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STATE OF NEW YORK

DEPARTMENT OF LAW

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**REAL ESTATE FINANCE BUREAU**

**M E M O R A N D U M**

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**Re: Compliance with the Revised Regulations Concerning  
Protections for Eligible Senior and Disabled Tenants  
During Condominium or Cooperative Conversions**

**Date: August 31, 2016**

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The Department of Law publishes this memorandum as a guidance document pursuant to State Administrative Procedure Act (S.A.P.A.) § 102(14).

Effective **September 1, 2016**, the Department of Law has permanently revised Parts 18 and 23 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (“13 N.Y.C.R.R.”) pursuant to its authority under New York General Business Law (“G.B.L.”) § 352-e(2-b).<sup>1</sup> The revised regulations clarify the eviction protections available to senior and disabled tenants during the condominium or cooperative conversion process. Market-rate non-purchasing tenants subject to both noneviction and eviction conversion offering plans shall be able to avail themselves of the eligible senior citizen<sup>2</sup> and/or eligible disabled person<sup>3</sup> election process.

This guidance document summarizes the recent regulatory revisions so that sponsors of condominium and cooperative non-eviction conversion offerings can conform their offering plans accordingly.

**Introduction**

The Department of Law’s “Notice of Emergency Adoption and Proposed Rule Making” entitled “*Clarification of Protections for Senior and Disabled Tenants During Condominium or Cooperative Ownership Conversions*” was published in the New York State Register on November 25, 2015. Pursuant to S.A.P.A. § 206(6)(d)(iii), the “Notice of Emergency Adoption and Proposed Rule Making”

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<sup>1</sup> 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).

<sup>2</sup> 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).

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

both publicized the 90-day adoption of the Department of Law’s emergency regulations, and proposed the permanent adoption of identical regulations. A 45-day public comment period followed the publication as required by S.A.P.A. § 202(1)(a). The Department of Law received several public comments shortly following the 45-day public comment period.

The Department of Law allowed its emergency regulations to expire on February 8, 2016 without permanently adopting the language contained therein. Instead of adopting the emergency regulations, the Department of Law revised its proposed regulations to clarify that the revised regulations only affect *future* condominium and cooperative conversion offerings, and will have no retroactive application. The “Notice of Revised Rule Making” detailing these revisions was published in the February 24, 2016 issue of the State Register. A 30-day public comment period followed its publication pursuant to S.A.P.A. § 202(4-a)(a); no public comments were received either during or following that period.

Accordingly, on August 16, 2016, the Department of Law permanently adopted the revised regulations published in the State Register on February 24, 2016. The “Notice of Adoption” will be published in the August 31, 2016 issue of the New York State Register. The Department of Law has also made available its “Notice of Adoption” as well as the full text of the revised regulations at the following web address: <http://www.ag.ny.gov/real-estatefinance-bureau/proposed-rule-making>. The revised regulations are effective September 1, 2016.

### **Summary of the Revised Regulations**

In brief, the revised regulations allow market-rate non-purchasing tenants whose buildings are converting to condominium or cooperative ownership pursuant to noneviction plans to have the option to elect eligible senior citizen or eligible disabled person status during the conversion process. As previously drafted, the Department of Law’s 13 N.Y.C.R.R. Parts 18 and 23 regulations only extended the election process to eligible senior citizens and eligible disabled tenants in eviction plans. As a result, tenants subject to noneviction 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 is inconsistent with the Martin Act’s legislative intent to protect non-purchasing tenants, particularly those who are senior or disabled, from being coerced into vacating their homes during the condominium or cooperative conversion process.<sup>4</sup> The Department of Law has therefore permanently amended its regulations to make clear that the protections for eligible senior citizen and eligible disabled market-rate tenants apply in both eviction and noneviction conversion offering plans, thereby limiting the period of time during which eligible market-rate tenants are susceptible to displacement during the noneviction conversion process.

### **Applicability of the Revised Regulations**

The revised regulations affect only sponsors of conversion offerings who have both (1) submitted their conversion offering plan to the Department of Law on or after September 1, 2016, **and** (2) executed a

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<sup>4</sup> 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).

contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016.

The revised regulations have no retroactive application, and apply only to *future* conversion offerings. Therefore, conversion offerings submitted to the Department of Law prior to September 1, 2016 need not comply with the revised regulations.<sup>5</sup> In addition, conversion offerings submitted to the Department of Law after September 1, 2016 need not comply with the revised regulations if the sponsor executed a contract of sale for the building or group of buildings or acquired the building or group of buildings prior to September 1, 2016.

### **Compliance with the Revised Regulations**

Under the revised regulations, sponsors who have both (1) submitted their conversion offering plans to the Department of Law on or after September 1, 2016, **and** (2) executed a contract of sale for the building or group of buildings or acquired the building or group of buildings on or after September 1, 2016 are now required to:

1. Include language in the Notice to Tenants 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 (*i.e.*, attach to) 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). The tenant election 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 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

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<sup>5</sup> The vast majority of such conversion offerings are subject to the Department of Law regulations promulgated prior to September 1, 2016 (*i.e.*, the regulations published in 1989). However, please note that noneviction conversion plans accepted for filing between November 10, 2015 and February 8, 2016 must adhere to all of the requirements of the emergency regulations published in the State Register on November 10, 2015. For more information regarding past compliance requirements, please refer to the Department of Law’s guidance documents entitled “*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*” and “*Effects of the Expiration of Emergency Regulations Concerning Protections for Senior and Disabled Tenants During Condominium or Cooperative Conversions*.”

change applies only to condominium conversion offerings; the regulations governing cooperative conversion offerings contained this language prior to this regulatory revision.

6. Provide renewal leases to eligible non-purchasing tenants who timely elect eligible senior citizen or eligible disabled person status.<sup>6</sup> 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. If requested, sponsors must also provide copies of the renewal leases for any tenants who have elected eligible senior citizen or eligible disabled person status when submitting an effectiveness amendment to the Department of Law. See 13 N.Y.C.R.R. §§ 18.5(e)(10) and 23.3(e)(10).

The result of these requirements is that market-rate tenants subject to noneviction 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,<sup>7</sup> 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).

## **Conclusion**

By providing non-purchasing market-rate tenants in *future* condominium or cooperative non-eviction conversion offerings the ability to elect eligible senior citizen or eligible disabled person status, the Department of Law’s revised regulations implement the intent of the Martin Act by protecting eligible senior and disabled tenants from eviction during the conversion process. In making this regulatory change, the Department of Law has ensured that its regulations are consistent with the Martin Act’s legislative intent while still allowing property owners to convert to condominium and cooperative ownership.

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<sup>6</sup> 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).

<sup>7</sup> 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).