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AN EVALUATION OF NEW YORK LOFT CONVERSION LAW

I. Introduction

The surge of economic expansion which took place during the Industrial Revolution resulted in a concentration of industry in urban areas.¹ In New York City, where land was densely populated and expensive,² buildings of five to ten stories were constructed to house the small factories used by manufacturing firms.³ These buildings, known as lofts,⁴ dominated lower Manhattan.⁵

After World War II, the needs of many industries changed⁶ and factories began to move to suburban and rural areas which offered greater space, lower rents, cheaper labor, and various tax incentives.⁷ At the same time that economic forces were pushing manufacturers out of New York City, individuals became interested in converting loft buildings for residential use. As loft conversion spread to other neighborhoods, laws and regulations were enacted haphazardly. The New York State Legislature is now considering a comprehensive bill,

1. C. RAPKIN, *SOUTH HOUSTON INDUSTRIAL AREA: A REPORT FOR THE CITY OF NEW YORK* 9 (1963).

2. *Id.* at 10.

3. *Id.*

4. A loft is defined as one of the upper floors of a warehouse especially when not partitioned. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1330 (3rd ed. 1976).

5. *Id.* at 10. Soho was one such neighborhood in lower Manhattan. Soho is short for South of Houston Street, an area in lower Manhattan bounded by Houston Street on the north, Canal Street on the south, Lafayette and Centre Street on the east, and West Broadway and the Avenue of the Americas on the west. By 1900, Soho had become the heart of the women's and children's garment industry. It also housed the hardware, paper and wholesale jewelry industries. Around the time of World War I, when the garment and fur industries left for the Pennsylvania Railroad Station area, firms dealing with low value paper and textile wastes moved into lower Manhattan. *Id.*

6. "One of the most universal changes in factory processes . . . has been the widespread introduction of continuous material-flow systems and automatic controls in processing." E. HOOVER & R. VERNON, *ANATOMY OF A METROPOLIS* 31 (1959). The general practice in designing factories is first to plan a production layout and then to build the factory around that layout. *Id.* The densely packed multi-story buildings of lower Manhattan could not accommodate the modern factory's need for a large amount of space.

7. Soho Newsletter, Nov. 14, 1971, at 1. This migration was further reinforced by a decline in jobs in New York City. Between 1963 and 1973, New York City lost 220,000 manufacturing jobs, a decline of 25%. REAL ESTATE BOARD, *RESIDENTIAL USE OF MANHATTAN LOFT BUILDINGS* 25 (1975).

Article 7C, Legalization of Interim Multiple Dwellings (Article 7C), designed to address the inadequacies which characterize loft conversion laws.⁸ In order to analyze the propriety of Article 7C, this Note reviews the evolution of New York loft conversion law.

Throughout the evolution of loft conversion law, three groups—tenants, landlords and city officials—have played important roles in determining the content and scope of the laws. The viewpoints of these groups are presented in separate sections. This Note concludes with a critique of Article 7C and, after advocating appropriate changes, recommends its enactment.

II. Evolution of Loft Conversion Law

Proposed Article 7C is intended to secure for tenants of residential loft buildings proper regulation of their premises. An analysis of the competing interests of tenants, landlords, and city officials reveals the

8. A telephone survey of Boston, Philadelphia, Baltimore, Cleveland, Hoboken and Chicago was conducted by the author to determine if cities other than New York have commercial loft conversion programs. No systematic program exists in Boston, Baltimore, Cleveland or Philadelphia. In Baltimore, under the Zoning Ordinances of Baltimore City, §§ 6.1-1(b)-6.5-1(b), buildings in commercial districts which are converted must comply with the Baltimore City Building Code (1976). Zoning ordinance § 7.1-1-3 prohibits residential use in manufacturing areas. In Philadelphia, § 14303 of the Zoning Code Book of the Department of Licenses and Inspection (1981), permits residential use of a building in a commercial area if certain lot and rear yard requirements are met. Sections 14503-06 of the Zoning Code prohibit the residential use of any building in an industrial area. In Cleveland, scattered sections of the Land Use Code allow residential use of buildings in general business areas. Section 345.4-04(c) 1 of the Land Use Code prohibits human habitation in general industrial areas. Hoboken has a loft program which allows the use of commercial buildings as residences. In the residential zoning districts, commercial buildings already in existence can be converted to residential use. Zoning Ordinance of the City of Hoboken §§ 4.5102, 4.5202, 4.5302 (1979). Buildings in industrial zones can be converted to residences if a zoning variance is obtained and the building complies with the requirements of the relevant building codes. Zoning Ordinance of the City of Hoboken § 4.6102 (1979). Chicago has a loft program which is based on the New York system. Commercial buildings 120 feet in height may be converted to residences under the Chicago Building Code ch. 51-1.2(d), if the premises are brought into compliance with §§ 62.1-10, 52.11 & 693.1 of Chicago's High Rise Code. Loft conversion in Chicago is also regulated by ch. 194a of the Chicago Municipal Code. Chicago's 22 zoning districts each are given a specific designation according to their character, e.g. residential, business, commercial, or manufacturing. Under ch. 194a, depending on where a building is located, an owner who converts a building has to comply with different requirements. The statute imposes minimum standards for lots, parking and loading spaces. Chicago's loft program could be made uniform if certain measures were adopted. First, a separate loft building code which recognizes the difficulty of the conversion process should be adopted. Second, this new code should be applied uniformly to every building which is converted, wherever located.

shortcomings in the current law which proposed Article 7C is intended to address.

A. Tenant Viewpoint

Two types of tenants have been attracted to the residential loft areas of New York City: artists and general residents. Despite having different reasons for finding loft living attractive, each group faces similar problems: the threat of eviction, adjusting to living in non-residential areas, and obtaining a safe and secure home at a reasonable cost.

Artists have been drawn to New York City because it is an important cultural center.⁹ When artists¹⁰ began moving into lower Manhattan in large numbers during the 1960's, loft buildings which formerly had been factories,¹¹ provided ideal dual living and working quarters for artists. Lofts offered large space at relatively inexpensive commercial rates,¹² although tenants were forced to expend time and money to make them habitable.¹³ Problems arose with respect to the rights and obligations of the tenants and landlords of converted dual purpose lofts. Although the dual purpose tenancy fell into neither category, it initially was considered a commercial landlord-tenant relationship. In most cases, loft tenants either did not possess a valid

9. 1964 N.Y. Laws ch. 939.

10. The term "artists" included painters, sculptors, musicians and dancers. In 1964, Article 7B defined an artist as "a person regularly engaged in the visual fine arts . . ." 1964 N.Y. Laws ch. 939. In 1971, the term was broadened to include those in all "the fine arts" such as painters, choreographers, filmmakers and professional composers. 1971 N.Y. Laws ch. 1008.

11. Between 1965 and 1978, owners of industrial property had difficulty finding any tenants. By 1980, tenants had a difficult time finding lofts. CITY PLANNING COMMISSION, *LOFTS: BALANCING THE EQUITIES* 42 (1981).

12. In 1965, it was possible to rent loft living space for 5 cents per square foot. Thus, a loft 3000 square feet in area would cost \$150 per month. N.Y. Times, Jan. 5, 1965, at 22, col. 1.

13. When the artist took over the loft, it was usually raw space: four walls, a ceiling and a floor. Time and money were needed to make the loft inhabitable and safe from fire and health hazards. The tenants had to make the effort since the owner usually would not. "We have a very laissez-faire landlord" said an artist who lived on Grand Street and painted in a Bowery studio. "His attitude is you don't ask me for anything and I won't ask you." N.Y. Times, Jan. 2, 1965, at 22, col. 6. Some of the conditions found in lofts included industrial waste on the floors and walls and piles of trash in every corner. N.Y. Times, Jan. 5, 1965, at 22, col. 1. Plumbing was non-existent and electrical wiring was concentrated in one area of the loft. One couple

lease,¹⁴ or possessed a prejudicial commercial lease.¹⁵ In the case of the former, the tenant could be evicted at any time.¹⁶ In the case of the latter, the tenant could be evicted on the grounds of an illegal tenancy¹⁷ or because of an expired lease.¹⁸

A lease is considered a contract¹⁹ between an owner entitled to possession and a tenant to whom exclusive occupation of a designated

spent \$3000 in 1965 dollars to renovate their loft. In addition, the furnishings and appliances that any residence would need had to be purchased. *Id.*

14. Under N.Y. GEN. OBLIG. LAW § 5-730 (McKinney 1978), any oral lease for a term of more than one year is void. Loft tenants frequently entered multi-year oral leases which were void under § 5-703.

15. A disadvantageous lease is one that does not set out a provision requiring reimbursement to the tenant for his expenditures. Because there is no law which requires a landlord to reimburse a tenant for improvements, a tenant would usually ask for a clause providing for reimbursement to be inserted in the lease. Such a clause required the landlord himself to repay the tenant or the clause provided that a "fixture" fee be paid by the next tenant. *See* note 75 *infra*.

16. If the lease were void, no landlord-tenant relationship existed and under N.Y. REAL PROP. ACTS § 713 (McKinney 1979), a landlord could move to recover possession of premises.

17. Where the use of premises is illegal the lease is void. *Shontz v. Laffay*, 225 A.D. 263, 232 N.Y.S. 614 (1st Dep't 1929). In general, because it was illegal for a tenant to use commercial premises as a residence, any lease entered into was void. If there were a clause in the lease either providing for landlord repayment of tenant improvements or a fixture fee, the landlord did not have to comply with such a clause. He could evade compliance by threatening the tenant with eviction on the grounds of an illegal tenancy—an act which could make the most determined tenant back down. *See, e.g., Lipkis v. Pikus*, 96 Misc. 2d 581, 585-86, 409 N.Y.S.2d 598, 600 (Civ. Ct. 1978) (Threat of eviction due to illegal occupancy "coupled with the large investment . . . in fixtures" was used to "obtain unreasonable increases or building improvements which are inherited by the owner after a tenant leaves or is evicted."). If the lease had ended either by natural termination or by eviction, claims for repayment could not be legally enforced since the lease was void.

18. The landlord has a right of reversion. *Becker v. Manufacturers Trust Co.*, 262 A.D. 525, 30 N.Y.S.2d 542 (1st Dep't 1941). Generally, the landlord has the right to recover the property he has leased after the term expires. He has no duty to reimburse the tenant for any improvements made. If the parties have made no provision for reimbursement and the landlord recovers the premises, the improvements revert to the landlord.

19. A lease is a contract which requires the parties to fulfill certain obligations while the lease is in effect. *219 Broadway Corp. v. Alexander's Inc.*, 46 N.Y.2d 506, 387 N.E.2d 1205, 414 N.Y.S.2d 889 (1979). *See also* *111 East 88th Partners v. Simon*, 106 Misc. 2d 693, 434 N.Y.S.2d 886 (Civ. Ct. 1980) (leases are contracts rather than simple conveyances of an interest in realty); *Wolf v. Wohl*, 103 Misc. 2d 1044, 431 N.Y.S.2d 743 (App. Term 1980) (a lease is both a contract and a conveyance of an interest in land); *Rochester Poster Advertising Co. v. State*, 27 Misc. 2d 99, 213 N.Y.S.2d 812 (Ct. Cl. N.Y. 1961), *aff'd*, 15 A.D.2d 632, 222 N.Y.S.2d 688 (4th Dep't 1961), *aff'd*, 11 N.Y.2d 1036, 230 N.Y.S.2d 30 (1962) (the word lease is used to designate the contract by which the relation of landlord and tenant is created).

portion of realty is granted.²⁰ The difference between residential and commercial leases is their content: a residential lease is subject to statutory provisions²¹ whereas a commercial lease is subject to negotiation by the individual parties.²² Residential leases are governed by several statutes.²³ The Multiple Dwelling Law (MDL) requires that

20. *Schnipper v. Flowood Realty Corp.*, 113 N.Y.S.2d 842 (N.Y. Munic. Ct. 1952), *rev'd on other grounds*, 122 N.Y.S.2d 178 (App. Term 1953). The occupation is granted for a specified time, *id.*, with a reversion to the landlord. *Becker v. Manufacturers Trust Co.*, 262 A.D. 525, 527, 30 N.Y.S.2d 542, 544 (1st Dep't 1941). The lessee pays rent as consideration for the lease. Quinn & Phillips, *The Law of Landlord-Tenant: A Critical Evaluation of the Past with Guidelines for the Future*, 38 FORDHAM L. REV. 225, 228 (1969). "Rent is the *quid pro quo* for the possession." *Id.*

21. N.Y. REAL PROP. LAW § 235-b (McKinney 1981) (warranty of habitability); N.Y. MULT. DWELL. LAW §§ 50-a(2) (intercom system), 50-c (lobby attendant), 78 (duty to repair), 325 (registration number), 26-84 (fire code) (McKinney 1974); N.Y. EMERGENCY TENANT PROTECTION ACT OF 1974 §§ 8621-34 (rent stabilization) (McKinney Supp. 1981-82); N.Y. ADMIN. CODE tit. 22, § 2900-21(f) (1977) (petition requirements); NEW YORK, N.Y., ADMIN. CODE ch. 26, § D26-41.15 (1977) (registration number), ch. 51, §§ Y51-1.0 - 13.0, YY51-1.0 - 7.0 (1975) (rent control and rent stabilization).

22. Commercial leases are subject to some statutory control. One such statute covers all leases of any real property containing renewal clauses which operate unless the tenant gives notice to the lessor of the intention to quit the premises upon expiration of the lease. N.Y. GEN. OBLIC. LAW § 5-905 (McKinney 1978), renders such provisions invalid unless the landlord, at least 15 and not more than 30 days prior to the time specified for notification of intention to quit calls the tenant's attention to such a clause. Another statute governs the deposit of money as security for performance of a rental agreement of real property. N.Y. GEN. OBLIC. LAW § 7-103(1) (McKinney 1978), provides that the money deposit continues to be the money of the person making the deposit and is not to be mingled with the money of the person receiving the deposit. In addition, N.Y. GEN. OBLIC. LAW § 7-103(2) (McKinney 1978), requires that if the money is deposited in a bank account, the lessor must notify the lessee of that fact, where the account is located and the amount of money in the account. If the account is interest bearing, interest must be paid to the lessee or held in trust, less 1% per annum upon the money as administration expenses for the lessor.

23. There are other types of statutes with which the owner must comply. For example, every multiple dwelling is entitled to have an intercommunications system located outside the door which leads to the lobby or main entrance. It should allow the person outside that door to talk with a person in an apartment. The person in the apartment should be able to allow visitors to enter by releasing a locking mechanism. N.Y. MULT. DWELL. LAW § 50-a(2) (McKinney 1981). Tenants in multiple dwellings also are entitled to have lobby attendant services when the attendant furnished by the owner is off-duty. The attendant is to be maintained for the safety and security of the tenants. The landlord may not interfere with the maintenance of such service. N.Y. MULT. DWELL. LAW § 50-c (McKinney 1981). When an owner of a multiple dwelling brings a petition to recover possession or rent due, the registration number required by N.Y. MULT. DWELL. LAW § 325 (McKinney 1974), and NEW YORK, N.Y., ADMIN. CODE ch. 26, § D26-41.21 (1977) must be stated. N.Y. ADMIN. CODE tit. 22, § 2900-21(f) (1977).

every multiple dwelling be kept in good repair²⁴ by the owner.²⁵ The tenant, on the other hand, is liable for any violation caused by his willful act, assistance or negligence.²⁶ The purpose of enacting the MDL was to benefit tenants by imposing liability on landlords if they failed to make repairs.²⁷

In 1975, the New York State Legislature passed Real Property Law section 235-b which made the warranty of habitability part of a residential lease.²⁸ Section 235-b states: [t]he landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented . . . are fit for human habitation . . . and that the occupants of such premises shall not be subjected to any conditions which would be

24. N.Y. MULT. DWELL. LAW § 78 (McKinney 1974). At common law, before the enactment of MDL § 78, there was no duty on the landlord, in the absence of an express agreement to paint, decorate or repair. *Davar Holdings v. Cohen*, 255 A.D. 445, 7 N.Y.S.2d 911 (1st Dep't 1938), *aff'd*, 280 N.Y. 828, 21 N.E.2d 882 (1939). *Davar* was based on a non-payment proceeding. The tenant refused to pay a higher rent because the landlord failed to give notice of the increase within the time period stated in the lease. The tenant's cross claim for the cost of painting the apartment was dismissed.

25. After the enactment of MDL § 78, a number of cases interpreted the phrase "good repair." In *Collins v. Noss*, 258 A.D. 101, 15 N.Y.S.2d 475 (1st Dep't 1939), *aff'd*, 283 N.Y. 595, 28 N.E.2d 20 (1940), the court defined good repair as the duty to make the premises reasonably safe for the purposes for which they were intended. In *Collins*, the plaintiff had sued the defendant landlord for injuries caused by the state of disrepair. The complaint was dismissed since the injuries were caused by the use of the premises for which they were not intended. In *Lewis v. Morewood Realty Corp.*, 19 N.Y.S.2d 203 (1940), the court found that a landlord has a duty to repair all parts of the premises, not just the common ways. The plaintiff was injured when she fell on a defective step of the defendant landlord's property. The plaintiff sought to recover under MDL § 78. Because the plaintiff was a licensee, the court held that the defendant had no duty to a licensee to keep the step in good repair.

26. N.Y. MULT. DWELL. LAW § 78 (McKinney 1974).

27. *Moore v. Bryant*, 27 Misc. 2d 22, 83 N.Y.S.2d 365 (Sup. Ct. 1948).

28. 1975 N.Y. Laws ch. 597, *codified at* N.Y. REAL PROP. LAW § 235-b (McKinney 1981). *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970), was one of the first cases to imply a warranty of habitability into a residential lease. The plaintiff landlord had sought possession on the grounds of failure to pay rent. Defendant tenants had refused to pay due to numerous housing code violations. The court of appeals found that the housing code obligations must be read into housing contracts. A warranty that the premises are habitable is to be implied in all leases which are covered by the housing code. The court of appeals reversed the district court's decision for the landlord and remanded the case to determine if the landlord had complied with his obligations under the warranty.

This decision was followed in many jurisdictions. In New York, *Javins* was followed in *Morbeth Realty Corp. v. Rosenshine*, 67 Misc. 2d 325, 323 N.Y.S.2d 363 (N.Y. Civ. Ct. 1971). The plaintiff had petitioned for possession due to tenant's failure to pay rent. The defendant claimed that numerous violations of the housing code breached the warranty of habitability and that because of the failure to maintain services and make repairs, there was a lack of consideration. The tenants had refused to pay rent based on these grounds. The court ruled that the housing code of

dangerous, hazardous or detrimental to their life, health or safety."²⁹ Residential leases also are controlled by a very strict building and fire code.³⁰ Finally, statutes regulate rent increases in residential dwellings.³¹

Commercial premises may not be used for residential purposes³² and commercial leases are not subject to extensive statutory regulation.³³ Therefore, loft tenants occupied commercial premises illegally³⁴ without the protection of a residential lease.³⁵ This situation was intolerable and in the early 1960's artists formed tenant associations which held public demonstrations and picketed city and state offices to publicize their demands for the legalization of dual use of

New York City must be read into all leases it covers, implying a warranty of habitability in those leases. The numerous housing code violations caused the tenant damages which the court set off against the rent the tenant owed.

One of the most significant cases to interpret § 235-b after its enactment in 1975 was *Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316, 391 N.E.2d 1288, 418 N.Y.S.2d 310 (1979). Due to a strike of maintenance men, the defendant tenants suffered extensive service interruptions which prompted them to withhold rent. The plaintiff landlord sued for the balance owed. The New York Court of Appeals held that the scope of the warranty of habitability extends not only to violations of the housing code but also to threats to the tenant's health and safety. In the instant case, the implied warranty of habitability was breached since the essential services which bore directly on the tenant's health and safety were reduced greatly. Acts such as work stoppages by third parties are within the scope of the warranty of habitability. The court affirmed the lower court's findings that the breach of the warranty resulted in a 10% loss of rental value and that the tenants were justified in withholding 10% of their rent. See generally Cunningham, *The New Implied and Statutory Warranties of Habitability in Residential Leases: From Contract to Status*, 16 URB. L. ANN. 3 (1979); Quinn & Phillips, *The Law of Landlord-Tenant: A Critical Evaluation of the Past with Guidelines for the Future*, 38 FORDHAM L. REV. 225 (1969); Comment, *Implied Warranty of Habitability: An Incipient Trend in the Law of Landlord-Tenant*, 40 FORDHAM L. REV. 123 (1971); Comment, *Tenant Remedies—The Implied Warranty of Fitness and Habitability*, 16 VILL. L. REV. 710, 711 (1971); Note, *Recovery under the Implied Warranty of Habitability*, 10 FORDHAM URB. L.J. 285 (1982).

29. N.Y. REAL PROP. LAW § 235-b (McKinney 1981). Any waiver of these statutory rights shall be void as against public policy. *Id.*

30. See notes 38, 40, 42, 43 *infra*.

31. See note 82 *infra*.

32. Under N.Y. MULT. DWELL. LAW § 301 (McKinney 1981), a multiple dwelling needs a certificate of occupancy. Under N.Y. MULT. DWELL. LAW § 325 (McKinney 1981), a registration number is needed. It is unlawful to inhabit a dwelling without these. Since commercial premises are not residences they do not need a certificate of occupancy and, therefore, cannot be used as living quarters.

33. See note 22 *supra* and accompanying text.

34. "At least 2,500 artists now live in loft buildings. Many of them occupy these quarters illegally." N.Y. Times, Feb. 29, 1964, at 49, col. 2.

35. Because the tenant had no legal defenses to assert against a petition for eviction on the grounds of an illegal tenancy, he was in a particularly vulnerable position. Therefore the tenant had to be extremely deferential. If the landlord

lofts.³⁶ As a result, the New York State Legislature considered a bill which proposed to regulate the use of lofts by artists and allow them to inhabit joint living and work space.³⁷ This bill, when passed in 1964, became Article 7B of the MDL.³⁸ The major provisions of the statute,

decided he wanted a new tenant or to raise the rent unreasonably, the artist was in no position to resist. Other problems also tested the spirit of these pioneering loft tenants. The areas which they settled were frequented by bums, derelicts, drug addicts, and prostitutes. N.Y. Times, Jan. 2, 1965, at 21 & 22, cols. 4 & 6. Living amongst such squalid neighbors kept "an artist . . . on his toes." *Id.* at 21, col. 4. Many artists found that they had to discard their innate sensitivity. "The worst thing is to see them [derelicts] die. I've seen at least three of them run in front of cars in the last four months. It is terrible to see. Artists are supposed to be sensitive, yet you have to be more than tough to get through this. Most people just couldn't take this." *Id.* at 22, col. 6.

36. N.Y. Times, Feb. 29, 1964, at 23, col. 1. They lobbied the N.Y. City Planning Commission, the N.Y. City Housing and Development Board, the Mayor and the New York State Legislature.

37. *Id.* at 49, col. 2. The bill had the support of the Artists Tenants' Association, Mayor Robert Wagner, and Acting City Administrator Maxwell Lehman.

38. 1964 N.Y. Laws ch. 939. Article 7B included: § 275 (legislative findings); § 276 (definition of an artist); § 277 (occupancy permitted); § 278 (application of other provisions); § 279 (termination).

Article 7B was to terminate December 31, 1968 under § 279. 1964 N.Y. Laws ch. 939. However in 1968, the Legislature extended the deadline to December 31, 1975. 1968 N.Y. Laws ch. 900. In 1971, the Legislature repealed § 279 removing the termination date. 1971 N.Y. Laws ch. 1008. The purpose of the termination date was to insure a legislative review if the legislature wanted to extend the statute.

The Multiple Dwelling Law (MDL) is a collection of statutes the general purpose of which is "to establish and maintain proper housing standards requiring sufficient light, air, sanitation and protection from fire hazards as are essential to the public." N.Y. MULT. DWELL. LAW § 2 (McKinney 1974). A multiple dwelling is a "dwelling which is occupied for rent or leased as a residence for 3 or more families independent of one another." N.Y. MULT. DWELL. LAW § 4(7) (McKinney 1974). A multiple dwelling cannot include commercial premises. The MDL subjects residences to certain air, light and safety requirements. N.Y. MULT. DWELL. LAW §§ 26-37 (McKinney 1981), fire protection requirements, *id.* §§ 50-67, as well as sanitation and health requirements, *id.* §§ 75-84. The MDL has specific provisions for enforcement of its statutes. Under § 301, no occupation is permitted in a residence unless a certificate of occupancy is obtained saying that the building conforms to statutory requirements. N.Y. MULT. DWELL. LAW § 301 (McKinney 1974). Failure to abide by § 301 prevents the owners from collecting rent. *Id.* § 302 (1)b (McKinney 1974). In addition, the owner must file for a registration number. He must file his name, address, a description of premises by street number, class and type of building, number of apartments and number of families therein. *Id.* § 325 (McKinney 1981). In complying with the MDL, the individual deals with the local agencies responsible for administering the individual statutes.

In New York City, the Department of Buildings is responsible for enforcing the Multiple Dwelling Law. 1 N.Y. CITY CHARTER ch. 26, § 643 (Supp. 1980-81). The landlord must have the Building Department examine and approve his plans for converting a loft. Once the landlord has complied with the Multiple Dwelling Law, the Building Department issues a certificate of occupancy. *Id.* § 645 (Supp. 1980-81). The owner of the building is required to register his building with the Department of Housing and Buildings, NEW YORK, N.Y., ADMIN. CODE ch. 26, § D26-41.01 (1977).

which enabled cities to implement the state program, permitted occupancy in commercial buildings in cities of one million or more persons engaged in the visual fine arts.³⁹ Tenancies were designed for dual residential and work purposes, but such quarters were not allowed in buildings with commercial enterprises. In addition, each building had to comply with specific fire, safety, health, air and light standards.⁴⁰

Although tenants' associations were encouraged by the legislature's action, they were critical of many provisions: the bill narrowly limited the class of persons eligible to live in lofts to a small group of fine artists⁴¹ rather than to all those involved in any fine art; the fire code⁴²

39. 1964 N.Y. Laws ch. 939. Visual fine arts were not defined by the statute but presumably meant such artistic disciplines as painting and sculpture.

40. The standards were meant to address certain concerns. Judging by the terms of the statutes, it appears they were enacted to allay tenants' fears such as susceptibility of the building's shell to fire, lack of protection against fire inside the building, and dangers associated with open elevator shafts. Under § 278, other provisions of the MDL were made applicable to Article 7B. 1964 N.Y. Laws ch. 939. Several of these provisions include:

Article 8. Requirements and Remedies. This article includes § 300 (permits), § 301 (certificate of occupancy), § 302 (unlawful occupations), § 302-a (abatement of rent), § 303 (enforcement of the law) and § 304 (penalties for violators).

Article 9. Registry of name and service of paper. This article includes § 325 (registration of the building by the owner) and § 326 (service of notices).

Article 10. Prostitution. This Article forbids the use of a residence as a house of prostitution.

Article 11. Laws repealed.

Miscellaneous sections.

- § 28. Two or more buildings on same lot.
- § 31. Size of rooms.
- § 37. Artificial hall lighting.
- § 51. Shafts, elevators, dumbwaiters.
- § 52. Stairs.
- § 55. Wainscoting.
- § 57. Bells, mail receptacles.
- § 58. Incombustible material.
- § 60. Motor vehicle storage.
- § 61. Business uses (except as authorized in Article 7B).
- § 62. Parapets, guard railings, and wires.

41. See note 10 *supra*.

42. MDL Article 7B, § 277, provided:

The building had to be of fireproof construction. If non-fireproof, the building could not exceed six stories or 75 feet in height, 100 feet in depth and 3000 square feet in area. The exterior walls had to have a fire resistive rating of three hours. A fire separation was necessary between all occupancies with a fire resistive rating of one hour. No medium or high fire hazard uses were allowed in the cellar, basement or street floor. All commercial areas had to have automatic sprinklers. Doors opening into public halls had to be fire proof and partitions between apartments had to be fireproof. Glass in the windows had to have embedded wire. Cooking spaces had to comply with MDL § 133. Exposed iron columns had to be covered with materials

was considered too stringent;⁴³ and the mixed use of commercial and residential premises in the same building was not permitted.⁴⁴ As a result of renewed lobbying, the legislature amended Article 7B in 1971 to permit all those engaged in any fine art to inhabit loft buildings.⁴⁵ In addition, to the extent local zoning laws permitted, the amendments provided that the same building could be used by artists and commercial enterprises.

Article 7B was not intended as a complete solution to loft conversion problems. It was an enabling act which required individual cities

that had a fire resistive rating of three hours. Elevator shafts had to be enclosed with fireproof doors and walls. 1964 N.Y. Laws ch. 939.

Other multiple dwellings are regulated by the fire code, set out in N.Y. MULT. DWELL. LAW §§50-67, 101-108. Some examples would be:

§ 51. Elevators must have fireproof doors and shafts.

§ 52. Stairs must have fireproof walls and self closing doors.

Representative of §§ 101-08 are:

§101. Every building over six stories tall must be fireproof. Walls, floors, roofs, stairs and public halls must be fireproof.

§105. There must be separate fireproof stairs with proper ventilation.

The purpose of the fire code is the containment of fire and the provision of a means of escape. N.Y. MULT. DWELL. LAW §§ 50-67, 101-108 (McKinney 1974).

43. S. FRIEDLAND, SPECIAL SPACE 23 (1981). For the next 18 years, this complaint concerning the fire code and building provisions was repeated. The landlords continually felt that such provisions were too expensive to comply with and felt that in order to encourage compliance, the Code should be amended. Consequently, it was amended in 1971, 1971 N.Y. Laws ch. 1008, in 1977, 1977 N.Y. Laws ch. 853, and in 1980, 1980 N.Y. Laws ch. 889. For details of these changes, *see* note 133 *infra*.

44. S. FRIEDLAND, SPECIAL SPACE 23. Section 277(5) states that no part of the building could be used for manufacturing purposes if any other part was to be used as dual purpose quarters. Only the cellar, basement, or street floors could be used for commercial purposes. 1964 N.Y. Laws ch. 939.

45. *See* note 10 *supra*. Artists were required to have their status certified by boards empowered by the MDL to do so. Under MDL § 276 artists could be certified "by the Municipal Department of Cultural Affairs." In New York City, there is a City Department of Cultural Affairs. 1 N.Y. CITY CHARTER ch. 67, § 2501 (1976). Its purpose is to plan, develop, conduct and supervise cultural activities. *Id.* ch. 67, § 2503. The zoning resolution which allows artists to live in Soho designates the Department of Cultural Affairs as the certifying agent. 1 J. PROCEEDINGS (N.Y.C. Bd. of Estimate), Cal. No. 90 at 477 (Jan. 20, 1971). The Department appoints a committee of 20 people—10 professional artists and 10 arts educators and administrators from all fine arts disciplines who decide whether to certify an artist. The criteria they must follow are:

1. Whether the individual is engaged in the fine arts, creative arts or performing arts regularly and on a professional basis;

2. Whether the individual demonstrates a serious consistent commitment to his/her art form;

3. Whether the individual is currently engaged in his/her art form;

4. Whether the individual demonstrates a need for a large loft space in which to practice his/her art form.

Department of Cultural Affairs, Application for Artist Certification (1982).

to enact local plans to implement the state statutes. In New York City, for example, zoning amendments were approved for lower Manhattan⁴⁶ which allowed dual purpose quarters in buildings located in Soho⁴⁷ with areas of 3600 square feet or less.⁴⁸

Despite the passage of favorable statutes and zoning regulations, loft tenants still encountered difficulties during the middle of the 1970's: landlords did not comply with section 277 of the MDL, which required that minimum fire and health protections be provided, nor did they attempt to obtain certificates of occupancy.⁴⁹ Tenants could enjoy the statutory protections only if they lived in buildings which complied with Article 7B. Artists who lived in uncertified buildings did so illegally and remained subject to the same risks which existed prior to the enactment of Article 7B. One case which is illustrative of the tensions which existed between loft tenants and landlords is *Mintz v. Robinson*,⁵⁰ where a landlord sued an artist-tenant for possession of the premises and collection of back rent.⁵¹ The defendant successfully claimed that the building was a *de facto* multiple dwelling as defined in section 4(7) of the MDL⁵² and that the case should be dismissed.⁵³

46. 1 J. PROCEEDINGS (N.Y.C. Bd. of Estimate), Cal. No. 90 at 477 (Jan. 20, 1971).

Zoning laws are statutes which regulate the way in which land can be used. In New York City, either the Board of Estimate or the City Planning Commission regulates the limit, height and bulk of buildings. They regulate the density of population in an area, restrict the location of trades and industries and the location of buildings designed for specific uses. They also create districts for any purpose. The City Planning Commission may propose zoning resolutions on its own initiative but must first notify the community or borough boards affected. The Board of Estimate then passes the Commission's resolutions. Protests against the resolutions can be lodged with the Board of Estimate. 1 N.Y. CITY CHARTER ch. 8, § 200 (Supp. 1981-82). NEW YORK, N.Y., ADMIN. CODE §§ 200-1.0, 2.0 (1976).

47. See note 5 *supra*.

48. 1 J. PROCEEDINGS (N.Y.C. Bd. of Estimate), Cal. No. 90 at 477 (Jan. 20, 1971). These dual purpose quarters were considered a special type of light manufacturing. *Id.* The term "light manufacturing" was not defined in the 1971 amendment.

49. See section II. B. *infra*.

50. 81 Misc. 2d 447, 366 N.Y.S.2d 547 (Civ. Ct. 1975).

51. The court found that the defendant qualified as an artist within the meaning of MDL § 276 because he had been certified by the N.Y.C. Department of Cultural Affairs as eligible to occupy legal living-work loft space. *Id.* at 448, 366 N.Y.S.2d at 549.

52. In *Mintz*, defendant maintained that since his building had three such families residing therein, it was in fact a multiple dwelling. *Id.* at 448, 366 N.Y.S.2d at 548. According to N.Y. MULT. DWELL. LAW § 4(7) (McKinney 1974), a multiple dwelling is any building in which three families reside independently of one another.

53. 81 Misc. 2d at 447, 366 N.Y.S.2d at 548. A registration number is required for multiple dwellings by N.Y. MULT. DWELL. LAW § 325 (McKinney 1974). Under N.Y. ADMIN. CODE tit. 22, § 2900-21(f) (1977), when a landlord brings a petition to recover unpaid rent, the registration number required by MDL § 325 and N.Y.C.

Critical to the holding against the plaintiff was the court's ruling that because the defendant was an artist under Article 7B of the MDL, he was entitled to live in the building.⁵⁴ The court, in effect, recognized that because the landlord created the illegal tenancy by failing to comply with the statutorily imposed duties, he should bear the costs of non-compliance.

The Soho art community thrived,⁵⁵ but at the same time, the type of tenants using lofts changed.⁵⁶ The influx of general residents pushed artists out of Soho because they could not afford the higher rents.⁵⁷ Aware of the problems faced by both artists and non-artists, the city passed two sets of zoning amendments in 1976. The first amendment increased the availability of residential loft space by expanding legal loft conversion into Noho, but restricted the area to artists only.⁵⁸ The second amendment, which was intended to reduce the competition for loft space between general residents and artists, allowed general residents to use lofts in Tribeca.⁵⁹ These new measures, however, did not address all the problems. For instance, the landlord still had to take the initiative to comply with the MDL and convert his building, and until a certificate of occupancy⁶⁰ was obtained, any person who attempted to live in the building did so illegally. As a result, the great majority of loft dwellers continued to take this risk by signing commercial leases and converting their individual lofts unilaterally.⁶¹

Administrative Code § D26-41.21 must be stated in the petition. In *Mintz*, failure to do so resulted in the dismissal of the landlord's petition.

54. 81 Misc. 2d at 448, 336 N.Y.S.2d at 549.

55. City Planning Commission, CP-23170 at 2 (March 1976).

56. Interview with Monte Davis of Lower Manhattan Loft Tenants, Oct. 27, 1981. Non-artists were attracted to loft housing in increasing numbers. This was due partly to the need for more housing and partly from a desire to be involved in the latest trend. *Id.*

57. S. FRIEDLAND, SPECIAL SPACE 32-33 (1981). Noho, short for North Houston, is defined by Astor Place on the north, Houston Street on the south, Broadway on the west and Mulberry Street on the east. Tribeca, short for the triangle below Canal, is defined by Canal Street on the north, Park Place on the south, Greenwich and West Streets on the west and West Broadway on the east.

58. 2 J. PROCEEDINGS (N.Y.C. Bd. of Estimate), Cal. No. 317 at 1099 (Mar. 31, 1976). This area remains restricted to "artists only." See note 127 *infra*.

59. 2 J. PROCEEDINGS (N.Y.C. Bd. of Estimate), Cal. No. 240 at 1691 (June 1, 1976). In 1977, city officials obtained an amendment to Article 7B which allowed general residents to use lofts as residential space. 1977 N.Y. Laws ch. 853, § 3 (Any building . . . may . . . be occupied in whole or in part for joint living-work quarters for artists or general residential purposes . . .).

60. See note 38 *supra*.

61. Tenants relied either on the assurances of landlords or the lax enforcement of the law by the city. See note 99 *infra*. Most tenants lost both this gamble and their

In the late 1970's, an imaginative legal defense developed as loft dwellers fought efforts by owners to evict them on the grounds of an illegal tenancy. The defense was first asserted in *Tarkington Associates v. Spilner*,⁶² when the plaintiff landlord brought an action to evict the defendant tenant on the grounds that the tenancy had expired. Citing *Mintz*,⁶³ the tenant moved to dismiss, alleging that the building was a multiple dwelling where three families lived independently of one another.⁶⁴ It was argued that dismissal was proper because the plaintiff had failed to obtain a registration number⁶⁵ for the *de facto* multiple dwelling.⁶⁶ The court rejected this argument, reasoning that under Article 7B of the MDL, the defendant, as a non-artist, was not entitled to live in the building and, therefore, the premises had been used unlawfully as a residence. *De facto* multiple dwelling status was not recognized because of the defendant's illegal occupancy.

Similarly, in *McClelland v. Robinson*,⁶⁷ the defendant asserted the *Mintz* defense, which consisted of moving to dismiss the landlord's petition for failure to fulfill the statutory requirements⁶⁸ concerning a *de facto* multiple dwelling.⁶⁹ The court held for the plaintiff, however, reasoning that because the defendant was a non-artist and therefore acted illegally at his own risk by using the loft as a residence,⁷⁰ he

leases in the process. Tenants could not unilaterally convert a commercial building into a residential building. It was unlikely that they would have the funds necessary to upgrade the building. MDL § 325 additionally required the owner, not the tenants, to register the building. Under MDL § 325 the tenant would not be subject to penalties if he proceeded to make the premises habitable; however, if the landlord chose to evict the tenant on the basis of the illegal tenancy, the tenant would lose his investment. N.Y. MULT. DWELL. LAW § 325 (2) (McKinney 1974). See note 18 *supra*. As a result, tenants living in an uncertified loft remained in legal uncertainty.

62. N.Y.L.J., June 8, 1978, at 10, col. 4.

63. 81 Misc. 2d 447, 366 N.Y.S.2d 547 (Civ. Ct. 1975).

64. N.Y. MULT. DWELL. LAW § 4(7) (McKinney 1974), states that a multiple dwelling is any building in which three families reside independent of one another. See note 53 *supra*.

65. N.Y. MULT. DWELL. LAW § 325 (McKinney 1974). See note 53 *supra*.

66. N.Y. ADMIN. CODE tit. 22, § 2900-21(f).

67. 94 Misc. 2d 308, 405 N.Y.S.2d 163 (Civ. Ct. 1978).

68. The defendant argued that since the plaintiff had failed to obtain a certificate of occupancy and a registration number as required by N.Y. MULT. DWELL. LAW §§ 301, 325 (McKinney 1974), he should be prohibited from collecting back rent. *Id.* at 310. N.Y. MULT. DWELL. LAW § 302(1)a (McKinney 1974), states that "If any dwelling be occupied . . . for human habitation in violation of § 301 . . . (b)[n]o rent shall be recovered by the owner of such premises for said period and no action . . . shall be maintained thereof or for possession of said premises for non-payment of such rent."

69. N.Y. MULT. DWELL. LAW § 4(7) (McKinney 1974).

70. "The premises were rented for 10 years" as "a studio and for no other purposes." 94 Misc. 2d at 309, 405 N.Y.S.2d at 164. "Landlord did not warrant residen-

should not be able to profit from illegal conduct by not paying rent.⁷¹

Although the *Mintz* defense was not accepted by the courts in *McClelland* and *Tarkington*, this did not indicate a change in attitude, but represented an attempt to draw a distinction. In *Mintz*, the court was willing to dismiss the landlord's petition because the tenant, as an artist, was in legal possession. In both *McClelland* and *Tarkington*, however, the court reached a contrary result because the tenants, as non-artists, illegally occupied the premises. Tenants were forced to develop a different approach to gain court protection as a result of this setback. They withheld rent payments willfully in order to prompt the landlords to institute rent collection proceedings. Once in court, the tenants hoped to convince the judge that because a *de facto* dwelling existed, they were entitled to withhold rent until the landlord obtained a certificate of occupancy. These were the circumstances of *Lipkis v. Pikus*,⁷² where the plaintiff landlord sued for back rent. The defendants⁷³ claimed that the plaintiff had willingly and knowingly permitted them to use the premises as a residence. They argued that if the landlord had intended to have them reside there, he should have obtained a registration number and a certificate of occupancy. Otherwise, he was not entitled to collect rent.

The court held for the defendant, finding that the premises were in fact a multiple dwelling.⁷⁴ This pro-tenant ruling can be explained in part by the fact that in *Lipkis* the landlord had offered a loft for

tial premises and a residential certificate of occupancy." *Id.* at 310, 405 N.Y.S.2d at 164. Even if the court had overlooked this point, it could not overlook the fact that "[t]enants are not certified artists" as defined in section 276 of the MDL and therefore "are not covered by the beneficent provisions of [§§ 277 and 278 of the MDL]" *Id.* at 309, 405 N.Y.S.2d at 164. One defendant was an architect while the other was a businessman. *Id.*

71. The court refused to extend the protection of Article 7B because of the tenant's illegal behavior. The defendants had argued that the equitable principle of estoppel should prohibit the landlord from collecting rent because he had failed to comply with state and city law. However, the court in denying relief stated that the tenants "had full opportunity to know and evaluate the effect of legal uncertainty in concluding their bargain and for this reason [did] not come before the Court with clean hands." 94 Misc. 2d at 310, 405 N.Y.S.2d at 164.

72. 96 Misc. 2d 581, 409 N.Y.S.2d 598 (Civ. Ct. 1978), *aff'd in part and modified in part*, 99 Misc. 2d 518, 416 N.Y.S.2d 694 (App. Term), *aff'd*, 72 A.D.2d 697, 421 N.Y.S.2d 825 (1st Dep't 1979).

73. "All tenants have been certified by the New York City Department of Cultural Affairs as artists under city standards." *Id.* at 586, 409 N.Y.S.2d at 601.

74. The court held that "the statutory definition of a multiple dwelling includes not only actual existing use but the intended use or design." 96 Misc. 2d at 588, 409 N.Y.S.2d at 602. *See* Lubriano v. Fried, N.Y.L.J., May 11, 1977, at 11, col. 2 (App. Term); Glatzer v. Malkinson, N.Y.L.J., Aug. 31, 1976, at 10, col. 4 (App. Term).

residential use which prior tenants had made habitable.⁷⁵ The defendants had not conferred residential status upon themselves as was true of the defendants in *Tarkington* and *McClelland*. Instead, the owner had done so when he encouraged the defendants to use the building as a residence.⁷⁶ The court ruled, therefore, that because the premises were a *de facto* multiple dwelling, the plaintiff would be barred from collecting rent⁷⁷ if he did not fulfill his obligations under Article 7B to obtain a registration number and a certificate of occupancy.⁷⁸

The appellate term reversed,⁷⁹ however, holding that the tenants should not be able to reap the benefits of an illegal occupancy and at

"There is no doubt that the owner had full knowledge of the nature of the tenancies in these buildings and that he encouraged the tenants to use the premises as residences." 96 Misc. 2d at 590, 409 N.Y.S.2d at 603. "The owner's contention that these premises were legally permissible Artist in Residence (AIR) occupancies and not multiple dwellings must be rejected. AIR status only applies to commercial buildings housing one or two artists living independently of one another." *Id.* at 589, 409 N.Y.S.2d at 602. In this case "there are three artists living independently in each building. Thus, the AIR status does not apply." *Id.* Under the AIR program, artists that have been certified by the N.Y.C. Department of Cultural Affairs may occupy joint living and working space in most commercial districts and some manufacturing districts in buildings without a certificate of occupancy. The AIR program was created in 1961 by agreement between the Mayor's Office, Department of Buildings, Fire Department, City Administrator and Artist Tenants Association. It operates independently of state or local legislation pursuant to rules set out by the Department of Buildings in 1961. The leases for AIR units are commercial but the tenant is protected from eviction for living in the space. A maximum of two AIR units per building is permitted. More than two AIR units constitute a *de facto* multiple dwelling. See note 35 *supra*. All the applications must be filed with the Department of Buildings and the building must comply with basic health and safety standards. To obtain an AIR permit, an artist must submit his/her artist certification along with a Department of Buildings application signed by the landlord to the Department. In manufacturing districts, no units may be used under the AIR program unless such use has been continuous since 1961 and the Department of Buildings has a continuous file for the unit since then or unless there is already one existing AIR unit in the same building. S. FRIEDLAND, SPECIAL SPACE 59-60 (1981).

75. 96 Misc. 2d at 586, 409 N.Y.S.2d at 601. "Each tenant paid from \$2000 to \$5500 to prior tenants as 'fixture or key money.' The owner invested nothing in the capital improvements of any of the lofts." The prior tenants had invested their capital to improve the lofts.

76. The court made similar findings in *Gordon & Gordon v. Madavin Ltd.*, 108 Misc. 2d 349, 441 N.Y.S.2d 148 (App. Term 1981), where a petition for possession was denied on grounds similar to *Lipkis* and also that the loft tenant eviction moratorium applied to the defendants. *Id.* at 350-51, 441 N.Y.S.2d at 150. For a discussion of the eviction moratorium, see note 135 *infra*.

77. N.Y. MULT. DWELL. LAW § 302(1)(b) (McKinney 1974). See note 38 *supra*.

78. N.Y. MULT. DWELL. LAW §§ 301, 325 (McKinney 1974). See notes 38, 53 *supra*.

79. 99 Misc. 2d 518, 519, 416 N.Y.S.2d 694, 695 (App. Term 1979), *aff'd*, 72 A.D.2d 697, 421 N.Y.S.2d 825 (1st. Dep't 1979).

the same time avoid paying rent. The court's opinion was based on a desire to deny implicit approval of rent withholding actions intended to force landlords to conform with applicable multiple dwelling guidelines.⁸⁰ The court reasoned that such a result could be achieved instead by stricter enforcement of the law and appropriate legislative action. Nevertheless, the court recognized the validity of the tenants' position and conditioned the landlord's recovery on obtaining a certificate of occupancy.⁸¹

Tenants were able to gain some leverage in their relationship with landlords. Once in court, the tenant could invoke *Lipkis* as precedent and prevent a landlord from collecting rent until proper measures were taken. If evidence could be adduced to prove that a *de facto* multiple dwelling existed, the tenants could force the landlord to obtain a certificate of occupancy and a registration number. Despite the progress achieved in *Lipkis*, however, loft tenants lacked statutory protection from unreasonable rent increases.⁸²

80. *Id.* at 521, 416 N.Y.S.2d at 696. "In this context we are not persuaded that the implicit condonation of widespread rent withholding actions or 'strikes' is the most feasible and equitable alternative to bring converted properties within applicable multiple dwelling guidelines."

81. *Id.* Because the tenants repeatedly defaulted in their obligations to make monthly deposits, the stay of eviction ordered in 1979 was vacated and the landlord was allowed to obtain a judgment for possession. *Lipkis v. Pikus*, N.Y.L.J., Jan. 20, 1982, at 11, col. 1, *motion for stay of eviction denied*, N.Y.L.J., Mar. 5, 1982, at 5, col. 1. The tenants withheld rent as a result of the landlord's alleged curtailment of services. *Lipkis v. Pikus*, No. 82-02044, slip op. at 2 (Sup Ct. Feb. 10, 1982). The technique of conditioning plaintiff's recovery on obtaining a certificate of occupancy also was used in *Laight Coop. Corp. v. Kenney*, 105 Misc. 2d 1001, 1004, 430 N.Y.S.2d 237, 239 (1980).

82. In New York City, there are two types of systems which regulate rents. The version used first was residential rent control. During World War II, the federal government had regulated rents, but these laws were allowed to expire. In New York, state and city statutes were then enacted to continue the regulation of rents. The legislative purpose was to prevent speculative increases in rent due to the large amount of people looking for housing after the war. There was also a need for regulation to prevent threats to health and safety. NEW YORK, N.Y., ADMIN. CODE ch. 51, § Y51-1.0 (1962). The law regulated any building occupied as a residence. NEW YORK, N.Y., ADMIN. CODE ch. 51, § Y51-3.0 (1962). The City Rent and Rehabilitation Administration established the maximum amount of rent to be charged. NEW YORK, N.Y., ADMIN. CODE ch. 51, § Y51-5.0 (1962). Repealed and superseded, 1970 N.Y. Local Laws No. 30.

The emergency created by the acute shortage of dwellings continued, causing hardship. Large rent increases coupled with the unlikelihood that new housing would be built created a need for regulation to prevent profiteering and health hazards. In 1969, such regulation was first instituted by New York City in the form of rent stabilization. 1969 N.Y. Local Laws No. 16, NEW YORK, N.Y., ADMIN. CODE ch. 51, § YY51-1.0-7.0. Rent stabilization applied to multiple dwellings used for perma-

In *Mandel v. Pitkowsky*,⁸³ the court held that the loft dwellers were entitled to the protection of rent regulation.⁸⁴ A landlord's attempt to impose a large rent increase at the expiration of the commercial lease was resisted by the tenants.⁸⁵ The court dismissed the landlord's eviction petition and held, *sua sponte*,⁸⁶ that the Emergency Tenant Protection Act (ETPA)⁸⁷ extended to loft tenancies because lofts were part of the broad category of residential dwellings which had been exempt from rent stabilization prior to the enactment of the EPTA.

ment residential purposes. *Id.* § YY51-3.0. The Rent Guidelines Board established guidelines for rent adjustments. *Id.* § YY51-5.0(b).

In 1971, the New York State Legislature enacted the Vacancy Decontrol laws which eliminated stabilization and rent control for all apartments becoming vacant on or after July 1, 1971. 1971 N.Y. Laws ch. 373, *codified at* N.Y. UNCONSOL. LAWS §§ 8581-82 (McKinney 1981). The purposes of the statutes were to encourage the construction of new housing in New York City by the private sector and to encourage owners to invest in the maintenance and improvement of existing housing units, thereby stemming the tide of the abandonment of sound housing. New York State Legislative Annual, Governor's Memoranda 312 (1971).

The Emergency Tenant Protection Act was passed by the New York State Legislature in 1974, 1974 N.Y. Laws ch. 576, *codified at* N.Y. UNCONSOL. LAWS §§ 8621-34 (McKinney Supp. 1981-82), and adopted by the New York City Council in the same year. New York City Council Res. 276 June 4, 1974, *quoted at* Perth Realty Co. v. Dovoll, 79 Misc. 2d 514, 515, 358 N.Y.S.2d 619, 621 (Civ. Ct. 1974). The statute addressed the problems of high rent and severe housing shortage caused by vacancy decontrol by repealing decontrol for the city's destabilized housing stock. Previously destabilized housing stock and pre-World War II decontrolled housing stock were placed under rent stabilization. In addition, every time a rent controlled apartment is vacated after July 1, 1974, it is transferred into the rent stabilization system.

83. 102 Misc. 2d 478, 425 N.Y.S.2d 926 (App. Term), *aff'd*, 76 A.D.2d 807 (1st Dep't 1979).

84. 102 Misc. 2d at 480-81, 425 N.Y.S.2d at 928. The court also ruled that "petitioner . . . may bring a non-payment proceeding upon a petition properly containing allegations required by law and by court rule. If a certificate of occupancy has still not been obtained at that time, the Housing Court will stay enforcement of a final judgement and provide for the deposit of all arrears with the clerk of the court until such time as a certificate is procured." *Id.* at 481, 425 N.Y.S.2d at 928, *citing* *Lipkus v. Pikus*.

85. In response, the plaintiff moved to evict because the defendant was using the premises illegally as a residence. *Id.* at 478, 425 N.Y.S.2d at 926. The defendant claimed that the plaintiff had encouraged residential habitation even though the premises were rented pursuant to a standard Real Estate Board loft lease which limited occupation of the premises solely to an artist's studio. The tenants invested substantial sums to convert the space to habitable living quarters and maintained that the building was a *de facto* multiple dwelling. Because the plaintiff had failed to obtain a certificate of occupancy it was argued that the petition should be dismissed. *Id.*

86. "Apart from the defects in the petition, we reach the merits of the case in the interest of judicial economy and because of the importance of the issue to others similarly situated." *Id.* at 480, 425 N.Y.S.2d at 928.

87. 1974 N.Y. Laws ch. 576.

Thus, loft tenants received from the courts greater protection than that provided by Article 7B.

Although loft dwellers had received some protection under Article 7B and the landmark cases, their legal status was still unclear at the beginning of the 1980's.⁸⁸ For example, landlords have curtailed services in order to evict tenants because under *Lipkis* and *Mandel*, a landlord is required to have a registration number or a certificate of occupancy in order to recover possession.⁸⁹ In addition, loft tenants did not come under the protection of Article 7B if owners did not take the initiative and upgrade their buildings in order to comply with section 277 of the MDL.⁹⁰ Moreover, enforcement of the law was lax

88. *Mandel v. Pitkowsky*, 102 Misc. 2d 478, 425 N.Y.S.2d 927 (App. Term 1979), *aff'd*, 76 A.D.2d 807 (1st Dep't 1979); *Lipkis v. Pikus*, 99 Misc. 2d 518, 416 N.Y.S.2d 694 (App. Term 1979), *aff'd*, 72 A.D.2d 697, 421 N.Y.S.2d 825 (1st Dep't 1979). At the time, there was a great deal of loft conversion activity. According to a 1978 New York Times article, the total number of conversions taking place below 59th Street was 1023—87 done legally, 936 done illegally. An area breakdown shows:

	Illegal Conversions	Legal Conversions
Soho	165	13
Noho	56	2
Tribeca	219	5
Lower Manhattan	13	0
West Village	5	5
Northeast Village	37	19
Madison Square	1	7
Bowery	49	2
Midtown South	310	10
Midtown North	58	1
Other Areas	23	23
All Areas	936	87

N.Y. Times, July 27, 1978, at 1, col. 3.

89. The practice of curtailing services to force tenants to vacate is a recent phenomena. *Corris v. 129 Front Co.*, N.Y.L.J., Mar. 11, 1982, at 24, col. 1 (App. Div. 1st Dep't) (tenants sought an injunction to prevent termination of services); *Lipkis v. Pikus*, No. 82-02044, slip op. at 2 (Sup. Ct. Feb. 10, 1982) (tenants commenced to withhold rent when landlord cut off services). In *Corris v. 129 Front Co.*, the appellate division ruled that an injunction would be granted only if the tenants paid landlord rent due from July 11, 1981 to present on the grounds that "landlords who rent must furnish services; and tenants who receive services must expect to pay rent," and that the landlord had made a good faith effort to provide services. Because the court conditioned equitable relief upon payment of rent, the pro-tenant decisions in *Mandel* and *Lipkis* were undermined. Although *Corris* was an equitable action initiated by tenants and *Lipkis* and *Mandel* were summary proceedings for possession initiated by the landlord, courts in future cases may not be alert to the distinction and will use *Corris* to strike down important common law tenant protection.

90. Interview with Monte Davis of Lower Manhattan Loft Tenants, Oct. 27, 1981.

and rents generally were not regulated.⁹¹ Finally, as lofts became lucrative, landlords evicted illegal tenants and did not renew the leases of legal tenants in order to collect higher rents.⁹²

In 1980 and 1981, New York City and the New York State Legislature created a five-point program designed to address these problems. The highlights of this program include the enactment of a moratorium on the eviction of loft tenants and the enlargement of the number of zoning districts in which any individual could use lofts as residences.⁹³ The plan also provided for the drafting and enactment of a comprehensive residential status bill which would permit the conversion of lofts into residences. Until such a bill is enacted, however, the stability of a loft tenant's leasehold remains uncertain.

B. Landlord Viewpoint

The majority of the statutes and cases which currently regulate the conversion of commercial lofts to residential space were passed at the insistence of tenants and tenant associations. Many of the laws also reflect the interests of loft building landlords or at least have an impact on the landlord-loft dweller relationship. It is, therefore, useful to examine the evolution of loft conversion law from the landlord's perspective.

One result of the fact that lower Manhattan had ceased to be a thriving commercial center was that empty buildings caused some commercial real estate owners to lose money. Consequently, landlords decided that if the buildings could not generate revenue from tenants engaged in manufacturing, income could be earned from other types of tenants.⁹⁴ Residential tenancies were illegal, but New York City officials were not diligent in policing MDL violations⁹⁵ and landlords allowed loft conversions in their buildings.⁹⁶

91. *Id.*

92. See notes 128-30, 135 *infra* and accompanying text.

93. Proposed Article 7C, entitled *Legalization of Interim Multiple Dwellings*, drafted by the New York City Department of Housing, Preservation and Development §§ 280-287.

94. See, e.g., *Lower Manhattan Loft Tenants*, *New York City's Illegal Housing Boom* (Oct. 14, 1981).

95. This may have been due to the fact that artists comprised a very small part of the total population. The number of illegal tenancies was therefore small and could be overlooked more readily by Building Department inspectors. It appears that because loft dwellers were a small group, they would have had a hard time lobbying with government officials. Once loft tenancy was opened to general residents, the number of loft dwellers and their lobbying power grew.

96. Weisbrod, *Loft Conversion*, 6 N.Y. AFFAIRS 45, 46 (1981).

In 1964, Article 7B was added to the Multiple Dwelling Law⁹⁷ which made it legal for an artist to live in a loft, provided the landlord complied with statutory provisions.⁹⁸ There were no incentives to commence the conversion process,⁹⁹ however, and landlords proceeded to mitigate their losses as they had done before the passage of Article 7B by allowing tenants to illegally use their buildings for dual purpose quarters. Not until *Mintz v. Robinson*,¹⁰⁰ where a landlord's petition to recover rent was dismissed because he had failed to comply with the MDL,¹⁰¹ were landlords on notice that they had to have an Article 7B loft building certificate of occupancy before they could bring suit to recover rent. Subsequent decisions restricted the *Mintz* holding to cases where tenants, as artists, were in legal possession of the premises,¹⁰² but this relief for landlords was shortlived. *Lipkis v.*

97. 1964 N.Y. Laws ch. 939. In 1971, Article 7B was amended. 1971 N.Y. Laws ch. 1008.

98. The first step would be to upgrade the building along the guidelines set forth in MDL § 277. 1971 N.Y. Laws ch. 1008. The majority of these guidelines dealt with fire safety. *See* note 26 *supra*. The remaining guidelines included:

(1) Improvement of lighting, ventilation and enlargement of rooms, alcoves and balconies to comply with NEW YORK, N.Y., ADMIN. CODE ch. 26, § C26-1205.0-1205.7 (1978);

(2) Improvement of lighting and ventilation of public halls in order to comply with NEW YORK, N.Y., ADMIN. CODE ch. 26, §§ C26-604.8 i 1 (f) and i 4 (c) (1978);

(3) Upgrading cooking space to comply with N.Y. MULT. DWELL. LAW § 33 (McKinney 1974); and

(4) Compliance with MDL §§ 75-84. This includes statutes on sanitation, health, plumbing, heating and repairs.

The second step would be to acquire a registration number. N.Y. MULT. DWELL. LAW § 325 (McKinney 1981).

The third step would be to acquire a certificate of occupancy. N.Y. MULT. DWELL. LAW § 301 (McKinney 1981).

99. Not only was renovation of the building very costly, but it was time consuming to obtain a registration number and a certificate of occupancy. In addition, many tenants were willing to take the risk of living in lofts illegally since the city did not actively enforce the new laws. Weisbrod, *Loft Conversion*, 6 N.Y. AFFAIRS 46 (1981). The Department of Buildings is responsible for enforcing the law, with respect to buildings and structures, including provisions of the building code, zoning resolutions, multiple dwelling laws and rules and regulations that may govern construction, use, maintenance, occupancy and sanitary conditions of buildings in the city. 1 N.Y. CITY CHARTER ch. 26, § 643 (Supp. 1980-81). The commissioner, any deputy, borough superintendents or inspectors, for the purpose of performing their duties, may inspect any building. *Id.* § 649. The Department examines, approves or disapproves any plans for alternations of buildings. *Id.* § 645.

100. 81 Misc. 2d 447, 449, 366 N.Y.S.2d 547, 550 (Civ. Ct. 1975).

101. In *Mintz*, the court held that since the premises were a *de facto* multiple dwelling the landlord was required to obtain a registration number. N.Y. MULT. DWELL. LAW § 325 (McKinney 1974). His failure to do so led to the dismissal of the petition. 81 Misc. 2d at 449, 366 N.Y.S.2d at 550.

102. *Tarkington Associates v. Spilner*, N.Y.L.J., June 8, 1978, at 10, col. 4, and *McClelland v. Robinson*, 94 Misc. 2d 308, 405 N.Y.S.2d 163 (Civ. Ct. 1978), brought some relief to landlords. Because of these cases the court would dismiss petitions as in

Pikus and *Mandel v. Pitkowsky*,¹⁰³ further restricted the leeway landlords had enjoyed in avoiding compliance with Article 7B. Pursuant to *Lipkis*, if a landlord knew that a tenant was using a loft as a residence or that the loft had been used previously as a residence, the landlord had to fulfill his statutory obligations. *Mandel* prevented landlords from seeking unreasonable rent increases.¹⁰⁴ These decisions have led landlords to curtail services when tenants conduct rent withholding actions.¹⁰⁵

In 1977, the state amended Article 7B,¹⁰⁶ enabling general tenants to live in lofts if the proper local laws were passed. Landlords still had little incentive to comply with the MDL, however, because the conversion process remained expensive and time consuming, city enforcement remained lax, and tenants remained willing to assume the risks of illegal tenancies.

In the past five years, loft landlords have been beset with a number of new problems: expenses, such as the cost of fuel, have risen; high interest rates have made institutional mortgages hard to obtain; and banks are reluctant to lend money to owners who have illegal tenants.¹⁰⁷ Rent stabilization, as demanded by tenants, should be tied to the control of the costs involved in upgrading lofts pursuant to Article 7B.¹⁰⁸ Furthermore, if a formula were devised to pass along costs to the tenants, landlords would be likely to accept rent stabilization.

Mintz only if the tenants were in legal possession of the premises. This meant that the tenant had to be an artist and therefore permitted by MDL § 277 to live in a loft. But if the tenant were in possession illegally, as in *McClelland* and *Tarkington*, the petition would not be dismissed.

103. *Lipkis v. Pikus*, 99 Misc. 2d 518, 416 N.Y.S.2d 694 (App. Term 1979), *aff'd*, 72 A.D.2d 697, 421 N.Y.S.2d 825 (1st Dep't 1979); *Mandel v. Pitkowsky*, 102 Misc. 2d 478, 425 N.Y.S.2d 927 (App. Term 1979), *aff'd*, 76 A.D.2d 807 (1st Dep't 1979).

104. Landlords had to use caution when they raised the rent because if they sought an unreasonable increase, a court battle could ensue with the landlord on the losing end. See *Mandel v. Pitkowsky*, 102 Misc. 2d 478, 425 N.Y.S.2d 927 (App. Term 1979), *aff'd*, 76 A.D.2d 807 (1st Dep't 1979). An attempted rent increase could result in a court battle for two reasons. First, the landlord might try to evict the tenant on the basis of an illegal tenancy in order to find a prospective tenant who would be willing to pay a higher rent. Second, the tenant might sue the landlord on the grounds of an illegal rent increase. The owner was likely to be on the losing end since he might encounter problems associated with the existence of a *de facto* multiple dwelling, see note 53 *supra* and accompanying text, or the rent increase might be beyond the rent stabilization guidelines which *Mandel* applied to loft tenants.

105. See note 89 *supra* and accompanying text.

106. 1977 N.Y. Laws ch. 853.

107. Interview with Aaron Gelbwacks, President of Association of Commercial Property Owners, Oct. 26, 1981. The banks are probably reluctant to become involved in a situation which could involve complex and lengthy litigation.

108. *Id.* The actual construction costs involved in upgrading a loft building would include cleaning the loft, painting the interior, laying down floors, installing kitchens

C. City Officials

The approach that New York City has taken to loft conversion law reflects a diversity of interests. City officials wanted to maintain an environment conducive to the existence of an art community in the city. Initially, this meant that efforts were directed toward providing artists with affordable dual work and living space.¹⁰⁹ At the same time, city officials wanted to maintain the existence of local industry and the housing needs of artists were balanced with the necessity of preserving industrial activity in lower Manhattan. Later, the housing shortage which arose in New York City made the conversion of lofts to residences an expedient method of augmenting existing housing stock although the city did restrict certain neighborhoods to artists.

New York City officials became involved with loft conversion when the City Planning Department, Housing and Resources Board, and the Mayor's Office, were convinced by tenant associations that some

and baths, rewiring the electrical system, repairing the walls and the plumbing, replacing windows and installing intercoms. The cost of such measures would be \$40 to \$70 per square foot. This estimate is based on a building located in Soho, built in the 1890's, covering 4000 square feet in area and rising about six stories high. Construction costs would run from \$960,000 to \$1,680,000. Interview with Martin Levine, Vice President Real Estate Finance Business for Chase Manhattan Bank, Jan. 22, 1982. In today's real estate market it has become a lucrative practice to purchase loft buildings, renovate and sell them as cooperative apartments. For a building such as the type described above, the acquisition of the shell would cost from \$30 to \$50 per square foot. Expenses such as financing loans, taxes, the services of attorneys, architects and real estate consultants add \$20 to \$30 per square foot. The construction costs add another \$40 to \$70 per square foot. The cost of bringing such a building on to the real estate market would range from \$2,160,000 to \$3,600,000. Cooperatives have more incidental costs than if the building was rented out. Therefore 10% has to be added to the cost, bringing the total to \$2,376,000 to \$3,960,000. The price is marked up anywhere from 15% to 100% to bring the investor a profit. The cost to the consumer would be \$113 to \$165 per square foot. *Id.*

109. Some government officials suggested that the state build such quarters for the artists, but even at that time such a proposal was too expensive. Governor's Bill Jacket ch. 973 (1964). New York City officials have attempted to provide housing for artists in other instances. One such effort was Westbeth, where New York City aided private developers with tax abatements and zoning variances to transform West Village commercial buildings into artists' studios. N.Y. Times, May 10, 1970, § 2, at 23, col. 1. The managing corporation tried to provide artists with housing at the lowest possible rent, but when a rent increase was imposed due to operating losses, tenants staged public protests, N.Y. Times, July 30, 1972, § 1, at 29, col. 3, and later conducted a rent strike. N.Y. Times, Sept. 24, 1972, § 8, at 12, col. 2. Presently, there are low vacancy rates and long waiting lists. S. FRIEDLAND, SPECIAL SPACE 39 (1981). Manhattan Plaza, another project which provides housing for artists on favorable terms, originated as a middle class housing project between Ninth and Tenth Avenues on West 43rd Street. New York City contributed \$90 million in financing, but when not enough middle class tenants rented apartments, federal

regulation of loft use was necessary.¹¹⁰ The state statute which emerged, Article 7B, required for implementation, the enactment of suitable local laws. A study by the New York City Planning Commission, undertaken for this purpose, found that Soho remained an important source of blue collar jobs.¹¹¹ The finding that "artists and manufacturers . . . have a mutually beneficial relationship,"¹¹² led to the conclusion that the art community should be protected and industry preserved.¹¹³

Zoning amendments were adopted in 1971¹¹⁴ which allowed artists to use dual purpose quarters in Soho, but limited artists to buildings covering 3600 square feet or less.¹¹⁵ It was hoped that by limiting artists to the smaller buildings in Soho, the need to maintain a light industry zone would be balanced with the development of a legitimate artist colony.¹¹⁶ The experiment in Soho was very successful,¹¹⁷ but artists were displaced by more affluent residents.¹¹⁸ As a result,

subsidies were obtained to permit low rents for artist-tenants. N.Y. Times, Sept. 14, 1979, at B1, col. 2. The federal subsidies required that the apartments be offered to low income tenants. *Id.* As the result of a protracted controversy over which type of tenant would be eligible for the subsidized rents, 70% of the apartments were set aside for performing artists and 30% for area residents. N.Y. Times, Mar. 15, 1977, at 73, col. 3. Manhattan Plaza continues to provide housing for artists. *See generally* S. FRIEDLAND, SPECIAL SPACE 37-44 (1981).

110. N.Y. Times, Feb. 29, 1964, at 23, col. 1.

111. City Planning Commission, CP-21256A (Dec. 1970), *quoted in* 1 J. OF PROCEEDINGS (N.Y.C. Bd. of Estimate), Cal. No. 90 at 477 (Jan. 20, 1971). The area continued as a center for manufacturers of apparel, textiles and electronic equipment as well as for warehousing and wholesale service facilities. *Id.* But while many manufacturing firms still used commercial space in the area, the structures which artists found attractive, due to their extensive space at low cost, were inadequate for industry. City Planning Commission, CP-23170 at 1 (Mar. 1976).

112. City Planning Commission, CP-23170 at 1 (Mar. 1976).

113. City Planning Commission, CP-21256A (Dec. 1970). *See note 111 supra.* This desire to balance the needs of industry with the needs of tenants appears in all subsequent zoning amendments. *See* City Planning Commission, CP-23170 at 4 (Mar. 1976) ("The Commission believes that a reasonable balance of land use can be achieved in SoHo and NoHo between art related uses and manufacturing.") and City Planning Commission, CP-23198 at 3 (June 1976) (This "district presents the opportunity to protect industry and to encourage stability . . . by permitting . . . residential uses.").

114. 1 J. OF PROCEEDINGS (N.Y.C. Bd. of Estimate), Cal. No. 90 at 477 (Jan. 30, 1971).

115. City Planning Commission, CP-21256A (Dec. 1970).

116. *Id.*

117. City Planning Commission, CP-23170 at 2 (Mar. 1976). The SoHo community thrived with the appearance of new galleries, art supply stores and craft shops. A variety of restaurants and boutiques were established serving Soho residents, employees and visitors. *Id.*

118. Lower Manhattan Loft Tenants, New York City's Illegal Housing Boom (Oct. 14, 1981). Non-artists were being attracted to loft housing partly by the need for new housing and partly out of snob appeal. *Id.*

zoning amendments were enacted in April 1976¹¹⁹ which increased the availability of residential loft space and extended legal loft conversion into NoHo. This was to be accomplished by allowing artists to use buildings of 5000 square feet in area but reserving the ground floors and basements for industry.¹²⁰ A few months later, Tribeca¹²¹ was designated as the first loft conversion area open to general tenants.¹²² A balance of the needs of industry and loft tenants was accomplished by allowing residential conversions in one portion of Tribeca while restricting conversions of other areas of the district to buildings covering less than 5000 square feet.¹²³

By 1977, the increasingly acute housing shortage in Manhattan prompted a further amendment of Article 7B which allowed any type of tenant to reside in lofts.¹²⁴ Government officials hoped that the housing market would improve somewhat if such use were permitted.¹²⁵ Furthermore, despite the periodic changes in the law, many problems still characterized the loft conversion process.¹²⁶ A five-point program emerged as a result.

119. 2 J. OF PROCEEDINGS (N.Y.C. Bd. of Estimate), Cal. No. 317 at 1099 (Apr. 1976).

120. *Id.* The City Planning Commission found that industrial concerns preferred to use the basement and ground floors and tended to be located there while artists tended to use the higher floors. The Board of Estimate accepted the Commission's proposal to incorporate these preferences into the zoning amendments by restricting loft dwellers to the first floor and above. In addition, artists had to be certified by the proper bodies as artists. *Id.*

121. Tribeca is the area defined by Canal Street on the north, Park Place on the south, Greenwich Street on the west and West Broadway on the east.

122. 2 J. OF PROCEEDINGS (N.Y.C. Bd. of Estimate), Cal. No. 240-91 at 1691 (June 11, 1976). The purpose of the Tribeca amendment was to increase the housing supply in Manhattan.

123. City Planning Commission, CP-23198 at 2 (June 1976). The ground, first and second floors of the building were reserved for commercial use. *Id.*

124. 1977 N.Y. Laws 853, *codified at* N.Y. MULT. DWELL. LAW § 277 (McKinney 1981).

125. New York State Legislative Annual 277 (1977).

126. After the court had handed down its decision in *Mandel v. Pitkowsky*, 102 Misc. 2d 478, 425 N.Y.S.2d 926 (App. Term) *aff'd*, 76 A.D.2d 807 (1st Dep't 1979), it became apparent that it was necessary for loft dwellers to have the same lease rights accorded any residential tenant. The legislature was interested in a formula whereby loft dwellers would have rights of possession; a new lease when the old one expired and the regulation of annual rent increases.

"[T]enants must be offered a lease with a term of one year at a rent equal to the rent level in effect at the expiration of their current lease plus an increase not to exceed eleven percent per annum for the first year of the term of the lease." Governor's Bill Jacket ch. 889 (1980).

First, because the demand for residential housing had outstripped earlier zoning efforts,¹²⁷ new zoning amendments were passed which increased the number of districts where general tenants could use lofts as residences.¹²⁸ The amendments reaffirmed other areas as manufacturing districts¹²⁹ or districts where loft use was restricted to artists only.¹³⁰ Second, the city amended the J-51 tax abatement program¹³¹ to deny benefits in the designated manufacturing areas.¹³² This was intended to encourage owners to convert lofts in permissible areas only.¹³³ Third, a Loft Enforcement Unit was created by the city to enforce all the applicable laws.¹³⁴ Fourth, a statutory mechanism

127. CITY PLANNING COMMISSION, *LOFTS: BALANCING THE EQUITIES* (Feb. 1981).

128. CITY PLANNING COMMISSION, *LOFTS: BALANCING THE EQUITIES* (Addendum Apr. 1981). Southeast Chelsea is the area defined by West 23rd Street, West 14th Street, Eighth Avenue and Park Avenue. The Garment Center East is the area defined by West 35th Street and West 40th Street on the north and West 33rd and West 34th Streets on the south. These areas were chosen as new mixed-use districts in an effort to recognize existing realities. *Id.* at 48 (Feb. 1981).

129. *Id.* These areas included: The Garment Center, the area defined by West 40th Street on the north, West 35th Street on the south, Tenth Avenue on the west and Seventh Avenue and Broadway on the east; Northeast Chelsea, the area defined by West 31st Street and West 23rd, 24th and 25th Streets; the Meat Market, the area defined by 17th Street on the north, Bethune Street on the south, West Street on the west and Hudson Street on the east; the Graphic Arts Center, the area defined by Burrow Street on the north, Canal Street on the south, West Street on the west and the Avenue of the Americas on the east. These areas were reaffirmed as manufacturing areas since industrial areas are important to the city's economy. *Id.* at 55 (Feb. 1981). Tribeca was reaffirmed as a mixed-use zone for general tenants. Existing illegal tenancies in the manufacturing districts remained illegal. *Id.*

130. CITY PLANNING COMMISSION, *LOFTS: BALANCING THE EQUITIES* (Addendum Apr. 1981).

131. NEW YORK, N.Y., ADMIN. CODE ch. 51, § J-51-2.5 (d)4 (1975).

132. The J-51 program was created by New York City and the New York State Legislature to facilitate, rehabilitate and upgrade existing housing. Tax abatements were used as incentives. Any increase in assessed valuation attributable to such upgrading was exempt from real property taxes for up to 12 years. Taxes on up to 90% of certified reasonable costs were abated. Such costs were based on the relation of actual construction costs to standard charges for work completed. Department of City Planning, *Re-Use of Non-Residential Buildings in Manhattan*, 40 (Dec. 30, 1977). NEW YORK, N.Y., ADMIN. CODE ch. 51, § J-51-2.5 (1975). In 1975, the city extended J-51 benefits to the conversion of any building into a multiple dwelling. *Id.* § J-51-2.5 7(d)2.

133. Weisbrod, *Loft Conversions*, 6 N.Y. AFFAIRS 45 (1981).

134. The Loft Enforcement Unit was placed within the Mayor's Office. It is comprised of inspectors, attorneys, architects and investigators. It will use a computer data collection system and reports from community groups, manufacturing and residential tenants to track illegal conversions. The unit will address itself to loft zoning and loft code compliance. It will investigate complaints, make reports, conduct follow up investigations and commence litigation against zoning and code violators. Weisbrod, *Loft Conversions*, 6 N.Y. AFFAIRS 45, 51-52 (June 1981).

The state legislature amended the fire and building code of § 277 once again. Since 1964, § 277 has been amended in 1971, 1971 N.Y. Laws ch. 1008, in 1977, 1977 N.Y.

was enacted in order to provide industrial tenants, who were displaced by an influx of residential tenants, with a payment¹³⁵ by the landlord designed to cover the cost of relocation. Fifth, the plan provided for the enactment of a comprehensive addition to the Multiple Dwelling Law designed to ensure the stability of loft tenants' leaseholds. Although an eviction moratorium was imposed from June, 1980 to June, 1981 as a stop gap measure until the comprehensive bill was enacted, it lapsed without the bill becoming law.¹³⁶

III. Article 7C

Despite repeated legislative attempts to provide for and balance the needs of tenants and landlords, a number of problems exist. Loft dwellers' rents are not regulated and tenants continue to be subjected to unreasonable rent increases.¹³⁷ In addition, many tenants live in *de facto* multiple dwellings which do not have a certificate of occupancy. Unless they are willing to endure costly litigation, these tenants will not benefit from the protection provided by the MDL.¹³⁸

Landlords continue to resist compliance with the laws.¹³⁹ By allowing landlords to pass along conversion costs to tenants, landlords

Laws ch. 853, and in 1980, 1980 N.Y. Laws ch. 889. Most of the amendments have dealt with the fire provisions.

135. 1980 N.Y. Laws ch. 889. These payments were supposed to induce industrial tenants to relocate elsewhere in Manhattan. Governor's Bill Jacket ch. 889 (1980). J-51 tax benefits were to be denied unless the landlord complied with this provision. 1980 N.Y. Laws ch. 889.

136. *Id.* The Legislature avoided a difficult issue by not taking any action at the time. Two interests had to be balanced: the tenants' desire for rent regulation and the landlords' desire to pass along some of the conversion costs to the tenants. The Legislature had to decide the percentage of costs to be passed along, the span of time during which the pass along is permitted and, in return, the extent of rent regulation to be imposed. A better balanced formula was proposed in Article 7C.

The eviction moratorium was deemed to apply prospectively and retroactively in *Gordon & Gordon v. Madavin, Ltd.*, 108 Misc. 2d 349, 441 N.Y.S.2d 148 (App. Term 1981). A petition for possession was rejected in *Gordon & Gordon* on the grounds that the loft tenant eviction moratorium applied to the defendant tenants. The landlord claimed that the moratorium did not cover the defendants since their leases expired prior to Nov. 26, 1980, the effective date of the statute. The court found that not only was the statute to be applied prospectively but it was the legislative intent for the statute to apply retroactively to leases expiring after June 11, 1980. Since tenants' leases expired after June 11, 1980, they were covered by the eviction moratorium. *Id.* The end of the moratorium created significant hardships for many loft tenants threatened with arbitrary evictions and the doubling or tripling of rent. N.Y. Times, Oct. 6, 1981, at B3, col. 2.

137. N.Y. Times, Oct. 6, 1981, at B3, col. 2.

138. N.Y. MULT. DWELL. LAW § 278 (McKinney 1974). See note 40 *supra* and accompanying text.

139. See note 107 *supra* and accompanying text.

will be more likely to accept rent stabilization. Disagreement continues to be the hallmark of landlord-tenant relationships. Therefore, an oversight committee empowered to rule on disputes which arise out of loft conversion and to enforce relevant laws is needed.

Proposed Article 7C is being considered for introduction during the 1982 New York State legislative session.¹⁴⁰ The bill is intended to secure proper regulation for all tenants who live in premises which do not comply with MDL section 277 which enumerates minimum health and safety standards.¹⁴¹ First, it provides for the establishment of a special loft unit¹⁴² which is supposed to resolve the complaints of owners and residential tenants of interim multiple dwellings¹⁴³ as well as to act on hardship applications.¹⁴⁴ In order to achieve these goals the loft board¹⁴⁵ has additional duties: (1) the determination of interim multiple dwelling status; (2) the determination of claims for rent adjustments brought by an owner or tenant; (3) the issuance and enforcement of rules and regulations governing minimum residential standards in interim multiple dwellings; and (4) the determination of controversies arising over the fair market value of a residential tenant's fixtures.¹⁴⁶

Second, a system enabling owners to pass along the costs of Article 7B compliance to tenants in the form of rent increases is provided in proposed Article 7C. The special loft unit is given the power to determine the necessary and reasonable costs incurred by the landlord

140. Proposed Article 7C, *Legalization of Interim Multiple Dwellings*, §§ 280-287.

141. This means that the landlord has not obtained a certificate of occupancy and a registration number.

142. Proposed Article 7C, § 282 (1982). The loft board is to be distinguished from the Loft Enforcement Unit (LEU). The loft board is an agency which will resolve landlord-loft dweller disputes. The LEU is an agency which enforces the applicable statutes and zoning resolutions.

143. Section 281 defines an interim multiple dwelling as any building in a city of one million or more persons which, at any time, was occupied for a manufacturing, commercial or warehousing purpose, lacks a certificate of occupancy and has been occupied by three or more families living independently of one another since April 1, 1980.

144. Under § 285(2), an owner may apply to the loft board to have the building exempted from compliance with Article 7C on the grounds that such compliance would have an adverse impact on non-residential tenants in the building or that conversion costs would make compliance infeasible.

145. The loft board will consist of from four to nine members from the public, the real estate industry, residential loft tenants, manufacturing loft tenants, and a chairperson, all to be appointed by the mayor of New York City, subject to approval by the local legislative body. Proposed Article 7C, § 282.

146. *Id.*

during renovation.¹⁴⁷ The adjustment in rent is to be determined either by dividing the cash cost of the improvements, without regard to interest or service charges, over ten years, or by dividing the same amount over fifteen years, exclusive of interest and service charges, but including interest costs on loans.¹⁴⁸

Third, proposed Article 7C subjects interim multiple dwellings (IMD) to rent regulation. Before a building is brought into Article 7B compliance, IMD tenants will pay the same rent as the lease specifies.¹⁴⁹ When compliance is achieved, the owner can apply to the loft unit in order to set an initial rent based upon the costs of conversion.¹⁵⁰ Thereupon each residential unit is subject to rent stabilization.¹⁵¹

Fourth, proposed Article 7C indirectly affords loft tenants the protection of section 277. It provides that an interim multiple dwelling owner must comply with the Article 7B fire and safety protection regulations within 18 months of receiving an alteration permit¹⁵² or the effective date of the statute, whichever is later.¹⁵³ A certificate of occupancy also must be obtained within 36 months of the effective date of the act.¹⁵⁴ Once the certificate of occupancy is obtained, the section 277 safeguards apply.

If proposed Article 7C contained the above measures only, it would be a significant accomplishment. However, the bill also creates a comprehensive program which, if enacted, would insure the stability of loft tenants' leaseholds. This comprehensive program includes such measures as allowing IMDs to be occupied for residential purposes.¹⁵⁵ IMD tenants would have the same protection that residential tenants have pursuant to real property laws and real property and proceed-

147. The loft board is entitled to devise a schedule of reasonable costs for compliance against which a landlord's expenditures may be contrasted to determine their reasonableness. *Id.* § 286(5).

148. *Id.* An owner can have the loft board designate the improvement costs as the certified amounts required when applying for tax exemptions and abatements. *Id.*

149. If no lease is in effect, rent increases prior to Article 7B compliance will follow guidelines set by the loft board. *Id.* § 286(2).

150. *Id.* § 286(3).

151. N.Y. EMERGENCY TENANT PROTECTION ACT OF 1974 §§ 8621-34 (McKinney Supp. 1981-82).

152. An owner has to file an alteration application within nine months of the effective date of the act, Proposed Article 7C, § 284(1)(i)(A), and must obtain an alteration permit within 12 months of the effective date. *Id.* § 284(1)(i)(B).

153. *Id.* § 284(1)(i)(C).

154. *Id.* § 284(1)(i)(D). Under § 284(2) an owner must obtain a registration number as required by N.Y. MULT. DWELL. LAW § 325 (McKinney 1978), within 60 days of the effective date of the act.

155. Proposed Article 7C, § 283.

ings law, the most significant being the implied warranty of habitability.¹⁵⁶ In addition, the bill provides a number of remedies for the tenant in the event the landlord fails to upgrade the building within the required time.¹⁵⁷ The loft unit may subject him to Article 8 sanctions such as the abatement of rent.¹⁵⁸ Upon the loft unit's finding that an owner has failed to fulfill his obligations, any three tenants from separate residential units may obtain a court order directing specific performance of such obligations.¹⁵⁹ Finally, under the bill, tenants cannot be evicted from an IMD on the grounds of illegal tenancy¹⁶⁰ and may sell any improvements in the premises after having offered them to the owner at fair market value.¹⁶¹

Proposed Article 7C represents a dramatic step toward a comprehensive loft conversion program. Although the legislature should enact the bill immediately, two flaws in particular must be remedied. The bill does not apply to those living in *de facto* multiple dwellings prior to April 1, 1980 and, therefore, those who have been using their lofts prior to that date would not be protected. Furthermore, proposed Article 7C extends rent stabilization only to those buildings which will be granted certificates of occupancy after the bill is enacted. The following changes are recommended: first, protection should be extended to those tenants living in *de facto* multiple dwellings prior to the effective date of the proposed bill; second, rent stabilization should be granted to all buildings which received certificates of occupancy prior to the effective date of the proposed bill.¹⁶²

156. *Id.* § 286(11).

157. *Id.* § 284(1)(ii-iv).

158. *Id.* § 284(1)(ii).

159. *Id.* § 284(1)(iii). If a tenant is forced to vacate a loft pursuant to a vacate order which was the result of the landlord's unlawful failure to fulfill his duties, the tenant may recover the fair market value of improvements made and reasonable moving costs. *Id.* § 284(1)(iv).

160. *Id.* § 286(1).

161. *Id.* § 286(6). The improvements can be sold to incoming tenants if the landlord chose not to purchase them. *Id.*

162. In addition, tenants could offer another criticism. The time period for passing along the owner's cost of improving the building is too short. It should be extended to 25 to 30 years. The owners also might have complaints about the proposed bill. The time allotted for obtaining alteration applications and permits, registration numbers and certificates of occupancy is not sufficient. More time should be given. Permitting a court order directing specific performance of Article 7C creates unnecessary judicial interference in the loft conversion process. The time period in which the landlord can pass along the costs of improvements to the tenants is too long. The owners should not have to wait 10 or 15 years for a return on their investment. Finally, loft use is not regulated in areas other than lower Manhattan. There is a substantial loft use in Brooklyn and Queens. The city must take the initiative to study these areas and enact zoning amendments similar to those in lower Manhattan regulating the use of lofts.

IV. Conclusion

Over the past two decades, a number of measures have been taken to address the problems raised by the conversion of commercial premises into residential units. The use of lofts in New York City is regulated by state statutes which govern occupancy, fire codes, and safety provisions, and by city zoning ordinances, which specify where lofts may be used as residences. Loft use has become highly regulated, but important measures still need to be taken. Proposed Article 7C represents an opportunity to make living in a loft the same as living in a conventional apartment. This Note advocates the enactment of Article 7C, with appropriate changes, to ensure uniform practices between landlords and loft tenants.

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