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New York State Division of Housing and Community Renewal

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HOUSING MANAGEMENT BUREAU MEMORANDUM #2009-B-06

To: All Housing Companies
Owners, Managing Agents and Site Managers

From: Robert Damico, Downstate Director
Housing Management Bureau

Date: June 2, 2009

Subject: Policy for Evaluating and Determining Pre-1991 "Succession" Claims.

A pre-1991 "succession" claim is one that involves succession rights to the tenancy of an apartment in a Mitchell-Lama housing project that accrued, occasioned by the permanent departure of the subject apartment's tenant-of-record from occupancy, before December 24, 1991, the effective date of the DHCR's succession regulations for State-aided, Mitchell-Lama projects.

The Office of Housing Management (OHM) will review such claims when submitted by housing companies. The Office of legal Affairs (OLA) will process appeals challenging the denial of such claims. Those claims and appeals will fall into one of three categories. Both OHM review and appeals processed by OLA will apply the following procedures and policies.

First: If the documentary record would support the grant of succession rights to the subject apartment's tenancy under the Regulations' existing requirements, but for the fact that the claim accrued before December 24, 1991, OHM will approve the claim and OLA will draft a determination to be issued by the Deputy Commissioner for Housing Management granting the claimant's appeal.

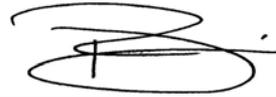
Second: If the documentary record would not support such a grant of succession rights under a strict application of the existing requirements, OHM and OLA will apply the three elements underlying the Regulations' succession requirements to the facts and supporting documentation:

- 1) the claimant's family member status, whether a listed relationship or one resulting from the relevant evidentiary factors enunciated by the Courts and the Regulations;

- 2) The claimant's co-occupancy with the tenant-of-record in the subject apartment as their joint primary residence for a significant, though flexible, period given the relevant facts and circumstances, having reference to and approximating the variable periods listed in the Regulations; and,
- 3) The claimant's appropriately documented nexus with the subject apartment during that period, based on the "usual indicia" regularly applied by the Courts and the standards provided by the Regulations, including, but not limited to, the subject apartment's annual affidavits documenting the relevant period. Where the succession claim meets the application of those standards, OHM will approve the claim and OLA will draft a determination to be issued by the Deputy Commissioner for Housing Management granting the appeal.

Third: Where the succession claim does not meet the application of the foregoing standards, OHM will disapprove the claim and direct the housing company to deny the claimant's request, with notice of the right to appeal to the DHCR, and OLA will draft a determination to be issued by the Deputy Commissioner for Housing Management denying the appeal, with notice of the right to seek judicial review.

If you have questions regarding this policy, please contact Susan Caughron at (212) 480-7350 or scaughron@nysdhcr.gov.



Robert Damico