S T A T E O F N E W Y O R K

5667

2009-2010 Regular Sessions

I N A S S E M B L Y

February 17, 2009

Introduced by M. of A. V. LOPEZ, LENTOL, MILLMAN, CYMBROWITZ, GOTTFRIED, KAVANAGH -- Multi-Sponsored by -- M. of A. ABBATE, BENJAMIN, COLTON, GLICK, JACOBS, ORTIZ, PERRY, ROSENTHAL -- read once and referred to the Committee on Housing

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:

Section 1. Section 281 of the multiple dwelling law is amended by adding a new subdivision 5 to read as follows:

5. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (I), (III) AND (IV) OF SUBDIVISION TWO OF THIS SECTION, BUT SUBJECT TO PARAGRAPHS (I) AND (II) OF SUBDIVISION ONE OF THIS SECTION AND PARAGRAPH (II) OF SUBDIVISION TWO OF THIS SECTION, THE TERM "INTERIM MULTIPLE DWELLING" SHALL INCLUDE BUILDINGS, STRUCTURES OR PORTIONS THEREOF THAT ARE LOCATED IN A CITY OF MORE THAN ONE MILLION PERSONS WHICH WERE OCCUPIED FOR RESIDENTIAL PURPOSES AS THE RESIDENCE OR HOME OF ANY TWO OR MORE FAMILIES LIVING INDEPENDENTLY FROM ONE ANOTHER FOR A PERIOD OF TWELVE CONSECUTIVE MONTHS DURING THE PERIOD COMMENCING JANUARY FIRST, TWO THOUSAND EIGHT, AND ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND NINE. A REDUCTION IN THE NUMBER OF OCCUPIED RESIDENTIAL UNITS IN A BUILDING AFTER MEETING THE AFOREMENTIONED TWELVE CONSECUTIVE MONTH REQUIREMENT SHALL NOT ELIMINATE THE PROTECTIONS OF THIS SECTION FOR ANY REMAINING RESIDENTIAL OCCUPANTS QUALIFIED FOR SUCH PROTECTIONS. NON-RESIDENTIAL SPACE IN A BUILDING AS OF THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL BE OFFERED FOR RESIDENTIAL USE ONLY AFTER THE OBTAINING OF A RESIDENTIAL CERTIFICATE OF OCCU-

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

LBD08550-01-9

PANCY FOR SUCH SPACE AND SUCH SPACE SHALL BE EXEMPT FROM THIS ARTICLE, EVEN IF A PORTION OF SUCH BUILDING MAY BE AN INTERIM MULTIPLE DWELLING.

S 2. Section 282 of the multiple dwelling law, as added by chapter 349 of the laws of 1982, is amended to read as follows:

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

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

1. (i) The owner of an interim multiple dwelling (A) shall file an alteration application within nine months from the effective date of [the act which added this article] CHAPTER THREE HUNDRED FORTY-NINE OF THE LAWS OF NINETEEN HUNDRED EIGHTY-TWO, 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.

(ii) An owner of an interim multiple dwelling who has not complied with the requirements of paragraph (i) of this subdivision by the effective date of [the chapter of the laws of nineteen hundred ninety-two which added this paragraph] CHAPTER TWO HUNDRED TWENTY-SEVEN OF THE LAWS OF NINETEEN HUNDRED NINETY-TWO shall hereafter be deemed in compliance with this subdivision provided that such owner files an alteration application by October first, nineteen hundred ninety-two, takes all reasonable and necessary action to obtain an approved alteration permit by October first, nineteen hundred ninety-three, 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 April first, nineteen hundred ninety-five, or within eighteen 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 October first, nineteen hundred ninety-five or within six months from achieving compliance with the aforementioned standards for the residential portions of the building, whichever is later.

(iii) An owner of an interim multiple dwelling who has not complied with the requirements of paragraph (i) or (ii) of this subdivision by the effective date of [the chapter of the laws of nineteen hundred ninety-six which added this paragraph] CHAPTER THREE HUNDRED NINE OF THE LAWS OF NINETEEN HUNDRED NINETY-SIX shall hereafter be deemed in compliance with this subdivision provided that such owner files an alteration application by October first, nineteen hundred ninety-six, takes all reasonable and necessary action to obtain an approved alteration permit by October first, nineteen hundred ninety-seven, 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 April first, nineteen hundred ninety-nine or within eighteen 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 June thirtieth, nineteen hundred ninety-nine or within three months from achieving compliance with the aforementioned standards for the residential portions of the building, whichever is later.

(iv) An owner of an interim multiple dwelling who has not complied with the requirements of paragraph (i), (ii) or (iii) of this subdivision by the effective date of this paragraph as provided in chapter four hundred fourteen of the laws of nineteen hundred ninety-nine which added this paragraph shall hereafter be deemed in compliance with this subdivision provided that such owner files an alteration application by September first, nineteen hundred ninety-nine, takes 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 two 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 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 NINE 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.

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

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

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

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

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

2. Notwithstanding any other provision of this article, an owner may apply to the loft board for exemption of a building or portion thereof from this article on the basis that compliance with this article in obtaining a legal residential certificate of occupancy would cause an unjustifiable hardship either because: (i) it would cause an unreasonably adverse impact on a non-residential conforming use tenant within the building or[,] (ii) the cost of compliance renders legal residential conversion infeasible. Residential and other tenants shall be given not less than sixty days notice in advance of the hearing date for such application. If the loft board approves such application, the building or portion thereof shall be exempt from this article, and may be converted to non-residential conforming uses, provided, however, that the owner shall, as a condition of approval of such application, agree to file an irrevocable recorded covenant in form satisfactory to the loft board enforceable for fifteen years by the municipality, that the building will not be re-converted to residential uses during such time.

The standard for granting such hardship application for a building or portion thereof shall be as follows: (a) the loft board shall only grant the minimum relief necessary to relieve any alleged hardship with the understanding if compliance is reasonably possible it should be achieved even if it requires alteration of units, relocation of tenants to vacant space within the building, re-design of space or application for a non-use-related variance, special permit, minor modification or administrative certification; (b) self-created hardship shall not be allowed; (c) the test for cost infeasibility shall be that of a reasonable return on the owner's investment not maximum return on investment; (d) the test for unreasonably adverse impact on a non-residential conforming use tenant shall be whether residential conversion would necessitate displacement. Such hardship applications shall be submitted to the loft board within nine months of the establishment of the loft board (or, in the case of interim multiple dwellings referred to in subdivision four of section two hundred eighty-one of this [chapter] ARTICLE, within nine months of the effective date of [that] SUCH subdivision FOUR OR IN THE CASE OF INTERIM MULTIPLE DWELLINGS MADE SUBJECT TO THIS ARTICLE BY SUBDIVISION FIVE OF SECTION TWO HUNDRED EIGHTY-ONE OF THIS ARTICLE, WITHIN NINE MONTHS OF THE EFFECTIVE DATE OF SUCH SUBDIVISION FIVE), but shall not be considered, absent a waiver by the loft board, unless the owner has also filed an alteration application. In determination of any such hardship application, the loft board may demand such information as it deems necessary. In approving any such hardship application, the loft board may fix reasonable terms and conditions for the vacating of residential occupancy.

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

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

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

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

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

3. Upon or after compliance with the safety and fire protection standards of article seven-B of this chapter, an owner may apply to the loft board for an adjustment of rent based upon the cost of such compliance. Upon approval by the loft board of such compliance, the loft board shall set the initial legal regulated rent, and each residential occupant qualified for protection pursuant to this article shall be offered a residential lease subject to the provisions regarding evictions and

regulation of rent set forth in the emergency tenant protection act of nineteen seventy-four, except to the extent the provisions of this article are inconsistent with such act. [At such time, the owners of such buildings shall join a real estate industry stabilization association in accordance with such act.]

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

S 3. Effective date and termination. This act shall take effect immediately. The provisions of this act and all regulations, orders and requirements thereunder shall terminate at the close of the calendar day May 31, [2010] 2011.

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