



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

**Re: Effects of the Expiration of Emergency Regulations
Concerning Protections for Senior and Disabled Tenants
During Condominium or Cooperative Conversions**

Date: February 8, 2016

The Department of Law publishes this memorandum as a guidance document pursuant to State Administrative Procedure Act (S.A.P.A.) § 102(14). This guidance document discusses the expiration of the Department of Law’s emergency rule entitled “*Clarification of Protections for Senior and Disabled Tenants During Condominium or Cooperative Ownership Conversions*” on February 8, 2016 and its effects on sponsors of conversion plans.

Introduction

On February 8, 2016, the Department of Law submitted a “Notice of Revised Rule Making” entitled “*Clarification of Protections for Senior and Disabled Tenants During Condominium or Cooperative Ownership Conversions*” to the New York Department of State. The “Notice of Revised Rule Making” revises the Department of Law’s identically named “Notice of Emergency Adoption and Proposed Rule Making,” published in the State Register on November 25, 2015. Pursuant to S.A.P.A. § 206(6)(d)(iii), this “Notice of Emergency Adoption and Proposed Rule Making” both publicized the adoption of the Department of Law’s emergency regulations and proposed the permanent adoption of the same regulations.

The Department of Law’s emergency regulations amended N.Y.C.R.R. Parts 18 and 23 to make clear that the non-purchasing tenant election process is available to eligible senior citizens and eligible disabled persons subject to both non-eviction and eviction conversion plans. The emergency regulations went into effect on November 10, 2015, and pursuant to S.A.P.A. § 202(6)(b), expire 90 days thereafter on February 8, 2016.

Pursuant to S.A.P.A. § 202(1)(a), a 45-day public comment period followed the publication of the “Notice of Emergency Adoption and Proposed Rule Making” in the State Register on November 25, 2015. Although the Department of Law did not receive any public comments during that period, shortly thereafter the Agency received numerous comments – one written, several verbal. Predominately, the

public comments expressed concern that the language contained in the emergency regulations and proposed permanent regulations failed to make clear that such regulations are solely prospective in application. The commenters explained that any retrospective application could be unduly burdensome to sponsors of conversion plans because units that sponsors expected to be available for sale could now be encumbered by unanticipated tenancies. They asked that the regulations contain a future effective date to give sponsors adequate time to adjust their existing business plans accordingly.

The Department of Law never intended for its regulations to be retrospective in application, nor punitive in nature toward sponsors. Therefore, **the Department of Law has decided to let its emergency regulations expire on February 8, 2016 without permanently adopting the language contained therein.** Instead, the Department of Law has submitted the aforementioned “Notice of Revised Rule Making,” which revises the proposed permanent regulations published on November 25, 2015 to make abundantly clear that the regulations will affect only *future* condominium and cooperative conversion offerings. Indeed, the revised regulations explicitly state that only sponsors who have submitted their conversion offering plans to the Department of Law on or after September 1, 2016, and 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, must comply with the new regulatory requirements. The Department of Law believes that these revisions effectively dispel any confusion regarding retrospective application.

The “Notice of Revised Rule Making” detailing these revisions will be published in the February 24, 2016 issue of the State Register, and is also posted on the Department of Law’s website. A 30-day public comment period will follow its publication as required by S.A.P.A. § 202(4-a)(a).

Effect of Expiration

The Department of Law plans for its revised regulations to become effective on September 1, 2016. In the meantime, the Department of Law’s emergency regulations will expire on February 8, 2016, and thereafter will not be effective. As a result, from February 9, 2016 until August 31, 2016, the Department of Law regulations promulgated prior to November 10, 2015 will be in effect (*i.e.*, the regulations published in 1989). These regulations only require disclosure of the non-purchasing tenant election process for eligible senior citizens and eligible disabled persons in eviction conversion plans.

Nevertheless, the emergency regulations were the Department of Law’s effective governing regulations from November 10, 2015 until February 8, 2016. As described below, the following two categories of conversion plans were subject to the emergency regulations during that period and will be affected by the expiration: (1) Non- eviction conversion plans accepted for filing between November 10, 2015 and February 8, 2016; and (2) Non- eviction conversion plans under review between November 10, 2015 and February 8, 2016, but not yet accepted for filing as of February 9, 2016.

Non- eviction conversion plans accepted for filing between November 10, 2015 and February 8, 2016

Non- eviction conversion plans accepted for filing between November 10, 2015 and February 8, 2016 must adhere to all of the emergency regulations’ requirements. Because these conversion plans were accepted for filing while the emergency regulations were the Department of Law’s effective governing regulations, they are still subject to its terms, despite the expiration. Fewer than 10 conversion plans will be affected by these requirements.

For specific information on complying with the emergency regulations, sponsors should refer to the Department of Law’s guidance document 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.*” However, the future compliance requirements will be minimal – if the Department of Law has already accepted offering plan for filing, the sponsor has already complied with most requirements of the emergency regulations. Sponsors of non-eviction conversion plans accepted for filing between November 10, 2015 and February 8, 2016 must only: (1) provide renewal leases to eligible non-purchasing tenants who timely elect eligible senior citizen or eligible disabled person status,¹ and (2) 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.²

Non-eviction conversion plans under review between November 10, 2015 and February 8, 2016, but not yet accepted for filing as of February 9, 2016

Non-eviction conversion plans under review between November 10, 2015 and February 8, 2016, but not yet accepted for filing as of February 9, 2016 will no longer be subject to the requirements of the emergency regulations as of February 9, 2016. Sponsors of such plans are free to revise their offering plans pursuant to 13 N.Y.C.R.R. §§ 18.1(h) and 23.1(h) to remove any reference to the non-purchasing tenant election process for eligible senior citizens and eligible disabled persons. Please note that the revised offering plan and Notice to Tenants must be re-served on all tenants within 30 calendar days from the date of this guidance document. 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, but 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).

However, the Department of Law will not require sponsors of non-eviction conversion plans that were under review between November 10, 2015 and February 8, 2016 to revise their offering plans. Rather, if the sponsor of such a conversion plan decides not to revise and re-serve the plan, the Department of Law will accept the plan for filing if it complies with the expired emergency regulations.

Conclusion

The Department of Law believes that its revised regulations accomplish the same goal as those published in the State Register on November 25, 2015: protecting *future* senior and disabled market-rate non-purchasing tenants from eviction during the conversion process in accordance with the intent of the Martin Act. The revised regulations simply clarify that such protections apply only prospectively. In addition, the September 1, 2016 effective date ensures that regulations are not unduly burdensome to sponsors of conversion plans – it will provide them adequate time to adjust their business plans to reflect that certain tenants may remain in occupancy as non-purchasing tenants for longer than previously anticipated.

¹ For further information on this requirement, sponsors should refer to the emergency regulations, 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).

² For further information on this requirement, sponsors should refer to the emergency regulations, 13 N.Y.C.R.R. §§ 18.5(e)(10) and 23.3(e)(10).