STATE OF NEW YORK

9123--B

IN SENATE

April 29, 2024

Introduced by Sen. GONZALEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the multiple dwelling law, in relation to the status of an interim multiple dwelling unit as a protected occupant's primary residence

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The legislature hereby finds and declares that the findings in section 280 of the multiple dwelling law are reaffirmed; that the decision from the Appellate Division, First Department, in **One Double Nine Dashing LLC v New York City Loft Board et al. (2022)** misinterpreted the relationship of primary residence to continued occupancy of potential protected occupants under article 7-C of the multiple dwelling law; that the unique illegal living arrangements of potential protected occupants prior to loft law coverage, without rent and eviction protections and without the applicability of minimum housing maintenance standards, necessitates a regulatory approach which is not always the same as for other rent-regulated tenants; that the loft board properly concluded that the primary residence requirement in the statute is prospective from an application for protected occupancy or from registration of the unit with the loft board; that the loft board properly considered all relevant evidence and rejected a position that statements on tax returns alone are determinative in making determinations regarding primary residence; that prior to **Dashing (2022)** neither the courts nor the loft board has looked at statements made on tax returns as controlling when evaluating issues of primary residence for loft tenants; that most loft tenants use for business purposes portions of their lofts, which the loft law envisions as being legalized and covered as joint live/work spaces, so long as the residential use is the primary use of the unit; and that it is necessary for the legisla-

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

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ture to correct the misinterpretation in **Dashing (2022)** and to clarify, and to codify in the law, what has been loft board policy and precedent based on the current law, loft board rules, and the loft board's delegated expertise for evaluating primary residence of potential protected occupants in possible interim multiple dwelling units.

§ 2. Paragraph (i) of subdivision 2 of section 286 of the multiple dwelling law, as amended by chapter 4 of the laws of 2013, is amended and a new subdivision 14 is added to read as follows:

(i) Prior to compliance with safety and fire protection standards of article seven-B of this chapter, residential occupants qualified for protection pursuant to this article shall be entitled to continued occupancy, provided that**, subsequent to the application for protected occupancy with the loft board or a court of competent jurisdiction or registration with the loft board of the occupant's unit pursuant to this article,** the unit is their primary residence, and shall pay the same rent, including escalations, specified in their lease or rental agreement to the extent to which such lease or rental agreement remains in effect or, in the absence of a lease or rental agreement, the same rent most recently paid and accepted by the owner; if there is no lease or other rental agreement in effect, rent adjustments prior to article seven-B compliance shall be in conformity with guidelines to be set by the loft board for such residential occupants within six months from the effective date of this article.

14. In determining whether a unit qualifies for coverage pursuant to this article, whether an occupant qualifies for protection under this article, or whether a registered interim multiple dwelling unit is a protected occupant's primary residence for all purposes under this article, no single factor shall be solely determinative, including, without limitation, statements made or actions taken in relation to federal, state or city tax returns. Evidence which may be considered shall include, but not be limited to, specification by an occupant of an address other than such unit as a place of residence on any tax return, motor vehicle registration, driver's license or other document filed with a government agency. No waiver of rights otherwise protected by this subdivision, made prior to the effective date of this subdivision, shall be accorded any force or effect.

§ 3. This act shall take effect immediately, and shall apply to all pending actions or proceedings, including appeals.