
REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

Re: Compliance with the Emergency Adoption
of Changes to 13 N.Y.C.R.R. Parts 18 and 23
Regulations Concerning Protections for Eligible
Senior Citizen and Eligible Disabled Tenants

Date: November 10, 2015

The Department of Law publishes this memorandum as a guidance document pursuant to State Administrative Procedure Act § 102(14). This memorandum summarizes the provisions of the emergency 13 N.Y.C.R.R. Parts 18 and 23 regulations, so that sponsors of condominium and cooperative non-eviction conversion offerings can conform their offering plans accordingly.

Introduction

On November 10, 2015, the New York State Department of Law adopted an emergency rule to amend its 13 N.Y.C.R.R. Parts 18 and 23 regulations. Specifically, the Department of Law revised the sections concerning protections for senior citizen and disabled market-rate tenants whose buildings are converting to condominium or cooperative ownership¹ to make clear that the non-purchasing tenant election process for eligible senior citizens and eligible disabled persons is also available to market-rate tenants in non-eviction plans.

The emergency regulations apply to any and all future 13 N.Y.C.R.R. Parts 18 and 23 offerings submitted to the Department of Law. Offering plans that the Department of Law has accepted for submission, but has not yet not accepted for filing are also affected. This emergency measure will be in effect for 90 days. However, the Department of Law has also submitted to the New York Department of State a “Notice of Proposed Rule Making” to permanently effectuate this change.

Summary of the Revised Regulations

In brief, the emergency rule allows market-rate tenants whose buildings are converting to condominium or cooperative ownership pursuant to non-eviction plans to have the option to elect eligible senior citizen² or eligible disabled person status³ during the conversion process. As previously drafted, the

¹ See 13 N.Y.C.R.R. §§ 18.1(e)(5), 18.1(e)(6), 18.3(d), 18.3(l), 18.5(e)(10), 23.1(e)(5), 23.1(e)(6), 23.3(d), 23.3(m), 23.3(n)(8), and 23.3(e)(10).

² As defined by N.Y.S. C.L.S. G.B.L. §§ 352-e(2-a)(a)(iii), 352-eee(1)(f), and 352-eeee(1)(f).

³ As defined by N.Y.S. C.L.S. G.B.L. §§ 352-e(2-a)(a)(iv), 352-eeee(1)(g), and 352-eeee(1)(g).

Department of Law's regulations only extended the election process to eligible senior citizens and eligible disabled tenants in eviction plans. As a result, tenants subject to non-eviction plans risked eviction from the date the offering plan was submitted to the Department of Law until the date the offering plan was declared effective, a period that could last between 10 and 24 months. Such a gap in tenant protection was inconsistent with the plain language of the Martin Act as well as the statute's legislative intent to protect all eligible senior citizens and eligible disabled persons from displacement during the conversion process.⁴

The Department of Law has therefore amended its regulations on an emergency basis to make clear that the protections for senior citizen and disabled market-rate tenants apply in both eviction and non-eviction plans, thereby limiting the period of time during which eligible market-rate tenants subject to non-eviction plans are susceptible to displacement. In making this change, the Department of Law has ensured that its regulations are consistent with the tenant protection provisions of the Martin Act while still allowing property owners to convert to condominium and cooperative ownership.

Compliance Requirements for New Conversion Offerings

Under the emergency regulations, sponsors of new condominium or cooperative conversion non-eviction offerings are now required to:

1. Include in the Notice to Tenants language stating that eligible senior citizen and eligible disabled tenants "have additional rights and protections, including the right to elect to become a non-purchasing tenant within 60 days from the date [the tenant] first received the offering plan from the sponsor." *See* 13 N.Y.C.R.R. §§ 18.1(e)(5) and 23.1(e)(5).
2. Include with the Notice to Tenants the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law. *See* 13 N.Y.C.R.R. §§ 18.1(e)(5) and 23.1(e)(5). These forms are available on the Department of Law's website at the following web address: <http://www.ag.ny.gov/real-estate-finance-bureau/forms>.
3. Include in the offering plan the information on the rights of eligible senior citizens and eligible disabled persons detailed in 13 N.Y.C.R.R. §§ 18.3(l) and 23.3(m).
4. Include the eligible senior citizen and eligible disabled person election forms as an exhibit to the offering plan when it is submitted to the Department of Law for filing. *See* 13 N.Y.C.R.R. §§ 18.3(d) and 23.3(d).
5. Highlight as special risk and discuss in the offering plan if, by reason of the termination of real estate tax benefits, tenants will no longer be subject to rent regulation, when the rent regulation will cease, and if there is any protection against rent increases for eligible senior citizen and disabled tenants. *See* 13 N.Y.C.R.R. § 23.3(n)(8). Note that this change only applies to condominium conversion offerings; the regulations governing cooperative conversion offerings contained this language prior to this emergency rule.

⁴ *See* N.Y.S. C.L.S. G.B.L. §§ 352-e(2-a)(b)(i), 352-e(2-a)(b)(ii), 352-e(2-a)(b)(iii), 352-eee(2)(c)(ii), 352-eee(2)(c)(iii), and 352-eee(2)(c)(iv), 352-eeee(2)(c)(ii), 352-eeee(2)(c)(iii), and 352-eeee(2)(c)(iv).

6. Provide renewal leases to eligible non-purchasing tenants who timely elect eligible senior citizen or eligible disabled person status.⁵ See 13 N.Y.C.R.R. §§ 18.3(l)(3)(ii), 18.3(l)(4)(ii), 23.3(m)(3)(ii), and 23.3(m)(4)(ii).
7. Provide copies of all executed eligible senior citizen or eligible disabled person election forms (if any) when submitting an effectiveness amendment to the Department of Law. Sponsors must also submit to the Department of Law, if requested, copies of the renewal leases for any tenants who have elected eligible senior citizen or eligible disabled person status. See 13 N.Y.C.R.R. §§ 18.5(e)(10) and 23.3(e)(10).

Compliance Requirements for Conversion Offerings Already Submitted to the Department of Law

In order to comply with the emergency regulations, sponsors of non-eviction conversion offerings that the Department of Law has accepted for submission, but not yet accepted for filing, must revise their offerings pursuant to 13 N.Y.C.R.R. §§ 18.1(h) and 23.1(h).⁶ Such sponsors are now required to:

1. Revise the Notice to Tenants to include language stating that eligible senior citizen and disabled tenants “have additional rights and protections, including the right to elect to become a non-purchasing tenant within 60 days from the date [the tenant] first received the offering plan from the sponsor.” See 13 N.Y.C.R.R. §§ 18.1(e)(5) and 23.1(e)(5).
2. Include with the Notice to Tenants the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law. See 13 N.Y.C.R.R. §§ 18.1(e)(5) and 23.1(e)(5). These forms are available on the Department of Law’s website at the following web address: <http://www.ag.ny.gov/real-estate-finance-bureau/forms>.
3. Revise the offering plan to:
 - a. Include the information on the rights of eligible senior citizens and eligible disabled persons detailed in 13 N.Y.C.R.R. §§ 18.3(l) and 23.3(m).
 - b. In condominium conversion offerings, highlight as special risk and discuss if, by reason of the termination of real estate tax benefits, tenants will no longer be subject to rent regulation, when the rent regulation will cease, and if there is any protection against rent

⁵ As described below, the tenant must complete the election form within 60 calendar days of the date the tenant first receives the final offering plan from the sponsor (the “presentation date”). See 13 N.Y.C.R.R. §§ 18.3(l)(3)(ii), 18.3(l)(4)(ii), 23.3(m)(3)(ii), and 23.3(m)(4)(ii).

⁶ 13 N.Y.C.R.R. §§ 18.1(h) and 23.1(h) define “revisions” as:

“Following submission of a proposed offering plan, revisions must be made to reflect any material changes of facts or circumstances pertaining to the proposed offering, the offerors, the property involved, the condition of the premises, or the costs of ownership and operation of the property, so that the offering plan may continue to comply with subdivision (b) of this section. Such revisions shall be submitted to the attorney assigned by the Department of Law to review the proposed offering plan. The Department of Law, in its discretion, may require that a supplement to the proposed offering plan be served on tenants containing the revised information. The Department of Law may issue a deficiency letter and/or require resubmission of a new offering plan if the revisions reflect matters of fact or circumstances which were known or should have been known to the sponsor at the time of original submission, or substantially change the nature or terms of the offering, or if the plan as revised comes within the grounds stated in subdivision (g) of this section. After the offering plan is filed, the plan must be amended periodically as required by section [18.5 or 23.5] of this Part.”

increases for eligible senior citizen and disabled tenants. *See* 13 N.Y.C.R.R. § 23.3(n)(8).⁷

- c. Include the eligible senior citizen and eligible disabled person election forms as an exhibit to the offering plan when it is submitted to the Department of Law for filing. *See* 13 N.Y.C.R.R. §§ 18.3(d) and 23.3(d).
4. Provide renewal leases to eligible tenants who timely elect eligible senior citizen or eligible disabled person status.⁸ *See* 13 N.Y.C.R.R. §§ 18.3(l)(3)(ii), 18.3(l)(4)(ii), 23.3(m)(3)(ii), and 23.3(m)(4)(ii).
5. Provide copies of all executed eligible senior citizen or eligible disabled person election forms (if any) when submitting an effectiveness amendment to the Department of Law. Sponsors must also submit to the Department of Law, if requested, copies of the renewal leases for any tenants who have elected eligible senior citizen or eligible disabled person status. *See* 13 N.Y.C.R.R. §§ 18.5(e)(10) and 23.3(e)(10).

The revised Notice to Tenants, tenant election forms, and the offering plan must be re-served on all tenants within 30 calendar days from the date of this memorandum. These documents also must be provided to the review attorney assigned to the file at the same time as they are served on all tenants. The Department of Law shall not review these documents before they are served. *See* 13 N.Y.C.R.R. §§ 18.1(h) and 23.1(h).

Effect of Emergency Regulations

The end result of the emergency rule is that market-rate tenants subject to non-eviction conversion offerings now have the opportunity to elect eligible senior citizen or eligible disabled person status within 60 calendar days of the date they first receive the final offering plan from the sponsor (the “presentation date”). Provided the sponsor is not able to successfully challenge a tenant’s election,⁹ the protections afforded by eligible senior citizen and eligible disabled person status accrue as soon as the election form is filed (so long as it is filed within 60 calendar days of the presentation date).

In order to aid sponsors in their compliance with the emergency regulations, the Department of Law has provided updated eligible senior citizen and eligible disabled person election forms at the following web address: <http://www.ag.ny.gov/real-estate-finance-bureau/forms>. In addition, the Department of Law has made available its “Notice of Emergency Adoption and Proposed Rule Making” as well as the full text of the emergency regulations at the following web address: <http://www.ag.ny.gov/real-estate-finance-bureau/proposed-rule-making>.

⁷ As described above, this change only applies to condominium conversion offerings. The regulations governing cooperative conversion offerings contained this language prior to this emergency rule.

⁸ Again, as described below, the tenant must complete the election form within 60 calendar days of the date the tenant first receives the final offering plan from the sponsor (the “presentation date”). *See* 13 N.Y.C.R.R. §§ 18.3(l)(3)(ii), 18.3(l)(4)(ii), 23.3(m)(3)(ii), and 23.3(m)(4)(ii).

⁹ The procedures by which a sponsor may challenge an election are outlined in 13 N.Y.C.R.R. §§ 18.3(l)(6), 18.3(l)(7), 23.3(m)(6), and 23.3(m)(7).