

7178

I N S E N A T E

March 18, 2010

Introduced by Sen. DILAN -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the multiple dwelling law, in relation to interim multiple dwellings in a city of more than one million persons and to amend chapter 349 of the laws of 1982, amending the multiple dwelling law relating to legalization of interim multiple dwellings in cities over one million, in relation to extending the effectiveness of such chapter

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 281 of the multiple dwelling law is amended by
2 adding a new subdivision 5 to read as follows:
3 5. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (I), (III) AND (IV) OF
4 SUBDIVISION TWO OF THIS SECTION, BUT SUBJECT TO PARAGRAPHS (I) AND (II)
5 OF SUBDIVISION ONE OF THIS SECTION AND PARAGRAPH (II) OF SUBDIVISION TWO
6 OF THIS SECTION, THE TERM "INTERIM MULTIPLE DWELLING" SHALL INCLUDE
7 BUILDINGS, STRUCTURES OR PORTIONS THEREOF THAT ARE LOCATED IN A CITY OF
8 MORE THAN ONE MILLION PERSONS WHICH WERE OCCUPIED FOR RESIDENTIAL
9 PURPOSES AS THE RESIDENCE OR HOME OF ANY TWO OR MORE FAMILIES LIVING
10 INDEPENDENTLY FROM ONE ANOTHER FOR A PERIOD OF TWELVE CONSECUTIVE MONTHS
11 DURING THE PERIOD COMMENCING JANUARY FIRST, TWO THOUSAND EIGHT, AND
12 ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND NINE. A REDUCTION IN THE
13 NUMBER OF OCCUPIED RESIDENTIAL UNITS IN A BUILDING AFTER MEETING THE
14 AFOREMENTIONED TWELVE CONSECUTIVE MONTH REQUIREMENT SHALL NOT ELIMINATE
15 THE PROTECTIONS OF THIS SECTION FOR ANY REMAINING RESIDENTIAL OCCUPANTS
16 QUALIFIED FOR SUCH PROTECTIONS. NON-RESIDENTIAL SPACE IN A BUILDING AS
17 OF THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL BE OFFERED FOR RESIDENTIAL
18 USE ONLY AFTER THE OBTAINING OF A RESIDENTIAL CERTIFICATE OF OCCUPANCY
19 FOR SUCH SPACE AND SUCH SPACE SHALL BE EXEMPT FROM THIS ARTICLE,
20 EVEN IF A PORTION OF SUCH BUILDING MAY BE AN INTERIM MULTIPLE DWELLING.
21 S 2. Section 282 of the multiple dwelling law, as added by chapter 349
22 of the laws of 1982, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 S 282. Establishment of special loft unit. In order to resolve
2 complaints of owners of interim multiple dwellings and of residential
3 occupants of such buildings qualified for the protection of this arti-
4 cle, and to act upon hardship applications made pursuant to this arti-
5 cle, a special loft unit referred to herein as the "loft board" shall be
6 established which shall consist of from four to nine members represen-
7 tative of the public, the real estate industry, loft residential
8 tenants, and loft manufacturing interests, and a chairperson, all to be
9 appointed by the mayor of the municipality and to serve such terms as he
10 may designate. The compensation of the members of the loft board shall
11 be fixed by the mayor. The members of the loft board shall not be
12 considered employees of the state or the municipality, provided, howev-
13 er, that state or municipal employees or officers may be named to the
14 loft board. The mayor shall establish the loft board within ninety days
15 of the effective date of [the act which added this article] CHAPTER
16 THREE HUNDRED FORTY-NINE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-TWO.
17 The loft board shall have such office and staff as shall be necessary to
18 carry out functions conferred upon it and may request and receive
19 assistance from any state or municipal agency or department. The loft
20 board shall have the following duties: (a) the determination of interim
21 multiple dwelling status and other issues of coverage pursuant to this
22 article; (b) the resolution of all hardship appeals brought under this
23 article; (c) the determination of any claim for rent adjustment under
24 this article by an owner or tenant; (d) the issuance, after a public
25 hearing, and the enforcement of rules and regulations governing minimum
26 housing maintenance standards in interim multiple dwellings (subject to
27 the provisions of this chapter and any local building code), rent
28 adjustments prior to legalization, compliance with this article and the
29 hearing of complaints and applications made to it pursuant to this arti-
30 cle; and (e) determination of controversies arising over the fair market
31 value of a residential tenant's fixtures or reasonable moving expenses.
32 The violation of any rule or regulation promulgated by the loft board
33 shall be punishable by a civil penalty determined by the loft board not
34 to exceed one thousand dollars which may be recovered by the munici-
35 pality by a proceeding in any court of competent jurisdiction. The loft
36 board may NOT charge [and collect reasonable] fees in the execution of
37 its responsibilities. The loft board may administer oaths, take affida-
38 vits, hear testimony, and take proof under oath at public or private
39 hearings.

40 S 3. Subdivision 1 of section 284 of the multiple dwelling law, as
41 amended by section 2 of part BB of chapter 85 of the laws of 2002, para-
42 graph (v) as amended by section 2 of part PP-1 of chapter 57 of the laws
43 of 2008, is amended to read as follows:

44 1. (i) The owner of an interim multiple dwelling (A) shall file an
45 alteration application within nine months from the effective date of
46 [the act which added this article] CHAPTER THREE HUNDRED FORTY-NINE OF
47 THE LAWS OF NINETEEN HUNDRED EIGHTY-TWO, and (B) shall take all reason-
48 able and necessary action to obtain an approved alteration permit within
49 twelve months from such effective date, and (C) shall achieve compliance
50 with the standards of safety and fire protection set forth in article
51 seven-B of this chapter for the residential portions of the building
52 within eighteen months from obtaining such alteration permit or eighteen
53 months from such effective date, whichever is later, and (D) shall take
54 all reasonable and necessary action to obtain a certificate of occupancy
55 as a class A multiple dwelling for the residential portions of the
56 building or structure within thirty-six months from such effective date.

1 The loft board may, upon good cause shown, and upon proof of compliance
2 with the standards of safety and fire protection set forth in article
3 seven-B of this chapter, twice extend the time of compliance with the
4 requirement to obtain a residential certificate of occupancy for periods
5 not to exceed twelve months each.

6 (ii) An owner of an interim multiple dwelling who has not complied
7 with the requirements of paragraph (i) of this subdivision by the effective
8 date of [the chapter of the laws of nineteen hundred ninety-two
9 which added this paragraph] CHAPTER TWO HUNDRED TWENTY-SEVEN OF THE LAWS
10 OF NINETEEN HUNDRED NINETY-TWO shall hereafter be deemed in compliance
11 with this subdivision provided that such owner files an alteration
12 application by October first, nineteen hundred ninety-two, takes all
13 reasonable and necessary action to obtain an approved alteration permit
14 by October first, nineteen hundred ninety-three, achieves compliance
15 with the standards of safety and fire protection set forth in article
16 seven-B of this chapter for the residential portions of the building by
17 April first, nineteen hundred ninety-five, or within eighteen months
18 from obtaining an approved alteration permit, whichever is later, and
19 takes all reasonable and necessary action to obtain a certificate of
20 occupancy as a class A multiple dwelling for the residential portions of
21 the building or structure by October first, nineteen hundred ninety-five
22 or within six months from achieving compliance with the aforementioned
23 standards for the residential portions of the building, whichever is
24 later.

25 (iii) An owner of an interim multiple dwelling who has not complied
26 with the requirements of paragraph (i) or (ii) of this subdivision by
27 the effective date of [the chapter of the laws of nineteen hundred ninety-
28 six which added this paragraph] CHAPTER THREE HUNDRED NINE OF THE
29 LAWS OF NINETEEN HUNDRED NINETY-SIX shall hereafter be deemed in compliance
30 with this subdivision provided that such owner files an alteration
31 application by October first, nineteen hundred ninety-six, takes all
32 reasonable and necessary action to obtain an approved alteration permit
33 by October first, nineteen hundred ninety-seven, achieves compliance
34 with the standards of safety and fire protection set forth in article
35 seven-B of this chapter for the residential portions of the building by
36 April first, nineteen hundred ninety-nine or within eighteen months from
37 obtaining an approved alteration permit whichever is later, and takes
38 all reasonable and necessary action to obtain a certificate of occupancy
39 as a class A multiple dwelling for the residential portions of the
40 building or structure by June thirtieth, nineteen hundred ninety-nine or
41 within three months from achieving compliance with the aforementioned
42 standards for the residential portions of the building, whichever is
43 later.

44 (iv) An owner of an interim multiple dwelling who has not complied
45 with the requirements of paragraph (i), (ii) or (iii) of this subdivision
46 by the effective date of this paragraph as provided in chapter four
47 hundred fourteen of the laws of nineteen hundred ninety-nine which added
48 this paragraph shall hereafter be deemed in compliance with this subdivision
49 provided that such owner files an alteration application by
50 September first, nineteen hundred ninety-nine, takes all reasonable and
51 necessary action to obtain an approved alteration permit by March first,
52 two thousand, achieves compliance with the standards of safety and fire
53 protection set forth in article seven-B of this chapter for the residential
54 portions of the building by May first, two thousand two or within
55 twelve months from obtaining an approved alteration permit whichever is
56 later, and takes all reasonable and necessary action to obtain a certifi-

icate of occupancy as a class A multiple dwelling for the residential portions of the building or structure by May thirty-first, two thousand two or within one month from achieving compliance with the aforementioned standards for the residential portions of the building, whichever is later.

(v) An owner of an interim multiple dwelling who has not complied with the requirements of paragraph (i), (ii), (iii) or (iv) of this subdivision by the effective date of this paragraph as provided in chapter eighty-five of the laws of two thousand two shall hereafter be deemed in compliance with this subdivision provided that such owner filed an alteration application by September first, nineteen hundred ninety-nine, took all reasonable and necessary action to obtain an approved alteration permit by March first, two thousand, achieves compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building by May first, two thousand ten or within twelve months from obtaining an approved alteration permit whichever is later, and takes all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for the residential portions of the building or structure by May thirty-first, two thousand ten or within one month from achieving compliance with the aforementioned standards for the residential portions of the building, whichever is later.

(vi) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (I) THROUGH (V) OF THIS SUBDIVISION THE OWNER OF AN INTERIM MULTIPLE DWELLING MADE SUBJECT TO THIS ARTICLE BY SUBDIVISION FIVE OF SECTION TWO HUNDRED EIGHTY-ONE OF THIS ARTICLE (A) SHALL FILE AN ALTERATION APPLICATION WITHIN NINE MONTHS FROM THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND TEN WHICH AMENDED THIS SUBPARAGRAPH, AND (B) SHALL TAKE ALL REASONABLE AND NECESSARY ACTION TO OBTAIN AN APPROVED ALTERATION PERMIT WITHIN TWELVE MONTHS FROM SUCH EFFECTIVE DATE, AND (C) SHALL ACHIEVE COMPLIANCE WITH THE STANDARDS OF SAFETY AND FIRE PROTECTION SET FORTH IN ARTICLE SEVEN-B OF THIS CHAPTER FOR THE RESIDENTIAL PORTIONS OF THE BUILDING WITHIN EIGHTEEN MONTHS FROM OBTAINING SUCH ALTERATION PERMIT OR EIGHTEEN MONTHS FROM SUCH EFFECTIVE DATE, WHICHEVER IS LATER, AND (D) SHALL TAKE ALL REASONABLE AND NECESSARY ACTION TO OBTAIN A CERTIFICATE OF OCCUPANCY AS A CLASS A MULTIPLE DWELLING FOR THE RESIDENTIAL PORTIONS OF THE BUILDING OR STRUCTURE WITHIN THIRTY-SIX MONTHS FROM SUCH EFFECTIVE DATE. THE LOFT BOARD MAY, UPON GOOD CAUSE SHOWN, AND UPON PROOF OF COMPLIANCE WITH THE STANDARDS OF SAFETY AND FIRE PROTECTION SET FORTH IN ARTICLE SEVEN-B OF THIS CHAPTER, TWICE EXTEND THE TIME OF COMPLIANCE WITH THE REQUIREMENT TO OBTAIN A RESIDENTIAL CERTIFICATE OF OCCUPANCY FOR PERIODS NOT TO EXCEED TWELVE MONTHS EACH.

(VII) An owner who is unable to satisfy any requirement specified in paragraph (ii), (iii), (iv) [or], (v), OR (VI) of this subdivision for reasons beyond his/her control, including, but not limited to, a requirement to obtain a certificate of appropriateness for modification of a landmarked building, a need to obtain a variance from a board of standards and appeals, or the denial of reasonable access to a residential unit as required by paragraph [(x)] (XI) of this subdivision, may apply to the loft board for an extension of time to meet the requirement specified in paragraph (ii), (iii), (iv) [or], (v), OR (VI) of this subdivision. The loft board may grant an extension of time to meet a requirement specified in paragraph (ii), (iii), (iv) [or], (v), OR (VI) of this subdivision provided that the owner demonstrates that he/she has made good faith efforts to satisfy the requirements.

1 [(vii)] (VIII) If there is a finding by the loft board that an owner
2 has failed to satisfy any requirement specified in [paragraphs] PARA-
3 GRAPH (i), (ii), (iii), (iv) [and], (v), OR (VI) of this subdivision,
4 such owner shall be subject to all penalties set forth in article eight
5 of this chapter.

6 [(viii)] (IX) In addition to the penalties provided in article eight
7 of this chapter, if there is a finding by the loft board that an owner
8 has failed to satisfy any requirement specified in [paragraphs] PARA-
9 GRAPH (i), (ii), (iii), (iv) [and], (v), OR (VI) of this subdivision, a
10 court may order specific performance to enforce the provisions of this
11 article upon the application of three occupants of separate residential
12 units, qualified for the protection of this article, or upon the appli-
13 cation of the municipality.

14 [(ix)] (X) If, as a consequence of an owner's unlawful failure to
15 comply with the provisions of [paragraphs] PARAGRAPH (i), (ii), (iii),
16 (iv) [and], (v), OR (VI) of this subdivision, any residential occupant
17 qualified for protection pursuant to this article is required to vacate
18 his or her unit as a result of a municipal vacate order, such occupant
19 may recover from the owner the fair market value of any improvements
20 made by such tenant and reasonable moving costs. Any vacate order issued
21 as to such unit by a local government shall be deemed an order to the
22 owner to correct the non-compliant conditions, subject to the provisions
23 of this article. Furthermore, when such correction has been made, such
24 occupant shall have the right to re-occupy his or her unit and shall be
25 entitled to all applicable tenant protections of this article.

26 [(x)] (XI) The occupants of a building shall, upon appropriate notice
27 regarding the timing and scope of the work required, afford the owner
28 reasonable access to their units so that the work necessary for compli-
29 ance with this article can be carried out. Access shall also be
30 afforded, upon reasonable prior notice, for the purpose of inspecting
31 and surveying units as may be required to comply with the provisions of
32 this article and article seven-B of this chapter. Failure to comply with
33 an order of the loft board regarding access shall be grounds for
34 eviction of a tenant.

35 S 4. Subdivision 2 of section 285 of the multiple dwelling law, as
36 amended by chapter 466 of the laws of 1987, is amended to read as
37 follows:

38 2. Notwithstanding any other provision of this article, an owner may
39 apply to the loft board for exemption of a building or portion thereof
40 from this article on the basis that compliance with this article in
41 obtaining a legal residential certificate of occupancy would cause an
42 unjustifiable hardship either because: (i) it would cause an unreason-
43 ably adverse impact on a non-residential conforming use tenant within
44 the building or[,] (ii) the cost of compliance renders legal residential
45 conversion infeasible. Residential and other tenants shall be given not
46 less than sixty days notice in advance of the hearing date for such
47 application. If the loft board approves such application, the building
48 or portion thereof shall be exempt from this article, and may be
49 converted to non-residential conforming uses, provided, however, that
50 the owner shall, as a condition of approval of such application, agree
51 to file an irrevocable recorded covenant in form satisfactory to the
52 loft board enforceable for fifteen years by the municipality, that the
53 building will not be re-converted to residential uses during such time.
54 The standard for granting such hardship application for a building or
55 portion thereof shall be as follows: (a) the loft board shall only grant
56 the minimum relief necessary to relieve any alleged hardship with the

1 understanding if compliance is reasonably possible it should be achieved
2 even if it requires alteration of units, relocation of tenants to vacant
3 space within the building, re-design of space or application for a non-
4 use-related variance, special permit, minor modification or administra-
5 tive certification; (b) self-created hardship shall not be allowed; (c)
6 the test for cost infeasibility shall be that of a reasonable return on
7 the owner's investment not maximum return on investment; (d) the test
8 for unreasonably adverse impact on a non-residential conforming use
9 tenant shall be whether residential conversion would necessitate
10 displacement. Such hardship applications shall be submitted to the loft
11 board within nine months of the establishment of the loft board (or, in
12 the case of interim multiple dwellings referred to in subdivision four
13 of section two hundred eighty-one of this [chapter] ARTICLE, within nine
14 months of the effective date of [that] SUCH subdivision FOUR OR IN THE
15 CASE OF INTERIM MULTIPLE DWELLINGS MADE SUBJECT TO THIS ARTICLE BY
16 SUBDIVISION FIVE OF SECTION TWO HUNDRED EIGHTY-ONE OF THIS ARTICLE,
17 WITHIN NINE MONTHS OF THE EFFECTIVE DATE OF SUCH SUBDIVISION FIVE), but
18 shall not be considered, absent a waiver by the loft board, unless the
19 owner has also filed an alteration application. In determination of any
20 such hardship application, the loft board may demand such information as
21 it deems necessary. In approving any such hardship application, the loft
22 board may fix reasonable terms and conditions for the vacating of resi-
23 dential occupancy.

24 S 5. Subparagraphs (A) and (B) of paragraph (ii) and paragraph (iii)
25 of subdivision 2 of section 286 of the multiple dwelling law, subpara-
26 graphs (A) and (B) of paragraph (ii) as amended by section 3 of part BB
27 of chapter 85 of the laws of 2002 and paragraph (iii) as amended by
28 chapter 414 of the laws of 1999, are amended to read as follows:

29 (A) Upon the owners' filing of an alteration application, as required
30 by paragraph (ii), (iii), (iv) [or], (v), OR (VI) of subdivision one of
31 section two hundred eighty-four of this article, an adjustment equal to
32 six percent of the rent in effect at the time the owner files the alter-
33 ation application.

34 (B) Upon obtaining an alteration permit, as required by paragraph
35 (ii), (iii), (iv) [or], (v), OR (VI) of subdivision one of section two
36 hundred eighty-four of this article, an adjustment equal to eight
37 percent of the rent in effect at the time the owner obtains the alter-
38 ation permit.

39 (iii) Any rent adjustments pursuant to paragraph (ii) of this subdivi-
40 sion shall not apply to units which were rented at market value after
41 June twenty-first, nineteen hundred eighty-two and prior to June twen-
42 ty-first, nineteen hundred ninety-two. THIS PARAGRAPH SHALL NOT APPLY
43 TO UNITS MADE SUBJECT TO THIS ARTICLE BY SUBDIVISION FIVE OF SECTION TWO
44 HUNDRED EIGHTY-ONE OF THIS ARTICLE.

45 S 6. Subdivision 3 of section 286 of the multiple dwelling law, as
46 added by chapter 349 of the laws of 1982, is amended to read as follows:

47 3. Upon or after compliance with the safety and fire protection stand-
48 ards of article seven-B of this chapter, an owner may apply to the loft
49 board for an adjustment of rent based upon the cost of such compliance.
50 Upon approval by the loft board of such compliance, the loft board shall
51 set the initial legal regulated rent, and each residential occupant
52 qualified for protection pursuant to this article shall be offered a
53 residential lease subject to the provisions regarding evictions and
54 regulation of rent set forth in the emergency tenant protection act of
55 nineteen seventy-four, except to the extent the provisions of this arti-
56 cle are inconsistent with such act. [At such time, the owners of such

1 buildings shall join a real estate industry stabilization association in
2 accordance with such act.]

3 S 7. Section 3 of chapter 349 of the laws of 1982, amending the multi-
4 ple dwelling law relating to legalization of interim multiple dwellings
5 in cities over one million, as amended by section 1 of part PP-1 of
6 chapter 57 of the laws of 2008, is amended to read as follows:

7 S 3. Effective date and termination. This act shall take effect imme-
8 diately. The provisions of this act and all regulations, orders and
9 requirements thereunder shall terminate at the close of the calendar day
10 May 31, [2010] 2014.

11 S 8. This act shall take effect immediately; provided that the amend-
12 ments to sections 281, 282, 284, 285 and 286 of article 7-C of the
13 multiple dwelling law made by sections one through six of this act shall
14 not affect the repeal of such article and shall be deemed repealed ther-
15 ewith, pursuant to section 3 of chapter 349 of the laws of 1982, as
16 amended.