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HOUSING MANAGEMENT BUREAU MEMORANDUM # 2014-B-04

To: All Housing Companies
Owners, Managing Agents and Site Managers

From: Robert Damico, Director
Housing Management Bureau

Date: May 30, 2014

Subject: Updated Guidelines for Processing Succession Applications

This memorandum will serve as guidance in the processing of succession applications.

DHCR's Succession Regulations (9 NYCRR Sub-Part 1727-8) generally impose three requirements on an applicant who seeks to succeed to an apartment after it has been vacated by the tenant of record:

1. The applicant must be a member of the tenant's family as defined by 9 NYCRR § 1700.2(a)(7);
2. The applicant must have lived in the apartment with the tenant as his/her primary residence for at least two years (one year if the applicant is a senior citizen or disabled) ("the qualifying period"); and
3. The applicant must have been listed as a resident of the apartment on all income affidavits required to be filed during the qualifying period.

On October 17, 2013, the New York State Court of Appeals decided the matter of *Paul Murphy v. New York State Division of Housing and Community Renewal*. In this matter, the Housing Company, as affirmed by DHCR, denied a succession application on the grounds that at least one of the income affidavits for the two years immediately prior to the named leaseholder vacating the apartment was missing.

In its decision, the Court of Appeals held "...that it was arbitrary and capricious for DHCR to deny succession rights on the basis of the failure to file a single income affidavit," holding that for purposes of succession the principal purpose of the income affidavit is to provide proof of the applicant's primary residence.

Therefore, in cases where there is a large amount of credible evidence that the applicant's primary residence was the subject apartment during the qualifying period, housing companies can no longer

deny succession applications solely because there is a missing income affidavit or because the applicant's name failed to appear on the affidavits submitted for the qualifying period.

The absence of the income affidavit or the applicant's name on one or all of the income affidavits for the qualifying period becomes only one factor in evaluating whether the applicant lived in the unit as a primary residence. Housing companies must use the information from the income affidavits (or lack thereof) together with other evidence to establish whether the apartment was the applicant's primary residence during the qualifying period. That evidence should include an evaluation of whether the failure to be listed on an income affidavit is consistent with obtaining some benefit under the program such as relieving the family in occupancy of having to pay an income based surcharge.

Under the Succession regulations, "primary residence" is defined as "...the dwelling unit in which the person actually resides, maintains a permanent physical presence and otherwise fulfills the requirements identified in Section 1727-8.2(a)(2) of this Title." (9 NYCRR § 1700.2(a)(13)) Traditionally, documentary evidence used to aid in the determination is similar to the documents described in 9 NYCRR 1700.(2)(a)(7) for determining the existence of a "family" relationship for applicants claiming to be non-traditional family members of the vacating leaseholder.

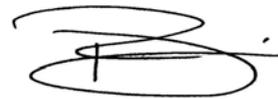
Accordingly, applicants will need to submit documentary proof of their cohabitation with the vacated tenant of record in order to prove their primary residence. Housing companies require the following sorts of documentation from succession applicants while processing these applications:

1. Tax returns
2. Government Housing Benefits statement
3. Driver's license or other state issued identification
4. Vehicle registration
5. Voter registration
6. Social Security benefits statement
7. Public assistance statement
8. School records
9. Redacted Health records that comply with Health Insurance Portability and Accountability Act standards
10. Insurance documentation
11. Bank statements
12. Loan documents showing address
13. Credit union statements
14. Bills (telephone, utility, credit card, etc.)
15. Pay Stubs
16. Healthcare proxy/Power of attorney
17. Will
18. W-2 forms
19. Notice of Occupancy filed with DHCR
20. Written statements from neighbors, other tenants in the building, clergypersons, social worker, school officials, health professionals and/or building staff
21. Proof of memberships (i.e. gym, religious organization, etc.)
22. Any personal correspondence reflecting one's address
23. Identification of addresses of any other residential properties owned by the applicant or in which the applicant has any interest and a statement of the nature and value of that interest.

24. Any other relevant document which shows the applicant's address during the qualifying period.

The list above is illustrative, not exhaustive. In determining the issues arising in any succession application, different weight will be afforded to different documentation as appropriate to the circumstances.

Additionally, applicants should be requested to provide an explanation for the absence of one or more required income affidavits or the absence of their name on a submitted income affidavit. Applicants who are not listed on the income affidavits for the qualifying period should also be required to provide proof of their income over the qualifying period (in the absence of tax returns); if an income based surcharge would have been imposed had their income been reported, as part of determining the credibility of the applicant's claim, housing companies should determine whether or not to pursue the vacating tenants for any unpaid surcharges that would have been imposed had the applicant's income been reported on the income affidavits during the qualifying period; in the case of mutual companies, housing companies can deduct any such unpaid surcharge from the equity to be returned to the vacating tenant upon resale of the apartment.



Robert Damico