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**MEMORANDUM**

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**To:** REF Attorneys, Paralegals & Law Students

**From:** Mary Sabatini DiStephan *MJD*

**Date:** July 31, 1996

**Re:** "Normal" Average Vacancy Rate

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This memo replaces my prior memos dated February 12, 1986 and May 8, 1986. This memo also supplements my memos dated April 5, 1989 and June 23, 1989 (copies of these memos are attached hereto for your convenience).

In determining what the normal average vacancy rate in a particular occupied building is that falls within the purview of General Business Law Section 352-eee 2(c) or 352-eeee 2(e), the following factors may be taken into consideration:

1. How many unrelated owners have owned the premises since the warehousing occurred? [If more than three totally unrelated owners (including the fact that there is no "side" agreement) have successively taken title to the premises after the warehousing occurred, this factor together with the following other factors could be used in making a finding of "normal".]
2. How many years have passed since the warehousing occurred? [If warehousing began in excess of 15 years ago, this fact taken together with the other enumerated factors could establish a vacancy rate considered "normal" for this building.]
3. How long has the current owner who is proposing the conversion owned the premises? [If more than 2 years, and no action has been commenced either to rehabilitate, repair or relet apartments this fact would dictate against "normal" as to this sponsor.]
4. In what condition were the apartments when the current owner took title? [If the apartments were uninhabitable, this fact would suggest "normal" even absent other factors, so long as this owner did not create or contribute to the condition due to lack of maintenance. Our engineers should visit the building in order to determine uninhabitability.]
5. What is the intention of the current owner with regard to the physical condition of the premises? [If the current owner, in conjunction with the other factors, will substantially rehabilitate the premises, this would contribute to a "normal" vacancy finding as it would promote the creation of updated housing stock (albeit coop or

condo) and improve the residential neighborhood. If it were not in conjunction with the other factors it could be interpreted merely as a way to avoid renting and making a windfall on conversion -- the result I believe the statute was meant to deter.]

6. Is the current owner the grantee of a "flip" sale from a prior owner who sold at a premium because of vacancies purposefully created by the prior owner in order to convert -- particularly where the prior owner before the sale could not establish "no excessive long-term vacancies" to the satisfaction of the Attorney General in conformity with this memo. [This would dictate against "normal".]

Please see me if you have any questions concerning this issue and/or if this issue arises in any plans which you are currently reviewing. Also keep in mind that any finding or pending investigation on this matter must be conveyed to the sponsor or sponsor's attorney in writing (preferably in the deficiency letter) within the 6-month statutory deadline.

MSD:sg



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**MEMORANDUM**

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TO: REF Attorneys, Paralegals, Law Students

DATE: 6/23/89

FROM: Mary Sabatini DiStephan *MSD*

RE: Excessive long-term vacancies and deficiency letters

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Where excessive long-term vacancies does not appear on its face to be an issue in a particular conversion plan, in eee or eeee jurisdictions, please include the following paragraph in the 45-day deficiency letter:

"Based upon information contained in sponsor's affidavit of no excessive long-term vacancies, the Department of Law has made a finding of no excessive long-term vacancies. However, such finding is always subject to review if new information comes to the attention of the attorney general."

In plans where the vacancies are an issue, you should make clear in the 45-day letter that a finding has not been made. If the plan is being finally rejected for this reason the final deficiency letter should clearly state that a finding of no excessive long-term vacancies cannot be made setting forth the factual basis for this conclusion.

If there is any questions please see me or Gary Connor.

MSD/ad