

MEMORANDUM

TO: REAL ESTATE FINANCING BUREAU STAFF

DATE: 3/7/85

FROM: JANE ROSENBERG

RE: Application of L.1984 chapter 234 to Eviction Plans: Eviction of disabled, elderly or long-term tenants on the grounds of an owner's personal use.

Chapter 234 of the Laws of 1984 amended three rent laws to restrict owner-occupancy evictions in cases where the tenant is 62 years of age or older, disabled, or has resided in the building for 20 years or longer.

The law affects all rent-controlled tenants in New York State, and tenants in apartments subject to ETPA. Following is a discussion of the application of the new law to each of these categories of tenants.

The law does not affect rent-stabilized apartments in New York City. However, the Omnibus Housing Act (L.1983, ch. 403) restricted the eviction of senior citizens and disabled tenants on owner-occupancy grounds. See Admin Code §Y51-6.0(c)(9)(b).

1. New York City Rent and Rehabilitation Law
(New York City Administrative Code §Y51-1.0 et seq.;

Chapter 234 amends §Y51.6.0(b)(1) of the New York City Rent Control Law, which authorizes DHCR to grant a certificate of eviction where a landlord "in good faith" seeks an apartment for personal or family use, to prohibit such evictions if the tenant is 62 years of age or older, disabled, or a tenant of the building for 20 years.

§Y51.6.0(a)(7) permits an owner to initiate a court action to evict a tenant where an eviction plan for the tenant's building has been declared effective and any right of continued occupancy has expired. This subdivision was added on July 21, 1982 as part of the law that amended GBL §352-eeee (L.1982, chap. 555), to provide for a simplified procedure for the eviction of non-purchasing rent-controlled tenants in coop and condo plans.

Chapter 234 does not amend §Y51-6.0(a)(7). Therefore, in eviction plans accepted for filing on or after July 21, 1982, "20 year" tenants may be evicted, unless they are also 62 or older or disabled. However, these tenants may not be evicted on the grounds of an owner's personal use if the eviction plan was accepted prior to the July 21, 1982 enactment of §Y51 - 6.0(a)(7). In such cases, an application for a certificate of eviction would be denied by DHCR, as authorized by chap. 234

2. Emergency Tenant Protection Act
(Unconsolidated Laws §8621 et. seq.,
Tenant Protection Regs §2502.5, 2504.4)

Chapter 234 amends §8630 of the ETPA, which authorizes DHCR to promulgate regulations for apartments located in cities, towns and villages in Nassau, Rockland and Westchester Counties that have adopted ETPA. §8630(a) states that any regulation permitting non-renewal of leases on the grounds of owner-occupancy shall require a showing of immediate and compelling necessity and shall not apply where the tenant is 62 or older, disabled, or a "20 year" tenant of the building.

Two provisions of the Tenant Protection regulations apply to coop and condo plans. §2504.4(a) permits an owner to refuse to renew a lease, obtain an order from DHCR, and evict a tenant on the grounds of personal or family use. "Good faith" and "compelling necessity" must be shown. The new law would operate so as to prohibit such actions if the tenant is in one of the three protected classes.

§2502.5(8) of the Regulations allows a landlord to insert a 90-day cancellation clause in a tenant's new or renewal lease, provided that an offering plan has been accepted for filing by the Attorney General. The clause permits a subsequent purchaser of the apartment or shares to terminate the lease on 90 days notice for the personal use of occupancy by the owner or a member of his or her immediate family. In a municipality that has adopted GBL §352-eee, the clause is operative only after three years have expired after the plan is declared effective. Although chap. 234 is not directly on point, it would presumably nullify the operation of such lease termination clauses if the apartment is occupied by a protected tenant, even if the municipality has not adopted §352-eee.

3. Emergency Housing Rent Control Law
(Unconsolidated Laws §8581 et seq.;
State Rent and Eviction Regulations §2104.5)

Chapter 234 amends §8585(2)(a) of the Emergency Housing Rent Control Law, which governs the eviction of tenants in approximately 50,000 housing units outside New York City.

In order to evict a tenant on the grounds of an owner's personal or family use, a certificate of eviction must be granted by DHCR. The owner's "good faith" and, in some cases, "immediate and compelling necessity", must be shown. However, since the enactment of chapter 234, a certificate of eviction will not be granted pursuant to §8585(2)(a) if the tenant is at least 62 years old, disabled, or is a "20 year" tenant.

Since the statute does not distinguish between rentals and co-ops or condos, it would operate so as to protect "20 year" tenants living in buildings throughout the state converted pursuant to eviction plans. Thus, in municipalities that have adopted GBL §352-eee, "20 year" tenants are added to senior citizens and the disabled as a protected class, as they are in municipalities that have adopted GBL §352-e(2-a). In municipalities that have not adopted either law, "20 year", elderly and disabled rent-controlled tenants are nevertheless protected.

Note that DHCR has not amended the Rent and Eviction Regulations to conform to chapter 234.

JR:ac