

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Rules Governing the Speculation Watch List

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (“HPD”) by Section 1802 of the New York City Charter and Section 27-2109.52(b) of the Administrative Code of the City of New York, and in accordance with Section 1043 of the City Charter, HPD is adding a new Chapter 52 to Title 28 of the Rules of the City of New York.

A notice of proposed rulemaking was published in the City Record on June 4, 2018. A public hearing was held on July 10, 2018.

Statement of Basis and Purpose

Local Law 7 of 2018 enacted article 3 of subchapter 4 of chapter 2 of title 27 of the Administrative Code of the City of New York (“Act”). The Act requires HPD to establish a “Speculation Watch List” within 300 days. The Speculation Watch List is comprised of certain multiple dwellings that contain six or more dwelling units, the majority of which are rent regulated. The Act provides that HPD shall promulgate by rule the criteria for a multiple dwelling’s inclusion in or removal from the Speculation Watch List. HPD is adopting a new chapter 52 of title 28 of the Rules of the City of New York (“Speculation Watch List Rules”) to implement the Act.

The Act requires HPD to create the Speculation Watch List by analyzing the Capitalization Rate for Qualified Transactions involving certain multiple dwellings and applying the Speculation Watch List inclusion criteria HPD has promulgated by rule. The Act requires HPD to define the term “Qualified Transaction.” The Act also provides that criteria for Speculation Watch List inclusion may include the number of dwelling units and the amount or ratio per dwelling unit of open hazardous and immediately hazardous violations and paid or unpaid emergency repair charges. The Act requires HPD to update the Speculation Watch List on at least a quarterly basis.

The adopted rules provide for the inclusion in the Speculation Watch List for a given fiscal quarter of certain recently sold multiple dwellings with a majority of rent regulated units if such multiple dwellings’ Capitalization Rates fall below the median capitalization rate for the respective boroughs in which they are located. Such below average Capitalization Rates suggest purchase prices exceeding the value of these properties, which is based upon their net operating income. When a purchaser is willing to pay more than the property value, it indicates a greater potential for tenant harassment so that the purchaser can recoup its inflated purchase price through forcing tenants out in order to escalate rents. Based on HPD analysis, it is expected that, pursuant to the adopted rules, approximately 150 multiple dwellings would be added to the Speculation Watch List annually, depending on market conditions. The adopted rules also provide the criteria for removal from the Speculation Watch List.

HPD’s authority for these rules is found in sections 1043 and 1802 of the New York City Charter and section 27-2109.52(b) of the Administrative Code of the City of New York.

New material is underlined.
[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 28 of the Rules of the City of New York is amended by adding a new Chapter 52 to read as follows:

Chapter 52
SPECULATION WATCH LIST

§ 52-01 Definitions. As used in this chapter, the following terms shall have the following meanings. Capitalized terms not specifically defined in this chapter shall have the meanings set forth in the Act.

Act. “Act” means article 3 of subchapter 4 of chapter 2 of title 27 of the administrative code of the city of New York, as may be amended.

Affordable Housing. “Affordable Housing” means Dwelling Units for which occupancy or initial occupancy is required to be restricted based on the income of the occupant or prospective occupant thereof as a condition of (i) a loan, grant, tax exemption or conveyance of property from any state or local governmental agency or instrumentality pursuant to (A) the Private Housing Finance Law, other than article 8-B of such law, or (B) the General Municipal Law, or (ii) a tax exemption pursuant to section 420-c of the Real Property Tax Law. “Affordable Housing” shall not include Dwelling Units for which occupancy or initial occupancy is required to be restricted based on the income of the occupant or prospective occupant thereof as a condition of (i) a tax exemption pursuant to section 421-a of the Real Property Tax Law, or (ii) generating a floor area bonus for the provision of affordable inclusionary housing or providing mandatory inclusionary housing pursuant to the Zoning Resolution.

Borough Capitalization Rate. “Borough Capitalization Rate” means the median Capitalization Rate of all Qualified Transactions in a given borough during the four most recent Fiscal Quarters, as calculated by HPD.

DOF. “DOF” means the Department of Finance of the City of New York or any successor agency or department thereto.

Dwelling Unit. “Dwelling Unit” means a dwelling unit as defined in section 27-2004 of the Housing Maintenance Code.

Fiscal Quarter. “Fiscal Quarter” means any one of the following periods: (i) the period beginning on the first day of July and ending on the last day of September; or (ii) the period beginning on the first day of October and ending on the last day of December; or (iii) the period beginning on the first day of January and ending on the last day of March; or (iv) the period beginning on the first day of April and ending on the last day of June.

Fiscal Year. "Fiscal Year" means the fiscal year of the City of New York, which commences July 1 and ends June 30.

HDC. "HDC" means the New York City Housing Development Corporation.

HDFC. "HDFC" means a housing development fund company organized pursuant to Article 11 of the Private Housing Finance Law.

HPD. "HPD" means the Department of Housing Preservation and Development of the City of New York or any successor agency or department thereto.

Internal Revenue Code. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.

List. "List" means the speculation watch list that is published during each Fiscal Quarter and includes all Multiple Dwellings that (i) were the subject of Qualified Transactions and (ii) HPD has determined to be at risk of tenant harassment in accordance with the criteria established in Section 52-02 of this chapter.

Listed Building. "Listed Building" means a Multiple Dwelling included on a List.

Local Supervision. "Supervision" means monitoring of the performance and regulatory compliance of Affordable Housing by HPD's Division of Asset Management, HPD's Division of Housing Supervision, or HDC Asset Management, or their successors.

Multiple Dwelling. "Multiple Dwelling" means a multiple dwelling, as defined in section 4 of the Multiple Dwelling Law:

(i) in which a majority of Dwelling Units are Rent Regulated;

(ii) that appears on the most recent DOF final assessment roll;

(iii) for which, during the Fiscal Year of the most recent DOF final assessment roll, DOF has recorded a notice of property value that lists numerical values greater than zero for both estimated gross income and estimated expenses;

(iv) for which the final assessment roll for the Fiscal Year immediately preceding the most recent notice of property value lists a tentative actual assessed value of greater than \$40,000;

(v) that either (a) is exclusively residential with eleven or more Dwelling Units or (b) contains seven or more Dwelling Units and one or more commercial units;

(vi) that is not providing Affordable Housing subject to Local Supervision;

(vii) that is neither (A) fully exempt from real property taxation under any applicable law or (B) partially exempt from real property taxation pursuant to article 2, 4, 5, or 11 of the Private Housing Finance Law or section 420-c of the Real Property Tax Law; and

(viii) that is not receiving benefits pursuant to section 11-243 of the Administrative Code of the City of New York for any eligible work that was carried out with the substantial

assistance of grants, loans or subsidies from any federal, state, or local governmental agency or instrumentality.

Qualified Transaction. "Qualified Transaction" means the sale of a Multiple Dwelling that:

(i) occurred during the most recently concluded Fiscal Quarter;

(ii) has a sale price greater than \$10,000;

(iii) is entirely contained within a single tax lot;

(iv) did not involve any federal, state, or local agency or instrumentality as either the purchaser or the seller; and

(v) did not involve an HDFC as the purchaser.

Rent Regulated. "Rent Regulated" means subject to rent regulation under the Rent Stabilization Law of 1969, the Rent Stabilization Code, the Private Housing Finance Law, or the Emergency Tenant Protection Act of 1974, all as amended, together with any successor statutes or regulations addressing substantially the same subject matter.

Zoning Resolution. "Zoning Resolution" means the Zoning Resolution of the City of New York, as amended.

§ 52-02 Criteria for inclusion. A Multiple Dwelling that is the subject of a Qualified Transaction and that has a Capitalization Rate less than the applicable Borough Capitalization Rate shall be added to the List. HPD will post a public e-mail address on its website through which HPD may be alerted as to any Multiple Dwelling that was either included on the List that allegedly did not meet the criteria for inclusion at the time of its inclusion or omitted from the List that allegedly did meet the criteria for inclusion.

§ 52-03 Criteria for removal. A Listed Building shall be removed from the List if, subsequent to the Qualified Transaction:

(a) it begins providing Affordable Housing subject to Local Supervision;

(b) it receives a full or partial exemption from real property taxation pursuant to article 2, 4, 5, or 11 of the Private Housing Finance Law or section 420-c of the Real Property Tax Law;
or

(c) it receives benefits pursuant to section 11-243 of the Administrative Code of the City of New York for any eligible work that was carried out with the substantial assistance of grants, loans or subsidies from any federal, state, or local governmental agency or instrumentality.

Commissioner Maria Torres-Springer
September 19, 2018