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1. NY CLS Mult D § 4

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NY CLS Mult D § 4

This section is current through 2012 released chapters 1-491

§ 4. Definitions

Certain words and terms when used in this chapter, unless the contest or subject matter requires otherwise, are defined as follows:

1. Wherever the word or words ″occupied,″ ″is occupied,″ ″used″ or ″is used″ appear, such word or words shall be construed as if followed by the words ″or is intended, arranged or designed to be used or occupied.″
2. The word ″shall″ is always mandatory.
3. The term ″department″ shall mean the department, bureau, division or other agency charged with the enforcement of this chapter.
4. A ″dwelling″ is any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings.
5. A ″family″ is either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers. A ″boarder,″ ″roomer″ or ″lodger″ residing with a family shall mean a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.
6. A ″private dwelling″ is any building or structure designed and occupied exclusively for residence purposes by not more than two families.

A building designed for and occupied exclusively by one family is a ″single-family private dwelling.″

A building designed for and occupied exclusively by two families is a ″two-family private dwelling.″

Private dwellings shall also be deemed to include a series of one-family or two-family dwelling units each of which faces or is accessible to a legal street or public thoroughfare provided that each such dwelling unit is equipped as a separate dwelling unit with all essential services, and also provided that each such unit is arranged so that it may be approved as a legal one-family or two-family dwelling.

7. A ″multiple dwelling″ is a dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other. On and after July first, nineteen hundred fifty-five, a ″multiple dwelling″ shall also include residential quarters for members or personnel of

any hospital staff which are not located in any building used primarily for hospital use provided, however, that any building which was erected, altered or converted prior to July first, nineteen hundred fifty-five, to be occupied by such members or personnel or is so occupied on such date shall not be subject to the requirements of this chapter only so long as it continues to be so occupied provided there are local laws applicable to such building and such building is in compliance with such local laws. A ″multiple dwelling″ shall not be deemed to include a hospital, convent, monastery, asylum or public institution, or a fireproof building used wholly for commercial purposes except for not more than one janitor's apartment and not more than one penthouse occupied by not more than two families. For the purposes of this chapter ″multiple dwellings″ are divided into two classes: ″class A″ and ″class B.″

8. a. A ″class A″ multiple dwelling is a multiple dwelling [fig 1] that is occupied [fig 2] for permanent residence purposes. This class shall include tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, garden-type maisonette dwelling projects, and all other multiple dwellings except class B multiple dwellings. A class A multiple dwelling shall only be used for permanent residence purposes. For the purposes of this definition, ″permanent residence purposes″ shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more and a person or family so occupying a dwelling unit shall be referred to herein as the permanent occupants of such dwelling unit. The following uses of a dwelling unit by the permanent occupants thereof shall not be deemed to be inconsistent with the occupancy of such dwelling unit for permanent residence purposes:

   (1)

      (A) occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons living within the household of the permanent occupant such as house guests or lawful boarders, roomers or lodgers; or

      (B) incidental and occasional occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons when the permanent occupants are temporarily absent for personal reasons such as vacation or medical treatment, provided that there is no monetary compensation paid to the permanent occupants for such occupancy.

   (2) In a class A multiple dwelling owned by an accredited not-for-profit college or university or leased by such a college or university under a net lease for a term of forty-nine years or more, the use of designated dwelling units for occupancy for fewer than thirty consecutive days shall not be inconsistent with the occupancy of such multiple dwelling for permanent residence purposes if:

      (A) No more than five percent of the dwelling units in such multiple dwelling but not less than one dwelling unit, are designated for such use and the designation of a unit once made may not be changed to another unit;

      (B) A list of the designated dwelling units certified by an authorized representative of the college or university is kept on the premises by the owner or net lessee and made available upon request for inspection by the department or the fire department of such city;

      (C) Only designated dwelling units on the certified list are used for occupancy for fewer than thirty consecutive days and only by (i) natural persons, other than per-

sons whose only relationship with the college or university is as a student, for whom the college or university has undertaken to provide housing accommodations such as visiting professors and academics, graduate students with research or teaching fellowships, researchers and persons presenting academic papers, interviewing for positions of employment or having other similar business with the college or university, or (ii) natural persons for whom a hospital affiliated with such college or university has undertaken to provide housing accommodations such as patients, patients' families and/or accompanying escorts, medical professionals and healthcare consultants or persons having other similar business with such hospital. A log shall be maintained on the premises of the names and addresses of such persons and the duration and reason for their stay. Such log shall be accessible upon request for inspection by the department and the fire department of such municipality;

(D) No rent or other payment is collected for such occupancy; and

(E) The fire department of such city shall require the filing of a fire safety plan or other appropriate fire safety procedure.

b. A ″garden-type maisonette dwelling project″ is a series of attached, detached or semi-detached dwelling units which are provided as a group collectively with all essential services such as, but not limited to, water supply and house sewers, and which units are located on a site or plot not less than twenty thousand square feet in area under common ownership and erected under plans filed with the department on or after April eighteenth, nineteen hundred fifty-four, and which units together and in their aggregate are arranged or designed to provide three or more apartments.

9. A ″class B″ multiple dwelling is a multiple dwelling which is occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals. This class shall include hotels, lodging houses, rooming houses, boarding houses, boarding schools, furnished room houses, lodgings, club houses, college and school dormitories and dwellings designed as private dwellings but occupied by one or two families with five or more transient boarders, roomers or lodgers in one household.

10. A ″converted dwelling″ is a dwelling (a) erected before April eighteenth, nineteen hundred twenty-nine, to be occupied by one or two families living independently of each other and subsequently occupied as a multiple dwelling, or (b) a dwelling three stories or less in height erected after April eighteenth, nineteen hundred twenty-nine, to be occupied by one or two families living independently of each other and subsequently occupied by not more than three families in all, with a maximum occupancy of two families on each floor in a two story building and one family on each floor in a three story building, in compliance with the provisions of article six of this chapter, including section one hundred seventy-a of said article. A converted dwelling occupied as a class A multiple dwelling is a class A converted dwelling; every other converted dwelling is a class B converted dwelling.

11. A ″tenement″ is any building or structure or any portion thereof, erected before April eighteenth, nineteen hundred twenty-nine, which is occupied, wholly or in part, as the residence of three families or more living independently of each other and doing their cooking upon the premises, and includes apartment houses, flat houses and all other houses so erected and occupied, except that a tenement shall not be deemed to in-

clude any converted dwelling. An ″old-law tenement″ is a tenement existing before April twelfth, nineteen hundred one, and recorded as such in the department before April eighteenth, nineteen hundred twenty-nine, except that it shall not be deemed to include any converted dwelling.

12. A ″hotel″ is an inn having thirty or more sleeping rooms.

13. A ″rooming house″ or a ″furnished room house″ is a multiple dwelling, other than a hotel, having less than thirty sleeping rooms and in which persons either individually or as families are housed for hire or otherwise with or without meals. An inn with less than thirty sleeping rooms is a rooming house.

14. A ″lodging house″ is a multiple dwelling, other than a hotel, a rooming house or a furnished room house, in which persons are housed for hire for a single night, or for less than a week at one time, or any part of which is let for any person to sleep in for any term less than a week.

15. An ″apartment″ is that part of a multiple dwelling consisting of one or more rooms containing at least one bathroom and arranged to be occupied by the members of a family, which room or rooms are separated and set apart from all other rooms within a multiple dwelling.

16. ″Single room occupancy″ is the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment. When a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling.

17. A ″public hall″ is a hall, corridor or passageway within a building but outside of all apartments and suites of private rooms. A ″public vestibule″ is a corridor, not within an apartment or suite of private rooms, providing access to a stair or elevator and not wider than seven feet nor longer than twice the width of the stair or elevator shafts opening upon it. A ″public room″ or ″public part″ of a dwelling is a space used in common by the occupants of two or more apartments or rooms, or by persons who are not tenants, or exclusively for mechanical equipment of such dwelling or for storage purposes.

18. A ″living room″ is a room which is not a public hall, public vestibule, public room or other public part of a dwelling. Every room used for sleeping purposes shall be deemed a living room. Dining bays and dinettes fifty-five square feet or less in floor area, foyers, water-closet compartments, bathrooms, cooking spaces less than eighty square feet in area, and halls, corridors and passageways entirely within an apartment or suite of rooms shall not be deemed living rooms. ″Floor space″ shall mean the clear area of the floor contained within the partitions or walls enclosing any room, space, foyer, hall or passageways of any dwelling.

19. A ″dining bay,″ ″dining recess″ or ″dinette″ is a recess used for dining purposes off a living room, foyer or kitchen.

20. A ″foyer″ is a space within an apartment or suite of rooms used as an entrance hall directly from a public hall.

21. A ″dormitory″ in a lodging house is any place used for sleeping purposes. A ″cubicle″ is a small partially enclosed sleeping space within a dormitory with or without a window to the outer air.

22. ″Premises″ shall mean land and improvements or appurtenances or any part thereof.

23. ″Structure″ shall mean a building or construction of any kind.

24. ″Alteration,″ as applied to a building or structure, shall mean any change or rearrangement in the structural parts or in the egress facilities of any such building or structure, or any enlargement thereof, whether by extension on any side or by any increase in height, or the moving of such building or structure from one location or position to another.

25. A ″fireproof multiple dwelling″ is one in which the walls and other structural members are of incombustible materials or assemblies meeting all of the requirements of the building code and with standard fire-resistive ratings of not less than one of the following sets of requirements:

    a. For any multiple dwelling more than one hundred feet in height, four hours for fire walls, party walls, piers, columns, interior structural members which carry walls, girders carrying columns, and for exterior walls other than panel walls; three hours for other girders, fire partitions, floors including their beams and girders, beams, roofs, floor fillings, and stairway enclosures; and two hours for exterior panel walls.

    b. For any multiple dwelling one hundred feet or less in height, the provisions of preceding paragraph a shall apply, except that the minimum requirements shall be three hours for exterior walls other than panel walls, which shall be two hours; two hours for protection of interior columns; one and one-half hours for roofs and for floors and beams; provided, however, that for a multiple dwelling three stories or less in height, the requirement for all floors and the roof shall be one hour.

26. The term ″fireproof,″ as applied to a part or parts of a building, means such part or parts are made of incombustible materials with standard fire-resistive ratings not less than those required for the corresponding part or parts of a fireproof dwelling.

27. A ″non-fireproof dwelling″ is one which does not meet the requirements for a fireproof dwelling.

28. A ″frame dwelling″ is a dwelling of which the exterior walls or any structural parts of such walls are of wood. A dwelling which would not otherwise be a frame dwelling shall not be deemed a frame dwelling by reason of the existence on such dwelling of frame oriel, bay or dormer windows, frame porches not more than one story in height, or frame extensions not more than one story in height and fifty-nine square feet in area if such windows, porches or extensions were erected prior to April thirteenth, nineteen hundred forty.

29. The term ″fire-retarded,″ as applied to a part or parts of a building, means such part or parts are either covered with metal lath plastered with two or more coats of mortar or otherwise protected against fire in a manner approved by the department with materials of standard fire-resistive ratings of at least one hour. Fireproofing shall always be accepted as meeting any requirement for fire-retarding.

30. ″Fire-stopping″ means the closing of all concealed draft openings to form an effectual fire barrier at floors, ceilings and roofs with brick, concrete, gypsum, asbestos, mineral wool, rock wool, metal lath with cement or gypsum plaster, or other approved incombustible materials.

31. A ″lot″ is a parcel or plot of ground which is or may be occupied wholly or in part

by a dwelling, including the spaces occupied by accessory or other structures and any open or unoccupied spaces thereon, but not including any part of an abutting public street or thoroughfare.

a. A ″corner lot″ is a lot of which at least two adjacent sides abut for their full length upon streets or public places not less than forty feet in width. That portion of a corner lot in excess of one hundred feet from any street on which the lot abuts shall be considered an interior lot.

An ″interior lot″ is a lot which is neither a corner lot nor a through lot.

b. The ″front″ of a lot is that boundary line which abuts on the street, or, if there be more than one street abutting, on the street designated by the owner. The ″rear″ of a lot is the side opposite the front.

c. The ″depth″ of a lot is the distance from the front of the lot to the extreme rear line of the lot. In the case of an irregular-shaped lot the mean depth shall be taken.

d. A ″through lot″ is a lot running through from street to street whose front and rear lines abut for their entire lengths upon streets or open public places; provided, however, that when either of said lines exceeds the other in length by more than twenty per centum, that part of the lot contiguous to the excess length of the longer line shall be deemed an interior lot. The department may designate which part of the longer line is the excess in length and make any reasonable interpretation of the part of the lot to be regarded as contiguous to such excess.

e. Lots or portions of lots shall be deemed ″back to back″ when they are on opposite sides of the same part of a rear line common to both and the opposite street lines on which the lots front are parallel with each other or make an angle with each other of not more than forty-five degrees.

32. A ″rear yard″ is an open space on the same lot with a dwelling between the extreme rear line of the lot and the extreme rear wall of the dwelling. A ″side yard″ is a continuous open space on the same lot with a dwelling between the wall of a dwelling and a line of the lot from the street to a rear yard or rear line of a lot. A ″court″ is an open space other than a side or rear yard, on the same lot as a dwelling. A court not extending to the street or rear yard is an ″inner court″. A court extending to the street or rear yard is an ″outer court″.

32-a. ″A rear yard equivalent″ is an open area which may be required on a through lot as an alternative to a required rear yard.

33. The ″curb level″, for the purpose of measuring the height of any portion of a building, is the level of the curb at the center of the front of the building; except that where a building faces on more than one street, the curb level is the average of the levels of the curbs at the center of each front. Where no curb elevation has been established the average elevation of the final grade adjoining all exterior walls of a building, calculated from grade elevations taken at intervals of ten feet around the exterior walls of the building, shall be considered the curb level, unless the city engineer shall establish such curb level or its equivalent.

34. A ″street wall″ of a building, at any level, is the wall of the building nearest to a street line abutting the property.

35. a. The ″height″ of a dwelling is the vertical distance from the curb level to the level

of the highest point of the roof beams; except that, in the case of pitched roofs, it is the vertical distance from the curb level to the mean height level of the gable or roof above the vertical street wall. When no roof beams exist or when there are structures wholly or partly above the roof, the height shall, except as otherwise expressly provided, be measured from the curb level to the level of the highest point of any such structure; except that where every part of the building is set back more than twenty-five feet from a street line, the height shall be measured from the average grade elevation calculated from the final grade elevations taken at intervals of ten feet around the exterior walls of the building.

b. Except as otherwise provided in section two hundred eleven, the following superstructure shall not be considered in measuring the height of a dwelling; parapet walls or guard railings, other superstructures twelve feet or less in height and occupying fifteen per centum or less of the area of the roof, elevator enclosures thirty feet or less in height used solely for elevator purposes, enclosures fifty feet or less in height used solely for tanks, cooling towers or other mechanical equipment; and, when approved by the department, pergolas, spires, chimneys, other ornamental treatments, roof gardens and playgrounds.

c. When on the main roof of any fireproof multiple dwelling erected after April eighteenth, nineteen hundred twenty-nine, in which one or more passenger elevators are operated, a penthouse dwelling is erected the height of which does not exceed twelve feet and the walls of which are set back as provided in this paragraph, the height of such multiple dwelling shall be measured as though no such penthouse had been erected thereon. Such penthouse walls shall be set back from the outer face of the front parapet wall at least five feet, from the outer face of the yard parapet wall at least ten feet, and from the inner face of every other parapet wall at least three feet; except that the setback so required from any parapet wall facing any court or yard or recess therefrom but not facing any street may be reduced one-third for each ten per centum by which the area of such court or yard exceeds the required minimum area thereof at the highest level of such parapet wall, and the setback so required from any parapet wall facing any street may be reduced one foot for each foot that such parapet wall is set back from the building line established by law at the highest level of such parapet wall, provided that in the opinion of the department safe and sufficient passage is provided to and from every part of the main roof. Any penthouse wall which may be flush with the inner face of any parapet wall may be flush with the outer face thereof.

d. If a rear multiple dwelling is erected after April eighteenth, nineteen hundred twenty -nine, on the same lot as a front multiple dwelling, and the depth of the yard of the front multiple dwelling is more than sixty feet and the lowest point of such yard is below the curb level and below the floor of a cellar of the front multiple dwelling or of the lowest story thereof if there is no cellar, the height of the rear multiple dwelling shall be measured from such lowest point instead of from the curb level.

36. A ″story″ is a space between the level of one finished floor and the level of the next higher finished floor, or, if the top story, of the space between the level of the highest finished floor and the top of the highest roof beams, or, if the first story, of the space between the level of the finished floor and the finished ceiling immediately above. For the purpose of measuring height by stories in multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, one additional story shall be added

for each twelve feet or fraction thereof that the first story exceeds fifteen feet in height, and for each twelve feet or fraction thereof that any story above the first story exceeds twelve feet in height.

37. A ″cellar″ in a dwelling is an enclosed space having more than one-half of its height below the curb level; except that where every part of the building is set back more than twenty-five feet from a street line, the height shall be measured from the adjoining grade elevations calculated from final grade elevations taken at intervals of ten feet around the exterior walls of the building. A cellar shall not be counted as a story.

38. A ″basement″ is a story partly below the curb level but having at least one-half of its height above the curb level; except that where every part of the building is set back more than twenty-five feet from a street line, the height shall be measured from the adjoining grade elevations calculated from final grade elevations taken at intervals of ten feet around the exterior walls of the building. A basement shall be counted as a story in determining height, except as provided in paragraph e of subdivision six of section one hundred two.

39. A ″section″ of a multiple dwelling is a part thereof, other than an apartment or suite of rooms, separated as a unit from the rest of such dwelling by fireproof construction.

40. A ″shaft″ is an enclosed space extending through one or more stories of a building connecting a series of openings therein, or any story or stories and the roof, and includes exterior and interior shafts whether for air, light, elevator, dumbwaiter or any other purpose.

41. A ″stair″ is a flight or flights of steps together with any landings and parts of public halls through which it is necessary to pass in going from one level thereof to another.

42. a. A ″fire-tower″ is a fireproof stair, enclosed in fireproof walls, without access to the building from which it affords egress other than by a fireproof self-closing door opening on a communicating balcony or other outside platform at each floor level.

    b. A ″fire-stair″ is a fireproof stair, enclosed in fireproof walls, within the body of the building which it serves, to which access may be had only through self-closing fireproof doors.

    c. A ″fire-escape″ is a combination of outside balconies and stairs providing an unobstructed means of egress from rooms or spaces in a building.

    d. A ″panel wall″ is a non-bearing wall in skeleton construction erected between columns or piers and wholly supported at each story.

43. Window dimensions shall always be taken between stop-beads or, if there are no stop-beads, between the sides, head and sill of the sash opening.

44. The term ″owner″ shall mean and include the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling. Whenever a multiple dwelling shall have been declared a public nuisance to any extent pursuant to paragraph b of subdivision one of section three hundred nine of this chapter and such declaration shall have been filed as therein provided, the term ″owner″ shall be deemed to include, in addition to those mentioned hereinabove, all the officers, directors and persons having an interest in more than ten per cent of the issued and outstanding stock of the owner as herein defined, as holder or beneficial owner thereof, if such owner be a corporation other

than a banking organization as defined in section two of the banking law, a national banking association, a federal savings and loan association, The Mortgage Facilities Corporation, Savings Banks Life Insurance Fund, The Savings Banks Retirement System, an authorized insurer as defined in section one hundred seven of the insurance law, or a trust company or other corporation organized under the laws of this state all the capital stock of which is owned by at least twenty savings banks or a subsidiary corporation all of the capital stock of which is owned by such trust company or other corporation.

History

Add, L 1929, ch 713; amd, L 1946, ch 950, eff April 22, 1946, with substance in part transferred from §§ 13, 27, 28, 31, 62, 145, 214 and 304 and substance of former § 4 in part transferred to §§ 3, 26, 27, 34, 55, 58, 101, 142 and 309; amd, L 1948, ch 868, §§ 1, 2, eff April 6, 1948, L 1949, ch 552, § 1, eff April 12, 1949, L 1950, ch 152, § 1, eff March 27, 1950, L 1950, ch 343, § 1, eff April 1, 1950, L 1950, ch 680, § 1, eff April 15, 1950, L 1951, ch 91, § 1, eff March 15, 1951, L 1952, ch 173, § 1, L 1952, ch 800, § 1, L 1954, ch 562, §§ 1, 2, eff June 1, 1954, L 1955, ch 745, § 1, L 1957, ch 69, § 1, eff March 15, 1957, L 1958, ch 900, §§ 1, 2, eff April 22, 1958, L 1960, ch 865, § 1, L 1961, ch 748, §§ 2, 3, L 1962, ch 149, § 1, L 1965, ch 630, § 1, eff July 2, 1965, L 1965, ch 841, §§ 1, 2, eff July 16, 1965, L 1966, ch 619, § 1, L 1968, ch 865, § 3, eff June 22, 1968, L 1969, ch 697, § 1, L 1969, ch 1063, §§ 2-5, eff June 25, 1969, L 1984, ch 805, § 41, eff Sept 1, 1984, L 1995, ch 559, § 1, eff Jan 1, 1996, *L 2010, ch 225, § 1, eff May 1, 2011 (see 2010 note below).*

Annotations

Notes

Editor's Notes

See note to § 1.

See note to § 33.

Laws 1995, ch 559, § 11, eff Jan 1, 1996, provides as follows:

§ 11. Cooking spaces shall be deemed to be in compliance with the provisions of the multiple dwelling law amended by this act if such spaces were approved by the department, as defined in subdivision 3 of *section 4 of the multiple dwelling law, on or before June 30, 1995. A kitchen shall be deemed to be in compliance with the provisions of the administrative code of the city of New York amended by this act if such kitchen was approved by the department of buildings of the city of New York on or before June 30, 1995.*

Laws 2010, ch 225, § 8, eff May 1, 2011, provides as follows:

§ 8.This act shall take effect May 1, 2011 and shall apply to all buildings in existence on such effective date and to buildings constructed after such effective date except that prior to such effective date an agency with the duty to enforce the provisions of the multiple dwelling law may promulgate rules and regulations or take other administrative actions to provide for the registration of

dwelling units in accordance with the provisions of subdivision 16 of section 67 and title 3 of article 4 of the multiple dwelling law, as added by sections two and three of this act, respectively (Amd, *L 2010, ch 566, § 3, eff May 1, 2011).*

Laws 2010, ch 566, § 3, eff May 1, 2011 amended *Laws 2010, ch 225, § 8 so as to change the effective date from July 16, 2010 to May 1, 2011, applicable to the amendments to subdivision 8.*

Amendment Notes

2010. Chapter 225, § 1 amended:
By redesignating entire sub 8, as sub 8, par a and deleting at fig 1 ″which″, at fig 2 ″, as a rule,″ and adding the matter in italics.

By adding sub 8, par a, subpar (1).

By adding sub 8, par a, subpar (2).

Revision Note

[1946, ch 950] Subdivision 1 is derived from former section 4(29), which only refers to the words ″is occupied.″

Subdivision 2 is derived from former section 4(27).

Subdivision 3 is derived from and is an expansion of the last clause of former section 13(2), which merely refers to the ″department charged with the enforcement of this chapter.″

Subdivision 4 has a slight change in language in order that it, as well as new subdivision 11, will read ″building or structure,″ the expression used in the Building Code of the City of New York (hereafter referred to as Building Code) and found in new subdivisions 6 and 24, derived therefrom.

Subdivision 6 is new. Paragraph one of this subdivision is derived from the definition of ″private dwelling″ in the Building Code section C26-122.0. Paragraphs 2 and 3 of this subdivision compare with paragraphs b and c of section 1(t) of the Zoning Resolution of the City of New York (hereafter referred to as Zoning Resolution) which use the phrases ″not more than one family″ and ″not more than two families,″ respectively. The wording of paragraphs 2 and 3 is considered more precise.

Former subdivisions 6 and 7 have been transferred in substance to new subdivisions 12, 13 and 14.

Subdivision 8 is paragraph a of former section 4(4) reworded. Paragraph b of former section 4(4), is now section 4(15) and paragraphs c and d of former section 4(4) are now in section 4(16).

Subdivision 9, first two sentences, is former section 4(5) reworded. The last sentence of subdivision 9 is new.

Subdivision 11 is former section 4(9) reworded. See comment to subdivision 4.

Subdivision 12 is paragraph a of former section 4(6), slightly reworded.

Subdivision 13, first sentence, is paragraph b of former section 4(6), slightly reworded. The last sentence of subdivision 13 is new and serves to make the definition more precise.

Subdivision 14 is former section 4(7) reworded.

Subdivision 15 is paragraph b of former section 4(4) renumbered.

Subdivision 16 is derived from paragraphs c and d of former section 4(4) and eliminates the need for the definition of ″single room occupancy building.″

Subdivision 17 is a rewording of the first three sentences of former section 4(23).

Subdivision 18 is derived from the last two sentences of former section 4(23). ″Dining bays and dinettes fifty-five square feet or less in area″ and ″foyers″ were not included in present section 4(23), the former being derived from the first sentence of present section 214(2), and the latter being new.

Subdivision 19 is new.

Subdivision 20 is derived in substance from former section 31.

Subdivision 21 is derived from former section 13(2).

Subdivision 22 is the Building Code section C26-120.0 reworded.

Subdivision 23 is the Building Code section C26-140.0 without change.

Subdivision 24 is the Building Code section C26-11.0 without change. Former subdivision 10 has been transferred to subdivisions 25 and 26 of new section 4, sub-paragraph (3) of paragraph f of subdivision 1 of section 34 and subdivision 5 of new sections 101 and 142.

Subdivision 25 is derived from former subdivision 4(10).

Subdivision 26 is derived from former section 4(10).

Subdivision 27 is derived from the first sentence of former section 4(11).

Subdivision 29 is derived from the second sentence of former section 4(11). The last sentence of subdivision 29 is new.

Subdivision 30 is derived from the Building Code section C26-683.0 and 1.7 of fire-retarding rules of the department.

Subdivision 31, introductory paragraph, is derived from Zoning Resolution section 1(v). Paragraph a of subdivision 31 is former section 3(13) slightly reworded. Paragraph b is the first three sentences and paragraph c is the fourth and fifth sentences of former section 4(14) reworded. The first sentence of paragraph d is derived from the last sentence of former section 4(14); the last two sentences of subdivision 31 are new. Paragraph e is almost identical with Zoning Resolution section 1(j).

Subdivision 32 is derived from former section 4(19) and the first three sentences of former section 4(20).

Subdivision 33, first paragraph, is derived from the first three sentences of former section 4(16) and from the last sentence of Zoning Resolution section 1(d). The second paragraph is derived from the last two sentences for former section 4(16).

Subdivision 34 is derived from Zoning Resolution section 1(e).

Sub 35, par b, has been transferred to new subdivision 11 of section 26. The reference to parapet walls and guard railings is derived from former section 62(1).

Sub 35, par d, is a rewording of the second sentence of the former section 27.

Former subdivision 16 has been transferred to subdivision 33 of new section 4.

Former subdivisions 19 and 20 have been transferred to subdivision 32 of new section 4.

Former subdivision 21 has been transferred in substance to subdivision 5 of section 27.

Subdivision 39 is new.

The first paragraph of former subdivision 23, now subdivision 17 of new section 4, and the second paragraph of former subdivision 23 is now subdivision 18 of new section 4.

Paragraph a of subdivision 42 is derived from former section 4(25).

Paragraph c of subdivision 42 is derived from former section 145.

Sub 42, par d. New definition derived from § C26-68.0 of the Building Code and paragraph 16(11) U.S. Bureau of Standards of the Department of Commerce.

Sub 42, par e. New definition derived from § C26-64.0 of the Building Code and paragraph 16(9) U.S. Bureau of Standards of the Department of Commerce.

Subdivision 43 is new.

Subdivision 44 is derived from present section 304(3). Former subdivision 27 is now subdivision 2 of new section 4; former subdivision 28 is now subdivision 9 of new section 3; former subdivision 29 is now subdivision 1 of new section 4; former subdivision 30, now paragraph a of new section 309(1); and former subdivision 31 is paragraph a of new section 309(2).

[1950, ch 152] This subdivision was amended to bring it into conformity with sub-article 13 of the Building Code of the City of New York which contained accepted standards for fire-stopping requirements. This was another step forward by the committee to make uniform and simplify laws relating to new construction in the City of New York.

[1950, ch 343] The original law did not require that tank houses less than fifty feet in height or elevator enclosures less than thirty feet in height be considered in computing the height of a multiple dwelling erected after April 18, 1929. This subdivision was amended so that a superstructure fifty feet or less in height enclosing mechanical equipment would not be considered in computing the height of a multiple dwelling. Cooling towers were included because many new, as well as existing, multiple dwellings were being air-conditioned.

[1950, ch 680] Due to the fact that the City of Buffalo adopted the provisions of the Multiple Dwelling Law a conflict might well have developed with respect to the proper officials or agency to enforce that law within such city if subdivision three of section four were to remain in its existing form. The reasons which originally impelled the language deleted by the 1950 amendment applied solely to New York City and are no longer applicable. Accordingly for the sake of uniformity and clarity this changed phraseology was recommended by the Committee.

[1951, ch 91rbrac; The 1951 act eliminated the present ambiguity and made perfectly clear that a ″one room with bath″ is an apartment for all purposes within the purview of the Multiple Dwelling Law.

[1952, ch 800] The definitions of ″fire-wall″ and ″fire-partition″ were eliminated because they had become unnecessary as a result of the amendment to subdivision 25 of section 4 as amended by chapter 868 of the laws of 1948.

[1954, ch 562] See note to Article 5-A.

[1955, ch 309] The Committee believed that members of a hospital staff who reside in separate quarters apart from the main hospital building are entitled to the full benefits and protection afforded by this law.

[1955, ch 745] Where a terrace in front of a multiple dwelling is above the curb level, this act permitted the continuity of the terrace to be broken to afford egress to and from the dwelling. This was not entirely clear as being the intent of the former wording of this subdivision.

[1957, ch 69] This act was designed to overcome the unrealistic effect of an interpretation under which non-fireproof dwellings were deemed to be frame dwellings merely because of a wooden oriel, bay or dormer window or because of a wooden porch or extension. The new law is limited in its application to buildings on which such appendages were erected prior to January 1, 1940. It does not authorize the creation of any new additions or extensions of this nature.

[1958, ch 900] By Chapter 309 of the Laws of 1955, residential quarters for hospital personnel not located in the hospital building were made subject to the Multiple Dwelling Law. However, the Committee found that existing buildings so occupied were of such varied heights and kinds of construction and classification that the law could not be applied effectively in a manner to prevent many buildings owned and used by voluntary hospitals, of good construction with adequate standards of safety and sanitation, from being in violation of law.

After much study and several conferences, the 1958 act was approved by the agencies and organizations affected as providing the solution to a very difficult and complicated problem.

[1960] This act was designed to aid in eliminating overcrowded conditions in multiple dwellings. As an outgrowth of previous bills and the intensive research, studies and discussions, the City of New York has adopted locally provisions substantially similar to those contained in this act. The Committee felt this was a salutary advance in the direction of preventing the creation of slums.

[1962] This legislation was designed to conform the method of computing the height of buildings with the provisions of § 26 of this chapter, as added by Chapter 1072 of the Laws of 1960.

Matthew Bender's New York Practice Guides:

2 *New York Practice Guide: Real Estate §§ 6.10*, *16.05*; 4 *New York Practice Guide: Real Estate § 31.12*

Case Notes

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1. In general

There is an obligation on landlord to repair apartment building, and hence obligation on any maintenance contractor to do so, even though building is occupied by fewer than three families. *Pantekas v Westyard Corp. (1974, 1st Dept) 44 App Div 2d 789, 355 NYS2d 128.*

Underletting to not more than 3 roomers cannot be held to constitute an illegal occupancy that would entitle the landlord to evict the tenant. *Hanan v Finkelstein (1948, Sup) 85 NYS2d 388.*

The hallway of a multiple dwelling is such a public place as will sustain a charge of breach of the peace. *People ex rel. Skeete v Richardson (1951, Mag Ct) 104 NYS2d 336.*

2. Roomer

Homeless and orphaned children placed with foster parents by a duly authorized social agency are not roomers or lodgers, and their presence in a home does not oblige owner to comply with the provisions of this section. *People v Whitted (1953, Mag Ct) 124 NYS2d 189.*

3. Lodger

Homeless and orphaned children placed with foster parents by a duly authorized social agency are not roomers or lodgers, and their presence in a home does not oblige owner to comply with the provisions of this section. *People v Whitted (1953, Mag Ct) 124 NYS2d 189.*

4. Department

In view of the provision in subd. 3 of § 4 of this law, providing that the term ″department″ shall mean such department, bureau, division, or other agency as may be charged with enforcement of this chapter, and certain provisions of ch 26 of the New York City Charter, § 194 of this law could not be construed as unconstitutional because the result was to give the Department of Buildings of New York City power to make implementing rules. *Garfield v Gillroy (1960) 8 NY2d 726, 201 NYS2d 103, 167 NE2d 645.*

Where a condominium is occupied or used as a temporary or permanent residence or home of three or more families living independently of each other, it may be considered a multiple dwell-

ing. However, where the term ″multiple dwelling″ is found in a local building code we will not attempt to determine whether it includes condominiums. 1983 Op St Const File #83-2.

5. Two family house

Managing agent's status as an agent for owner of multiple dwelling did not ipso facto insulate him from liability from civil penalties for building violations. *Housing & Development Administration v Bryant Westchester Realty Corp. (1977) 90 Misc 2d 816, 396 NYS2d 569.*

Stoop and inner hallway of two-family house were not ″public places″; thus when defendant, who resided on first floor, was found asleep with half of his body on stoop and half in hallway, he was within curtilage of his home and possession of firearm on his person was misdemeanor and not felony. *People v Taylor (1977) 92 Misc 2d 29, 399 NYS2d 575.*

Whether or not a dwelling is a two-family house is a mixed question of law and fact because there are many residences that although occupied by two families are potentially capable of being occupied by a third. *Noto v McGoldrick (1951, Sup) 108 NYS2d 640.*

The fact that an old lady slept in the unfinished basement storeroom without paying rent did not make a legal two family residence a multiple dwelling for purposes of statute decontrolling housing. *Moran v McGoldrick (1954, Sup) 133 NYS2d 172.*

6. Multiple dwelling

Premises consisting of a combined business and residential building, three stories in height, the upper floors of which are divided into four separate housekeeping units with separate street entrances, are not a multiple dwelling within the meaning of the Mult. Dwell. Law, and hence the owner was under no duty to keep the roof and skylight in a reasonably safe condition unless it is shown by a preponderance of the evidence that the roof was used in common by the families, including the family of the janitor, who occupied the second-floor apartments opening onto the roof. *Mercier v Bushwick Sav. Bank (1941) 261 App Div 151, 24 NYS2d 666.*

A two-story building on the ground floor of which there were four stores facing a boardwalk and on the second floor numerous sleeping rooms, was a ″multiple dwelling.″ *Becker v Manufacturers Trust Co. (1941) 262 App Div 525, 30 NYS2d 542,* reh den *(1941) 263 App Div 810, 32 NYS2d 126.*

Premises constituted a multiple dwelling within the ambit of the Multiple Dwelling Law, where they had been occupied as the residence of three families living independently of each other, and the fact that one of the families moved out a few months before the accident and at the time of the accident that apartment was temporarily unoccupied did not change the character of the premises. *Rosario v Koss (1966, 2d Dept) 26 App Div 2d 561, 271 NYS2d 77,* amd on other grounds (1966, 2d Dept) *26 App Div 2d 590, 272 NYS2d 962.*

In action for declaration that 2 adjoining buildings were single horizontal multiple dwelling, earlier determination that buildings were single entity for purposes of rent control was not dispositive since issue in earlier proceeding was whether owner of buildings had established immediate and compelling necessity for conversion of rent-controlled units to his own use, and determination that buildings were single horizontal multiple dwelling required greater showing that there were sufficient indicia of common facilities, ownership, management and operation to warrant treating units as integrated. *Jackson v Biderman (1989, 1st Dept) 151 App Div 2d 400, 543 NYS2d 433.*

Two-family home containing 3 separate apartments, one of which was occupied by defendants in owner's action for ejectment and recovery of payment for use and occupancy, was multiple dwelling under CLS *Mult D § 4(1)* and (7). *Jalinos v Ramkalup (1998, 2d Dept) 255 App Div 2d 293, 679 NYS2d 419.*

Although an owner was precluded from recovering use and occupancy of certain premises in a 100 -plus building under N.Y. *Mult. Dwell. Law § 4(1)*, (7), a tenant's N.Y. *C.P.L.R. 3025(b)* motion to add defenses under the Rent Stabilization Law, New York City, N.Y., Admin. Code § 26-501 et seq., and the Loft Law, N.Y. Mult. Dwell. Law art. 7-C, lacked merit as those statutes did not apply. *Sheila Props., Inc. v A Real Good Plumber, Inc. (2009, 2d Dept) 59 App Div 3d 424, 874 NYS2d 145.*

A multiple dwelling is one which is arranged, designed or intended to be used as the temporary or permanent residence or home of three families living independently of each other. *Eichorn v Goodman (1959) 22 Misc 2d 516, 188 NYS2d 710.*

Section 302(1)(b) of the Multiple Dwelling Law does not bar an action by a landlord for unpaid rent, where the building involved did not constitute a multiple dwelling since only two apartments were rented for residency therein. *Herzog v Thompson (1966) 50 Misc 2d 488, 270 NYS2d 469.*

The statutory definition of multiple dwelling includes not only actual existing use of a dwelling occupied by ″three or more families living independently of one another″ (*Multiple Dwelling Law, § 4*, subd 7), but also the intended use or design (*Multiple Dwelling Law, § 4*, subd 1) with the petitioner landlord in a nonpayment summary proceeding having the burden of proof to show that the building is not a multiple dwelling as alleged in the petition. *Lipkis v Pikus (1978) 96 Misc 2d 581, 409 NYS2d 598,* affd *(1979) 99 Misc 2d 518, 416 NYS2d 694,* affd (1979, 1st Dept) *72 App Div 2d 697, 421 NYS2d 825,* app dismd *(1980) 51 NY2d 874, 433 NYS2d 1019, 414 NE2d 399,* stay den *(1980) 50 NY2d 929* and later proceeding *(1982) 56 NY2d 502, 450 NYS2d 1024, 435 NE2d 1099,* later proceeding *(1982) 56 NY2d 612, 450 NYS2d 481, 435 NE2d 1096,* appeal after remand (1982, 1st Dept) *90 App Div 2d 700, 455 NYS2d 772,* later proceeding (1983, Civ Ct) *122 Misc 2d 136, 471 NYS2d 177,* affd (1983, Sup App T) *122 Misc 2d 833, 473 NYS2d 902,* revd (1984, 1st Dept) *103 App Div 2d 682, 477 NYS2d 345,* app gr, ques certified (1984, 1st Dept) *104 App Div 2d 546, 479 NYS2d 1019,* vacated, app gr, ques certified (1984, 1st Dept) *104 App Div 2d 768, 480 NYS2d 877* and affd, ctfd ques ans *(1985) 64 NY2d 830, 486 NYS2d 932, 476 NE2d 331.*

It was error to dismiss nonpayment summary proceeding based on petitioner overlandlord's failure to plead status of building as multiple dwelling and registration of building with office of Code Enforcement, where petitioner net leased building to corporate respondent for purpose of operating group home, which then allegedly rented space that individual respondents occupied for residential use; premises was commercial building (not multiple dwelling) when it was net leased, nor is group home encompassed within definition of multiple dwelling under CLS *Mult D § 4(7)*, and conditions requiring registration were created in violation of net lease while corporation was in exclusive control of premises. 2009-2011 *Third Ave. Corp. v Fifth Ave. Community Ctr. (1996, Sup App T) 169 Misc 2d 67, 648 NYS2d 211.*

The fact that an old lady slept in the unfinished basement storeroom without paying rent did not make a legal two family residence a multiple dwelling for purposes of statute decontrolling housing. *Moran v McGoldrick (1954, Sup) 133 NYS2d 172.*

In a personal injury action against a landlord for lead paint in the premises he rented, he was not entitled to summary judgment because there was a fact issue as to whether the premises was a multiple dwelling, defined as a dwelling occupied by three or more families living independently, under N.Y. *Mult. Dwell. Law § 4(7)*, and whether the landlord, as a result, could be charged with constructive notice of the lead paint condition pursuant to New York City, N.Y., Admin. Code § 27-2056.4. *Galicia v Ramos (2003, App Div, 2d Dept) 756 NYS2d 651.*

No dispute existed that the premises on which the tenant heldover was registered as a multiple dwelling governed by certificate of occupancy requirements; accordingly, the tenant's residential use of a commercial storefront premises therein was not used for the contemplated use of a multiple dwelling, that of residential living, which meant that the tenant violated the certificate of occupancy and the landlord could avail the landlord of the remedies permitted even where the certificate of occupancy was violated. *Nii v Quinn (2003, Sup) 759 NYS2d 841.*

7. --Common utilities

Two adjoining buildings were not single horizontal multiple dwelling, although buildings shared heating system and owners were closely related (father and son), since all other utilities were separate; close relation of owners did not require disregard of separate ownership. *Jackson v Biderman (1989, 1st Dept) 151 App Div 2d 400, 543 NYS2d 433.*

Adjacent buildings comprised horizontal multiple dwelling and were subject to Emergency Tenant Protection Act of 1974 where physical inspection by inspector for Department of Housing and Community Renewal established that buildings shared common heating, sewer, oil and water systems. *Nine Hunts Lane Realty Corp. v New York State Div. of Housing & Community Renewal (1989, 2d Dept) 151 App Div 2d 465, 542 NYS2d 255.*

Determination that residence was single horizontal multiple dwelling was supported by evidence that buildings shared common fire escape, boiler, and water and heating and sprinkler systems and other commonality. 105 *West 28th St. Corp. v New York City Loft Bd. (1996, 1st Dept) 228 App Div 2d 184, 643 NYS2d 91.*

8. --Convents, monasteries and other religious uses

A building of a religious corporation which was occupied by the pastor thereof and his family, a matron, who was merely a domestic, and three women, who were roomers or lodgers, was not a rooming house, lodging house, or multiple dwelling within the purview of this section. *Wesseley v Trustees of First German M. E. Church (1937) 165 Misc 834, 300 NYS 942.*

9. --Lofts

Petitioner, the owner of commercial lofts leased to eight artists as living-work quarters (Multiple Dwelling Law, art 7-B) pursuant to commercial leases providing for use as an ″artist studio and for no other purpose″, has failed to sustain his burden of proof that the buildings were not multiple dwellings as alleged in the petition in the nonpayment summary proceedings and thus exempt from the requirement of obtaining a multiple dwelling registration number and residential certificate of occupancy as a prerequisite to collecting rent (*Multiple Dwelling Law, § 302*), since the buildings were actually occupied and were intended to be occupied, physically arranged and designed as residences for ″three or more families living independently of one another″ and thus multiple dwellings. *Lipkis v Pikus (1978) 96 Misc 2d 581, 409 NYS2d 598,* affd *(1979) 99 Misc 2d 518, 416 NYS2d 694,* affd (1979, 1st Dept) *72 App Div 2d 697, 421 NYS2d 825,* app dismd *(1980) 51 NY2d 874, 433 NYS2d 1019, 414 NE2d 399,* stay den *(1980) 50 NY2d 929* and later pro-

ceeding *(1982) 56 NY2d 502, 450 NYS2d 1024, 435 NE2d 1099,* later proceeding *(1982) 56 NY2d 612, 450 NYS2d 481, 435 NE2d 1096,* appeal after remand (1982, 1st Dept) *90 App Div 2d 700, 455 NYS2d 772,* later proceeding (1983, Civ Ct) *122 Misc 2d 136, 471 NYS2d 177,* affd (1983, Sup App T) *122 Misc 2d 833, 473 NYS2d 902,* revd (1984, 1st Dept) *103 App Div 2d 682, 477 NYS2d 345,* app gr, ques certified (1984, 1st Dept) *104 App Div 2d 546, 479 NYS2d 1019,* vacated, app gr, ques certified (1984, 1st Dept) *104 App Div 2d 768, 480 NYS2d 877* and affd, ctfd ques ans *(1985) 64 NY2d 830, 486 NYS2d 932, 476 NE2d 331.*

A violation for illegal residential use placed on a commercial building occupied by artists as living -work quarters (Multiple Dwelling Law, art 7-B) is not proof of the nonmultiple dwelling status of the building where petitioner landlord actively participated in the subdivision of the building into residences for artists and thus ratified and accepted the living arrangements which converted the commercial building into a multiple dwelling for which a registration number and certificate of occupancy must be obtained before rent may be collected or possession recovered in a non-payment summary proceeding. *Lipkis v Pikus (1978) 96 Misc 2d 581, 409 NYS2d 598,* affd *(1979) 99 Misc 2d 518, 416 NYS2d 694,* affd (1979, 1st Dept) *72 App Div 2d 697, 421 NYS2d 825,* app dismd *(1980) 51 NY2d 874, 433 NYS2d 1019, 414 NE2d 399,* stay den *(1980) 50 NY2d 929* and later proceeding *(1982) 56 NY2d 502, 450 NYS2d 1024, 435 NE2d 1099,* later proceeding *(1982) 56 NY2d 612, 450 NYS2d 481, 435 NE2d 1096,* appeal after remand (1982, 1st Dept) *90 App Div 2d 700, 455 NYS2d 772,* later proceeding (1983, Civ Ct) *122 Misc 2d 136, 471 NYS2d 177,* affd (1983, Sup App T) *122 Misc 2d 833, 473 NYS2d 902,* revd (1984, 1st Dept) *103 App Div 2d 682, 477 NYS2d 345,* app gr, ques certified (1984, 1st Dept) *104 App Div 2d 546, 479 NYS2d 1019,* vacated, app gr, ques certified (1984, 1st Dept) *104 App Div 2d 768, 480 NYS2d 877* and affd, ctfd ques ans *(1985) 64 NY2d 830, 486 NYS2d 932, 476 NE2d 331.*

The multiple dwelling character and design of a building occupied by artists as living-work quarters (Multiple Dwelling Law, art 7-B) was unchanged by a subsequent commercial occupancy in one portion of the building since current usage is not necessarily determinative of the multiple dwelling character of the building and owner's intention therefor. Petitioner landlord, by his active participation in the subdivision of his commercial building into residences for artists and his unconditional approval and encouragement of the subtenancies in his building, ratified and accepted the living arrangements which converted the commercial building into a multiple dwelling for which a registration number and residential certificate of occupancy must be obtained before rent may be collected or possession recovered. *Lipkis v Pikus (1978) 96 Misc 2d 581, 409 NYS2d 598,* affd *(1979) 99 Misc 2d 518, 416 NYS2d 694,* affd (1979, 1st Dept) *72 App Div 2d 697, 421 NYS2d 825,* app dismd *(1980) 51 NY2d 874, 433 NYS2d 1019, 414 NE2d 399,* stay den *(1980) 50 NY2d 929* and later proceeding *(1982) 56 NY2d 502, 450 NYS2d 1024, 435 NE2d 1099,* later proceeding *(1982) 56 NY2d 612, 450 NYS2d 481, 435 NE2d 1096,* appeal after remand (1982, 1st Dept) *90 App Div 2d 700, 455 NYS2d 772,* later proceeding (1983, Civ Ct) *122 Misc 2d 136, 471 NYS2d 177,* affd (1983, Sup App T) *122 Misc 2d 833, 473 NYS2d 902,* revd (1984, 1st Dept) *103 App Div 2d 682, 477 NYS2d 345,* app gr, ques certified (1984, 1st Dept) *104 App Div 2d 546, 479 NYS2d 1019,* vacated, app gr, ques certified (1984, 1st Dept) *104 App Div 2d 768, 480 NYS2d 877* and affd, ctfd ques ans *(1985) 64 NY2d 830, 486 NYS2d 932, 476 NE2d 331.*

Since the commercial dwelling has been continuously occupied since 1968 for residential purposes by at least three loft tenants living independently of each other, such building constitutes a de facto multiple dwelling (*Multiple Dwelling Law, § 4*, subd 7) and, therefore, the failure of the petition in a holdover summary proceeding to allege the information required by the relevant Civil Court rule with respect to the filing of a registration statement (22 NYCRR 2900.21 [f]) mandates dismissal of the petition on jurisdictional grounds. *Mandel v Pitkowsky (1979) 102 Misc 2d 478, 425 NYS2d 926,* affd (1980, 1st Dept) *76 App Div 2d 807, 429 NYS2d 550.*

In a summary holdover proceeding by landlords against a tenant of a photographic studio loft, the trial court properly held that the tenant was not subject to peremptory eviction action at the termination of his lease where the loft was located in a multiple dwelling, where rent had been accepted from the tenant for a period well in excess of three successive months, and where the tenant's rental agreement expired subsequent to the qualifying date for multiple dwellings. *Dovman v Yahashi (1981, Sup App T) 109 Misc 2d 484, 442 NYS2d 349.*

A building, previously found to be a de facto multiple dwelling, continued as such even though one loft had become vacant, where the multiple dwelling character and design of the building was unchanged. *Ropla Realty Corp. v Ulmer (1981, Civ Ct) 110 Misc 2d 619, 442 NYS2d 889,* affd (1982, Sup App T) *113 Misc 2d 175, 451 NYS2d 546.*

10. Class A multiple dwelling

No violation of a certificate of occupancy resulted from the use of a minority of the units in a hotel for nonpermanent or transient occupancy where a hotel was designated as a class A multiple dwelling. City of New York v 330 Cont. LLC (2009, 1st Dept) *60 App Div 3d 226, 873 NYS2d 9.*

A so-called garden-type maisonette dwelling, being classed as a class A multiple dwelling under this section, the owner is subject to the requirements of § 80 as to keeping all parts of the dwelling free from vermin, dirt, garbage, ″or other thing or matter dangerous to life or health.″ *Greenstein v Springfield Development Corp. (1960) 22 Misc 2d 740, 204 NYS2d 518.*

Living quarters of tenant which did not contain her bathroom within room or rooms she used, resembled a room found in a rooming house, a ″class B″ occupancy, which was not permitted in ″class A″ building. *Fifth Ave. Tenth Corp. v Allen (1967) 55 Misc 2d 80, 284 NYS2d 497.*

Eight individually-owned one- and 2-family houses situated on land owned by petitioner, which were protected by rent control or rent stabilization (9 NYCRR), were not multiple dwellings under CLS *Mult D § 4(8)*, and thus registration was not necessary under CLS *Mult D § 325*. 200-218 *Soundview Realty Corp. v Sherlock (1996, Civ Ct) 170 Misc 2d 308, 647 NYS2d 913,* summary judgment gr, petition dismd (1996, Civ Ct) *171 Misc 2d 98, 653 NYS2d 828,* affd (1999, Sup App T) *181 Misc 2d 738, 695 NYS2d 239.*

11. Garden-type maisonette

A so-called garden-type maisonette dwelling, being classed as a class A multiple dwelling under this section, the owner is subject to the requirements of § 80 as to keeping all parts of the dwelling free from vermin, dirt, garbage, ″or other thing or matter dangerous to life or health.″ *Greenstein v Springfield Development Corp. (1960) 22 Misc 2d 740, 204 NYS2d 518.*

12. Class B Occupancy

In a summary proceeding by a landlord against his tenant for default in the payment of rent on a room in New York City, the trial court correctly awarded the landlord possession of the premises and rent due and denied the motion of the tenant to dismiss where the subject premises was a class B multiple dwelling and where the statutory language, antecedent history and practical construction of the Emergency Tenant Protection Act of 1974 indicated that it was not meant to extend rent stabilization to tenants residing in such dwellings in New York City. *La Guardia v Cavanaugh (1981) 53 NY2d 67, 440 NYS2d 586, 423 NE2d 9.*

By subd. 9 of this section, a lodging house is subject to the provisions of the Mult. Dwell. Law

as a ″class B″ multiple dwelling. *Lyons v Prince (1939) 257 App Div 202, 12 NYS2d 466,* affd on other grounds *(1939) 281 NY 557, 24 NE2d 466.*

Living quarters of tenant which did not contain her bathroom within room or rooms she used, resembled a room found in a rooming house, a ″class B″ occupancy, which was not permitted in ″class A″ building. *Fifth Ave. Tenth Corp. v Allen (1967) 55 Misc 2d 80, 284 NYS2d 497.*

13. Old-law tenement

A building erected in New York City about 1890 and occupied ever since as a tenement house is an ″old-law tenement house,″ and the landlord thereof, who failed to obtain a certificate of compliance, may nevertheless recover rent from a tenant occupying such premises since former § 302, subd 1, now subd 1b of § 301, makes an exception in the case of an ″old-law tenement house.″ Tompkins Square Holding Co. v Gilson (1938) 167 Misc 77, 2 NYS2d 714.

Section 366 subd 4 excepts old law tenements from the requirement of subd 18 of this section. 239, 243 & 247 *Corp. v Gabel (1966, 1st Dept) 26 App Div 2d 411, 274 NYS2d 910,* revd on other grounds *(1967) 19 NY2d 558, 281 NYS2d 62, 227 NE2d 866,* remittitur amd *(1967) 20 NY2d 750, 283 NYS2d 114, 229 NE2d 708.*

14. Hotel

Lodging houses are not hotels under either the common-law conception of hotels or under the definition contained in this section. *N. H. Lyons & Co. v Corsi (1952) 203 Misc 160, 116 NYS2d 520, 22 CCH LC P 67188,* app dismd *(1958) 355 US 284, 2 L Ed 2d 271, 78 S Ct 342* and affd *(1955) 286 App Div 1065, 146 NYS2d 663,* affd *(1957) 3 NY2d 60, 163 NYS2d 677, 143 NE2d 392, 32 CCH LC P 70722,* remittitur amd *(1957) 3 NY2d 928, 167 NYS2d 945, 145 NE2d 885* and reh den *(1957) 3 NY2d 941* and remittitur amd *(1957) 3 NY2d 942.*

15. Rooming house

A building of a religious corporation which was occupied by the pastor thereof and his family, a matron, who was merely a domestic, and three women, who were roomers or lodgers, was not a rooming house, lodging house, or multiple dwelling within the purview of this section. *Wesseley v Trustees of First German M. E. Church (1937) 165 Misc 834, 300 NYS 942.*

Under subd. 13 of this section, premises could not be considered a ″rooming house″ where they contained 52 sleeping rooms in which persons were housed for hire without meals. *Kraus v Birns (1963) 39 Misc 2d 562, 241 NYS2d 189.*

16. Lodging house

In holdover summary proceeding, record supported finding that space which respondent occupied in lodging house was subject to rent stabilization regulation, where respondent's affidavit stated that he considered rented space to be his home, landlord had rented same space to respondent for continuous 2-year period, and landlord's conduct in relation to use of assigned space demonstrated that, from landlord's perspective, it was expected and intended that respondent would occupy space as his home. *Gracecor Realty Co. v Hargrove (1997) 90 NY2d 350, 660 NYS2d 704, 683 NE2d 326.*

Holdover summary proceeding involving space which respondent occupied in lodging house was properly dismissed on basis that space was subject to rent stabilization law and that notice of termination did not state authorized grounds for terminating rent-stabilized tenancy under Rent Sta-

bilization Code; landlord's claim that living compartments in lodging houses are not subject to rent stabilization as matter of law, based on asserted "longstanding interpretation" of Division of Housing and Community Renewal, was unreasonable and inconsistent with applicable statutes. *Gracecor Realty Co. v Hargrove (1997) 90 NY2d 350, 660 NYS2d 704, 683 NE2d 326.*

By subd. 9 of this section, a lodging house is subject to the provisions of the Mult. Dwell. Law as a "class B" multiple dwelling. *Lyons v Prince (1939) 257 App Div 202, 12 NYS2d 466,* affd *(1939) 281 NY 557, 24 NE2d 466.*

A building of a religious corporation which was occupied by the pastor thereof and his family, a matron, who was merely a domestic, and three women, who were roomers or lodgers, was not a rooming house, lodging house, or multiple dwelling within the purview of this section. *Wesseley v Trustees of First German M. E. Church (1937) 165 Misc 834, 300 NYS 942.*

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17. Single-room occupancy

An arrangement by a landlord permitting one person or a couple to remain in an apartment as primary tenant with the right to take in not more than four roomers as permitted by § 4, subd. 5, does not constitute "single room occupancy" as defined in subd. 16 of § 4. *Levine v Finkelstein (1949) 274 App Div 628, 88 NYS2d 166.*

Subd. 5 of this section connotes a more or less common use of an apartment as distinguished from an exclusive occupancy of a room or rooms rented for "single room occupancy." *Levine v Finkelstein (1949) 274 App Div 628, 88 NYS2d 166.*

In a nonpayment proceeding to recover possession of a room in a single-room-occupancy petition, because a landlord was authorized to charge the tenants the negotiated free-market rent for six months, and then, could assess the most recent rent charged the prior permanent tenant, if lawful, plus applicable increases, and the tenants failed to show by verifiable proof that the premises was not registered, and that any part of the rents sought exceeded the legally collectible rent, dismissal of the landlord's petition for possession was reversed. *Kanti-Savita Realty Corp. v Santiago (2007, Sup App T) 18 Misc 3d 74, 852 NYS2d 579.*

18. Corner lot

The Queens-Midtown Tunnel Exit Roadway is to be deemed a "street" within the meaning of subd. 31 of this section for purposes of determining whether a particular building site is a "corner lot." *Application of Triborough Bridge & Tunnel Authority (1962) 34 Misc 2d 870, 230 NYS2d 873,* affd (1962, 1st Dept) *17 App Div 2d 811, 233 NYS2d 120,* affd *(1963) 12 NY2d 915, 238 NYS2d 97, 188 NE2d 402.*

Since a public park is a "public place," under the definition of "corner lot" in subd. 31 of this section a particular lot must be found to be a corner lot where the full length of one side of it abutted upon a street and the full length of the other abutted upon a public park. *Application of Independence Terrace Corp. (1962) 35 Misc 2d 368, 230 NYS2d 870.*

This section and *Multiple Residence L § 4(32)(a)* are in pari materia and should be considered together, and when so considered, they express a clear limitation on the size of a corner lot not found in Buffalo's zoning ordinance. *Meadows v Binkowski (1966) 50 Misc 2d 19, 269 NYS2d 331,* affd (1967, 4th Dept) *27 App Div 2d 706, 279 NYS2d 1019.*

19. Cellar; basement

Under the definitions of ″cellar″ and ″basement″ in this section, a so-called ″store and its related basement area leased by plaintiff to defendant must be considered, in view of its location with respect to curb level, as actually a ″basement.″ *Osias v 21st Borden Corp. (1961) 29 Misc 2d 680, 211 NYS2d 463.*

Premises owner had unclean hands in creating an illegal multiple dwelling within the definition of N.Y. *Mult. Dwell. Law § 4* by allowing an occupant to live in a basement apartment, and her holdover squatter proceeding was dismissed where she failed to prove by a preponderance of the evidence that the occupant was a squatter under *N.Y. Real Prop. Acts. Law § 713(3)*, as the occupant had been given a key to the apartment in exchange for his services in removing snow and garbage; there was no claim that the occupant was a licensee under *N.Y. Real Prop. Acts. Law § 713(7)*. *Hodge v Gaither (2003, Civ Ct) 1 Misc 3d 902A, 781 NYS2d 624.*

20. Stairs

In action by plaintiff who slipped on ice while ascending outside ″staircase″ of apartment building, court should have determined as matter of law that staircase in question was not one defined by NYC Admin Code § 27-376 as exterior staircase being used as exit in lieu of interior stairs, and that intermediate handrail called for by NYC Admin Code § 27-375 was therefore not required, where ″staircase″ consisted of 3 steps leading from path to platform which began as fourth step and ended at door leading into building. *Gaston v New York City Hous. Auth. (1999, 1st Dept) 258 App Div 2d 220, 695 NYS2d 83.*

Subd. 41 of this section is not in conflict with former subd. 21 (now § 27, subd. 5f) which provided that every outside stairway which extended more than 12 inches beyond the wall of a dwelling should be considered as part of the dwelling. *Armstrong v Rapp (1937) 165 Misc 583, 1 NYS2d 219.*

21. Fire escape

Since it appears that under *§ 4(42c) of the Multiple Dwelling Law* a fire escape is an integral part of an apartment, defendants' motion to suppress evidence seized during their arrest for alleged narcotics violations must be granted, where observations were surreptitiously made by police from a fire escape prior to their entrance into the residential apartment without a warrant. The court pointed out there was nothing in the record to indicate there was anything suspicious about the apartment or its occupants until the initial observation was made from the fire escape. *People v Terrell (1967) 53 Misc 2d 32, 277 NYS2d 926,* affd (1968, 1st Dept) *30 App Div 2d 644, 291 NYS2d 1002.*

22. Owner; agent

The superintendent of a building who collected rents and could order some repairs to be made was an agent in control of the dwelling within the purview of subd 44 of this section and subd 8 of § 304. *People v Robertson (1953) 281 App Div 990, 120 NYS2d 883.*

This section does not make the managing agent of an apartment house liable as an owner for failure to make repairs. A managing agent, not in complete control, is not liable for mere nonfeasance. Gardner v 1111 Corp. (1955) 286 *App Div 110, 141 NYS2d 552,* affd *(1956) 1 NY2d 758, 152 NYS2d 303, 135 NE2d 55.*

Managing agent of building was entitled to summary judgment dismissing action for trip and fall on staircase where rental agreement with property owner established that managing agent did not have control over property to exclusion of owner; contrary result was not required by NYC Admin Code § 27-2004 (which contains same definition of ″owner″ as CLS *Mult D § 4*) since definition of term ″owner″ in that statute did not include managing agent where managing agent did not have exclusive control over property. *Ioannidou v Kingswood Management Corp. (1994, 2d Dept) 203 App Div 2d 248, 610 NYS2d 277.*

For purposes of delivery of notice of violation to ″a person employed by the respondent,″ service on employee of owner was equivalent to service on employee of managing agent in control of premises under NYC Charter § 1404(d). *Langsam Prop. Servs. Corp. v McCarthy (1999, 1st Dept) 261 App Div 2d 208, 690 NYS2d 208.*

Building superintendent was special employee of building owner, and thus superintendent's action against owner for Labor Law violations and common-law negligence was barred by exclusivity of remedy afforded by award of workers' compensation benefits, where owner was in partnership with building manager who supervised and directed superintendent's work, building manager and superintendent were coemployees of real estate management corporation engaged by owner to maintain premises, and result barring action was consistent with state's rejection of dual capacity doctrine and with statutory inclusion within ambit of term ″owner″ of ″agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling.″ *Gonzalez v RHQ Assocs. (1999, 1st Dept) 263 App Div 2d 413, 693 NYS2d 580.*

An officer of the corporate owner of a multiple dwelling, may, as an ″owner″, be personally liable to correct violations of the Housing Maintenance Code (Administrative Code of City of New York, § D26-1.01 et seq.) and the Multiple Dwelling Law placed against the premises if it could be demonstrated that such corporate officer was a ″person . . . directly or indirectly in control of a dwelling″ (Administrative Code, § D26-1.07, subd 45). The usual exoneration to a corporate officer for the obligations and responsibilities of the corporation do not apply to a multiple dwelling in light of the responsibilities, duties and liability placed upon a corporate officer ″in control″ of a dwelling by Housing Maintenance Code and the Multiple Dwelling Law. *Housing & Development Administration v Johan Realty Co. (1978) 93 Misc 2d 698, 403 NYS2d 835.*

Since a new owner of a multiple dwelling taking possession of the premises after notices of housing violations had been previously served on the former owner is subject to liability for uncorrected violations since the existence of the violations could have been discovered prior to the purchase by a search of the records of the Housing and Development Administration of the City of New York, then defendant, as an officer of the corporation which exercised continuous control over the subject multiple dwelling, can be held personally liable to correct violations of the Housing Maintenance Code placed against the premises (Administrative Code of City of New York, § D26 -1.07, subd 45) even though the notices of violation were served upon his mother as managing agent of the dwelling and were not specifically addressed to him. Defendant has not denied actual knowledge of the existence of the violations and the notices of violations were sent to his mother at defendant's own law offices. *Housing & Development Administration v Johan Realty Co. (1978) 93 Misc 2d 698, 403 NYS2d 835.*

Where an order of appointment forbade the receiver of rents and profits from making repairs in excess of three hundred dollars or in excess of rents collected, he cannot be found guilty of failing to maintain premises in a safe condition in violation of the Administrative Code of the City of New York under the *Multiple Dwelling Law (§ 4*, subd 44) where he lacked funds to make repairs. *People v Eisenberg (1979) 100 Misc 2d 29, 420 NYS2d 962.*

Statutory owner of co-operative apartment building is ″owner″ of building and responsible in first instance for removing housing violations in apartment in proceeding brought by tenant, and not proprietary lessee of individual apartment, but statutory owner is then free to pursue any remedy against proprietary lessee for noncompliance with any obligations under lease. *McMunn v Steppingstone Management Corp. (1986, Civ Ct) 131 Misc 2d 340, 500 NYS2d 219.*

Corporate officer, in fact managing building for corporate owner, was ″owner″ within meaning of administrative code and CLS *Mult D § 4* and was thus subject to contempt proceeding for failure to comply with court order directing correction of housing code violations; accordingly, corporate owner and individual corporate officer would each be fined $ 500 for civil contempt and $ 250 for criminal contempt in deliberately and willfully disobeying order, and individual officer would be sentenced to 30 days imprisonment. *Johnson v Atop Roofing & Siding Corp. (1987, Civ Ct) 135 Misc 2d 746, 516 NYS2d 408.*

Respondent, who was listed as registered managing agent and officer of corporate owner on multiple dwelling registration, was ″owner″ under CLS *Mult D § 4* and NYC Admin Code § 27-2004, and thus could properly be fined for failure to provide heat and hot water to tenant. *Department of Hous. Preservation & Dev. v Livingston (1996, Sup App T) 169 Misc 2d 660, 652 NYS2d 196.*

Respondent, who was listed as officer of corporate owner and testified that she was intimately involved with day-to-day operations of building, was ″owner″ under CLS *Mult D § 4* and NYC Admin Code § 27-2004, and thus could properly be fined for failure to provide heat and hot water to tenant. *Department of Hous. Preservation & Dev. v Livingston (1996, Sup App T) 169 Misc 2d 660, 652 NYS2d 196.*

In an action alleging injuries to a minor based on exposure to lead paint and dust in apartments, members of limited liability companies (LLCs) were improperly found to be owners of the apartments under N.Y. *Mult. Dwell. Law § 4(44)* because the minor had not advanced a claim to declare the premises a public nuisance under § 4(44) Matias v Mondo Props. LLC (2007, 1st Dept) *43 App Div 3d 367, 841 NYS2d 279.*

23. Miscellaneous

Class action status should be afforded to proceeding attacking policy adopted by city rent agency establishing maximum base rent system. Plaza Management Co. v City Rent Agency (1975, 1st Dept) 48 App Div 2d 129, 368 NYS2d 178, affd *(1975) 37 NY2d 837, 378 NYS2d 33, 340 NE2d 468.*

Requirements of CLS *Mult D § 78* and Housing Maintenance Code (NYC Admin Code § 27-2005) that owner of New York City multiple dwelling correct violations includes violations in vacant apartments since multiple dwelling by nature is one in which independent units are contiguous, share services and public areas, and are thus interdependent, and both statutes subsume vacant units under term ″occupied,″ defined as ″intended, arranged or designed to be … occupied″ in CLS *Mult D § 4(1)* and NYC Admin Code § 27-2004(a)(2). *Department of Housing Preservation & Dev. v Metropolitan Ave. Corp. (1990, Civ Ct) 148 Misc 2d 956, 561 NYS2d 531.*

Research References & Practice Aids

New York References:

This section referred to in §§ 3, 26, 210, 310; CLS *Pub Health § 2324-a*; CLS Real P Actions & Pr § 715; CLS *Real P § 231*

Definitions, *CLS Bank § 2*

Definitions, CLS *Mult R § 4*

Definitions, CLS *Pub Hous § 3*

NYCRR References:

Emergency housing rent control: Rent and eviction regulations. 9 NYCRR §§ 210.1 to 210.19

General requirements. 9 NYCRR § 730.1

Administrative orders. 9 NYCRR §§ 2050.1 to 2050.17

Emergency housing rent control: Decontrol orders. 9 NYCRR § 2150.1

Emergency tenant protection: legal regulated rents. 9 NYCRR §§ 2501.1, 2501.2

Emergency tenant protection: adjustments of legal regulated rents. 9 NYCRR §§ 2502.1 to 2502.6

Research References & Practice Aids:

12 NY Jur 2d Buildings, Zoning, and Land Controls § 24

14A NY Jur 2d Business Relationships § 773

66 NY Jur 2d Hotels, Motels and Restaurants §§ 2, 6

74 NY Jur 2d Landlord and Tenant § 393

85 NY Jur 2d Premise Liability §§ 29, 49, 147, 213

86 NY Jur 2d Premise Liability §§ 351, 358, 363, 377, 385, 393, 397

98 NY Jur 2d Taxation and Assessment § 207

49 Am Jur 2d, Landlord and Tenant §§ 1 et seq

6 Am Jur Proof of Facts 353, Innkeepers

Texts:

2 *Bergman on New York Mortgage Foreclosures (Matthew Bender) § 23.37*, *25.02*

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