STATE OF NEW YORK DEPARTMENT OF LAW

OFFICE OF ATTORNEY GENERAL ROBERT ABRAMS

MEMORANDUM

TO: REF ATTORNEYS and LEGAL ASSISTANTS

DATE: 1/16/86

FROM: MARY SABATINI DISTEPHAN/NANCY KRAMER

RE: EVICTIONS IN NON-EVICTION PLANS

The essence of a non-eviction conversion plan is, of course, that a rental tenant cannot be evicted for failure to purchase his/her unit. The tenant can be evicted for a material breach of the lease such as nonpayment of rent. This distinction is often inadequately or confusingly disclosed in offering plans and should be clarified.

Both GBL §352-eee and GBL §352-eeee state that non-eviction plans must provide:

> No eviction proceedings will be commenced at any time against non-purchasing tenants for failure to purchase or any other reason applicable to expiration of tenancy; provided that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of reasonable access to the owner or a similar breach by the non-purchasing tenant of his obligations to the owner of the dwelling unit or the shares allocated thereto; and provide further that an owner of a unit or of the shares allocated thereto may not commence an action to recover possession of a dwelling unit from a non-purchasing tenant on the grounds that he seeks the dwelling unit for the use and occupancy of himself or his family.

(GBL §352-eee(2)(c)(ii) and GBL §352-eeee(2)(c)(ii)).

Both sections define "non-purchasing tenant" to be:

> A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

(GBL §352-eee(1)(e) and GBL §352-eeee(1)(e)).

A tenant receives certain rights under the provisions of GBL §352-eee and GBL §352-eeee which he or she would not otherwise have had. For example, a tenant who is adjudicated to be a "non-primary" resident is normally not entitled to a renewal lease under rent stabilization or ETPA and is subject to eviction at the expiration of the existing lease. However, such a tenant may not be evicted under an effective non-eviction plan. (This is also true for NYC buildings of fewer than six units which are not subject to rent stabilization.) Nor may a non-purchasing tenant be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of occupancy. (§352-eee(c)(iv) and §352-eeee(c)(iv)).

NK/kw