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Real Estate Update
Loft Law

LOFT LAW LIVES ON

BUT AFTER 14 YEARS, MOST NOVEL ISSUES HAVE BEEN RESOLVED

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THE LEGISLATURE has decided that the unique New York City structure known as the interim multiple dwelling will remain part of our legal landscape at least for another three years. On July 13, 1996, the Legislature passed and the Governor signed a bill that, among other things, extended and amended Article 7-C of the Multiple Dwelling Law, commonly known as the Loft Law. An understanding of the 1996 amendments, which are fairly modest in scope, requires a basic understanding of the salient features of the fourteen year old Loft Law.

The 1992 Statute

Article 7-C of the Multiple Dwelling Law (MDL), enacted in 1982, represented the last component of what was intended to be a comprehensive solution to the problems created in the 1970s by the widespread illegal conversion of loft space formerly occupied by commercial and manufacturing tenants, to residential use or to joint commercial-residential use. [FN1]

The Loft Law created a class of buildings known as "interim multiple dwellings" (IMD) and established a specific statutory definition for the determination of whether a building was a "covered" IMD. [FN2] An owner of an IMD building was obligated to take various steps, within specifically prescribed time periods, culminating in obtaining a "certificate of occupancy as a Class A multiple dwelling for the residential portions of the building or structure ..." [FN3]

The 1982 Loft Law conferred upon tenants and other protected residential occupants the right to continued occupancy notwithstanding the expiration of their leases or the fact that residential occupancy of their lofts was not permitted under their leases or by law. During the period the building was in the legalization process, these protected occupants were entitled to remain in possession at "the same rent, including escalations, specified in their lease ... or in the absence of a lease ... the same rent most recently paid and accepted by the owner."

[FN4]

Under the statutory scheme, upon the ultimate issuance of a residential certificate of occupancy, the Loft Board would establish initial legal rents based on the owner's "necessary and reasonable" legalization expenses and the tenants would then be entitled to written leases and would enter the rent stabilization system.

Finally, the 1982 Loft Law granted owners who were in compliance with the statute the right to "recover rent from residential occupants ... and maintain an action or proceeding for possession of such premises for non-payment of rent" notwithstanding the statutory provisions that barred an owner of a multiple dwelling from bringing an action or proceeding to recover rents in the absence of a certificate of occupancy. [FN5]

This provision was designed to grant IMD owners who complied with the new law relief from the pre-Loft Law line of cases which had barred loft owners of illegally converted lofts from pursuing claims for unpaid rents where their buildings were held to constitute "de facto multiple dwellings" and therefore, subject to the provisions of the MDL and the New York City Administrative Code requiring certificates of occupancy and the registration of multiple dwellings. [FN6]

Legalization Problems

Although the Loft Law established a timetable for the legalization requirements and certain "code compliance" regulations addressed other details of the legalization process, during the first 10 years of the Loft Law's existence, the vast majority of IMD buildings did not meet the legalization deadlines. [FN7]

The reasons for the widespread non-compliance were varied and essentially fell into two broad categories: fault and no-fault. Included among the former category was the fact that some owners simply were unwilling to incur the substantial expense involved in bringing their buildings up to residential code requirements. In some instances, tenants were perfectly content to remain in occupancy of illegally converted space because the rent levels were acceptable and they wished to avoid the physical disruption in their home and/or workplace that the code compliance work would cause.

Other IMD owners, however, attempted to comply with the law but could not meet the legalization deadlines for reasons beyond their control. Under the Loft Law's requirements, IMD owners had to bear the costs of legalization (although a portion of these expenses was to be recouped from the tenants after code compliance was achieved) while collecting frozen below market rents. Many owners claimed that they simply could not obtain sufficient financing from lenders. In some cases, the attempts to legalize became bogged down before one or more of the various other administrative agencies having jurisdiction over issues of zoning and code compliance.

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For some IMD owners, another legalization roadblock was created in 1987 when the Legislature amended the Loft Law to expand the definition of an IMD. Under the 1982 statute, an IMD building had to be located in a zoning district in which residential use was permitted either "as of right, or by minor modification or administrative certification ... [or] pursuant to a special permit." [FN8]

In 1987, the Legislature amended the statute to provide that loft units that were residentially occupied between certain dates were covered IMD units regardless of the zoning requirements contained in the original 1982 statute. [FN9]

The City of New York opposed the enactment of the 1987 amendment because it dispensed with zoning compliance, an integral component of the original Loft Law, as an element of IMD coverage. [FN10] After enactment, the City unsuccessfully sued the State for a declaratory judgment that the 1987 amendment violated the home rule provisions of the New York State Constitution.

While this action was pending, the City and its agencies did not conform their own laws and regulations to the amended statute. Thus, compliance with all zoning requirements continued to be a prerequisite for the issuance of a certificate of occupancy. For a period of time, the Loft Board held in abeyance the processing of matters involving these so-called "amendment buildings." For these and other reasons, despite the best of intentions, some owners found it virtually impossible to comply with the law's legalization requirements.

The 1982 Loft Law granted an IMD owner the right to "recover rent ... and maintain an action or proceeding for possession for non-payment of rent, provided that he is in compliance with this article." [FN11] By the late 1980s, many IMD tenants in buildings whose owners had failed to meet the law's code compliance requirements began withholding rent.

Non-compliant owners who tried to commence actions or proceedings to recover the rents did not meet with success as the courts began to hold that proof of compliance with the Loft Law (and its legalization requirements) was an essential element of the landlord's cause of action. [FN12]

Addressing the inequitable impact that the Loft Law was having upon IMD owners who were attempting in good faith to legalize their buildings, in 1992, the Legislature amended the Loft Law in several significant respects. The amendments essentially granted a reprieve to owners of IMD buildings who had not yet complied, for whatever reason, with the then existing legalization deadlines.

The new law provided that these owners would thereafter "be deemed in compliance" if the following new code compliance deadlines were met: (a) the filing of an alteration application with the Department of Buildings by Oct. 1, 1992; (b) the taking of all reasonable and necessary action to obtain an approved alteration permit by Oct. 1, 1993; (c) achieving compliance with the MDL Article 7-B fire and safety standards by April 1, 1995, or within 18 months of obtaining an approved

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alteration permit, whichever was later; and (d) the taking of all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for the residential portions of the building by June 30, 1995 or within six months from achieving Article 7-B compliance, whichever was later. [FN13]

The 1992 amendments also expanded the Loft Board's authority to grant an extension of any of the new deadlines to an owner who was acting in good faith but was unable to meet a deadline for reasons beyond his or her control. [FN14] The more restrictive 1982 statute allowed the Loft Board to "twice extend the time of compliance with the requirement to obtain a certificate of occupancy for periods not to exceed 12 months each" only in cases where the owner had proved compliance with the fire and safety standards of Article 7-B. [FN15]

The 1992 amendments also granted owners the right to collect certain rent increases at various stages of the legalization process.

Amending MDL 286(2), the statute provided that the base rent for units not yet in compliance and which had not been rented at market value after June 21, 1982 would be increased by 6 percent upon the owner's filing of the alteration application, an additional 8 percent upon obtaining the alteration permit and an additional 6 percent upon achieving Article 7-B compliance.

If any of these stages already had been reached, the law authorized immediate prospective increases in corresponding percentages.

While some amendments cured inequities that had resulted from the implementation of the Loft Law, the Legislature left several issues open for interpretation. For example, the "deemed in compliance" language of the 1992 amendment clearly gave owners who met the new deadlines the right to collect rent on a prospective basis.

However, the Legislature avoided answering the question of whether owners who met the new deadlines and thus, were "deemed in compliance," were entitled to collect rent arrears that accrued prior to the owner's compliance with the new deadlines.

This issue was squarely addressed in 1994 by the Appellate Term, First Department, in Lipkus v. Gilmour, where the court, reversing a Civil Court determination, held that the 1992 amendments would operate prospectively only. [FN16]

Thus, the court held that owners who met the new legalization deadlines were not, by virtue of the 1992 amendments, entitled to collect rent accruing prior to the effective date of the amendments.

However, citing the 1991 Appellate Division Decision of Cromwell v. Le Sannom Bldg. Corp. [FN17], the Appellate Term noted that the owner's claim for pre-1992 arrears "may yet be enforceable under [MDL 284(1)(i)] if it can be established that landlord ... took all 'reasonable and necessary action' or was prevented from doing so by circumstances not of his making and beyond his control."

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The 1996 bill, among other things, amended the Loft Law and extended it until June 30, 1999. The 1996 amendments are far more limited in scope than those contained in several proposed bills and the changes advocated by competing loft owner and loft tenant interest groups.

As it did in 1992, the Legislature created a new subsection of MDL §284, which further extends the legalization deadlines. As a result, owners of IMDs who have not complied, for whatever reason, with the legalization deadlines contained in the original 1982 statute as well as the extended deadlines of the 1992 amendments "shall hereafter be deemed in compliance" with the Loft Law's legalization requirements provided that he or she (a) files an alteration application by Oct. 1, 1996; (b) takes all reasonable and necessary action to obtain an alteration permit by Oct. 1, 1997; (c) achieves compliance with the fire and safety standards of Article 7-B of the Multiple Dwelling Law by April 1, 1999 or within eighteen months of obtaining the alteration permit, whichever is later; and (d) takes all reasonable and necessary action to obtain a certificate of occupancy by June 30, 1999 or within three months of achieving compliance with the fire and safety standards, whichever is later.

The 1996 amendments also follow the framework of the 1992 amendments by (a) authorizing the Loft Board to grant owners extensions of the newly created deadlines; and (b) authorizing owners who are not yet in compliance the right to collect prospective rent adjustments of 6, 8 and 6 percent, respectively, upon their reaching the first three basic stages of the legalization process: (a) filing an alteration application; (b) obtaining a work permit; and (c) achieving Article 7-B compliance.

It should be noted that the 1996 amendments simply extend the right to collect the pre-legalization prospective rent increases, which were authorized by the 1992 amendments, to owners as and when they meet the newly created legalization deadlines; the Legislature did not authorize any additional pre-legalization rent adjustments.

Conclusion

New York City's Loft conversion phenomenon clearly made its mark on the law in that it spawned its own statute, administrative agency, body of case law and cottage industry of lawyers with this unique specialty.

As practitioners in this area knew, loft matters had a distinct "downtown" flavor. Any resemblance between loft transactions and real estate transactions occurring above 14th Street was purely coincidental.

Many of the tenants who rented raw loft spaces in the 1970s and converted them to residential or mixed living-work uses were artists. The owners of these loft buildings included many "mom and pop" landlords who were overwhelmed by the requirements and financial burdens of the new Loft Law.

The efforts of these groups to co-exist, first outside of a legal framework and then under a novel statutory and regulatory scheme, resulted in a wealth of strange looking lease clauses and colorful litigation.

This area of law, however, has clearly had its run. Attorneys who specialized in loft matters in the 1980s are attorneys hopefully with other areas of specialization, other means of support.

In this the 14th year of the Loft Law's existence, most of the novel issues resulting from the statute have been resolved and the stock of IMD buildings is dwindling - if slowly - as more of these structures are being brought up to code standards. Nevertheless, for at least three more years, a special set of rules will govern those properties classified as IMDs.

FN1. "Loft Law Update," Stanley M. Kaufman, NYLJ, Sept. 9, 1992, p. 1.

FN2. MDL §281

FN3. MDL §284(1)(i)

FN4. MDL §286(1). The 1982 Loft Law directed the Loft Board, the agency established to enforce and administer the law, to establish rent adjustments where there was no lease in effect prior to the owner's compliance with the safety and fire protection standards of MDL Article 7-B. MDL 286(2). In furtherance of this statutory mandate, one of the Loft Board's earliest acts was to grant owners a one time rent increase ranging from seven percent to thirty-nine percent depending upon the date of the last rent increase.

FN5. MDL §285(1).

FN6. See, e.g. Lipkis v. Picus, 99 Misc. 2d 518, 416 NYS2d 694 (App. Term. 1st Dept. 1979), aff'd, 72 AD2d 697, 421 NYS2d 825 (1st Dept. 1979).

FN7. "Loft Law Update," Stanley M. Kaufman, NYLJ, Sept. 9, 1992, page 1.

FN8. MDL §281(2)

FN9. Chapter 466, Laws of 1987, adding MDL §281(4)

FN10. The 1982 Loft Law represented the culmination of a coordinated effort by the City and State to adopt a regulatory scheme. Comprehensive "loft" amendments to the New York City Zoning Resolution were enacted in 1981 in conjunction with and in anticipation of the legislature's enactment of the Loft Law. In addition, MDL §280, the "Legislative Findings" section, states, in pertinent part, that "the intervention of the state and local governments is necessary to effectuate legalization, consistent with the zoning resolution ..."

FN11. MDL §285(1)

FN12. Cromwell v. LeSannom Building Corp., 171 AD2d 458, 567 NYS2d 41 (1st Dept. 1991); Country Dollar Corporation v. Douglas, 161 A.D.2d 537, 566 N.Y.S.2d 533 (1st Dept. 1990); 902 Associates Ltd. v. Total Picture Creative Services, Inc., 144 Misc.2d 316,, 547 NYS2d 978 (App. Term 1st Dept. 1989); Baer v. Jarzonbek, NYLJ, Jan. 30, 1992, p. 25, c. 4 (Civ. Ct. N.Y. Co.).

FN13. Chapters 227 and 410, Laws of 1992.

FN14. MDL §284(1)(iii).

FN15. MDL §284(1) (i).

FN16. 160 Misc.2d 50, 611 NYS2d 976 (App. Term. 1st Dept. 1994), aff'd., 633 NYS2d 957 (A.D. 1st Dept. 1995).

FN17. 171 AD2d 458, 567 NYS2d 41 (1st Dept 1991).

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