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Summer 2010

# New York Residential Landlord-Tenant Law 101 for the Transactional Attorney

Gerald Lebovits



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# N.Y. Real Property Law Journal

A publication of the Real Property Law Section  
of the New York State Bar Association



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# New York Residential Landlord-Tenant Law 101 for the Transactional Attorney

By Margaret B. Sandercock and Gerald Lebovits

## Introduction

A transactional attorney whose client wants to acquire a building occupied by residential tenants must have answers to many important questions. These questions include whether existing tenants have rights of continued occupancy and to the issuance of renewal leases; whether the tenants' leases are enforceable and whether other enforceable agreements with the tenants, apart from their leases, will bind the purchaser; whether there are impediments to collecting rent; whether the purchaser will face financial liability for the prior owner's actions, such as rent overcharges; and whether the purchaser will be able to continue any landlord-tenant proceedings the prior owner commenced.

The building's suitability for the purchaser's purposes and the fiscal advisability of the purchase might hinge on the attorney's answers to these questions. The parameters of pre-purchase due diligence, the contract provisions necessary to protect the purchaser's interests, and the steps the purchaser should take at the closing and immediately post-closing will require a basic knowledge of landlord-tenant law.

This article spots some of the most common landlord-tenant issues that transactional attorneys should recognize so that they can assess the proposed purchase, consult with a landlord-tenant specialist if necessary, and take action required at closing. The attorney's pre-purchase research, which may be conducted pre-contract or during a due-diligence period with a right of cancellation after the contract is signed,<sup>1</sup> should be conducted simultaneously with other due diligence and will supplement an engineering report and physical inspection of the entire building.<sup>2</sup>

## Due Diligence Issue #1: Do the Tenants Have the Right to Stay?

Customarily, the contract of sale for an occupied residential building will contain a schedule of the unit numbers, the rent amounts, and the security deposits, if any. Leases to which the contract is subject (those that will continue after closing) may be attached to the contract or provided during a post-contract due-diligence period. The purchaser's attorneys should seek a contract representation that the leases the seller provides are the only written agreements with the tenants.

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Absent an option to renew, a lease provision terminating the lease on sale of the building, or some other written agreement with the prior owner, residential tenants not subject to New York's rent-regulatory laws may remain for the balance of their lease but need not be given a renewal lease.<sup>3</sup>

A rent-regulated tenant, however, has the right to continue in possession with successive renewal leases, in the case of rent-stabilized status, or as a statutory tenant without a lease, in the case of rent-control or interim multiple dwelling (Loft Law) status.<sup>4</sup> These tenants' occupancy rights may

not be terminated without a showing of good cause.<sup>5</sup> Some rent-regulated tenants' successors in interest also have the right to continued occupancy.<sup>6</sup> Tenants who meet the following requirements are rent-regulated.

## Rent-Stabilized Tenants

Rent-stabilized tenants in New York City are those who live in buildings with six or more units built before January 1, 1974, and which are not subject to rent control, as well as the tenants of some newer buildings that became subject to rent stabilization because the owner participated in a real estate tax-abatement program.<sup>7</sup> Some localities in the counties of Nassau, Westchester, and Rockland also adopted the Emergency Tenant Protection Act (ETPA).<sup>8</sup> In those localities, a building with six or more units built before January 1, 1974, and which is not subject to rent control is subject to rent stabilization.<sup>9</sup>

Purchasers of cooperative or condominium units occupied by rent-stabilized and rent-controlled tenants must be alert to a tenant's right of continued occupancy. If the building was converted under a non-eviction plan,<sup>10</sup> rent-regulated tenants who do not purchase their units retain their statutory rights.<sup>11</sup> Even if the building is converted under an eviction plan, rent-regulated tenants are entitled to continued occupancy for at least three years after the offering plan is declared effective.<sup>12</sup> The three-year limitation does not apply to senior citizens<sup>13</sup> (over sixty-two) and the disabled,<sup>14</sup> who retain their statutory rights indefinitely.<sup>15</sup>

Courts in the First and Second Departments have recently recognized, in addition, that tenants who live in a commercial building with six or more residential units not subject to the Loft Law<sup>16</sup> and located in an

area where residential occupancy is permitted by zoning might be subject to rent stabilization.<sup>17</sup>

To be rent stabilized in the First Department, a residential tenant in a commercial building must demonstrate that zoning requirements are complied with, that the building has six or more residential units, that the landlord knew or should have known of the residential occupancy, and that the unit is capable of being legalized.<sup>18</sup>

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*"An exception to rent stabilization coverage exists if the landlord, at the landlord's expense, substantially rehabilitated the property after January 1, 1974, without receiving a real estate tax benefit."*

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The standards are stricter in the Second Department, which has indicated its intent to limit rent-stabilized tenancies in commercial buildings.<sup>19</sup> In the Second Department, a residential tenant in a commercial building must establish not only compliance with zoning, that the building has six or more residential units, and that the landlord knew or should have known of the residential occupancy, but also that residential amenities were installed at the occupants' expense and that the landlord took affirmative steps to convert the premises to residential use during the pendency of litigation in which the tenants sought rent-stabilization protection.<sup>20</sup>

A count of six or more residential units, which invokes rent stabilization, may be arrived at in a number of ways: if there were six or more units when the building came under rent stabilization;<sup>21</sup> if six or more units are on the certificate of occupancy (C of O) of a building otherwise qualifying for rent stabilization, even if the building, as used, has less than six separate units;<sup>22</sup> or if the number of residential units in a building otherwise qualifying for

rent stabilization is increased to six or more.<sup>23</sup> On the other hand, a building remains rent stabilized if it has six or more units and the number of units is subsequently decreased to five units or fewer.<sup>24</sup>

In some instances, a building might contain six or more units and be subject to rent stabilization even though it is not initially obvious that the requirement of six or more units is met. For instance, garden apartments in New York City are covered by rent stabilization.<sup>25</sup> Even if an individual building in the complex has fewer than six units, but so long as the complex in total has six or more units, the complex is covered by rent stabilization if it meets the other statutory requirements. Sometimes two or more physically adjacent buildings, none of which contains six or more units, will collectively be declared a horizontal multiple dwelling subject to rent stabilization if the buildings meet the other requirements of rent stabilization and are operated as a single enterprise under common ownership and share common facilities such as a boiler or water supply.<sup>26</sup>

An exception to rent stabilization coverage exists if the landlord, at the landlord's expense, substantially rehabilitated the property after January 1, 1974, without receiving a real estate tax benefit.<sup>27</sup>

Some units that would presumptively be subject to rent stabilization are, on investigation, deregulated. One reason this might be the case is that the unit has consistently been owner-occupied.<sup>28</sup> Another reason is that the legal regulated rent rose to a figure exceeding \$2,000 a month, either at a vacancy or if the tenant's annual income exceeded \$175,000 for two years in a row.<sup>29</sup> This deregulation is called "luxury decontrol."

With the exception of residentially occupied commercial buildings that are rent stabilized due to case law and not by statute or regulation, a building's rent-stabilized status and the number and identity of registered

units can be ascertained from the Department of Housing and Community Renewal (DHCR), the regulatory agency, by making a request to the DHCR's Public Information Unit. The seller's cooperation is required for all pre-closing DHCR investigations; the contract should require that cooperation. A DHCR investigation must be conducted on the purchaser's behalf of any building of six or more units in New York City, Nassau, Westchester, or Rockland counties. The purchaser's attorney should assume that all buildings in these areas meet the basic criteria for rent stabilization and that all units in these buildings should be registered, and should ask the seller to explain unregistered buildings and units.

### Single Room Occupancies

Permanent tenants of single room occupancy facilities (SROs) in New York City are protected under rent stabilization if the building was erected before July 1, 1969, contains six or more units, and the rent charged was less than \$88 a week or \$350 a month on May 31, 1968.<sup>30</sup> Rent-stabilization protection for SRO tenants can also accrue because the building received a tax abatement.<sup>31</sup> Permanent tenants are those who have been in occupancy for six months or more<sup>32</sup> or who have been in occupancy for at least fifteen days and have requested a lease.<sup>33</sup>

The New York City Department of Housing Preservation and Development (HPD) regulates New York City's SRO facilities. The New York City Department of Buildings (DOB) will not issue a building permit for a building known to it as an SRO if HPD does not issue a Certificate of No Harassment.<sup>34</sup> The "look back period" for a Certificate of No Harassment is three years.<sup>35</sup> Even if the building is vacant when the purchaser acquires it, HPD requires assurance that the former owner, in preparation for selling the building, did not harass the tenant to vacate. The purchaser's attorney for any building that, by its age and physical



configuration, could possibly have been used as an SRO facility must review the DOB's records and contact the HPD to see whether city records reflect it as an SRO. If so, existing single-room tenancies meeting the rent-stabilization requirements might have to be continued. The seller should also be contractually bound by a condition of closing to obtain a Certificate of No Harassment if one is required.

### Loft Law Tenants

Loft Law tenants are residential tenants who lived, between April 1, 1980 and December 1, 1981, in formerly commercial buildings, zoned legal for residence. These buildings must contain three or more residential units and these tenants' lawful successors.<sup>36</sup> The Loft Law covers tenants in these buildings located in areas not zoned legal for residence if they can show that the building contained three or more residential units from April 1, 1980 through May 1, 1987.<sup>37</sup> Loft Law buildings are regulated by the New York City Loft Board, located at 100 Gold Street, New York, New York 10038, and must be registered with the Loft Board,<sup>38</sup> which maintains a website listing the buildings currently under its jurisdiction. In addition to the Multiple Dwelling Law's statutory provisions enacting the Loft Law, the Loft Board has a body of its own regulations and decisions, or Loft Board orders.<sup>39</sup>

The Loft Law is a transitional statute<sup>40</sup> under which landlords of rent-regulated buildings are statutorily required to obtain a Class A C of O for residential use,<sup>41</sup> a significant financial commitment. There are statutory time limits within which a C of O must be obtained, although under Loft Board regulations, a new owner may obtain a one-year extension if it misses a deadline.<sup>42</sup> When the C of O is obtained, Loft Law tenants become rent stabilized.<sup>43</sup> Some rent-stabilization provisions like luxury decontrol do not apply to Loft Law tenants.

The Loft Board website listing does not include buildings that have

obtained their C of O or buildings in which all the Loft Law tenants have vacated. This is significant because if a building or unit is vacated pre-C of O and the landlord does not buy the Loft Law tenants' tenancy rights as statutorily permitted,<sup>44</sup> the unit remains subject to the Loft Law. If a Loft Law unit is vacated pre-C of O with a payment for tenancy rights, the sale must be reported to the Loft Board with a statement concerning the unit's intended future use. If the unit will be used residentially, the landlord is required to obtain a residential C of O.<sup>45</sup> If the Loft Board is advised that the unit will be used commercially but it becomes reoccupied residentially, the unit becomes rent stabilized.<sup>46</sup>

The prospective purchaser's attorney for a building known to have been subject to the Loft Law should make a Freedom of Information Law (FOIL) request to review all records concerning the building or arrange for a knowledgeable Loft Law practitioner to do so. If the Loft Law status is unknown but the building's appearance and history suggest that it might have been subject to the Loft Law, a contract representation should be sought that the building and its units are not, and never have been, subject to the Loft Law.

### Rent-Controlled Tenants

Rent-controlled tenants live in buildings containing three or more residential units, residentially occupied since February 1, 1947, or earlier and occupied by the current record tenant or lawful successor since at least July 1, 1971. Rent-control laws are effective in New York City, more than 50 municipalities throughout the state, and the counties of Albany, Erie, Monroe, Nassau, Oneida, Onondaga, Rensselaer, Schenectady, and Westchester. Rent control also applies to buildings of fewer than three units if the tenant or lawful successor has been in residence since at least April 1, 1953.<sup>47</sup>

Rent-controlled tenancies are registered with DHCR. Because of the age of many of these tenancies,

DHCR's records are not always complete or accessible. Complicating the investigation of rent-controlled tenancies is that renewal leases are not issued. They need not be issued: rent-controlled tenants are statutory tenants. In any transaction concerning a residential building built before 1947, the attorney should seek a contract representation that there are no rent-controlled tenancies. Investigating this issue independently can prove difficult.

Immediate family members may succeed to the tenancy rights of rent-controlled and rent-stabilized tenants. To succeed to a rent-controlled or rent-stabilized tenancy, the family member seeking succession has the burden of proof to show by a fair preponderance of the credible evidence<sup>48</sup> that the protected tenant vacated due to death or permanent departure and that both the protected tenant and the family member seeking succession primarily resided in the unit together for two years (or one year where the tenant or spouse is over age 62 or disabled).<sup>49</sup> The following are immediate family members under rent stabilization and rent control: the protected tenant's husband, wife, son, daughter, father, mother, grandfather, grandmother, grandson, granddaughter, sister, brother, stepson, stepdaughter, stepfather, stepmother, father in law, mother in law, son in law, and daughter in law.<sup>50</sup>

The Court of Appeals in *Braschi v. Stahl Associates Co.*<sup>51</sup> expanded the concept of family to include nontraditional family members like homosexual couples. Regulations governing both rent-controlled and rent-stabilized tenants later adopted the *Braschi* standards. The New York City Loft Board issued an order that likewise adopted *Braschi*.<sup>52</sup> To succeed to a regulated tenancy, the nontraditional family member must satisfy the requirements for traditional family members (permanent vacatur of the regulated tenant and primary residence of the regulated tenant and the succeeding tenant for one or two years) and, in addition,

demonstrate that the relationship was one of emotional and financial commitment and interdependence. This is a litigious area with numerous fact-specific precedents. A prospective purchaser or new owner who wishes to investigate tenancies that might fall under *Braschi* should seek specialized legal assistance.

In all cases it is advisable to obtain a contract provision stating that no litigation is pending in any court or administrative agency concerning the building or, in the alternative, listing all litigation so that it can be investigated.

## Due Diligence Issue #2: Lease and Rent Issues

After determining whether any residential tenant has a right of continued occupancy, the purchaser should ascertain whether the leases claimed to be in effect are enforceable;<sup>53</sup> whether rent can be collected; and whether the rent amounts in the leases are legally permitted.

### Are the Leases Enforceable?

For residential tenancies, regulated and deregulated alike, courts will not enforce leases that are unconscionable<sup>54</sup> or against public policy. For instance, rent-stabilized leases giving unrestricted rights to sublease and assign, or waiving the obligation of primary residence at the premises, are unenforceable as against public policy.<sup>55</sup> Other examples of unenforceable leases include those that permit the landlord to breach the warranty of habitability<sup>56</sup> and in which rent-stabilized and rent-controlled tenants waive their rent-regulatory rights.<sup>57</sup>

Agreements between the prior landlord and a tenant conferring rent-stabilized status are enforceable<sup>58</sup> and bind successor landlords even if the agreement did not so provide, because these agreements run with the land.<sup>59</sup>

### Can Rent Be Collected?

Even if the residential tenants are not rent regulated, rent may not be collected if the building does not have a C of O for residential use if a C of O is required.<sup>60</sup> This rule equally applies in the Second Department to situations in which residential tenants live in commercial buildings but do not qualify for rent-stabilization protection.<sup>61</sup> Rent may also not be collected from the residential occupants of portions of the building not covered by the C of O, such as extra units not reflected on the C of O.<sup>62</sup>

New York City buildings containing three or more residential units must be registered as multiple dwellings with HPD; this registration is known as a Multiple Dwelling Registration statement, or MDR. The consequence of failure to register is that rent may not be collected until registration.<sup>63</sup> This is true whether or not the occupants are rent-regulated and whether or not the residential occupancy is legal.<sup>64</sup>

Rent-regulated buildings must be registered with the proper regulatory authority, whether the DHCR or the Loft Board,<sup>65</sup> or rent may not be collected. If the registration for a stabilized unit is not kept current, the landlord may not charge in excess of the last registered rent. Rent may not be collected from Loft Law tenants in buildings in which the landlord has not complied with the code-compliance timetable set out in Multiple Dwelling Law § 284.<sup>66</sup>

### Are the Claimed Regulated Rents Correct?

It is the nature of a deregulated tenancy that as long as the C of O corresponds with the use of the building and the building is registered if registration is required, the landlord may charge and collect any rent the tenant agreed to. A hallmark of a regulated tenancy is that although the landlord may charge the tenant less rent than the law permits, the rent may not exceed the regulated rent.

A rent-stabilized tenant's rent, which is less than the law permits, is a preferential rent. For leases post 2003, a preferential rent reflected as such in the tenant's lease need not be continued in lease renewals absent an agreement between the landlord and the tenant that the preferential rent will continue permanently throughout the tenancy.<sup>67</sup>

The rents paid by rent-stabilized tenants must be registered with DHCR. Unless the stabilized tenant is paying a preferential rent, the legal regulated rent is calculated as follows: the initial legal registered rent (generally the first rent registered by the landlord after April 1, 1984),<sup>68</sup> plus the increases permitted for a one- or two-year lease;<sup>69</sup> plus any vacancy allowances that have accrued during vacancy between tenants;<sup>70</sup> plus any other permitted increases by virtue of Major Capital Improvements (MCI) or other improvements;<sup>71</sup> less any rent-reduction orders in effect for failure to provide required services.<sup>72</sup>

A landlord might be entitled to MCI increases for work to operate, preserve, or maintain a building, but not for ordinary repairs.<sup>73</sup> The work must be building-wide, benefitting all tenants.<sup>74</sup> Building systems such as heating or intercom can result in an MCI increase only after they exceed their useful life as determined by a DHCR schedule.<sup>75</sup> MCI increases may not exceed the tenant's regulated rent by six percent a year.<sup>76</sup>

MCIs require an application to DHCR before the appropriate rent increase may be collected.<sup>77</sup> MCI applications must be supported by at least one of the following: cancelled checks for payment of the work; invoice receipts marked "paid in full"; a signed contract for the work; or a contractor's affidavit that the work was completed and paid in full.<sup>78</sup> DHCR might require additional proof if the relationship between the contractor and the landlord is not at arm's length.<sup>79</sup>

Work on an individual unit can result in what is known as a "1/40th increase."<sup>80</sup> Examples of work that might qualify for that increase include new kitchen cabinets and windows, but ordinary maintenance such as painting and finishing floors is ineligible.<sup>81</sup> Landlords most often perform the work between tenancies, with the cost passed along to the new tenant, who has the opportunity to file a Fair Market Rent Appeal (FMRA) to grieve the rent for a period of four years, if the landlord notified the tenant that work was done and that the rent increased in consequence.<sup>82</sup>

If a building is rent stabilized, the purchaser should require the seller to provide at least four years of leases and compare them with the rent registrations filed at DHCR for the same period. The purchaser should obtain a contract representation concerning all pending applications before DHCR and compare it with a printout that can be obtained from DHCR indicating open matters. The attorney should collect proof of performance of all work leading to 1/40th increases for at least the past four years as well as notice to the new tenant a rent increase was based on this work. Likewise, the attorney should obtain all proof associated with MCI work for at least the past four years, together with an agreement to assist post-closing on pending MCI applications.

Rent-controlled rents are comprised of the initial base rent plus annual increases.<sup>83</sup> The DHCR annually sets rent increases for rent-controlled tenants outside New York City.<sup>84</sup> In New York City, since 1972, a procedure called the Maximum Base Rent (MBR) system allows rent-controlled rents to be increased.<sup>85</sup> Every two years, DHCR sets an allowable increase in the MBR for each rent-controlled apartment.<sup>86</sup> Rents can be increased by a maximum of 7.5 percent each year, but they are limited to the amount needed to reach the MBR.<sup>87</sup> To obtain an MBR increase, the landlord must apply to DHCR six

months in advance for an order of eligibility, which requires the landlord to represent, among other things, that rent-impairing violations have been cleared, corrected, or abated.<sup>88</sup>

Senior citizens in both rent-controlled and rent-stabilized apartments may apply for a SCRIE exemption from future rent increases if the head of household is over 62, the family income is \$29,000 a year or less, and the rent exceeds one-third the gross household income.<sup>89</sup>

Loft Law tenants do not pay regular, periodic rent increases.<sup>90</sup> The tenant's base rent under the Loft Law, which in almost all cases was established twenty or more years ago, is derived from a complex Loft Board formula that takes into account the date and percentage of the tenant's last rent increase.<sup>91</sup>

The only increases from the base rent for Loft Law tenants are associated with progress toward obtaining a C of O: for filing an alteration application (six percent), obtaining a building permit (eight percent), and achieving temporary C of O standards (six percent).<sup>92</sup> After a C of O is obtained, the landlord may apply to the Loft Board to pass along to the tenants, as a temporary rent increase over ten or fifteen years, the reasonable costs of obtaining the C of O,<sup>93</sup> as well as the New York City's Rent Guidelines Board-permitted loft increase for that year.<sup>94</sup>

There are no SCRIE rent adjustments for Loft Law tenants, nor is there a Loft Law analog to a rent-reduction order.<sup>95</sup>

Loft Law tenants who believe they are being charged the incorrect rent because unpermitted increases were added to the rent in the past may apply to the Loft Board for a rent adjustment<sup>96</sup> or may advance the defense of rent overcharge in a nonpayment proceeding.<sup>97</sup> Unless a Loft Law tenant has disputed the rent at the Loft Board, in which case there will be a Loft Board order stating the outcome of the dispute, the Loft Law

tenants' rents are not registered with the Loft Board and usually cannot be ascertained from Loft Board records. In purchasing a Loft Law building, therefore, the seller's contractual representations of permitted rent levels are particularly important.

### **What are the Consequences of Collecting Rent When the C of O Does Not Match the Building's Use; When No MDR or Loft Law Registration Is Filed; or When Excessive Rent Is Collected from a Rent-Regulated Tenant?**

A tenant may not recoup past-paid rent when the tenant paid rent not otherwise collectible because the building occupancy did not conform with the C of O; when the building was required to have an MDR but did not; or when the building was required to be registered with the Loft Board but was not.<sup>98</sup> The purchaser has nothing to fear if a predecessor collected rent under any of these circumstances.

This is not the case if a rent-stabilized or rent-controlled tenant has been overcharged. A rent-stabilized tenant may file an application with DHCR to recoup up to four years of rent overcharges<sup>99</sup> or may assert an overcharge defense in a nonpayment proceeding. The tenant may be awarded treble damages for up to two years before an overcharge application if the overcharge is willful. The landlord has the burden to disprove willfulness.<sup>100</sup>

Rent overcharges that do not concern the initial rent charged for the premises may be recaptured from a new landlord.<sup>101</sup> Court decisions anticipate that purchasers investigate the building's rent history and pending DHCR applications, negotiate a purchase price that reflect a potential overcharge liability, and, possibly, negotiate contract provisions for indemnification by the seller in the event of a determination of overcharge.<sup>102</sup> Treble damages are not awarded against a new owner who cannot produce rent records prior to the new ownership.<sup>103</sup> The tenant may recoup the overcharge either by



means of forgiven past or future rent or by a cash payment.<sup>104</sup>

Rent overcharges stemming from the initial rent paid by the tenant may not be collected from a new owner.<sup>105</sup>

Although Loft Law tenants are subject to the four-year statute of limitations in collecting rent overcharges,<sup>106</sup> Loft Board regulations do not provide for treble damages in rent disputes with the landlord.<sup>107</sup>

### Due Diligence Issue #3: Is Owner-Occupancy Possible?

Purchasers who want to occupy their own building may do so by declining to renew a deregulated tenant's lease.<sup>108</sup> If there are no deregulated units or if the deregulated units are unsuitable for the purchaser, one or more rent-stabilized or rent-controlled units can be taken for owner occupancy.<sup>109</sup> A nonrenewal notice must be served on the tenant between 90 and 150 days before the lease expires.<sup>110</sup> Assuming that the tenant does not vacate as the notice requires, the owner must bring a summary holdover proceeding.<sup>111</sup>

An owner-occupancy, or owner's-use, proceeding can be maintained only by an individual owner or one partner of a partnership.<sup>112</sup> The landlord bears the burden of proof to demonstrate a good-faith intent to occupy the unit taken as the owner's primary residence or the primary residence of an owner's immediate family member.<sup>113</sup> To prevail in an owner-occupancy case, the owner must offer the tenant moving expenses and comparable housing in the immediate vicinity<sup>114</sup> if seeking a unit of which the tenant or tenant's spouse is over the age of sixty-two or disabled.<sup>115</sup> If a rent-controlled tenant or household member has lived in the building for twenty years or more, an owner-occupancy eviction may not be maintained.<sup>116</sup>

The Loft Law and Loft Board regulations do not provide for owner occupancy.<sup>117</sup> An owner-occupancy

case may not be brought in a Loft Law building until it passes into rent stabilization and the tenant's first or subsequent stabilized lease is ending.<sup>118</sup>

### Issues Arising at Closing and After

If all goes well during the building investigation, the client decides that the building will suit the client's needs, and a contract is signed, it will soon be time to prepare a closing checklist and a "to do" agenda for the first days of ownership. Along with pro-rated rents for the month of the closing, security deposits for the existing tenants must be collected and handled properly after the closing. The purchaser should also be counseled about an owner's lead-paint responsibilities. There might also be existing landlord-tenant proceedings that the purchaser may continue in many, but not all, cases.

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### What About Security Deposits?

When property is conveyed from one owner to another, the security deposits must be transferred to the new owner, which is responsible for maintaining the deposit and returning it to the tenant.<sup>119</sup> The seller is no longer liable to the tenants for their deposits.<sup>120</sup> Even if a purchaser fails to receive the tenants' security deposits from the seller, the purchaser will still be liable to the tenants.<sup>121</sup>

Tenant security deposits may not be commingled with the landlord's funds.<sup>122</sup> If the building contains six or more rental units, security deposits must be held in an interest bearing account.<sup>123</sup> The tenant is entitled to receive the interest annually, less a one percent administrative fee.<sup>124</sup>

Statutory rights concerning security deposits pertain whether or not the tenant is rent-regulated.<sup>125</sup> Tenants subject to rent stabilization may not, however, be required to post a security deposit exceeding one month's rent.<sup>126</sup>

### What Are the Obligations Concerning Lead Paint?

A landlord who has actual or constructive knowledge that a child under age seven resides in a unit is charged with notice of any hazardous lead condition in the unit.<sup>127</sup> A letter should be sent to all tenants to identify those units with children under seven.<sup>128</sup> The new landlord should schedule an inspection of all units from which a response is received and of any others of which the purchaser is aware, or becomes aware, that children are in residence.<sup>129</sup>

### May the New Owner Maintain Landlord-Tenant Cases the Seller Began?

In general, landlord-tenant proceedings may be brought only by the building's landlord and owner. A prospective purchaser or contract vendee may not properly serve the predicate notices required before most summary proceedings may be brought or commence summary proceedings until after closing.<sup>130</sup>

Sometimes, however, at the time of closing the seller has already commenced one or more summary proceedings. In general, a new owner can be substituted, on consent or on motion, for the predecessor in a summary proceeding previously filed.<sup>131</sup> This is especially advantageous in cases such as primary-residence holdovers against rent-stabilized tenants, in which the predicate notice must be served 90–150 days before lease expiration and in which discontinuing a previously filed case will result in a long delay or recapture an appellant.<sup>132</sup>

If consent to the substitution cannot be obtained, the purchaser should demonstrate building owner-

ship by a certified copy of the deed; registration of the property (MDR, DHCR, or Loft Board, as appropriate) in the new owner's name; and, in a proceeding involving rent, an assignment of rents.<sup>133</sup>

A new owner may not continue an owner-occupancy proceeding against a rent-regulated tenant.<sup>134</sup> Maintaining an owner-occupancy case is based on the qualifying person's good-faith intent to occupy the premises.

## Conclusion

For most purchasers, acquiring a residential property designed for multiple occupancies is a major investment. There are some restrictions on the landlord's rights with respect to a residentially occupied building, even one not rent regulated. Occasionally a purchaser inadvertently acquires a property occupied by one or more rent-regulated tenants, and therefore subject to greater controls, through misunderstanding or lack of pre-purchase investigation. The landlord's rights are more limited than contemplated, and the financial implications might be disastrous. More frequently, the purchaser knows that tenants with leases occupy the property, or even that the tenants are rent regulated, but is not fully aware of the tenants' rights and the new owner's responsibilities to them.

Even if money is no object and the best and consummate experts conduct full due diligence, the purchaser and its representatives are often unable to speak with the tenants until after the closing. Where this article suggests obtaining contract representations, the purchaser and counsel might wish to request that certain contract representations by the seller survive closing, at least for a few months. This burden to the seller must be used sparingly and be tailored to the building in question (might it be a Loft Law building, an SRO, or something else?), and not to substitute for available due diligence.

## Endnotes

1. See generally Bea Grossman & Ram Sundar, *The Importance of Due Diligence in Commercial Transactions: Avoiding CERCLA Liability*, 7 FORDHAM ENVTL. L.J. 351, 377 (1996) (discussing the importance of the due diligence inspection team, both financially and legally). The attorney should try to obtain a post-contract due-diligence period. The required investigation for any given building might involve a great deal of work. But the purchaser might prefer to incur due-diligence costs post-contract when seller is under an obligation to the purchaser and the expense is less likely to be wasted.
2. See *52 Riverside Realty Co. v. Ebenhart*, 119 A.D.2d 452, 453, 500 N.Y.S.2d 259, 260 (1st Dep't 1986) (citing *Phelan v. Brady*, 119 N.Y. 587, 591, 23 N.E. 1109, 1110 (1890)) (explaining that the transferee of real property takes the premises subject to the conditions as to tenancy, including any waiver of rights that his predecessor has established if the transferee has notice of the existence of the leasehold; possession of the premises constitutes constructive notice to a purchaser of the rights of the possessor).
3. See N.Y. REAL PROP. LAW § 291 (LEXIS 2010) (explaining that every conveyance of real property, including leaseholds, for a duration in excess of three years is void against the person who subsequently purchases or acquires the real property). See, e.g., *Sam & Mary Housing Corp. v. Jo/Sal Mkt. Corp.*, 121 Misc. 2d 434, 439-40, 468 N.Y.S.2d 294, 298-99 (Sup. Ct. Queens County 1983), *aff'd on other grounds*, 100 A.D.2d 901, 901, 474 N.Y.S.2d 786, 787 (2d Dep't 1984) (holding that although a lease in excess of three years is a "conveyance of real property," neither statutes nor authorities require such to be recorded); *Gemrosen Realty Corp. v. Kadarkhan*, 288 A.D.2d 64, 64, 733 N.Y.S.2d 15, 16 (1st Dep't 2001) (finding that an unrecorded lease exceeding three years may be enforceable, notwithstanding New York Real Property Law § 291, if the purchaser has notice or constructive notice by virtue of the tenant's presence on the premises and filings with the Division of Housing and Community Renewal (DHCR)).
4. E.g., N.Y.C.R.R. tit. 9, ch. VIII, § 2522.5(b)(1) (LEXIS 2010) ("For housing accommodations other than hotels, upon such notice as is required by section 2523.5 of this Title, the tenant shall have the right of selecting at his or her option a renewal of his or her lease for a one- or two-year term; except that where a mortgage or a mortgage commitment existing as of April 1, 1969 prohibits the granting of one- year lease terms or the tenant is the recipient of a Senior Citizen Rent Increase Exemption pursuant to section 26-509 of the Administrative Code of the City of New York, the tenant may not select a one-year lease.").
5. See, e.g., *id.* § 2524.5 (providing grounds for refusing to renew a rent-stabilized tenant's lease); *Commercial Hotel v. White*, 194 Misc. 2d 26, 27, 752 N.Y.S.2d 779, 780 (Sup. Ct. App. T. 2d Dep't 2002) (finding that rent-controlled tenants can only be evicted pursuant to one of the grounds that the rent-stabilization code provides).
6. See generally N.Y.C.R.R. tit. 9, ch. VII, §§ 2104.6(d)(3)(i), 2204.6(d)(2)(i), 2520.6(n), 2523.5(b)(1) (listing the immediate family members and nontraditional family members who may succeed to rent-controlled and rent-stabilized tenancies; the regulations provide identical succession rights for all rent-controlled and rent-stabilized tenants throughout New York state).
7. See generally ANDREW SCHERER, RESIDENTIAL LANDLORD-TENANT LAW IN NEW YORK § 4:31 (2009-2010 ed.) ("In New York City, as a general rule, residential rental units occupied as primary residences in buildings with six or more units that were built prior to January 1, 1974 and that are not subject to the Rent Control Law are subject to the Rent Stabilization Law, by operation of the Rent Stabilization Law and the Emergency Tenant Protection Act. However, many units that do not fit into this category are also governed by the Rent Stabilization Law because the owners have received certain tax benefits, loans or other assistance.").
8. *Id.* § 4:30 ("Outside New York City, Rent Stabilization applies to non-Rent Controlled housing units in buildings of six or more units that were built or converted to residential use before January 1, 1974 in localities that have adopted the Emergency Tenant Protection Act in Nassau, Westchester, and Rockland counties.").
9. *Id.*
10. See generally N.Y. GEN. BUS. LAW § 352-eeee(1)(b) (LEXIS 2010) (defining "non-eviction plan"). Whether a conversion plan was eviction or non-eviction can be determined by examining the cover of the

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*"Where this article suggests obtaining contract representations, the purchaser and counsel might wish to request that certain contract representations by the seller survive closing, at least for a few months."*

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- offering plan or from the New York State Attorney General's Real Estate Finance Bureau, located at 120 Broadway, New York, New York.
11. See *id.* § 352-eeee(2)(c)(iii) ("Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to the conversion of the building or group of buildings or development to cooperative or condominium ownership shall continue to be subject thereto.").
  12. See *id.* § 352-eeee(2)(d)(ii) ("No eviction proceedings will be commenced against a non-purchasing tenant for failure to purchase or any other reason applicable to expiration of tenancy until the later to occur of (1) the date which is the expiration date provided in such non-purchasing tenant's lease or rental agreement, and (2) the date which is three years after the date on which the plan is declared effective. Non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy prior to conversion shall continue to be subject thereto during the period of occupancy provided in this paragraph. Thereafter, if a tenant has not purchased, he may be removed by the owner of the dwelling unit or the shares allocated to such dwelling unit.").
  13. *Id.* § 352-eeee(1)(f) (defining "eligible senior citizens").
  14. *Id.* § 352-eeee(1)(g) (defining "eligible disabled persons").
  15. See NEW YORK, N.Y., R.C.N.Y. tit. 26, ch. 4, § 26-511 (LEXIS 2010) (explaining that an owner shall not refuse to renew the lease of a rent-stabilized tenant who is an "eligible senior citizen" or an "eligible disabled person").
  16. See N.Y. MULT. DWELL. LAW §§ 280–286 (LEXIS 2010).
  17. See *Randall Assocs., LLC v. Fylypowycz*, 16 Misc. 3d 1107A, 841 N.Y.S.2d 828 (N.Y. Civ. Ct. N.Y. County 2007) (providing an historical analysis of the rent-stabilization protections afforded to tenants who convert commercial space not subject to the Loft Law with six or more residential units).
  18. See *Duane Thomas LLC v. Wallin*, 35 A.D.3d 232, 233, 826 N.Y.S.2d 221, 222 (1st Dep't 2006) (explaining that because a temporary residential certificate of occupancy covering the unit was obtained, the unit was capable of being legalized and may be subject to rent-stabilization).
  19. See *S. Eleventh St. Tenants Assn. v. Dov Land LLC*, 59 A.D.3d 426, 427, 872 N.Y.S.2d 514, 515–16 (2d Dep't 2009) (stating that Emergency Tenant Protection Act (EPTA) protections are available to tenants of illegally converted lofts not subject to the Loft Law only in very limited circumstances).
  20. See *Caldwell v. Am. Package Co.*, 57 A.D.3d 15, 24, 866 N.Y.S.2d 275, 281 (2d Dep't 2008) (holding that tenants were not entitled to ETPA protection, because their assertion that the owner applied for and obtained a map change permitting residential occupancy of the building was not supported by copies of any public records or any additional evidence that the owner had taken measures to alter the permissible use of the premises during the pendency of the proceeding).
  21. See *generally Fleur v. Croy*, 137 Misc. 2d 628, 629–31, 520 N.Y.S.2d 1010, 1011–14 (N.Y. Civ. Ct. N.Y. County 1987), *aff'd*, 139 Misc. 2d 885, 531 N.Y.S.2d 761 (Sup. Ct. App. T. 1st Dep't 1988) ("The current rent stabilization structure was established by the Rent Stabilization Law of 1969... which, with limited exceptions, applied to all buildings 'containing six or more dwelling units' built after 1947.").
  22. See *Loventhal Mgmt. v. N.Y. St. Div. of Hous. & Cmty. Renewal*, 183 A.D.2d 415, 415, 583 N.Y.S.2d 270, 270–71 (1st Dep't 1992) (explaining that illegally converting two units into one will not exempt the premises from coverage under the Rent Stabilization Law when its certificate of occupancy and an inspection report showed that the premises were formerly comprised of six residential units).
  23. See *Commercial Hotel*, 194 Misc. 2d at 27, 752 N.Y.S.2d at 780 ("Plaintiff's addition of a sixth unit...brought all the units in the building under rent stabilization....").
  24. *Fleur*, 137 Misc. 2d at 630–31, 520 N.Y.S.2d at 1012–13 (holding that mere cosmetic work and a reduction in the number of units was insufficient proof of a substantial rehabilitation and thus did not destabilize a building under the ETPA).
  25. NEW YORK, N.Y., ADMIN. CODE, tit. 26, ch. IV, § 26-505 (LEXIS 2010) ("For purposes of this chapter a class A multiple dwelling shall be deemed to include a multiple family garden-type maisonette dwelling complex containing six or more dwelling units having common facilities . . . and operated as a unit under a single ownership on May sixth, nineteen hundred sixty-nine, notwithstanding that certificates of occupancy were issued for portions thereof as one- or two-family dwellings.").
  26. See N.Y.C.R.R. tit. 9, ch. VIII, § 2520.11(d) (LEXIS 2010); *Salvati v. Eimicke*, 72 N.Y.2d 784, 791, 533 N.E.2d 1045, 1047, 537 N.Y.S.2d 16, 18 (1988).
  27. N.Y.C.R.R. tit. 9, ch. VII, § 2520.11(e).
  28. See *id.* § 2200.2(f)(11) (explaining that regulations of the City Rent and Rehabilitation Law shall not apply to housing accommodations rented after April 1, 1953, which were or are continuously occupied by the owner thereof for a period of one year prior to the date of renting); see also *Francis v. Rapee*, Loft Board Order #30 (Nov. 30, 1983) (stating that Loft Law owner-occupied units count toward the number of residential units required for the building to be subject to the Loft Law), available at <http://archive.citylaw.org/loft/arch1983/LBO-0030.pdf>.
  29. See N.Y., ADMIN. CODE, tit. 26, ch. IV, § 26-504.1.
  30. N.Y.C.R.R. tit. 9, ch. VII, § 2520.11(g) (LEXIS 2010).
  31. See SCHERER, *supra* note 7, at § 4:48.
  32. See N.Y.C.R.R. tit. 9, ch. VII, § 2520.6(j).
  33. See, e.g., *Nutter v. W & J Hotel Co.*, 171 Misc. 2d 302, 305–06, 654 N.Y.S.2d 274, 276–77 (N.Y. City Civ. Ct. N.Y. County 1997) ("[T]he purposes of these provisions of the rent stabilization laws indicate that the request for a lease, evincing an intent to accede to tenancy status, is what triggers the protection of the rent stabilization laws.").
  34. See N.Y. ADMIN. CODE tit. 26, ch. IV, § 27-2093 (LEXIS 2010) (certification of no harassment with respect to single room occupancy multiple dwellings (SROs)); see *generally* NEW YORK, N.Y., R.C.N.Y. tit. 28, ch. 10, § 10-07 (LEXIS 2010).
  35. See R.C.N.Y. tit. 28, ch. 10, § 10-01 ("Inquiry period" shall mean (i) with respect to an application submitted pursuant to any provision of the Zoning Resolution, the period of time therein defined as the inquiry period, and (ii) with respect to an application submitted pursuant to Administrative Code § 28-107.1 *et seq.* and Administrative Code § 27-2093, a period commencing three years prior to submission of the application and ending on the date that HPD issues a final determination on the application.").
  36. See N.Y. MULT. DWELL. LAW § 281(1)–(2) (LEXIS 2010).
  37. See *id.* § 281(4).
  38. See *id.* § 284(2).
  39. See *generally* R.C.N.Y. tit. 29, chs. 1–2, §§ 1-01–2-12 (LEXIS 2010). Loft Board orders can be researched in a database maintained by New York Law School, available at [http://www.nyls.edu/centers/harlan\\_scholar\\_centers/center\\_for\\_new\\_york\\_city\\_law/cityadmin\\_library](http://www.nyls.edu/centers/harlan_scholar_centers/center_for_new_york_city_law/cityadmin_library) (last visited Apr. 25, 2010). Old Loft Board orders not on the New York Law School website may be obtained by contacting the Loft Board, available at <http://www.nyc.gov/html/loft/html/contact/contact.shtml> (last visited Apr. 25, 2010).
  40. See R.C.N.Y. tit. 29, ch. 2, § 2-01(m).
  41. N.Y. MULT. DWELL. LAW § 284 (LEXIS 2010) ("The owner of an interim multiple



- dwelling . . . 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.”).
42. R.C.N.Y. tit. 29, ch. 2, § 2-01(b)(1).
  43. *Id.* § 2-01(m) (providing that fewer than six units in a Loft Law building does not preclude rent-stabilization coverage).
  44. See N.Y. MULT. DWELL. LAW § 286(12) (“No waiver of rights pursuant to this article by a residential occupant qualified for protection pursuant to this article made prior to the effective date of the act which added this article shall be accorded any force or effect; however, subsequent to the effective date an owner and a residential occupant may agree to the purchase by the owner of such person’s rights in a unit.”).
  45. See generally R.C.N.Y. tit. 29, ch. 2, § 2-07 (LEXIS 2010).
  46. See *315 Berry St. v. Hanson Fine Arts*, 39 A.D.3d 656, 657, 835 N.Y.S.2d 261, 262 (2d Dep’t 2007).
  47. SCHERER, *supra* note 7, at § 4:26-4:28.
  48. See *1234 Pacific Mgmt. v. Jefferson*, 8 Misc. 3d 1022(A), 2005 N.Y. Slip Op. 51230(U), \*3 (N.Y. Civ. Ct. Kings County 2005).
  49. N.Y.C.R.R. tit. 9, ch. VII, §§ 2104.6, 2204.6, 2520.6, 2523.5 (LEXIS 2010) (“Disabled” for this purpose is defined identically to the definition in N.Y. GEN. BUS. LAW § 352-eeee(1)(g) set forth *supra* at note 14).
  50. *Id.* §§ 2520.6(o)(1), 2204.6(d)(3)(i).
  51. 74 N.Y.2d 201, 211 543 N.E.2d 49, 53–54 554 N.Y.S.2d 784, 788–89 (1989).
  52. *In re Snelham*, Loft Board Order #1625 (Sept. 29, 1984), available at <http://archive.citylaw.org/loft/arch1996/Lbo-2029.pdf>.
  53. The purchaser should remember that sellers that provide leases might not provide them for all occupied residential units. For example, statutory tenants—rent-controlled and Loft Law tenants—do not have current leases; no current leases will be provided for these units.
  54. N.Y. REAL PROPERTY LAW § 235-c (LEXIS 2010) (“If the court as a matter of law finds a lease or any clause of the lease to have been unconscionable at the time it was made the court may refuse to enforce the lease, or it may enforce the remainder of the lease without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.”).
  55. See, e.g., *Rima 106 LP v. Alvarez*, 257 A.D.2d 201, 204–06, 690 N.Y.S.2d 40, 42–44 (1st Dep’t 1999).
  56. See N.Y. REAL PROP. LAW § 235-(b)(2) (LEXIS 2010) (“An agreement by a lessee or tenant of a dwelling waiving or modifying his rights as set forth in this section shall be void as contrary to public policy.”).
  57. E.g., *Georgia Props., Inc. v. Dalsimer*, 39 A.D.3d 332, 334, 835 N.Y.S.2d 41, 43 (1st Dep’t 2007) (finding that “[d]eregulation of apartments is only ‘available through regular, officially authorized means [and] not by private compact’”) (quoting *Draper v. Georgia Props., Inc.*, 94 N.Y.2d 809, 811, 701 N.Y.S.2d 71, 72 (1999)).
  58. See *546 W. 156 St. HDfC v. Smalls*, 8 Misc. 3d 135(A), 803 N.Y.S.2d 18, 2005 WL 1798344 (Sup. Ct. App. T. 1st Dep’t 2007), *rev’d*, 43 A.D.3d 7, 14, 839 N.Y.S.2d 62, 68 (1st Dep’t 2007) (reinstating the trial court’s ruling and holding that the parties’ stipulated agreement treating the premises as subject to rent-stabilization did not defeat the statutory exclusion from regulation under the Administrative Code of the City of New York and that the parties’ stipulated agreement was enforceable only to the extent that it set the rental amount and only for the duration of any lease signed by the parties).
  59. See *Carrano v. Castro*, 12 Misc. 3d 5, 7, 820 N.Y.S.2d 376, 378 (Sup. Ct. App. T. 2d Dep’t 2006), *aff’d*, 44 A.D.3d 1038, 1040, 844 N.Y.S.2d 435, 436 (2d Dep’t 2007).
  60. N.Y. MULT. DWELL. LAW § 302(1)(b) (LEXIS 2010); see *Caldwell v. American Package Co.*, 57 A.D.3d 15, 22–23, 866 N.Y.S.2d 275, 280 (2d Dep’t 2008) (“Multiple Dwelling Law § 302 prohibits the owner of a multiple dwelling for which there is no valid certificate of occupancy allowing residential use from collecting rent or the value of the use and occupancy of the premises.”).
  61. See *Caldwell*, 57 A.D.3d at 25–26, 866 N.Y.S.2d at 282 (holding that the trial court erred by not allowing the tenants to rely on Multiple Dwelling Law § 302 as a defense and therefore that the owner was not entitled to an award of the value of the use and occupancy of the premises).
  62. See, e.g., *Tan Holding Corp. v. Ecklund*, 33 A.D.3d 487, 487–88, 823 N.Y.S.2d 31, 31 (1st Dep’t 2006) (holding that landlord had no claim against tenant for use and occupancy when landlord and its predecessors in interest acquiesced in the illegal conversion); *O’Connor v. Gallier*, 7 Misc. 3d 1016A, 801 N.Y.S.2d 237, 2005 WL 991 [http://www.nysba.org/AM/Template.cfm?Section=Entertainment\\_Arts\\_and\\_Sports\\_Law\\_Journal&TEMPLATE=/CM/HTMLDisplay.cfm&CONTENTID=3318069](http://www.nysba.org/AM/Template.cfm?Section=Entertainment_Arts_and_Sports_Law_Journal&TEMPLATE=/CM/HTMLDisplay.cfm&CONTENTID=3318069), at \*2 (Sup. Ct. Kings County 2005).
  63. N.Y. MULT. DWELL. LAW § 325(2) (McKinney 2010).
  64. See *A Real Good Plumber v. Kelleher*, 191 Misc. 2d 94, 96, 740 N.Y.S.2d 745, 747 (Sup. Ct. App. T. 2d Dep’t 2002) (holding that the landlord was required to have registered the leased premises as a multiple dwelling if landlord knew of, and acquiesced in, tenant’s residential use of loft).
  65. Loft Law buildings consisting of three or more units need not register as multiple dwellings; Loft Board registration is required instead of an MDR statement.
  66. See *County Dollar Corp. v. Douglas*, 160 A.D.2d 537, 537, 556 N.Y.S.2d 533, 533 (1st Dep’t 1990) (finding that a landlord cannot bring a non-payment proceeding against loft tenants when the landlord has not complied with the legalization procedures of Multiple Dwelling Law § 284(1)).
  67. N.Y.C.R.R. tit. 9, ch. VIII, § 2521.2 (LEXIS 2010); see *Aijaz v. Hillside Place, LLC*, 37 A.D.3d 501, 501–02, 830 N.Y.S.2d 283, 284 (2d Dep’t 2007) (holding that the landlord could not use the Rent Stabilization Law as an affirmative defense to tenant’s rent overcharge claim because the renewal leases at issue were entered into and expired before the Legislature amended the Rent Stabilization Law, which amendment was to be applied prospectively).
  68. Emergency Tenant Protection Act of 1974, N.Y. UNCONSOL. LAWS, ch. 5, § 8629(b); NEW YORK, N.Y., ADMIN. CODE tit. 26, ch. 4, § 26-513 (LEXIS 2010); N.Y.C.R.R. tit. 9, ch. VIII, § 2522.3. The initial legal regulated rent for units extensively altered is not based on the 1984 rent but on the first rent set after alterations. The initial legal regulated rent for units that pass from rent-control to rent-stabilization is based on the fair market rent, a value the landlord sets and which the first tenant may contest. The Loft Board sets the initial regulated rent for a Loft Law unit passing into rent stabilization. N.Y. MULT. DWELL. LAW § 286(6).
  69. See, e.g., ADMIN. CODE tit. 26, ch. 4, § 26-510(b); N.Y.C.R.R. tit. 9, ch. VIII, §§ 2522.2, 2522.5(d)(1).
  70. See generally SCHERER, *supra* note 7, at § 4:115 (“Under the statutory provision, if a vacant apartment is rented for a two-year lease, the landlord can charge a 20% vacancy increase. If a vacant apartment is rented for a one-year lease, the landlord may charge a 20% increase minus ‘the difference between (a) the two year renewal lease guideline promulgated by the guideline board of the City of New York applied to the previous legal regulated rent and (b) the one year renewal lease....’”).
  71. N.Y.C.R.R. tit. 9, ch. VIII, § 2522.4(a)(2)(i); ADMIN. CODE tit. 26, ch. 4, § 26-511(c)(6) (b), available at <http://24.97.137.100/nyc/AdCode/entered.htm>.
  72. See generally SCHERER, *supra* note 8, at § 4:118 (“DHCR issues rent reduction orders as a penalty for failure to maintain



- essential services.... A rent reduction order will offset an abatement of rent for breach of warranty of habitability.”).
73. See generally N.Y.C.R.R. tit. 9, ch. VIII, § 2522.4(a)(2)(i) (LEXIS 2010); N.Y. ADMIN. CODE tit. 26, ch. 4, § 26-511(c)(6)(b) (LEXIS 2010).
  74. N.Y.C.R.R. tit. 9, ch. VIII, § 2522.4(a)(2)(i); see *Garden Bay Manor Assocs. v. N.Y. St. Div. of Hous. & Cmty. Renewal*, 150 A.D.2d 378, 540 N.Y.S.2d 665 (2d Dep’t 1989) (explaining that even an item depreciable under the Internal Revenue Code will not qualify for MCI treatment unless it is building-wide and constitutes an improvement to the building).
  75. *Id.*
  76. *Id.* § 2522.4(e)(8).
  77. See N.Y.C.R.R. tit. 9, ch. VIII § 2502.4(a) (LEXIS 2010).
  78. Elliot G. Sander, *Major Capital Improvements/Individual Apartment Improvements Confirmation of Costs/Payments*, Division of Housing and Community Renewal (1990), available at <http://www.dhcr.state.ny.us/Rent/PolicyStatements/orap9010.htm> (last visited Apr. 25, 2010).
  79. See *id.*
  80. See N.Y.C.R.R. tit. 9, ch. VIII, § 2522.4(a)(8) (LEXIS 2010) (“The increase in the monthly stabilization rent for the affected housing accommodations when authorized pursuant to paragraph (1) of this subdivision shall be 1/40th of the total cost, including installation but excluding finance charges.”); see also NEW YORK, N.Y., ADMIN. CODE tit. 26, ch. 4, § 26-511(c)(13) (LEXIS 2010).
  81. See N.Y.C.R.R. tit. 9, ch. VIII, § 2522.4(a)(2)(i) (LEXIS 2010).
  82. See N.Y.C.R.R. tit. 9, ch. VIII, § 2522.4(a)(1) (“An owner is entitled to a rent increase where there has been a substantial increase, other than an increase for which an adjustment may be claimed pursuant to paragraph (2) of this subdivision, of dwelling space or an increase in the services, or installation of new equipment or improvements, or new furniture or furnishings, provided in or to the tenant’s housing accommodation, on written tenant consent to the rent increase. In the case of vacant housing accommodations, tenant consent shall not be required.”); ADMIN. CODE tit. 26, ch. 4, § 26-516(a) (“Where the amount of rent set forth in the annual rent registration statement filed four years prior to the most recent registration statement is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter.”).
  83. See *Perry v. N.Y. St. Div. of Hous. & Cmty. Renewal*, 281 A.D.2d 629, 631, 722 N.Y.S.2d 556, 558 (2d Dep’t 2001) (“[T]he legal regulated rent is deemed to be the rent charged four years prior to the date of the initial registration ‘plus in each case, any [subsequent] lawful increases and adjustments.’”).
  84. New York State Division of Housing and Community Renewal, Office of Rent Administration, available at <http://www.housingnyc.com/html/resources/dhcr/dhcr1.html> (last visited Apr. 4, 2010).
  85. See *City of New York v. N.Y. St. Div. of Hous. & Cmty. Renewal*, 97 N.Y.2d 216, 765 N.E.2d 829, 739 N.Y.S.2d 333 (2001) (“In 1970 the City passed Local Law 30, enacting a new maximum rent formula: Administrative Code of City of NY § Y51-5.0[a], now § 26-405[a]. Like the earlier State legislation, Local Law 30 provided both for the calculation of maximum rents and for adjustments to these rents.”); see also *Mayer v. City Rent Agency*, 46 N.Y.2d 139, 385 N.E.2d 605, 412 N.Y.S.2d 867 (1978) (“Local Law No. 30... substantially revised the city rent control laws. By its provisions there was required to be established, effective January 1, 1972, a maximum base rent (MBR) ceiling for each rent controlled apartment.... The MBR was to be recalculated every two years thereafter to keep abreast of changes in operating costs.”); see also ADMIN. CODE tit. 26, ch. 3, § 26-405(a)(3) (LEXIS 2010).
  86. See ADMIN. CODE tit. 26, ch. 3, § 26-405(a)(4) (“the city rent agency shall establish maximum rents effective January first, nineteen hundred seventy-four and biennially thereafter by adjusted the existing maximum rent to reflect changes, if any, in the factors which determine maximum gross building rental under paragraph three of this subdivision...”).
  87. See *id.* § 26-405(a)(5) (“[W]here the period for which the rent is established exceeds one year, regardless of how the collection thereof is averaged over such period, the rent the landlord shall be entitled to receive during the first twelve months shall not be increased by more than seven and one-half percentum over the previous rent and additional annual rents shall not exceed seven and one-half percentum of the rent paid during the previous year.”).
  88. See *id.* § 26-405(h)(6) (“If at least six months before the effective date of any adjustment or establishment of rents pursuant to paragraph three or four of subdivision a of this section, the landlord has not certified to the agency having jurisdiction that (a) all rent impairing violations (as defined by section three hundred two-a of the multiple dwelling law), and (b) at least eighty percentum of all other violations of the housing maintenance code or other state or local laws that impose requirements on property that were recorded against the property one year prior to such effective date have been cleared, corrected, or abated, no increase pursuant to such paragraphs shall take effect until he or she shall have entered into a written agreement with the city rent agency to deposit all income derived from the property into an escrow or trust account pursuant to subparagraph (a) of paragraph four of this subdivision, in addition to the procedures set forth in this paragraph and all other applicable penalties and procedures under this chapter, such violation shall also be subject to repair or removal by the city pursuant to the provisions of article five of subchapter five of the housing maintenance code, the landlord to be liable for the cost thereof.”).
  89. See *id.* § 26-509 (“A tenant is eligible for a rent exemption pursuant to this section if: (i) the head of the household residing in the housing accommodation is sixty-two years of age or older...and is entitled to the possession or to the use or occupancy of a dwelling unit...(ii) the aggregate disposable income (as defined by regulation of the department for the aging) of all members of the household residing in the housing accommodation whose head of household is sixty-two years of age or older does not exceed... twenty-nine thousand dollars beginning July first, two thousand nine, per year, after deduction of federal state and city income and social security taxes...(iv) (a) in the case of a head of the household who does not receive a monthly allowance for shelter pursuant to the social services law, the maximum rent for the housing accommodation exceeds one-third of the aggregate disposable income, or subject to the limitations contained within item (c) of subparagraph (i) of paragraph three of this subdivision, if any expected lawful increase in the maximum rent would cause such maximum rent to exceed one-third of the aggregate disposable income”).
  90. See N.Y. MULT. DWELL. LAW § 286(2) (LEXIS 2010).
  91. See *id.* § 286(4).
  92. See *id.* § 286(2).
  93. See *id.* § 286(3).
  94. See *id.* § 286(3).
  95. See N.Y. MULT. DWELL. LAW § 286(2) (LEXIS 2010).
  96. See *id.* § 286(b).
  97. See *Theoharidou v. Newgarden*, 176 Misc.2d 97, 98, 673 N.Y.S.2d 813, 814 (Sup. Ct. App. T. 1st Dep’t 1998) (explaining that the Rent Regulation Reform Act of 1997 amended the Rent Stabilization Law of 1969 to provide that “no determination of an overcharge and no award or calculation of an award . . . may be based upon an overcharge having occurred more than four years before the complaint is filed”).

98. See *Goho Equities v. Weiss*, 149 Misc.2d 628, 631, 572 N.Y.S.2d 836, 837 (Sup. Ct. App. T. 1st Dep't 1991) (holding that tenant who pays rent for a loft not in compliance with code-compliance timetable may not recoup rent). See, e.g., *Commercial Hotel*, 194 Misc.2d at 27, 752 N.Y.S.2d at 780 (holding that tenant may not recoup rent for premises that lack certificate of occupancy); *Soalt v. Pulisic*, N.Y. L.J., Dec. 5, 1991, at 30, col. 4 (Sup. Ct. App. T. 2d Dep't 1991) (holding that tenant may not recoup rent paid for illegal premises).
99. See NEW YORK, N.Y. ADMIN CODE tit. 26, ch. 4, § 26-516(a)(2) (LEXIS 2010).
100. See ADMIN CODE tit. 26, ch. 4, § 26-516(a).
101. See N.Y.C.R.R. tit. 9, ch. VIII, § 2526.1(f) (2) (LEXIS 2010) (providing that the treble damages the prior landlord incurs are also the new owner's responsibility).
102. See *Helfand v. Sessler*, 8 Misc.3d 96, 97–98, 799 N.Y.S.2d 347, 348–49 (Sup. Ct. App. T. 1st Dep't 2005).
103. *Round Hill Mgmt. Co. v. Higgins*, 177 A.D.2d 256, 257, 575 N.Y.S.2d 841, 842 (1st Dep't 1991).
104. N.Y.C.R.R. tit. 9, ch. VIII, § 2522.3(d)(1); see also *Fullan v. 142 E. 27th St. Assocs.*, 1 N.Y.3d 211, 214–15, 802 N.E.2d 1105, 1107–08, 770 N.Y.S.2d 707, 709–10 (2003).
105. See *Fullan v. 142 E. 27th St. Assocs.*, 1 N.Y.3d 211, 214–15, 802 N.E.2d 1105, 1107–08, 770 N.Y.S.2d 707, 709–10 (2003).
106. See N.Y. C.P.L.R. 213 (LEXIS 2010).
107. See N.Y. MULT. DWELL. LAW § 286 (LEXIS 2010).
108. See N.Y.C.R.R. tit. 9, ch. VIII, § 2204.5 (LEXIS 2010).
109. See, e.g., *id.*; see also, e.g., *id.* § 2524.4(a)(2).
110. See N.Y.C.R.R. tit. 9, ch. VIII, § 2204.5.
111. See *id.*
112. See *id.*
113. See N.Y.C.R.R. tit. 9, ch. VIII, § 2204.5 (LEXIS 2010).
114. *Burke v. Joy*, 99 A.D.2d 952, 953, 472 N.Y.S.2d 643, 644 (1st Dep't 1984).
115. See N.Y.C.R.R. tit. 9, ch. VIII, § 2204.5; see also *id.* § 2520.6(q) (defining “disability” as “an impairment which results from anatomical, physiological or psychological conditions...which are expected to be permanent and which prevent such person from engaging in any substantial gainful employment.”).
116. See N.Y.C.R.R. tit. 9, ch. VIII, § 2204.5.
117. See N.Y. MULT. DWELL. LAW § 286 (LEXIS 2010); *Axelrod v. French*, 148 Misc.2d 42, 44–45, 559 N.Y.S.2d 918, 919–20 (N.Y. Civ. Ct. N.Y. County 1990); *165 W. 26th St. Assocs. v. Folke*, 131 Misc.2d 867, 869–70, 520 N.Y.S.2d 355, 356–57 (Sup. Ct. N.Y. County 1986).
118. See N.Y. MULT. DWELL. LAW § 286; *Axelrod*, 148 Misc.2d at 44–45, 559 N.Y.S.2d at 919–20; *165 W. 26th St. Assocs.*, 131 Misc.2d at 869–70, 520 N.Y.S.2d at 356–57.
119. See N.Y. GEN. OBLIG. LAW § 7-105 (LEXIS 2010).
120. See *id.*
121. See *id.*
122. See *id.* § 7-103.
123. See *id.*
124. See N.Y. GEN. OBLIG. LAW § 7-105 (LEXIS 2010).
125. See *id.*
126. N.Y.C.R.R. tit. 9, ch. VIII, §§ 2525.4, 2505.4 (applying the ETPA regulations to certain tenants in counties outside New York City).
127. NEW YORK, N.Y., Local Law No. 1 (2004), available at <http://www.nyc.gov/html/hpd/downloads/pdf/lead-local-local1-2004.pdf>. See generally *Peri v. City of New York*, 44 A.D.3d 526, 527–28, 843 N.Y.S.2d 618, 618–19 (1st Dep't 2007), *aff'd*, 11 N.Y.3d 756, 894 N.E.2d 1192, 864 N.Y.S.2d 802 (2008); see also GERALD LEBOVITS, HP PROCEEDINGS: A PRIMER (Legal Update for Judges and Court Attorneys 2007), available at <http://ssrn.com/abstract=1299746> (last visited Apr. 25, 2010).
128. See Local Law No. 1; see generally *Peri*, 44 A.D.3d at 527–28, 843 N.Y.S.2d at 618–19 (1st Dep't 2007), *aff'd*, 11 N.Y.3d 756, 894 N.E.2d 1192, 864 N.Y.S.2d 802 (2008); see also GERALD LEBOVITS, *supra* note 127.
129. *Id.*
130. The converse to a new owner's being allowed to maintain a proceeding is the obligation of a new owner to correct code violations existing when the new owner closed on the building and what happens to code-violation cases (called Housing Part, or HP, proceedings in New York City) pending against the old owner. The prior owner may move to dismiss any pending code proceeding. That motion will be granted because the occupant-petitioner no longer has standing to maintain the proceeding (although the occupant-petitioner may still move for contempt against a prior owner who did not comply with a stipulation or court order to effect repairs while it still owned the building). The Department of Housing, Preservation, and Development (HPD), or in granting the prior owner's motion to dismiss the judge, will then ascertain, with the prior owner's help, who is the new owner so that the occupant-petitioner in the code proceeding may file a new proceeding against the new owner. Regardless what happens in the proceeding, the new owner always has the obligation to correct violations that arose during the prior ownership and which exist during the current ownership. For more on this complicated area, see GERALD LEBOVITS, *supra* note 127.
131. See *id.*
132. See *id.*
133. See *id.*
134. E.g., *MRG Realty Co. v. Bloomberg*, 58 A.D.2d 562, 562, 396 N.Y.S.2d 24, 25 (1st Dep't 1977).

**Margaret B. Sandercock is a partner at Goodfarb & Sandercock, L.L.P. Gerald Lebovits is a judge of the New York City Civil Court, Housing Part, and an adjunct professor at St. John's University School of Law and Columbia Law School. The authors thank New York Law School students Hannah Faddis and Tara Ryan for their research and David Berger, Esq., of Tenenbaum & Berger for his comments.**