

MEMORANDUM

TO: REF Attorneys, Paralegals and Law Students

DATE: 7/10/89

FROM: Mary Sabatini DiStephan *MSD*

RE: Parking/Garage Spaces

The matter of parking or garage spaces arises in several contexts during the conversion of a rental building to cooperative or condominium status.

In regulated jurisdictions, the first issue to consider is whether garage or parking spaces are subject to rent control or rent stabilization. If the landlord owned and ran the facility itself (as distinct from leasing it) and offered or provided the spaces to tenants as part of their tenancies then the garage or parking space and/or its availability is an ancillary required or essential service provided under rent stabilization or rent control which cannot be taken away.

Under rent control or rent stabilization, the rent which can be charged to a non-purchasing tenant for a garage or parking space is regulated and subject to increases just as regulated apartment rents are. Purchasing tenants may, however, be charged whatever maintenance the board decides. The owners of unsold units or shares occupied by rental tenants who pay regulated rents and who rent parking spaces, are responsible for the difference between the maintenance they must pay to the board and the regulated rent collected from the tenant.

Attached to this memo is a letter from the New York State Division of Housing and Community Renewal (DHCR) which makes clear that parking spaces which are regulated may not be warehoused during a conversion and saved for purchasers. Such a practice would result in fewer spaces being available to non-purchasing tenants. That would constitute a decrease in essential or required services and a violation of section 352-eeee(3) and 352-eee(3) of the General Business Law which require that the managing agent provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. It is also a violation of Section 60 of the Multiple Dwelling Law (quoted at page 2 of the DHCR letter) when a landlord or sponsor rents a space to an outsider instead of a tenant who wants the spot. (Renting to an outsider is one way that a sponsor can warehouse a space until an outside purchaser desires it.)

In reviewing red herrings, please be sure that, when appropriate, the plans disclose these requirements of law. If proper disclosure was not made in the original red herring, sponsor should serve a supplement on the tenants with this revised disclosure. The supplement should indicate that any tenant on a waiting list for a spot maintains that position after conversion. There should also be disclosure that the plan will not be accepted for filing until at least 30 days after the supplement is served on all tenants. If a sponsor is clearly in violation of section 352-eeee(3) or 352-eee(3) of the GBL and refuses to change it, the plan should be rejected as not conforming to the requirements of the Martin Act. I would like to review such rejection letters before they are sent.

In plans that are already accepted, if proper disclosure has not been made, is silent, or is in violation of law as above, please advise the sponsor to amend the erroneous or non-existent disclosure as the next amendment comes in or when we receive a complaint. For plans that have gone effective and closed, the amendment should be prospective in application. For plans not yet effective or closed, proper disclosure should be made and a right of rescission may be necessary since some purchasers may have relied on an expectation of being able to immediately obtain a parking space or on the understanding that only purchasers could obtain spots in the future.

It would be ideal to require all sponsors to immediately amend their plans to give proper disclosure. This would be difficult to administer and to enforce and therefore, we will look at amendments and situations/complaints as they arise.

Please see me if you have any questions or if problems are presented.

MSD:kd  
Attachment



STATE OF NEW YORK  
DIVISION OF HOUSING AND COMMUNITY RENEWAL  
OFFICE OF RENT ADMINISTRATION  
GERTZ PLAZA  
92-31 UNION HALL STREET  
JAMAICA, NEW YORK 11433

MARIO M. CUCOMO  
GOVERNOR

RICHARD L. HIGGINS  
COMMISSIONER

May 16, 1989

Park West Village Tenant's Association  
P.O. Box 20339  
Park West Finance Station  
New York, N.Y. 10025

Dear M(s) Armstrong and M(s) Wagner:

I am responding to your letter concerning the issue of alleged "warehousing" of parking spaces in rent regulated buildings or developments either during the condominium conversion process or subsequent to conversion to a condominium.

The rights of tenants to receive required services (including ancillary services) and the responsibilities of owners to provide such services are governed by Section 26-514 of the Administrative Code of the City of New York (Rent Stabilization Law) and Sections 2520.6(r)(3) and 2525.2 of the Rent Stabilization Code.

Sec. 26-514 of the Rent Stabilization Law essentially provides that an owner must maintain all services furnished on the applicable base date or services required to be furnished by any state law or local law, ordinance or regulation applicable to the premises.

Sec. 2520.6(r)(3) of the Rent Stabilization Code defines "ancillary services", in pertinent part, as follows:

That space and those required services not contained within the individual housing accommodation which the owner was providing on the applicable base dates set forth below, and any additional space and services provided or required to be provided thereafter by applicable law. These may include, but are not limited to, garage facilities, laundry facilities, recreational facilities, and security...

Your letter indicates that in some buildings or developments undergoing the condominium conversion process or buildings or developments already converted to the condominium form of ownership, tenants, whose names are on the waiting list for parking spaces, are being denied the use of the available parking spaces since the building owners are "warehousing" such parking spaces for the purchasers of the condominium units.

The Division of Housing and Community Renewal, as well as its predecessor agency the New York City Conciliation and Appeals Board (CAB), has had occasion to determine the issue of an owner's obligation to provide available parking spaces to the rent-regulated tenants who have requested such parking spaces in writing. In CAB Opinion No. 6092 it was held that Sections 62A and 2(m)(1) and 2(m)(2)(i) of the Rent Stabilization Code (now Sections 2520.6(r)(1) and (3) of the Revised Rent Stabilization Code) requires an owner to maintain all building-wide services, including ancillary services, provided or required to be provided on May 31, 1968.

In Matter of Streg, Inc. v. Herman, 35 Misc. 351, 231 N.Y.S. 2d. 63 (Sup. Ct. New York County 1962), this court ruled that garage space is a required service and thus subject to rent regulations regardless of whether rented in connection with a specific apartment or where such garage was used in general by the building's tenants on the base date and were offered to the tenants of the various apartments in the building as they became available. (Accord: CAB Opinion Numbers 3152 and 2556)

It is to be noted that Sec. 60 of the Multiple Dwelling Law is also applicable to the scenario posed by your letter.

Sec. 60.1.b of the Multiple Dwelling Law provides, in pertinent part, as follows: x

Such space or structure (garage or parking space) shall be used solely for the storage of passenger motor vehicles of the occupants of the multiple dwelling or of multiple dwellings under common ownership, except that, in the event such space or structure or part thereof is not used by such occupants, it may be rented by the owner or owners of such dwelling or dwellings to persons other than the occupants thereof. The space which has thus been rented shall be made available to an occupant within thirty days after written request therefor...  
(Emphasis added)

In Missionary Sisters of the Sacred Heart v. Meer, 131 A.D. 2d. 392, 517 N.Y.S. 2d. 504 (1st. A.D. 1987), it was held that "under [Sec. 60 of] the Multiple Dwelling Law the building's garage spaces had first to be offered to occupants of the building", and only those spaces not rented by occupants could be rented to non-occupants. Furthermore, this court continued, any space so rented to a non-occupant shall be made available to an occupant within thirty days after a written request therefor.

The fact that a building or a development is in the process of being converted or has already converted to the condominium form of ownership does not alter the rights of non-purchasing rent regulated tenants to obtain available parking spaces.

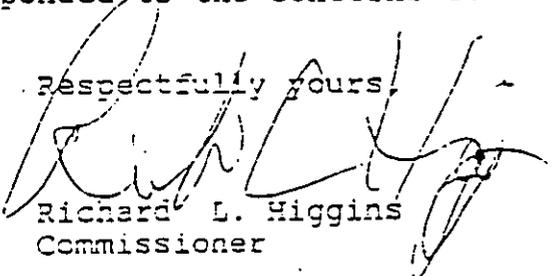
Sec. 352eeee(3) of the General Business Law provides as follows:

3. All dwelling units occupied by non-purchasing tenants shall be managed by the same managing agent who manages all other dwelling units in the building or group of buildings or development. Such managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. The offeror shall guarantee the obligation of the managing agent to provide all such services and facilities until such time as the offeror surrenders control to the board of directors or board of managers. [Emphasis added]

It is clear from the above-cited statutory provisions, prior DHCR determinations, and decisional law, that an owner of a building or development which is undergoing the condominium conversion process or which has already been converted to the condominium form of ownership is not authorized to "warehouse" available parking spaces for purchasing tenants only. See copy of DHCR Administrative Review Order and Opinion No. AL 110173-RT, enclosed.

I trust that I have responded to the concerns raised in your letter.

Respectfully yours,

  
Richard L. Higgins  
Commissioner