

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on the proposed rule changes to Section 2-09 of the Loft Board rules, which covers occupant protection under Article 7-C, subletting rights, privity with the owner, and the right to recover subdivided covered space.

Date / Time: July 12, 2012 at 2PM

Location: 22 Reade St., 1st Floor
New York, NY 10007

Contact: New York City Loft Board
280 Broadway
3rd Floor
New York, NY 10007
(212) 566-5663

Proposed Rule Amendment

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, the New York City Loft Board intends to amend section 2-09 of Title 29 of the Rules of the City of New York to conform the Loft Board's rules to the amendments made to Article 7-C of the Multiple Dwelling Law, effective as of June 21, 2010. Section 2-09 addresses occupant protection under Article 7-C, subletting rights, privity with the owner, and the right to recover subdivided space.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment by mail to the New York City Loft Board at the address shown above or electronically through NYCRULES at www.nyc.gov/nycrules by July 12, 2012.
- To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact the New York City Loft Board at the phone number shown above by July 9, 2012.

- Written comments and a summary of oral comments received at the hearing will be available July 18, 2012 between the hours of 10:00 A.M. and 4:00 P.M. at the offices of the New York City Loft Board.

STATEMENT OF BASIS AND PURPOSE

Pursuant to § 282 of Article 7-C of the Multiple Dwellings Law (MDL), also known as the “Loft Law,” the Loft Board may promulgate rules to ensure compliance with the Loft Law.

Effective as of June 21, 2010, the New York State Legislature amended the Loft Law and enacted Chapters 135 and 147 of the Laws of 2010, which among other things, added MDL § 281(5). When it added § 281(5), the New York State Legislature expanded the criteria for coverage under the Loft Law.

The proposed changes conform § 2-09 of the Loft Board’s rules to the amended Loft Law, by extending the rule’s requirements to buildings covered pursuant to the newly added MDL § 281(5), and clarifying the existing provisions regarding subletting rights, privity with the owner, the right to recover subdivided space, and sale of improvements.

To summarize, the proposed rule:

- (a) Updates the definition of an occupant qualified for possession of a residential unit and protection of Article 7-C;
- (b) Clarifies the conditions necessary for privity between the subtenant and owner or prime lessee;
- (c) Describes when a prime lessee may recapture the IMD unit or subdivided space if the prime lessee still occupies a portion of the IMD unit; and
- (d) Clarifies the procedure for a prime lessee to be compensated for the improvements made by the prime lessee.

"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.

New matter in the following rule is underlined, and deleted material is in brackets.

Section 2-09 of Title 29 of the Rules of the City of New York is amended to read as follows:

§2-09 Occupant Qualified for Article 7-C Protection, Privity, Subletting and Recovery of Subdivided Unit. [Similar Matters.]

(a) Definitions.

Prime lessee [. As used in these regulations, the term "prime lessee" shall] means the party with whom the landlord entered into a lease or rental agreement for use and occupancy of a portion of an IMD, which is being used residentially, regardless of whether [such] the lessee is currently in occupancy or whether [such] the lease remains in effect.

Privity [. As used in these regulations, the term "privity" shall] means a direct contractual relationship between two parties, which may be established explicitly, implicitly or by operation of law.

Tenant [. Where the term "tenant" is used in Article 7-C of the Multiple Dwelling Law to] refers directly or implicitly to a residential tenant [, it] and is deemed interchangeable with [the use of] the word "occupant" in Article 7-C and these rules.

(b) Occupant qualified for possession of residential unit and protection [of] under Article 7-C.

(1) Except as otherwise provided herein, the occupant qualified for protection under Article 7-C [shall be] is the residential occupant in possession of a residential unit, covered as part of an IMD.

(2) If the residential occupant in possession of a covered residential unit is not the prime lessee, the lack of consent of the landlord to a sublet, assignment or subdivision establishing such occupancy [shall] does not affect the rights of such occupant to [the] protection[s of] under Article 7-C, provided that such occupant was in possession of such unit prior to: (i) June 21, 1982, for an IMD unit subject to Article 7-C by reason of MDL § 281(1)[,]; (ii) [or prior to] July 27, 1987, for an IMD unit subject to Article 7-C solely by reason of MDL § 281(4); or (iii) June 21, 2010, for an IMD unit subject to Article 7-C by reason of MDL § 281(5), and these [the] rules [issued pursuant thereto].

(3) When a residential occupant took possession of a residential unit covered as part of an IMD, on or after: (i) June 21, 1982, for an IMD unit subject to Article

7-C by reason of MDL § 281(1); (ii) [on or after] July 27, 1987, for an IMD unit subject to Article 7-C solely by reason of MDL § 281(4); or (iii) June 21, 2010, for an IMD unit subject to Article 7-C by reason of MDL § 281(5), and [the] these rules [issued pursuant thereto], such occupant [shall be] is qualified for the protection of Article 7-C if:

(i) [he/she] The occupant is a prime lessee with a lease currently in effect or, if [he/she] the occupant took possession[,] of the IMD unit with the consent of the landlord, as a statutory tenant pursuant to Article 7-C, without the issuance of a new lease; or

(ii) [he/she] The occupant is the assignee of a prime lessee and such assignment was consented to by the landlord; or

(iii) [p] Prior to establishment of such occupancy, the landlord was offered the opportunity to purchase improvements in the unit pursuant to § 286(6) of the MDL and these rules [regulations promulgated pursuant thereto].

(4) The prime lessee, or sublessor who is not the prime lessee, [shall be] is deemed to be the residential occupant qualified for [the] protection [of] under Article 7-C, if [he/she] the prime lessee or sublessor can prove that the residential unit covered as part of an IMD is his[/] or her primary residence, even if another person is in possession. If the prime lessee or sublessor fails to prove that such unit is his or her primary residence, [the] any rights of such person to recover the [such a] unit are extinguished.

(i) The prime lessee or sublessor must exercise, in a court of competent jurisdiction, his[/] or her right to recover [such] the unit upon the expiration or termination of the sublease under the terms of which [he/she] the prime lessee or sublessor is the immediate overtenant, if the sublease was in effect on: September 25, 1983 for a unit covered under MDL § 281(1); November 22, 1992 for a unit covered under MDL § 281(4); or **October 14, 2012**, the effective date of the amended rule, for a unit covered under MDL § 281(5). [or]

(ii) [w]Where [such] the sublease [is] was no longer in effect on the relevant date above, the prime lessee or sublessor must exercise, in a court of competent jurisdiction, his or her right to recover the unit on or before;

(A) December 24, 1983, [except that] for IMD units that are subject to Article 7-C by reason of MDL § 281(1); or

(B) February 21, 1993, for IMD units that are subject to Article 7-C solely by reason of MDL § 281(4).

(C) If the IMD unit is covered by Article 7-C by reason of MDL § 281(5), and the sublease is no longer in effect, the prime lessee or sublessor must exercise the right to recover the unit on or before **January 12, 2013**, 90 days after the effective date of this amended rule, or if the unit is not subject to Article 7-C on **October 14, 2012**, the effective date of this amended rule, 90 days following the finding of coverage by a Loft Board order, a finding of coverage by a court of competent jurisdiction, or the issuance of an IMD registration number after filing of a registration application, whichever is earlier. [and the rules issued pursuant thereto, the primary lessee or sublessor must exercise his / her right upon expiration or termination of the sublease or where such sublease is no longer in effect, on or before February 21, 1993, whichever is later.]

(5) [In an IMD w]Where a prime lessee is in possession of a portion of the space which he or she leased from the landlord, such prime lessee [shall be] is entitled to remain in possession, and [be] is qualified for [the] protection[s of] under Article 7-C, only with respect to the portion of such space which he or she occupied as a residential unit, [(including any portion thereof used for home occupations or as the working portion of a joint-living-working quarters for artists)], and]. The prime lessee is not [shall not be] entitled to claim any of the remaining portion of the leased space as primary residence in an action against the occupant of any other residential unit within such space, except to the extent provided for in § 2-09(c)(5) [of these regulations,] below, [of these regulations] and subject to [notwithstanding] the provisions of §§ 2-09(b)(3) and (b)(4) above. The current residential occupants of the remaining unit(s) created through subdivision [shall be] are qualified for protection under Article 7-C with regard to their respective residential units covered by Article 7-C, except as provided in §§ 2-09(b)(3) and (b)(4)[,] [above,] of these rules [regulations].

(c) Rights, obligations and legal relationships among the parties.

(1) *Legalization and cost of legalization.* The landlord of an IMD building is responsible for legalization of each residential IMD unit pursuant to MDL § 284 [of the MDL, for all covered residential units], regardless of whether the occupant is the prime lessee or a person or persons with whom the prime lessee entered into an agreement permitting such persons to occupy units in space covered by the prime lease. The costs of legalization, as reflected in rent adjustments made pursuant to MDL § 286(5) [of the MDL], and apportioned among the covered residential units, shall be borne directly by the residential occupants qualified for protection of such units.

(2) *Privity.*

(i) *Privity Between Residential Occupant and Prime Lessee.* The residential occupant qualified for protection under Article 7-C, if other than the prime lessee, [shall be] is deemed to be in privity with the prime lessee, if either:

(A) [t]There is a lease or rental agreement in effect [regarding] for the residential unit between the prime lessee and the residential occupant; or

(B) [t]There is a lease or rental agreement in effect [regarding] for the residential unit or the space in which it is located, between the landlord and the prime lessee. No lease or rental agreement between the prime lessee and the residential occupant[, shall have] has any force or effect beyond the term of the lease or rental agreement between the prime lessee and the landlord, except as provided in §§ 2-09(c)(6) or (c)(7) [herein] of these [regulations] rules.

(ii) *Privity Between Landlord and Prime Lessee.* The prime lessee and the landlord [shall be] are deemed to be in privity when there is a lease or rental agreement in effect between them.

(iii) *Privity Between Residential Occupant and Landlord.* The residential occupant and the landlord [shall be] are deemed to be in privity when the residential occupant is the prime lessee; or when the lease or rental agreement between the prime lessee and the landlord, covering the residential occupant's unit or the space in which it is located, is no longer in effect. All leases or rental agreements [(except subleases entered into pursuant to § 226-b of the Real Property Law

(“RPL”) and § 2-09(c)(4)[, below,] of these [regulations] rules, below [promulgated pursuant thereto]), which have not expired [shall] will be deemed to be no longer in effect upon certification by the Department of Buildings of the landlord's compliance with the fire and safety protection standards of Article 7-B.[, and at that time] Upon such certification, a residential lease subject to the [e]Emergency [t]Tenant [p]Protection [a]Act of nineteen seventy-four must be offered to the residential occupant, pursuant to § 286(3) of the MDL.

(3) *Services.*

(i) When the landlord and residential occupant are in privity, the landlord [shall be] is responsible for meeting the minimum housing maintenance standards established by the Loft Board in § 2-04 of these rules.

(ii) When the prime lessee and the residential occupant are in privity, there [shall be no] must not be any diminution of services [from] provided by the prime lessee to the residential occupant. The prime lessee [shall be] is responsible for meeting the minimum housing maintenance standards established by the Loft Board, to the extent such standards are required pursuant to the lease or rental agreement between the prime lessee and the residential occupant, and to the extent [such] those services are within the control of the prime lessee. Otherwise, [such] all services [shall] must be provided by the landlord.

(4) *Subletting rights of occupants qualified for protection under Article 7-C.*

(i) Right to Sublet. All occupants qualified for protection under Article 7-C [shall] have the right to sublet their units pursuant to and in accordance with the procedures specified in § 226-b of the [Real Property Law] RPL, notwithstanding that such occupants may reside in an [interim multiple dwelling () IMD()] building having fewer than 4 residential units, and [that such occupants] may not have a current lease or rental agreement in effect. The residential occupant of a unit located in a subdivided space, who is not in privity with the landlord, must obtain the consent of both the prime lessee of such space and the landlord to a proposed sublet of such unit, which may not be unreasonably withheld in accordance with § 226-b of the [Real Property Law] RPL.

(ii) Subletting Provisions. [In addition, t]The right to sublet [shall be] is subject to the following provisions:

(A) The rent[al] charged to the subtenant may not exceed the legal rent, as established pursuant to Article 7-C and these [regulations] rules, plus a ten percent surcharge payable to the residential occupant if the unit sublet is furnished with the residential occupant's furniture;

(B) The residential occupant must be able to establish that the residential unit is his [/or] her primary residence;

(C) The residential occupant may not sublet the unit for more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease;

(D) The term of the proposed sublease may extend beyond the term of the residential occupant's lease, if [such] a lease is in effect, or beyond the date of the Department of Buildings certification of the landlord's compliance with Article 7-B of the MDL [Multiple Dwelling Law]. In such event, [such] the sublease [shall be] is subject to the residential occupant's right to continued occupancy pursuant to Article 7-C of the MDL, [Multiple Dwelling Law or] including the right of [such] the residential occupant to issuance of a lease in accordance with the terms and provisions of MDL § 286(3) and these rules, upon Article 7-B compliance. It [shall be] is considered unreasonable for a landlord to refuse to consent to a sublease solely because the residential occupant has no lease or rental agreement in effect or because [such] the sublease extends beyond the residential occupant's lease or beyond the anticipated date of achieving Article 7-B compliance.

(E) Where a residential occupant violates the provisions of subparagraph (ii) of this paragraph (4), the subtenant [shall be] is entitled to damages of three times the overcharge and may also be awarded attorney's fees and interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to § 5004 of the Civil Practice Law and Rules.

(F) The provisions in [subparagraphs (ii)] clauses (A) through (E) of [this paragraph] § 2-09(c)(4)(ii) [shall] apply to all subleases for IMD units which are subject to Article 7-C by reason of MDL § 281(1), commencing on or after September 25, 1983, the original effective date of these rules [regulations]. Subleases entered into on or after June 21, 1982, but prior to September 25, 1983 are [the effective date of these regulations, shall] not [be] subject to [subparagraphs (ii)] clauses (A), (C) and (E) of [this paragraph (4)] § 2-09(c)(4)(ii), but are [shall be] subject to [subparagraphs (ii)] clauses (B) and (D) of [this paragraph (4)] § 2-09(c)(4)(ii) and the provisions of § [Section] 226-b of the [Real Property Law] RPL, in effect at the time of the commencement of the sublease.

(G) Notwithstanding the provisions of [subparagraph (ii)] clause (F) of [this paragraph (4)] § 2-09(c)(4)(ii), the provisions in [subparagraphs (ii)] clauses (A) through (E) of [this paragraph (4)] shall § 2-09(c)(4)(ii) apply to all subleases for IMD units which are subject to Article 7-C solely by reason of MDL § 281(4) commencing on or after November 23, 1992. Subleases for such units entered into on or after July 27, 1987, but before November 23, 1992, [shall] are not [be] subject to [subparagraphs (ii)] clauses (A), (C) and (E) [of this paragraph (4)], but are [shall be] subject to [subparagraphs (ii)] clauses (B) and (D) of [this paragraph (4)] § 2-09(c)(4)(ii) and the provisions of §226-b of the [Real Property Law] RPL, in effect at the commencement of the sublease.

(H) Notwithstanding the provisions of clauses (F) and (G) of § 2-09(c)(4)(ii), the provisions in clauses (A) through (E) of § 2-09(c)(4)(ii) apply to all subleases for IMD units which are subject to Article 7-C by reason of MDL § 281(5) commencing on or after:

(1) The finding of Article 7-C coverage by a Loft Board order, or by a court of competent jurisdiction, or

(2) The issuance of an IMD registration number after the filing of registration application by the owner, whichever is earlier.

Subleases for such units entered into on or after June 21, 2010, but before the finding of coverage by a Loft Board order or a court of competent jurisdiction, or the issuance of an IMD registration number after the filing of a registration application by the owner for IMD units subject to Article 7-C by reason of MDL § 281(5), are not subject to clauses (A), (C) and (E), but are subject to clauses (B) and (D) of § 2-09(c)(4)(ii) and the provisions of § 226-b of the RPL, in effect at the commencement of the sublease.

(iii) If any clause, sentence, paragraph, subdivision or part of this § 2-09(c)(4) of these [regulations] rules is [shall be] adjudged by any court of competent jurisdiction to be invalid, [such] the judgment shall not render invalid this entire section on subletting rights of residential occupants.

(5) Prime [lessee's right to recover subdivided space.] Lessee's Right to Recover Subdivided Space

(i) Lease Between Prime Lessee and Landlord is In Effect and Residential Occupant Voluntarily Vacates the Subdivided Portion. Where the prime lessee is the residential occupant of a portion of the space [he/she has] leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is in effect, the prime lessee may recover for his [/] or her own personal use, a residential unit located within [such] the leased space voluntarily vacated by the residential occupant prior to the establishment of privity between such residential occupant and the landlord. The right to recover space pursuant to this [regulation] rule is [shall] not [be] available to a prime lessee found by the Loft Board to [be guilty of harassment of] have harassed any residential occupant(s). The recovered space [shall] will be deemed part of the prime lessee's residential unit, and in no event [shall] may the prime lessee relet such space for any purposes whatsoever, except that [he/she shall have] the prime lessee retains the same rights to sublet [his/her] the entire residential unit as provided in § 2-09(c)(4) of these [regulations] rules.

(ii) Prime Lessee's Right to Compensation For Improvements When the Residential Occupant Voluntarily Vacates the Subdivided Portion. Where a prime lessee waives [his/her] the right to recover a residential unit in space leased by a prime lessee and vacated by the residential occupant, the prime lessee may sell improvements to the unit made or

purchased by [him/her] the prime lessee to an incoming tenant, provided that the prime lessee [shall] first offers the improvements to the landlord for an amount equal to their fair market value pursuant to § 286(6) of the MDL and the Loft Board rules [regulations promulgated pursuant thereto]. If the incoming tenant purchases the improvements, [T]the incoming tenant [shall be] is deemed in privity with the landlord, and the initial maximum rent [shall be] is to be determined in accordance with §2-09(c)(6)(ii)(A) of these [regulations]rules. [, if the incoming tenant purchases the improvements; or] If the landlord purchases the improvements, the rent due shall be the initial market rental, [(subject to subsequent rent regulation if the IMD has six or more residential units () if the landlord purchases the improvements] and if the sole basis for rent regulation is Article 7-C.

(ii)(iii) Lease Between Prime Lessee and Landlord is In Effect and Prime Lessee Wants to Recover the Subdivided Portion. Where the prime lessee is the residential occupant of a portion of the space [he/she] the prime lessee has leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is in effect, the prime lessee may recover for his[/] or her own personal use, a residential unit located within [such] the leased space, if the residential occupant of [such] the unit agrees to the purchase by the prime lessee of [such] the occupant's rights in the unit. The recovered space [shall] will be deemed part of the prime lessee's residential IMD unit, and in no event [shall] may the prime lessee relet such space for any purpose whatsoever, except that [he/she shall have] the prime lessee retains the same rights to sublet [his/her] the entire residential IMD unit as provided in § 2-09(c)(4) of these [regulations] rules.

(iv) Lease Between Prime Lessee and Landlord No Longer In Effect and Prime Lessee Wants to Recover Subleased Portion. Where the lease or rental agreement between the prime lessee and the landlord is no longer in effect, the prime lessee's right to recover space pursuant to this subsection [shall] expires on:

(A) July 5, 1988, for an IMD unit subject to Article 7-C by reason of MDL § 281(1) [or,];

(B) January 22, 1993, for an IMD unit subject to Article 7-C solely by reason of MDL § 281(4), [on January 22, 1993]; or

(C) December 13, 2012, 60 days after the effective date of the amended rule, or if the unit is not subject to Article 7-C on the effective date of this amended rule, 60 days following the finding of coverage by a Loft Board order, a finding of coverage by a court of competent jurisdiction, or issuance of an IMD registration number after the filing of registration application by the owner, whichever is earlier, for IMD units subject to Article 7-C by reason of MDL § 281(5).

[(iii)] (v) Factors to Consider When Prime Lessee Seeks to Recover Subdivided Space. Where the prime lessee is the residential occupant of a portion of subdivided space that the prime lessee uses as his [/] or her primary residence, and which [he/she] the prime lessee has rented directly from the landlord, the prime lessee [shall be] is entitled to recover as part of his[/] or her primary residence, a residential unit, located within the leased space, even if the space is occupied by another person or persons, if [such] the prime lessee can establish that:

(A) [t]There was an express written agreement between the prime lessee and the occupant of such space, other than the mere expiration of the lease, entitling the prime lessee to recover such space, and that the prime lessee has not taken actions inconsistent with exercising the option entitling [him/her] the prime lessee to recover such space;

(B) [t]The prime lessee has occupied the entire demised premises as his[/] or her own primary residence for at least one year prior to the subdivision and subletting of the unit;

(C) [t]The prime lessee has a compelling need to recover such space; and

(D) [t]The prime lessee has not been [guilty of harassment of] found to have harassed any residential occupants.

Space recovered pursuant to this provision [shall be] is deemed part of the prime lessee's residential IMD unit, and in no event [shall] may the prime lessee relet [such] any recovered space for any purpose whatsoever, except that [he/she shall have] the prime lessee has the same rights to sublet [his/her] the entire residential IMD unit as provided in § 2-09(c)(4) above, [of these regulations,] provided, however, that no such

sublet [shall be] is permitted for the first [two] 2 years after recovery. The prime lessee [shall have] retains the right to make a claim to recover space pursuant to this provision, before the Loft Board, where there is a lease or rental agreement in effect between [him/her] the prime lessee and the landlord, or, where [such an] a lease or rental agreement is no longer in effect, on or before:

(a) July 5, 1988 for an IMD unit subject to Article 7-C by reason of MDL § 281(1), [July 5, 1988];

(b)[or,] January 22, 1993 for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), [on or before January 22, 1993]; or

(c) **December 13, 2012**, 60 days from the effective date of the amended rule, or if the unit is not subject to Article 7-C on the effective date of this amended rule, 60 days after the finding of coverage by a Loft Board order, a finding of coverage by a court of competent jurisdiction or the issuance of an IMD registration number after the filing of registration application by the owner, whichever is earlier, for IMD units subject to Article 7-C by reason of MDL § 281(5).

(6) *Rent.*

(i) *Maximum Permissible Rent When Residential Occupant Is In Privity With Prime Lessee.* When the residential occupant is in privity with the prime lessee, the maximum permissible rent payable by [such] the residential occupant to the prime lessee [shall be] is:

(A) [t]The rent established in [such] the residential occupant's lease or rental agreement, subject to the limitations in the applicable Loft Board Interim Rent Guidelines; or

(B) [i]If such lease or rental agreement is no longer in effect, in accordance with § 2-06 for an IMD unit subject to Article 7-C by reason of MDL § 281(1); or[,] in accordance with § 2-06.1 for an IMD unit subject to Article 7-C solely by reason of MDL § 281(4);[, in accordance with §2-06.1] or in accordance with § 2-06.2 for an IMD unit subject to Article 7-C by reason of MDL § 281(5), and any other relevant orders or rules of the Loft Board.

(ii) Maximum Permissible Rent When Residential Occupant Is In Privity with Landlord. When the residential occupant is in privity with the landlord, [such] the residential occupant [shall] must pay rent as follows:

(A) [i]If the residential occupant is [other than] not the prime lessee, the maximum permissible rent [shall be] is the amount last regularly paid under the terms of the lease or rental agreement with the prime lessee, or the sublessor, if other than the prime lessee, plus any increases permissible and subject to any limitations under § 2-06 for an IMD unit subject to Article 7-C by reason of MDL § 281(1); or[,] under § 2-06.1 for an IMD unit subject to Article 7-C solely by reason of MDL § 281(4); [under § 2-06.1 and any other relevant orders of the Loft Board] or under § 2-06.2 for an IMD unit subject to Article 7-C by reason of § 281(5), and any other relevant orders or rules of the Loft Board.

(B) Maximum Permissible Rent When Prime Lessee is Residential Occupant of Entire Leased Space. [i]If the prime lessee is the residential occupant of the entire space leased from the landlord, the maximum permissible rent [shall be] is:

(a) [t]The amount specified in the lease or rental agreement, subject to any limitations in the applicable Loft Board Interim Rent Guidelines; or

(b) [i]If the lease or rental agreement is no longer in effect, the amount permissible pursuant to § 2-06 for an IMD unit subject to Article 7-C by reason of § 281(1); or[,] § 2-06.1 for an IMD unit subject to Article 7-C solely by reason of MDL § 281(4); [the amount permissible pursuant to § 2-06.1, any other relevant orders of the Loft Board] or § 2-06.2 for an IMD unit subject to Article 7-C by reason of § 281(5), and any other relevant orders or rules of the Loft Board.

(C) (a) Maximum Permissible Rent When Prime Lessee is Residential Occupant of a Portion of Leased Space and Lease is in Effect. [i]If the prime lessee is the residential occupant of a portion of the space leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is in

effect for the entire space, the maximum permissible rent [shall be] is the amount specified in the lease or rental agreement for the entire space, and any permissible increases pursuant to any relevant orders or rules of the Loft Board.

(b) Maximum Permissible Rent When the Prime Lessee is Residential Occupant of a Portion of Leased Space and the Lease Between the Prime Lessee and the Landlord is Not in Effect. [i] If the prime lessee is the residential occupant of a portion of the space leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is no longer in effect for a residential unit or unit located in a portion of such leased space, because privity has been established between the residential occupant(s) of [such] the subdivided unit or unit(s) and the landlord pursuant to § 2-09(c)(~~5~~2)(iii)[,] above, of these [regulations,] rules, the maximum permissible rent is [due shall be] based on the rent paid by the prime lessee to the landlord under the most recent rental agreement for the entire space, plus any increases permissible under §2-06 for an IMD unit subject to Article 7-C by reason of MDL § 281(1); or, under §2-06.1 for any IMD unit(s) subject to Article 7-C solely by reason of MDL §281(4)[, under §2-06.1,]; or under § 2-06.2 for an IMD unit subject to Article 7-C by reason of MDL § 281(5), and any other relevant orders or rules of the Loft Board. The maximum permissible rent payable by [from] the prime lessee to the landlord [shall be an amount] is equal to the percentage of the rent so calculated, equivalent to a fraction:[, the numerator of which is the square footage of]

(1) [t] The numerator of which is the square footage of the leased space occupied by the prime lessee's unit, plus [(2)] the square footage of any other unit regarding which [he/she] the prime lessee remains in privity with the residential occupant, and

(2) [t] The denominator of which is the entire square footage of the space leased from the landlord under the lease or rental agreement most recently in effect.

(D) (a) Maximum Permissible Rent When Prime Lessee is a Residential Occupant of a Portion of Leased Space and the Lease

Between the Prime Lessee and Residential Occupant is not in Effect. [i]If the prime lessee is the residential occupant of a portion of the space leased from the landlord, but the lease or rental agreement for all other units within the space is no longer in effect because the occupants of [such] those units have entered into privity with the landlord, the maximum permissible rent [shall be] is based on the rent paid by the prime lessee to the landlord under the most recent lease or rental agreement for the entire space, plus any increases permissible under §2-06 for an IMD unit subject to Article 7-C by reason of MDL § 281(1); or, under § 2-06.1 for any IMD unit(s) subject to Article 7-C solely by reason of MDL § 281(4); or under § 2-06.2 for an IMD unit subject to Article 7-C by reason of MDL § 281(5), [under §2-06.1], and any other relevant orders or rules of the Loft Board. The maximum permissible [legal] rent payable by [from] the prime lessee to the landlord [shall be an amount] is equal to the percentage of the rent so calculated, equivalent to a fraction:[,]

(1) [t]The numerator of which is the square footage of the leased space which [his or her] the prime lessee's unit occupies, and

(2) [t]The denominator of which is the entire square footage of the space leased from the landlord.

(b) Maximum Permissible Rent When the Rent Paid by the Residential Occupant and Prime Lessee is Greater than the Total Rent for the Unit. [w]Where the rent paid by the residential occupant(s) of such space who were in privity with the prime lessee to the prime lessee and the prime lessee's proportionate share of the rent as calculated under § 2-09(c)(6)(ii)(D)(a) above, [(]without inclusion of any increases permissible under the applicable Loft Board Interim Rent Guidelines, or any other increase permitted in the Loft Board rules or Article 7-C [or other relevant orders of the Loft Board)], is [are] greater than the [amount of] rent specified in the most recent lease or rental agreement for the entire space leased between the prime lessee and the landlord or, if applicable, the [amount of] rent as calculated under § 2-09(c)(6)(ii)(C)(b), the landlord has the option to treat the excess amount as follows: [It shall be the landlord's option to either:]

(1) [r]Reduce the monthly legal rent payable by [due from] the prime lessee by one-half of [such] the excess amount as calculated on a monthly basis, provided [but in no event shall] the monthly legal rent may not be less than \$100; or

(2) [m]Make a single lump sum payment to the prime lessee equal to one-half of the monthly excess amount multiplied by 36.

The landlord may exercise [his/her] the option to make a single[,] lump sum payment at any [point] time. If the landlord chooses the option of a single lump sum payment, [at a point] after the prime lessee has commenced paying a rent calculated under [subparagraph] item (1) above, the single lump sum payment due to the prime lessee from the landlord [shall] may not be diminished by the amount of the prior reductions in rent. Upon payment of the single lump sum payment, the landlord may increase the prime lessee's monthly rent to the maximum permissible rent [amount] allowable under § 2-09(c)(6)(ii) (D)(a)[,] above. Any prime lessee found to have harassed [guilty of harassment of] any residential occupant [shall not be] is not entitled to the rent reduction or single lump sum payment provided for in [subparagraphs] items (1) and (2) above, respectively.

[3](c) Effective Date of Rent Adjustments The rent adjustments [of this] provided in items (A) and (D) of this subparagraph [(D)] (ii) of [and sub]paragraph [(A)] (6) [shall] apply to the next regular rent payment due on or after: (i) July 5, 1988, for IMD units subject to Article 7-C pursuant to MDL § 281(1); (ii) [or the next regular rent payment due on or after] January 22, 1993, for IMD units subject to Article 7-C solely pursuant to MDL § 281(4); or (iii) **December 13, 2012**, 60 days from the effective date of the amended rule, for IMD units subject to Article 7-C by reason of MDL § 281(5).

Otherwise, the rent adjustments [shall] apply to the next regular rent payment due after such lease or rental agreement, or portion thereof, is no longer in effect, but in no event earlier than: (i) July 5, 1988, for IMD units subject to Article 7-C pursuant to MDL §

281(1); (ii) January 22, 1993, [or,] for IMD units subject to Article 7-C solely by reason of MDL §281(4); or (iii) **December 13, 2012**, 60 days from the effective date of the amended rule for IMD units subject to Article 7-C pursuant to MDL § 281(5)[, no earlier than January 22, 1993].

(7) *Prime lessee's or sublessor's right to compensation for costs incurred in developing residential unit(s).*

(i) *Right to Compensation.* Where a prime lessee, or a sublessor who is not the prime lessee, has incurred costs for improvements made or purchased in developing residential unit(s) in any space for which [he/she] the prime lessee or sublessor had or has a lease or rental agreement and for which [he/ or she] the prime lessee or sublessor is not the residential occupant qualified for protection under Article 7-C, such prime lessee or sublessor [shall be] is entitled to compensation [recover] from the residential occupant(s), [compensation] for the prime lessee's or sublessor's actual costs incurred in developing the residential unit in question.

(ii) *Agreements for Compensation for Improvements.* The prime lessee or sublessor and the residential occupant may agree to payment of [such] the compensation upon any terms that are mutually acceptable, at any time prior to the deadline for the filing of an application as described in subparagraph[division] (iii) below. All such agreements [shall] must be submitted to the Loft Board within 90 calendar days [of] following their execution.

(iii) *Limitation on Right to Compensation.* If the parties are unable to agree upon the amount and terms of compensation prior to the establishment of privity between the residential occupant and the landlord, as defined in § 2-09(c)(2) of these rules [regulations], the prime lessee, [or] sublessor, or [the] residential occupant, may apply to the Loft Board for resolution of the [any] dispute over compensation of the prime lessee or sublessor. Such application may be brought [any time] after the residential unit has been registered with the Loft Board without timely contest of coverage or determined to be covered under Article 7-C by [the] Loft Board order or a court of competent jurisdiction, but no later than 180 calendar days after the later of:

(A) [the establishment of privity between the residential occupant and the landlord, or

(B)]May 6, 1988, for IMD unit(s) subject to Article 7-C by reason of § 281(1), or

(B) November 23, 1992, for any IMD unit(s) subject to Article 7-C solely by reason of MDL § 281(4), or

(C) **October 14, 2012**, for any IMD unit(s) subject to Article 7-C by reason of MDL § 281(5), or

(D) [t]The establishment of privity between the residential occupant and the landlord, or

[(C)](E) The date of the landlord's registration of the residential unit without timely contest of coverage or the determination of coverage of the residential unit by the Loft Board or a court of competent jurisdiction, whichever is earlier[, or

(D) for any IMD unit(s) subject to Article 7-C solely by reason of MDL § 281(4), November 23, 1992, or].

The application [shall] must comply with the [regulations] rules of the Loft Board governing applications, including [except that, for purposes of] § 1-06[(a)] of these rules [such regulations]. [t]The affected parties [shall be] are limited to the prime lessee or sublessor, the residential occupant, and the owner. The application [shall] fee is due and payable at the time of filing the application [also comply with the regulations of the Board governing fees].

(iv) Factors to Determine Whether Compensation is Due. The Loft Board [shall] must first determine whether any compensation is due and payable to the prime lessee or sublessor, as applicable, based on consideration of the following factors:

(A) [w]Whether the prime lessee or sublessor incurred any costs, as defined [below] in [subdivision (v)] clause (A) of subparagraph (v) below, allocable to the particular unit in question; and

(B) [w]Whether the prime lessee or sublessor has already been compensated in accordance with the terms of a prior agreement. The amount of rent paid to the prime lessee or sublessor, in excess of [the amount which would represent] a proportionate share of the rent paid by the prime lessee to the landlord, based on the percentage of the total square footage of [floor] space occupied, [shall] will not be credited towards [such] compensation of the prime lessee or sublessor, in the absence of a specific agreement.

(v) *Factors to Determine the Amount Due for Improvements.* If it is determined that the prime lessee or sublessor, as applicable, did incur costs for improvements for which he or she has not yet been compensated, the Loft Board [shall] will determine the amount due and payable in accordance with the following criteria:

(A) [a]All improvements as defined in § 2-07 of these rules, [the Board's regulations on Sales of Improvements shall be] are compensable;

(B) [t]The Loft Board [shall] will establish the value of [such] the improvements by determining the actual costs incurred for the improvements based on evidence presented;

(C) [c]Compensation determined to be due and payable may [shall] be made in accordance with a payment schedule agreed to by the prime lessee or sublessor, as applicable, and the residential occupant, or, if no agreement is reached, a payment schedule not to exceed 6 months, set by the Loft Board, contained in the Loft Board's order.

(vi) Compensation made pursuant to this paragraph (7) [shall] provides residential occupants [the] with an opportunity to purchase improvements but [shall] does not constitute a sale of improvements pursuant to § 286(6) of the MDL.

(vii) (A) *Compensation by the Owner.* A residential occupant may offer the landlord [the] an opportunity to compensate the prime lessee or sublessor for costs incurred for improvements made or purchased in developing a residential IMD unit. The compensation to be paid by the landlord is the amount determined by agreement of the prime lessee or sublessor, as applicable, and

the residential occupant, pursuant to subparagraph (7)(ii) above, or as determined by the Loft Board pursuant to subparagraph (7)(v) above. If the landlord chooses to pay this compensation to the prime lessee or sublessor, the residential occupant remains the occupant qualified for Article 7-C protection, except that [he/she] the residential occupant [forfeits] will have no [the] right to sell such improvements purchased by the landlord pursuant to § 286(6) of the MDL. Compensation of the prime lessee or sublessor by the landlord [shall] does not affect the rent due from the residential occupant;

(B) if the landlord compensates the prime lessee or sublessor pursuant to [this subdivision] (A) above, the prime lessee or sublessor [shall have no] will have no right to recover the unit for his [/] or her own personal use pursuant to §§ 2-09(b)(4) and (c)(5) of these rules [regulations]. When the residential occupant vacates the unit, the landlord [shall be] is entitled to lease the unit at market rent, absent a finding by the Loft Board of harassment by the landlord of occupants;

(C) if the landlord declines the opportunity to compensate the prime lessee or sublessor, the residential occupant remains responsible for the compensation payment established [by agreement of the prime lessee or sublessor and the residential occupant] pursuant to subparagraphs (7)(ii) or [above or as determined by the Loft Board pursuant to subparagraph] (7)(v) above.

(8) Residential occupant's right to sale of improvements pursuant to MDL § 286(6) [of the MDL].

In accordance with MDL § 286(6) and the Loft Board rules, a [The] residential occupant [shall be] is entitled to sell [pursuant to §286(6) of the MDL and Loft Board regulations on Sales of Improvements] all improvements to [his/her] the unit made or purchased by [him/her] the residential occupant:

(i) [u] Upon [the] filing [of] an agreement with the Loft Board pursuant to § 2-09(c)(7)(ii), or

(ii) [f] Following a Loft Board determination of an application filed pursuant to § 2-09(c)(7)(iii), or

(iii) [u]Upon the expiration of the deadline for filing [such] an application, if none has been filed.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Identification of Occupants Protected by Loft Law (§ 2-09)

REFERENCE NUMBER: DOB-14

RULEMAKING AGENCY: Department of Buildings

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Ruby B. Choi
Mayor's Office of Operations

5/4/2012
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Identification of Occupants Protected by Loft Law (§ 2-09)

REFERENCE NUMBER: 2011 RG 061

RULEMAKING AGENCY: Loft Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: May 3, 2012