

David A. Paterson
Governor



Deborah VanAmerongen
Commissioner

New York State Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, NY 11433

January 23, 2009

This is in response to your letter request for an opinion letter.

In your letter, you state that the owner you represent is contemplating applying to the DHCR for certificates of eviction regarding the tenants of "under-occupied" apartments, as that term is used in Rent and Eviction Regulations (RER) Section 2204.7. The purpose of the evictions would be to subdivide the affected apartments. You state that there are many other housing accommodations in the building that will not be affected by the proposed subdivision.

You ask whether the owner must comply with the Sound Housing Act provision requiring (for a building-wide demolition) a showing that the owner cannot possibly achieve an 8.5% return on the assessed valuation of the building.

The answer is yes. RER Section 2204.4(g) states, in part:

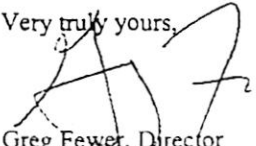
No application for a certificate of eviction shall be granted under sections 2204.7 ... of this Part, unless the administrator determines, after a hearing, that ... there is no reasonable possibility that the landlord can make a net annual return of 8.5% of the assessed valuation of the subject property without recourse to the eviction sought.

In addition, you request copies of all necessary forms.

Enclosed please find the requested copies, i.e., application form RA-54 (10/04) and Owner's Statement of Building's Economic Viability form number RA-1022 (7/92).

I hope this letter has addressed your concerns. However, please be advised that this opinion letter is not a substitute for a formal agency order issued upon prior notice to all parties, such parties having been afforded the opportunity to be heard.

Very truly yours,


Greg Fewer, Director
Policy Unit

Enclosures

GF/mga

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