TENANT PROTECTION IN BUILDINGS OCCUPIED DURING CONSTRUCTION

presented by
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BUILD SAFE | LIVE SAFE CONFERENCE 2019
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This presentation will provide an overview of regulations in the NYC Construction Codes which were enacted by NYC Local Law 154 of 2017, governing the protection of tenants residing in buildings that are under construction.

Tenant Protection Plans are used to safeguard the safety and health of building occupants in properties that are undergoing construction. Each TPP must provide the means and methods to be employed to assure such safeguards. This course will outline specific provisions that must be addressed in a TPP, including the varying responsibilities of parties involved in the creation of the Plan, with discussion of TPP enforcement.
LEARNING OBJECTIVES

At the end of this course, participants will be able to:

1. Participants will examine NYC Local Law 154 of 2017 enacted to protect tenants occupying buildings during construction.

2. Participants will discuss existing and proposed or pending legislation regarding assignment of responsibility for creating Tenant Protection Plans and ensuring such TPPs are obeyed.

3. Participants will be able to outline the elements required to be addressed within Tenant Protection Plans.

4. Participants will be able to summarize the importance, necessity and enforcement measures in effect for Tenant Protection Plans.
WHAT IS A MULTIPLE DWELLING?

NEW YORK STATE MULTIPLE DWELLING LAW

ARTICLE 1
INTRODUCTORY PROVISIONS; DEFINITIONS

§4. Definitions. Certain words and terms when used in this chapter, unless the context or subject matter requires otherwise, are defined as follows:

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 a building or structure, intended for any purpose, any portion thereof, or any part of any building or structure, if the residence of three families or more living independently of each other, or during any part of the time such building or structure is occupied, is used or maintained for the residence of three families or more living independently of each other.
WHAT IS A MULTIPLE DWELLING?
WHAT IS A REGISTERED MULTIPLE DWELLING?

How many MDs are registered with HPD?
- Almost 175,000 in NYC

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BACKGROUND: TENANT HARASSMENT

Some historic methods of tenant harassment by landlords

- Failure to provide services (heat, hot water, electricity)
- Failure to rid buildings of infestations
- Failure to maintain service equipment (elevators, appliances)
- Failure to maintain building envelope and structure
- Arson...
BACKGROUND: TENANT PROTECTION

Some historic methods of Tenant Protection

- Civil Court, L/T Court Hearings
- 1940s – Rent Control
- 1960s – Rent Stabilization
- 1970s – Warranty of Habitability
- 1980s – Mayor’s Arson Strike Force
  - NYC DOB Tenant Safety Plan
As we agreed at our meeting on July 27, the following procedures will be followed in response to concerns raised by the Mayor’s Arson Strike Force:

1. All Docket Advice Sheets are to be forwarded to the Arson Strike Force, attention of Mr. Hoey, Director. The Strike Force will return notated copies indicating those buildings where there have been past incidents of suspected arson or negligently caused fires, as well as their comments on the requested action.

2. A comprehensive tenant protection plan is required to be submitted prior to any approval for the rehabilitation of any occupied multiple dwelling (unless the building is an SRO and is already so covered under Local Law 19 of 1983). This plan should cover all aspects of tenants’ safety during the course of construction. For buildings indicated on the Docket Sheets as known to the Arson Strike Force, the plan shall set forth in detail the efforts to be taken to insure tenants’ safety from additional fire hazards that may arise during the alteration work.

Cc: Bob Esnard
Irv Mankin
Joe White
Deputy Borough Superintendents
TENANT SAFETY PLAN must provide for the following on every application filed for work within an occupied MD:

- **Egress** (shall not be obstructed at any time)
- **Fire Safety** (all laws and controls to be strictly observed)
- **Health Requirements** (dust, debris, pest control, sanitary facilities, noise control)
- **Services** (as required by Housing Maintenance Code (HMC) and Multiple Dwelling Law (MDL))
- **Structural Stability** (no work may cause structural danger for tenants)
- **Controlled Inspection** (required for all work)
- **Plans** (filed plans must indicate compliance, including temporary measures)

TENANT SAFETY PLAN was often provided as a set of notes on plans stating that work would comply with the above minimum requirements.
New Requirement by DOB for Tenant Protection Plan (TPP)

- TPP appeared in the 2008 Building Code
- TPP **must** be submitted as a document which will be viewable online by the public
- Any necessary graphic descriptions of TPP remain on application’s filed drawings
- Similar to/direct descendant of Tenant Safety Plan
New York City Council Passes Stand for Tenant Safety Legislative Package, Endorsed by Progressive Caucus, to End Construction as Harassment
2017 – LOCAL LAWS ENACTED TO PREVENT TENANT HARASSMENT BY CONSTRUCTION

- Creation of interagency Task Force, OTA and Real-Time Enforcement units
- Increased liens, penalties, fines, foreclosures
- Prohibitions and restriction of privileges for bad actors
- Creation of Safe Construction Bill of Rights (HPD)
- Creation of new/enhanced TPP by LL 154/2018
NYC LOCAL LAW 154 OF 2017

LOCAL LAWS OF
THE CITY OF NEW YORK
FOR THE YEAR 2017

No. 154


A LOCAL LAW

To amend the administrative code of the city of New York and the New York city building code, in relation to tenant protection plans, and to repeal section 1704.20.10 of the building code of the city of New York, in relation to special requirements for work in occupied multiple dwellings.
LL 154/2017

1. AMENDS Administrative Code (AC) 28-104.8.4
   - Increases specificity requirements for construction documents
   - Adds requirements for public availability to TPP
   - Adds requirements for notification to occupants

2. AMENDS Building Code (BC) 110
   - Adds requirement for DOB inspections for compliance with TPP

3. REPEALS BC 1704.20.10
   - Eliminates requirement for Special Inspection Agency (3rd party) TPP inspection

4. AMENDS BC 3303.10
   - Clarifies requirements for TPP in all buildings containing occupied dwelling units
   - Adds requirements for notification of DOB within 72 hours of work
   - Adds requirement for DOB to inspect 5% of sites w/in 7 days of work
   - Adds empowerment for DOB to stop work performed in violation of TPP
SEVEN TENANT PROTECTION
PLAN ELEMENTS

While similar to TPP and TSP of the past, requirements in AC 28-104.8.4 are more stringent, and require more oversight.

§ 28-104.8.4 Tenant protection plan. Construction documents for alterations of buildings in which any dwelling unit will be occupied during construction shall include a tenant protection plan. Such plan shall contain a statement that the building contains dwelling units that will be occupied during construction and shall indicate in sufficient detail the specific units that are or may be occupied during construction, the means and methods to be employed to safeguard the safety and health of the occupants throughout the construction, including, where applicable, details such as temporary fire-rated assemblies, opening protective, or dust containment procedures. Such means and methods shall be described with particularity and in no case shall terms such as “code compliant,” “approved,” “legal,” “protected in accordance with law” or similar terms be used as a substitute for such description. The elements of the tenant protection plan may vary depending on the nature and scope of the work but at a minimum shall make detailed and specific provisions for:

1. Egress. At all times in the course of construction provision shall be made for adequate egress as required by this code and the tenant protection plan shall identify the egress that will be provided. Required egress shall not be obstructed at any time except where approved by the commissioner.

2. Fire safety. All necessary laws and controls, including those with respect to occupied dwellings, as well as additional safety measures necessitated by the construction shall be strictly observed.

3. Health requirements. Specification of means and methods to be used for control of dust, disposal of construction debris, pest control and maintenance of sanitary facilities, and limitation of noise to acceptable levels shall be included.

3.1. There shall be included a statement of compliance with applicable provisions of law relating to lead and asbestos, and such statement shall describe with particularity what means and methods are being undertaken to meet such compliance.

4. Compliance with housing standards. The requirements of the New York city housing maintenance code, and, where applicable, the New York state multiple dwelling law shall be strictly observed.

5. Structural safety. No structural work shall be done that may endanger the occupants.

6. Noise restrictions. Where hours of the day or the days of the week in which construction work may be undertaken are limited pursuant to the New York city noise control code, such limitations shall be stated.

7. Maintaining essential services. Where heat, hot water, cold water, gas, electricity, or other utility services are provided in such building or in any dwelling unit located therein, the tenant protection plan shall specify the means and methods to be used for maintaining such services during such work in accordance with the requirements of the New York city housing maintenance code. If a disruption of any such service is anticipated during the work, then such plan shall specify the anticipated duration of such disruption and the means and methods to be employed to minimize such disruption, including the provision of sufficient alternatives for such service during such disruption.
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TPP ENFORCEMENT

3303.10 Operations in occupied buildings. When construction or demolition activity occurs in an occupied building, barricades, signs, drop cloths, and other protective means shall be installed and maintained as necessary to provide reasonable protection for the occupants against hazard and nuisance. Such protective means shall be indicated on an occupant protection plan, or where a tenant protection plan is required by Section 3303.10.1, on a tenant protection plan.

3303.10.1 Tenant protection plan. In buildings containing occupied dwelling units, including newly constructed buildings that are partially occupied where work is still ongoing within the building, all construction or demolition work shall be performed in accordance with a tenant protection plan as required by Chapter 1 of Title 28 of the Administrative Code.

*3303.10.2 Inspections of tenant protection plan. The owner shall notify the department in writing at least 72 hours prior to the commencement of any work requiring a tenant protection plan. The department shall conduct an inspection of five percent of such sites within seven days after the commencement of such work to verify compliance with the tenant protection plan. Thereafter, the department shall conduct an inspection upon the receipt of a complaint concerning such work.

*Section 3303.10.2 was added by Local Law 154 of 2017. This law has an effective date of December 28, 2017.

*3303.10.3 Enforcement of tenant protection plan. If work is not being performed in accordance with the tenant protection plan, the commissioner may issue a stop work order pursuant to section 28-207.2 of the administrative code.

*Section 3303.10.3 was added by Local Law 154 of 2017. This law has an effective date of December 28, 2017.
TPP ENFORCEMENT

NYC Department of Buildings
ECB Violation Details

Premises: [Redacted] ROADWAY MANHATTAN
BIN: [Redacted]
Filed At: [Redacted]
Community Board: [Redacted]

ECB Violation Summary:

ECB Violation Number: [Redacted]
Severity: CLASS - 1

Penalty Balance Due: $2,500.00

Certification Status: NO COMPLIANCE RECORDED
Hearing Status: IN VIOLATION

Respondent Information:

Name: [Redacted]
Mailing Address: [Redacted]
License/Registration/Tracking Number: [Redacted]

Violation Details:

Violation Date: 08/21/2018
Served Date: 08/21/2018

Violation Type: CONSTRUCTION

Infraction Codes: 106 27-28/BC-MISC
Section of Law: MISCELLANEOUS VIOLATIONS

Specific Violation Condition(s) and Remedy:

SEC. 3303.10 TENANT PROTECTION PLAN NOT BEING COMPLIED WITH. NOTED: @ TIME OF INSP THE FOLLOWING WERE OBSERVED EXCESSIVE DUST IN COMMON HALLWAYS,MISSING PLASTIC SHEETING ON APT DOORS,BEING WORK ON, PROTECTION ON

Issuing Inspector ID: [Redacted]
Issued as Aggravated Level: NO
Evidence Attached

Dept. of Buildings Compliance History and Events:

Certification Status: NO COMPLIANCE RECORDED
Compliance On: A Certificate of Correction must be submitted to the Administrative Enforcement Unit (AEU) for all violations. A violation that is not dismissed by ECB will continue to remain ACTIVE or "open" on DOB records until acceptable proof is submitted to the AEU, even if they have paid the penalty imposed by ECB.

ECB Hearing Information:

Scheduled Hearing Date/Time: 8:30
First Scheduled Hearing Date: [Redacted]

ECB Penalty Information:

Penalty Imposed: $2,500.00
Adjustments: $0.00
Amount Paid: $0.00
Court Docket Date: [Redacted]

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**PROPOSED TPP LEGISLATION**

**INTRODUCTION 1107-2018**

Submital of construction documents, applicant and owner statements, and tenant protection plans.

This bill would require contractors to prepare and submit for approval tenant protection plans when seeking a permit to perform construction. The bill would require statements by buildings owners and contractors regarding the occupancy of a building and the scope of work of a construction project. Finally, this bill would create the option to submit phased tenant protection plans to reflect the current stage of work.

**Sponsors**

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**History**

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