

Amendment to § 2-05 to conform the Loft Board's rules regarding subletting matters to the amendments made to the MDL effective as of June 21, 2010.

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NEW YORK CITY LOFT BOARD

NOTICE OF ADOPTION OF FINAL RULE

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY LOFT BOARD by Article 7-C of the Multiple Dwelling Law and Mayor's Executive Order No. 129, dated May 22, 2009, and pursuant to and in accordance with the requirements of Section 1043 of the New York City Charter, that the New York City Loft Board intends to amend section 2-05 of Title 29 of the Rules of the City of New York, to identify the procedure for registration of buildings for Article 7-C coverage.

A duly noticed public hearing was held on January 20, 2010, affording the public opportunity to comment on the proposed amendments, as required by Section 1043 of the New York City Charter. Written comments were accepted through January 14, 2010.

Statement of Basis and Purpose:

Pursuant to § 282 of Article 7-C of the MDL ("Loft Law,") the Loft Board may promulgate rules to ensure compliance with the Loft Law. Effective as of June 21, 2010, the Legislature amended the Loft Law by enacting Chapters 135 and 147 of the Laws of 2010, which, among other things, added §§ 281(5), and 282-a. Section 281(5) expands the window period under which residential units may qualify for coverage as interim multiple dwellings ("IMDs") under the Loft Law. This section also provides certain restrictions that buildings must satisfy in order to qualify for protection under the Loft Law. Section 282-a provides a statute of limitations for the filing of a registration application.

The proposed amendments to this rule, which outlines the registration requirements, adds a section that authorizes the Executive Director to rescind, or revoke a registration, or any part thereof if he or she determines that a unit or building does not qualify as an IMD under the amended Loft Law. It also incorporates the new statute of limitations for registration applications as provided in § 282-a. The proposed amendments also provide that an owner is subject to a civil penalty for failure to post the registration information in the building. Finally, it requires owners to serve the initial registration application form on all of the tenants in the building, removes outdated provisions and integrates the changes made over the years into a more cohesive form. This proposed rule is not listed in the Loft Board's Regulatory Agenda because it was not anticipated at the time.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this Board, unless otherwise specified or unless the context clearly indicates otherwise.

Section 2-05 of Title 29 of the Rules of the City of New York is amended to read as follows:

§2-05 Registration.

(a) *Definitions.*

Landlord. As used in these rules [regulations], the term "landlord" shall mean the owner of an interim multiple dwelling ("IMD"), the lessee of a whole building, part of which [is an interim multiple dwelling] contains IMD units, or the agent, executor, assignee of rents, receiver, trustee, or other person having direct or indirect control of such a dwelling.

Residential Occupant. As used in these rules [regulations], the term "residential occupant" shall mean an occupant of an IMD [interim multiple dwelling] unit eligible for protection under Article 7-C of the New York State Multiple Dwelling Law ("MDL.")

Agent. As used in § 284(2) of the MDL and these rules, the term "agent" or "managing agent" shall mean the person in control of and responsible for the maintenance and operation of the IMD building, which person shall be an individual, 21 years of age or older, and shall reside within New York City or customarily and regularly attend a business office located in New York City.

(b) *Procedure for Filing Registration Application.* The following instructions ["Information and Instruction to Owners, Lessees and Agents of Interim Multiple Dwellings"] constitute the procedures for registration of buildings, structures or portions thereof, [Interim Multiple Dwellings] pursuant to MDL § 284(2) [of Article 7-C of the New York State Multiple Dwelling Law]. Applications for registration shall be certified by the landlord in a form prescribed [promulgated] by the Loft Board.

Instructions—Interim Multiple Dwelling Registration Application Form [—Part A].

(1) Print [using black ink only.] all information in completing the registration application form and return it and the required documents listed in § 2-05(b)(8). Detach this information and instruction sheet and return copies of the form, when completed] to: ["I.M.D."] "IMD REGISTRATION" at the [New York City] Loft Board's office, together with a check covering the registration and code-compliance monitoring fees, in accordance with subparagraph (3) below.

[Registration forms must be filed for all Interim Multiple Dwellings by January 31, 1983 to avoid payment of an initial registration fee.]

The landlord must serve a copy of the initial registration application form on all occupants of the building including residential, commercial and manufacturing occupants and prime lessees, if different. Service shall be made by regular mail delivered to each occupant at the occupant's unit, or at a different address in accordance with the terms for delivery of the notice in the occupant's lease. The registration application form must specify which residential units are being registered as IMD units and include the unit designations and location in the building. Certification of such service to the occupants and prime lessees shall be attached to the registration application form filed with the Loft Board.

(2) The information requested on the registration application form [and Rider(s) are] is required pursuant to MDL §§ 284(2) and 325 [of the New York State Multiple Dwelling Law], and these rules. Additional information may be required pursuant to rules [and regulations which shall be] promulgated by the [New York City] Loft Board.

(3) Pursuant to MDL § 282, the Loft Board may charge and collect reasonable fees. Registration and code compliance monitoring fees shall be payable to the Loft Board in accordance with § 2-11 of these rules. [NO FEE is required if application is filed by January 31, 1983. However, a fee may be imposed if registration forms are filed after January 31, 1983. A renewal registration fee may be established by the Loft Board pursuant to §282 of the Multiple Dwelling Law.]

(4) Completion and submission of a registration [this] application form does not constitute a waiver of the applicant's right to contest before the Loft Board the coverage of the premises described therein as an IMD building under Article 7-C of the MDL, [Multiple Dwelling Law as an interim multiple dwelling. Nor] nor shall the act of filing [of] the registration application form constitute evidence before the Loft Board that the building [the premises] described therein [are an interim multiple dwelling] is an IMD building. Notwithstanding the foregoing, the failure of an owner, a building occupant or prime lessee to contest the registration application within 45 calendar days after service of the registration application or 45 calendar days after the filing date with the Loft Board, whichever is later, shall constitute a "waiver" to contest coverage of the units registered, and shall preclude the landlord from contesting such coverage status.

In the event the Loft Board or its staff subsequently discovers that a building, structure or portion thereof registered as an IMD does not qualify as an IMD subject to coverage under Article 7-C, in whole or in part, then the Executive Director may revoke such IMD status for the individual unit, or the building in its entirety, as applicable, effective upon notice to the owner, the building occupants and the prime lessees, listed on the registration application form. Any and all applications by a landlord, building occupant or the prime lessee to challenge the denial of a registration application form or the revocation of IMD status of a building or a unit by the Executive Director shall be governed by the terms and provisions of § 1-07.1 of these rules.

(5) Procedure to Contest a Registration Application. Any and all applications filed by a landlord, building occupant(s) or prime lessee, if applicable, to contest coverage of a building[s] or individual unit[s] under Article 7-C [by owners, lessees or agents] must be received by the Loft Board within [30] 45 calendar days after [of] [the issue date of the IMD registration number or within 30 days after promulgation of coverage regulations by the Loft Board, whichever is later] service of the registration application form on the building occupants and prime lessee(s) or within 45 calendar days after filing of the registration application form with the Loft Board, whichever is later. Such applications [Applications, by letter in duplicate,] must set forth the extent of coverage being contested, including [and set forth] the facts and rationale upon which coverage is being contested. [Notice of the filing] A copy of the application must be served on ALL residential, commercial and manufacturing occupants of the building and the prime lessee(s) in the manner described in § 1-06(b) of these rules for service of Loft Board applications, and the application [to] filed with the Loft Board must [state] include a certification that such service has been made. [The notice of application must state that copies of the full application are available for inspection at the Loft Board and that a copy

of the full application will be furnished by the landlord upon the written request of an occupant. Until the Loft Board determines otherwise by rule or regulation, service shall be effected in the manner prescribed by Real Property Actions and Proceedings Law §735. Failure of an owner, lessee or agent to contest coverage within 30 days of the issuance of an IMD Registration Number or within 30 days of the promulgation of coverage regulations by the Loft Board, whichever is later, precludes said applicant from contesting coverage.

It is the intent of the Loft Board to provide those wishing to contest coverage an opportunity to do so within 30 days after the promulgation of regulations which directly address the issue upon which the coverage dispute or contestation is predicated.]

(6) [Please be advised that other affected parties] Any occupant in the building may apply for [or contest] coverage under Article 7-C. Such applications shall [should] be filed in accordance with [made following] the procedures set forth in [§2-05(b)(5) above] § 1-06 of these rules, and shall be subject to the terms and provisions of the MDL and these rules, including, without limitation, the deadline for filing coverage applications set forth in MDL § 282-a, § 1-06.1 of the Loft Board's rules, and the Loft Board's website [except that notice of filing of the application must be served on the landlord not the occupants].

(7) [Registration applications, if accepted by the Loft Board] An interim multiple dwelling registration number issued by the Loft Board will be effective until such time as determined by the [New York City] Loft Board or its staff.

(8) Required Documents For A Registration Application. A registration [A]application[s] must be completed in its entirety. Legible copies of the following must be attached: (i) the current lease for each residential unit claimed to be covered under Article 7-C, or, where there is no current lease, the most recent lease agreement, [(including all executed riders, amendments, modifications and extensions)] for all residentially occupied units, (ii) the lease in effect during the qualifying window period set forth in MDL § 281 for each residential unit claimed to be covered under Article 7-C, and if no lease existed during the window period, an owner must file proof of residential occupancy during the window period with the registration form; (iii) the lease in effect on June 21, 2010, if different, and if no lease existed on June 21, 2010, the owner must attach a signed statement outlining the rental agreement in effect on June 21, 2010 – including party names, monthly rent, a description of the premises, use of the premises, and the services provided by the landlord; and (iv) any lease for a unit engaged in commercial, manufacturing, or industrial activity in the building on June 21, 2010 [must be attached regardless of the commercial, residential or manufacturing nature of the lease]. If no lease [exists or] existed for the commercial, manufacturing, or industrial unit on June 21, 2010, the owner must attach a signed statement outlining the rental agreement in effect on June 21, 2010.

For cooperatives, legible copies of [one of] the proprietary [leases and of all coversheets] leases for all units, including the units engaged in commercial, manufacturing, or industrial activity, must be attached. If any units were [are] rented on June 21, 1982 for units seeking coverage pursuant to MDL § 281(1), or July 27, 1987 for units seeking coverage pursuant to MDL § 281(4), or June 21, 2010, for units seeking coverage pursuant to MDL § 281(5), [attach] copies of those leases and subleases or rental agreements must be attached. For condominiums, legible copies of all leases for

units that were [are] rented on June 21, 1982 for units seeking coverage pursuant to MDL § 281(1), or July 27, 1987 for units seeking coverage pursuant to MDL § 281(4) or June 21, 2010, for units seeking coverage pursuant to MDL § 281(5), must be attached.

[All personal and confidential information on leases (including all information which could lead to the identification of the premises, landlords and occupants) will not be available under the Freedom of Information Act.]

[An] A registration application form will not be accepted, and an IMD Registration Number will not be [assigned] issued, unless all questions set forth on the registration application form are answered in full, and all required leases or signed statements are attached. If a particular question or piece of information is inapplicable, [or not available] the applicant shall enter "Not Applicable," or if the information is unavailable, enter "Not Available", and attach a signed statement explaining the reasons such information is inapplicable or unavailable. The content of [an] a registration application form will be reviewed prior to issuance of an IMD Registration Number [acceptance].

In the space provided on the registration application form, an applicant must specify which units it seeks to register with the Loft Board for coverage under Article 7-C. The applicant shall enter [Enter] the number of residential units occupied for residential purposes by families living independently from one another, the periods of such residential occupancy, and indicate the units' location [and the number of floors] in the building. [A family] "Family" shall have the meaning provided in MDL § 4(5), and may consist of a person or persons, regardless of whether they are related by marriage or ancestry. [Enter the number of residentially occupied units on each floor so occupied. Rider A which specifically identifies each of the units in the building must be completed and returned with the application.]

(9) The acceptance of the registration application form in no way legalizes the residential occupancy. If the registration application form is accepted by the Loft Board staff, a copy of the form with the assigned [I.M.D.] IMD Registration Number will be returned to the applicant [you]. That number must be included on all future correspondence with the Loft Board regarding the building [with the office]. The Loft Board reserves the right to reject, revoke or amend an [I.M.D.] IMD Registration Number for a building. The Loft Board also reserves the right to revoke, at any time, the Article 7-C coverage for a unit in a building issued an IMD Registration Number.

(10) For each building potentially subject to Article 7-C, the owner, the lessee of the whole building, if applicable, and the agent [or other person having control of the premises] must each sign the [file a separate] registration application form thereby certifying to the truth, accuracy and completeness of the information contained therein. If the building is known by more than one address [is known by other addresses], the applicant shall list each address on [them on a separate sheet of paper and attach to] the application form.

If the owner, lessee of the whole building[.] or agent [or other person] is a corporation, other than a corporation listed as exempt from the provisions of [the Multiple Dwelling Law] MDL § 325, the names, business, and residence addresses and phone numbers of each of its officers must be listed on the form.

Other officers, including treasurer or chief fiscal officer, and stockholders who own or control at least 10 percent of the corporation's stock, must be listed on a separate attachment.

If the owner, lessee of the whole building or agent [or other person] is other than an individual or a corporation, the names, business and residential addresses and phone numbers for each member, general partner or participant in a partnership, [or] joint venture or limited liability company must be listed on a separate attachment.

At least one of the phone numbers [entered] filed with the registration application [on the] form must be a confidential telephone number where a responsible party can reasonably be expected to be reached 24 hours a day, 7 days a week [at all times] for emergencies. Such number(s) must be within 50 miles radius of New York City limits, and must be indicated on a separate signed sheet of paper [and] filed with the registration application form. Such responsible party shall be twenty-one years or older, and shall reside within New York City or customarily and regularly attend a business office located in New York City. The emergency number shall be confidential pursuant to the Freedom of Information Law (Public Officers Law § 84, et. seq.) as amended from time to time. . Any change in the emergency number, managing agent information, owner's address or ownership shall be sent to the Loft Board within 5 days of the change. The failure to report such change is a violation of the Loft Board rules and the owner may be subject to civil penalties up to \$17,500.00.

(11) All [owners, lessees of whole buildings, and agents or other persons having control of the premises] landlords who file a registration application form [for I.M.D. Registration Numbers] agree to provide the minimum housing maintenance standards established [or to be established by the Loft Board] by § 2-04 of these rules, as it may be amended from time to time, to all residentially occupied units covered under Article 7-C of the MDL [for as long as the I.M.D. Registration Number is valid].

(12) [The "managing agent" defined as the person in control of and responsible for the maintenance and operation of the dwelling, must be an individual over 21 years of age with a business office or residence in New York City] Reserved.

(13) [An identification sign] A notice, in the form prescribed by the Loft Board, [containing the building address, the I.M.D. Registration Number assigned by the Loft Board for the purpose of identifying the building and the owner and managing agent] as designated on the Loft Board's website, shall be posted in the lobby of [in] every IMD building [interim multiple dwelling] [with] within five (5) business days after the issuance of the [I.M.D.] IMD Registration Number. Failure to post such notice may subject the landlord to civil penalties of up to \$17,500 per day. [A sample sign with instructions will be sent to you when the IMD Number is issued.] Such notice must contain:

(A) the building address;

(B) the IMD Registration Number assigned by the Loft Board for the purpose of identifying the building;

(C) the contact information for the owner and managing agent; and

(D) the Loft Board's phone number.

(14) If additional space is required to respond to any of the questions set forth on the registration application form, the applicant shall attach a signed separate sheet of paper [identifying the question(s) being answered] to complete the response.

(c) Rent claims. A [Landlords] landlord of [interim multiple dwellings] a building for which an IMD Registration Number has been issued[,] shall be [deemed to be compliance with the registration provisions of Article 7-C and shall be] entitled to claim rents

becoming due after the date of issuance of the IMD Registration Number, in summary proceedings, pursuant to MDL §285(1) [of Article 7-C of the Multiple Dwelling Law], provided that such landlords are in compliance with the terms and provisions of Article 7-C and the Loft Board's rules.

Finding that there are a significant number of ongoing disputes between landlords and residential occupants in loft dwellings over payment of past due rents and that Article 7-C did not intend to authorize landlords to recover past due rents from residents occupying premises which may not qualify for coverage under Article 7-C, the Loft Board believes that landlords' right to recover for past due rents pursuant to MDL §285(1) [of the Multiple Dwelling Law] should be stayed until the question of coverage of an IMD has been resolved.

Landlords who waive their right to contest coverage by executing a written waiver in a form acceptable to the Loft Board, fail to contest coverage within 45 calendar days following the filing of the registration application with the Loft Board or following the service of the registration application on the occupants and the prime lessees, or whose coverage dispute has been resolved by a determination that the premises in question are covered by Article 7-C, and who have met the requirements of subdivision (b) of this section shall be deemed in full compliance with the registration provisions of Article 7-C, [in order to claim past due rent payable from residential occupants pursuant to MDL §285(1) of the Multiple Dwelling Law]. An owner must be in full compliance with all of the provisions of Article 7-C and the Loft Board's rules, including and without limitation, the registration requirements, in order to recover rent.

(d) *Confidentiality of lease information.* All personal and confidential information contained in leases submitted together with the registration application forms pursuant to this section [(including all information which could lead to the identification of the premises, landlords, [and] or tenants,)] shall be confidential pursuant to the Freedom of Information Law (Public Officers Law § 84, et. seq.) as amended from time to time [Filed with the City Clerk: August 2, 1983]. Notwithstanding the foregoing, the current owner of the building may have access to such unit's information, and the current occupant of the unit may also have access to such information, as necessary in connection with an application filed with the Loft Board or a case filed in a court of competent jurisdiction.

(e) *Initial Registration Application Form Filing Deadlines for Buildings Seeking Coverage under MDL § 281(4) Prior to June 21, 2010, the Effective Date of Chapter 135 of the Laws of 2010.* Effective July 27, 1987, Article 7-C of the MDL [Multiple Dwelling Law] was amended, in part, to extend coverage to certain residentially occupied buildings, structures or portions thereof that were excluded from the protections of Article 7-C because they did not meet the zoning requirements of MDL §§281(2)(i), (iii) or (iv). Now, pursuant to MDL §281(4), any building, structure or portion thereof which contains units that were residentially occupied on May 1, 1987, since December 1, 1981, that were used for residential purposes since April 1, 1980, is an [interim multiple dwelling] IMD covered by Article 7-C regardless of the zoning requirements of MDL §§281(2)(i), (iii) and [or] (iv), if the building otherwise meets the criteria set forth in MDL §281(1) and these rules. MDL §281(1) defines an "interim multiple dwelling" as a building, structure or portion thereof which at any time was occupied for manufacturing, commercial or warehouse purposes; and which on December 1, 1981 was occupied for residential purposes since April 1, 1980 as the residence or home of any three or more

families living independently of one another; lacks a certificate of compliance or occupancy pursuant to MDL §301. Pursuant to MDL §281(4), an interim multiple dwelling shall include any building within the City of New York which meets these qualifications, regardless of whether there are currently three or more qualifying units. Thus, a reduction in the number of occupied residential units in a building after December 1, 1981 since April 1, 1980, shall not result in the elimination of the protections of Article 7-C to any remaining residential occupants qualified for such protection whose units were residentially occupied on May 1, 1987 since April 1, 1980.

(1) The provisions of these rules, §2-05, shall be fully applicable to IMD buildings [interim multiple dwellings] or additional covered units, which are subject to coverage under Article 7-C pursuant to MDL §281(4), except as provided below:

(i) Pursuant to MDL § 284(2), all residential units that qualify for coverage under Article 7-C [requires registration of all interim multiple dwellings within sixty days of the date of the enactment. Interim multiple dwellings or additional covered units subject to Article 7-C solely] pursuant to MDL §§ 281(4) were required to [shall] be initially registered on or before September 25, 1987. The initial registration period for such qualifying units under § 281(4) [ends] ended on June 30, 1988.

(f) Deadlines for Filing Initial Registration Application after June 21, 2010 in Chapters 135 and 147 of the Laws of 2010 (1) Pursuant to MDL § 284(2), the initial registration for buildings covered pursuant to MDL § 281(5) shall have been filed by August 21, 2010, which was sixty days from the effective date of Chapter 135 of the Laws of 2010. The provisions of these rules, §2-05, shall be fully applicable to IMD buildings or additional covered units, which are subject to coverage under Article 7-C pursuant to MDL §281(5).

Pursuant to MDL § 282-a, the initial registration application form must be filed for all buildings, structures, or portions thereof seeking Article 7-C coverage by the certain date listed in § 1-06.1(a) of these rules, and on the Loft Board's website. This date is 6 months after the date the Loft Board adopted all rules necessary to implement the provisions of Chapters 135 and 147 of the Laws of 2010, which added MDL § 281(5).

Any initial registration application forms filed after the certain date listed in § 1-06.1(a) of these rules will not be accepted, notwithstanding that such residential units may otherwise meet the qualifying criteria for an IMD unit pursuant to MDL § 281, unless the landlord is directed to file a registration form pursuant to a Loft Board order finding coverage or if the landlord is directed to file a registration application form by a court of competent jurisdiction pursuant to the claim of Article 7-C coverage raised in a pleading before the certain date listed in § 1-06.1(a) of these rules, and on the Loft Board's website.

(2) Registration Renewals. [Thereafter, renewal] Renewal of registration pursuant to § 2-11(b)(1)(i)(A) of these rules shall be required annually on or before July 1st. Prior to the processing of the registration renewal application, the landlord [owner, lessee of a whole building and] or the agent [are] is required to pay all unpaid fines, late fees and registration and code compliance monitoring fees for prior registration periods at the rate [then established by the Loft Board] set forth in § 2-11(b)(9)(i) of these rules, as may be amended from time to time. Failure to timely pay such registration and code compliance monitoring fees may result in the imposition of late fees, and other civil

penalties, in accordance with the terms and provisions of these rules, including, without limitation, § 2-11(b)(1)(i)(D).

[(ii) In addition to the requirements set forth in §2-05(b)(8) of these rules, the landlord shall submit legible copies of all leases (including all executed riders, amendments, modifications and extensions) for residentially occupied units for the period April 1, 1980 through May 1, 1987.]

[(f)g] No applications filed by or on behalf of a landlord of an IMD building [interim multiple dwelling] shall be processed by the Loft Board unless the registration renewal application is current and all applicable fees and penalties have been paid in full as of [on] the date of filing [of] such application. An application is not deemed filed until payment of all outstanding fees, fines and penalties has been received by the Loft Board.

Dated: March 10, 2011

Robert D. LiMandri
Chairperson