



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

**Re: Exemption for Partial Building Sales
In Residential Rental Buildings**

Date: October 10, 2014

I. Introduction

In many mixed-income rental buildings, financing and/or tax exemptions are tied to requirements that certain rental units remain affordable to low-income tenants for a period of at least 30 years. In some cases, existing regulatory agreements also require that all units in the building remain rental. These circumstances exist most commonly where owners participated in 80/20 programs and obtained multi-layered subsidies such as bond financing, low-income housing tax credits (LIHTC), and 421-a tax exemptions in exchange for setting aside 20% of the units as income-restricted rentals.¹ In these circumstances, owners typically wait for the relevant requirements to expire and then seek to convert the building, in its entirety, to a market-rate condominium or cooperative, resulting in the loss of the building's affordable rental units.

Under Department of Law (DOL) regulations, an owner does not generally have the option to offer for sale only market-rate rental units in an occupied building while continuing to own and operate the affordable units as income-restricted rentals (a "partial sales program"). This forecloses a potential means of preserving affordable housing and, potentially, expanding its quantity. Going forward, DOL will use its authority to grant exemptions from those regulations in service of that objective.

Specifically, exemptions will be granted to allow a partial sales program if, and only if, the applicant has obtained support for the exemption from the relevant housing finance agency (HPD, HDC, or HFA) because the conversion will preserve existing affordable housing following the expiration of existing requirements and may add additional income-restricted units – rental or homeownership – to the project.

¹ 80/20 is generally used to refer to the ratio of market rate units to income-restricted units in rental projects that qualify for tax-exempt bond financing and low-income housing tax credits under Section 42 of the Internal Revenue Code.

This memo provides an overview of the relevant sections of the Martin Act and applicable regulations and sets forth the procedure for submission of an exemption application for an owner of a mixed-income rental building requesting permission to convert such building, buildings, or group of buildings to condominium or cooperative status through a partial sales program.

II. Overview of the Martin Act and Applicable Regulations

The Martin Act requires an offering plan whenever an owner wishes to convert a building, group of buildings, or development in New York City from residential rental status to condominium or cooperative ownership. N.Y. Gen. Bus. Law § 352-eeee(1)(a). When converting, the Sponsor is required to provide *all* bona fide tenants in occupancy an exclusive right to purchase their dwelling units for 90 days after the offering plan is presented. *See* 13 N.Y.C.R.R. § 23.3(n)(1)(i)(a); *see also* § 18.3(m)(1)(iii)(a)(1).² Thus, the Sponsor is not able to simultaneously sell the market-rate units while maintaining the rental status of the income-restricted units.

The regulations permit the Sponsor to request an exemption from certain regulatory provisions, as follows:

Upon written application of the sponsor or sponsor's attorney, the Department of Law, in its discretion, may exempt a plan from the application of any provision of this Part, where it is found that enforcement of the provision is not necessary to effectuate the purposes of the G.B.L. or to protect the investing public.

Id. § 23.1(k) and § 18.1(k).

The Martin Act, as it relates to the regulation of real estate securities, was intended to serve two purposes. First, it preserves, stabilizes, and improves neighborhoods by facilitating homeownership. *See* 1982 N.Y. Laws, ch 555, §§ 1, 9. Second, it protects tenants in occupancy who do not participate in the conversion process from harassment, deterioration of services, and threats of imminent eviction due to the decision to remain a rental tenant. *See id.*, § 1. The proposed exemption application is consistent with both statutory purposes of the Martin Act: the facilitation of homeownership and the full protection of rental tenants.

III. Procedure for Submission of an Exemption Application

The DOL has developed the following exemption application process for building owners who propose a partial sales program that preserves existing affordable housing, and in some cases, will add additional income-restricted units to the project.

² 13 N.Y.C.R.R. Part 23 governs the conversion of a residential rental building to condominium status whereas 13 N.Y.C.R.R. Part 18 governs the conversion of a residential rental building to cooperative status.

The exemption application must be submitted to the DOL prior to the submission of the offering plan. In the exemption application, the building owner must include an attorney transmittal letter with the requisite unqualified statements required by 13 NYCRR § 23.4(a) and § 18.4(a) along with an affidavit from the proposed principals of Sponsor, including the following information:

- The type of financing currently encumbering the building or buildings, and any restrictions that require certain units to remain income-restricted rentals, including the current duration of such restrictions;
- Whether there are any regulatory agreements recorded against the building or buildings, and if so, the parties to such agreements and the remaining duration thereof;
- The number of units, by percentage, that must currently be maintained as income-restricted rental, and the nature and breakdown of those restrictions (*e.g.*, area median income (AMI) of income-restricted tenants, whether leases must be rent-stabilized);
- Whether the market-rate and/or income-restricted units are rent-stabilized and if so, whether leases contain a rider permitting deregulation of any of the units, and if so, the proposed date of termination of rent stabilization status of such units;
- The number of income-restricted units that will be maintained if the exemption application is granted, and whether the nature and breakdown of those restrictions may change (*e.g.*, increase in AMI after period of time);
- The number of additional income-restricted units, whether rental or homeownership, that will be added to the project if the exemption application is granted, and whether the nature and breakdown of those restrictions may change;
- The duration or, where applicable, permanence of the income-restricted units, whether rental or homeownership, if the exemption application is granted;
- A detailed description of the proposed financing terms and affordability restrictions to be implemented with respect to the income-restricted units if the condominium or cooperative conversion takes place;
- The manner in which title to the income-restricted rental units will be held if the exemption is granted (*e.g.*, 20% income-restricted rental units will be owned as one condo unit); and
- How the board of the condominium or cooperative will be structured to ensure that the interests of both unit owners and income-restricted tenants are adequately represented.

The application must include a letter of support from the relevant housing finance agency.³ The letter must confirm that the basis for the agency's support is consistent with the terms outlined in the affidavit from the proposed principals of Sponsor, and should explain why the exemption is necessary to further the affordable housing preservation goals of the City or State. The DOL will not issue an exemption without a letter of support from the relevant housing finance agency.

The application for exemption will be granted if it effectuates the purposes of the Martin Act by preserving and in some cases expanding the number of income-restricted units. The DOL shall act on an exemption application within 30 days of receipt. There will be no charge for such application and it must be submitted prior to the submission of the offering plan.

Applications should be sent to:

New York State Office of the Attorney General
The Real Estate Finance Bureau
c/o Bureau Chief
120 Broadway, 23rd Floor
New York, NY 10271

³ Sponsors should note that HPD, HDC, and HFA have collectively agreed to require the same general terms and conditions before the letter of support will be issued. Sponsors should contact the relevant housing finance agency to obtain such information.