other claims or rights of the parties.

(6) After a court of competent jurisdiction has issued a finding that conduct in violation of subdivision d of section 27-2005 of this chapter has occurred, the department, if it receives notice of such finding, shall post on its website, no later than ninety days after having received notice of such finding, the following information for each such finding:
(i) the address of the building containing the dwelling unit that was the subject of such violation;
(ii) the name of the property owner;
(iii)the civil penalty imposed for such violation;
(iv)the date such penalty was imposed; and (v) whether an order restraining the owner of such unit from violating subdivision d of section 27–2005 of this chapter was issued.

(n) The provisions of subdivision d of section 27-2005 of this chapter, subdivision m of this section and subdivision b of section 27-2120 of this chapter shall not apply where a shareholder of record on a proprietary lease for a dwelling unit, the owner of record of a dwelling unit owned as a condominium, or those lawfully entitled to reside with such shareholder or record owner, resides in the dwelling unit for which the proprietary lease authorizes residency or in such condominium unit, as is applicable.

(o) In any action brought by a lawful occupant or group of lawful occupants under subdivision h of this section for a violation of subdivision d of section 27-2005 of this chapter, the housing part shall, in addition to any other relief court determines to be appropriate, award to each such occupant (i) compensatory damages or, at the election of such occupant, one thousand dollars and (ii) reasonable attorneys' fees and costs. Such court may also, at its sole discretion, award punitive damages.

(o)

(1) Notwithstanding any other provision of law, when the department serves a notice of violation to correct and certify a condition that constitutes a violation of article four of subchapter two of this chapter, the notice of violation shall specify the date by which the violation shall be corrected as provided in such article, and the procedure by which the owner, for good cause shown pursuant to this subdivision, may request a postponement. The notice of violation shall further specify that the violation shall be corrected in accordance with section 27-2017.8 and the rules established pursuant to section 27-2017.9, where applicable. The notice of violation shall be served by personal delivery to a person in charge of the premises or to the person last registered with the department as the owner or agent, or by registered or certified mail, return receipt requested, or by certified mail with proof of delivery, to the person in charge of the premises or to the person last registered with the department as the owner or agent; provided that where a managing agent has registered with the department, such notice of violation shall be served on the managing agent. Service of the notice shall be deemed completed five days from the date of mailing. Notification, in a form to be determined by the department, of the issuance of such violation shall be sent simultaneously by regular mail to the occupant at the dwelling unit that is the subject of such notice of violation.

(2) Notwithstanding any other provision of law, the notice of violation shall direct that the correction of each violation cited therein shall be certified to the department. Such certification shall be made in writing or electronically, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent. Such certification shall include a statement that the violation was corrected in compliance with section 27-2017.8, where applicable, and the rules established pursuant

to section 27-2017.9, where applicable. All certifications shall be delivered to the department and acknowledgement of receipt therefore obtained or shall be mailed to the department by certified or registered mail, return receipt requested, no later than five days after the date set for correction, or submitted electronically within five days after the date set for correction, and shall include the date when each violation was corrected. Such certification of correction shall be supported by a sworn statement saying that the violation was properly corrected by the person who performed the work is performed by an employee or agent of the owner. Notification of such certification shall be mailed to the complainant by the department not more than twelve full calendar days from the date of receipt of such certification by the department. Failure to file such certification shall establish a prima facie case that such violation has not been corrected.

(3) Whenever the department shall issue a notice of violation to correct a condition that constitutes a hazardous or immediately hazardous violation of subdivision a of section 27-2017.3 the department shall conduct a final inspection to verify that the violation has been corrected. Where the department determines that the violation has not been corrected, the department may take such enforcement action as is necessary, including performing or arranging for the performance of the work to correct the violation.

(4) Notwithstanding any other provision of law, a person making a false certification of correction of a violation issued pursuant to article four of subchapter two of this chapter, in addition to any other civil penalty, shall be subject to a civil penalty of not less than two thousand dollars nor more than ten thousand dollars for each false certification made, recoverable by the department in a civil action brought in a court of competent jurisdiction. If the person making such false certification is an employee of the owner then such owner shall be responsible for such civil penalty. In addition, any such person make a false certification of correction shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars or imprisonment for up to one year or both.

(5) Notwithstanding any other provision of law, and in addition to any penalties applicable under article three of subchapter five of this chapter, a person who violates article four of subchapter two of this chapter by failing to correct such violation in accordance with the work practices in section 27-2017.8 and in the rules established pursuant to section 27-2017.9 shall be subject to a civil penalty of five hundred dollars per day for each violation to a maximum of ten thousand dollars from the initial date set for correction in the notice of violation until the date the violation is corrected and certified to the department.

(i) That the condition which constitutes the violation did not exist at the time the violation was placed; or

(ii) That he or she began to correct the condition which constitutes the violation promptly upon discovering it but that full correction could not be completed expeditiously because of serious technical difficulties, inability to obtain necessary materials, funds or labor;

(iii) That he or she was unable to gain access to the dwelling unit wherein the violation exists, or such other portion of the building as might be necessary to make the repair, provided that a postponement was granted pursuant to this subdivision; or

(iv) That he or she was unable to obtain a permit or license necessary to correct the violation, provided that diligent and prompt application was made therefore; or

(v) That the violation giving rise to the action was caused by the act of negligence, neglect or abuse of another not in the employ or subject to the direction of the owner, except that the owner shall be precluded from showing in defense or mitigation of such owner's liability for civil penalties evidence of any acts occurring, undertaken, or performed by any predecessor in title prior to the owner taking control of the premises. Where the aforesaid allegations are made by way of mitigation of penalties, the owner shall show by competent proof, pertinent financial data and efforts made to obtain necessary materials, funds or labor or to gain access, or to obtain a permit or license and such other evidence as the court may require. If the court finds that sufficient mitigating circumstances exist, it may remit all or part of any penalties arising from the violations, but may condition such remission upon a correction of the violation within a time period fixed by the court.

(6) Notwithstanding any other provision of law, failure by the department to comply with any time period provided in this section relating to responsibilities of the department shall not render null and void any notice of violation issued by the department or the department of health and mental hygiene pursuant to such article or section, and shall not provide a basis for defense or mitigation of an owner's liability for civil penalties for violation of such article.

§27–2116 **Enforcement of civil penalty; powers of housing part of the civil court, collection of judgment.**

(a) The department may bring an action in the housing part of the New York city civil court for the recovery of civil penalties, together with costs and disbursements. Leave of court, obtained by motion to the housing part thereof, shall be required for disclosure or for a bill of particulars, except for a notice under section three thousand one hundred twenty-three of the civil practice law and rules, which shall be granted only upon a showing that such disclosure or bill of particulars is necessary to the prosecution or defense of the action. If it is so noted on the summons, any motion for disclosure or a bill of particulars must be made in writing and on notice and must be filed with the clerk with proof of service no later than thirty days after joinder of issue.

(b) The owner shall be responsible for the correction of all violations, but in an action for civil penalties may in defense or mitigation of such owner's liability for civil penalties show:

(1) That the violation or violations were corrected within the time specified in the notice of violation and the certificate of compliance was duly filed; or

(2) That the violation did not exist at the time the notice of violation was served; or in mitigation or remission of his or her liability for civil penalties show:

(i) That he or she began to correct the violation promptly upon receipt of the notice of violation, but that its full correction could not be completed within the time provided because of technical difficulties, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit wherein the violation occurs, or such other portion of the building as might be necessary to make the repair; or

(ii) That he or she was unable to obtain a permit or license necessary to correct the violation, provided that diligent and prompt application was made therefor; or

(iii)That the violation giving rise to the action was caused by the act or negligence, neglect or abuse of another not in the employ or subject to the direction of the defendant.

CURBED NEW YORK

NEWS NYC RENT STABILIZATION

New DOB measure aims to stop landlords from flouting rent stabilization rules

A new system will help the DOB double-check the claims of landlords

By **Zoe Rosenberg** | **@zoe_rosenberg** | Dec 14, 2018, 11:43am EST

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A new measure by the Department of Buildings will help the agency keep on top of landlords seeking to illegally remove rent-regulated apartments from the rolls.

Crain's reports that the DOB has started incorporating a state wide database of rent-regulated apartments into its own information system that will act as a

double-check against landlords who file paperwork falsely claiming that a building is empty of rent-regulated tenants, and is therefore ready for construction or demolition.

The measure was unveiled by DOB Commissioner Rick Chandler at a City Council hearing. The goal, Chandler said, is to "prevent owners of rent-regulated buildings from getting construction permits if they submit false statements to the department." That false paperwork that landlords have filed in the past often comes at the cost of tenant harassment and coercion.

The DOB database comes at the crest of fallout from false claims by [redacted] that 34 of its buildings getting overhauls were without rent-regulated tenants. In early December, the Housing Rights Initiative announced the preliminary outcome of a class action lawsuit filed against [redacted] in August 2017 on behalf of five former tenants of 89 Hicks Street over the illegal deregulation of rent-stabilized units in the building.

The building, which has more than six units and was built before 1974, was required to be registered as rent-stabilized, but a look into the property found that [redacted], formerly helmed by White House senior advisor [redacted], registered a mere 10 percent of units as rent stabilized and illegally deregulated the remaining units.