

NEW YORK HOUSING JOURNAL

Brought to you by the Community Housing Improvement Program, Inc., an association of apartment building owners

THE INQUIRING MIND

Using Lobby for Tenant Party

Q. One of my tenants told me that she plans to use our building's lobby for a party so that the tenants in the building can get to know one another. She says that she has the right to do this under State law. Is she correct?

A. Not exactly, says Adam Leitman Bailey of the Manhattan law firm of Adam Leitman Bailey, PC. Section 230 of the State's Real Property Law (RPL) gives tenants' groups the right to meet in a peaceful manner in any location in the building without having to pay a fee. They must meet during "reasonable hours" and "without obstructing access to the premises or facilities." Unfortunately, there is almost no case law interpreting RPL section 230, he notes. However, the section speaks of tenants meeting for the purpose of forming groups to protect tenants' rights. It *doesn't* protect social activities, points out Bailey. So, the tenant can't demand to use the lobby for a party, he says. If the tenant was trying to meet to establish a tenants' organization for the building, you would probably have to allow her to do so. But you could insist that the meeting take place during reasonable hours—for example, at a time in the evening when the lobby is usually quiet.

Exempting SCRIE Tenant from Paying Fuel Cost Adjustment

Q. Does the Senior Citizen Rent Increase Exemption (SCRIE) program cover the fuel cost adjustment that rent-controlled tenants must pay, or do tenants pay this themselves, directly to the owner?

A. SCRIE doesn't exempt the tenant from paying the entire amount of the fuel cost adjustment. Instead, at the time the tenant first applies for SCRIE and is found eligible, SCRIE exempts the tenant from paying any future increase in the fuel cost adjustment. SCRIE sets the tenant's share of the rent, which includes the current amount of the cumulative fuel cost adjustment. SCRIE exempts the tenant from paying subsequent fuel cost increases, which are included in the tax abatement the owner receives.

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Give Tenants 'Mortgage' to Reduce Cash Outlay to Buy Out Rent

Regulated Leases

By Adam Leitman Bailey, Esq.

Now that the financial crisis has hit, some owners are experiencing cash flow problems and their lenders have stopped or seriously tightened lending. At the same time, owners want to continue to increase their property values through buying out existing rent-regulated leases. To help our clients deal with this crisis, we came up with an unconventional solution that operates much like a traditional mortgage agreement. It has led to a few deals that wouldn't otherwise have happened.

In this solution, buyout money is disbursed in three steps to the tenant agreeing to give up the rent-regulated lease: (1) a bulk payment upon signing a stipulation of settlement; (2) monthly payments thereafter over a set time period, for example, five years; and (3) a balloon payment at the end of the specified term. All but the payment on signing are secured by a mortgage on the building with a "due on sale" clause, at a reasonable rate of interest. While at first blush, this makes the tenant an investor in the building, it can be attractive to both the owner and the tenant. The owner doesn't have to come up with as much money up front during times of tight lending and the tenant has a dependable secured income stream, which could be particularly useful for funding the tenant's new quarters.

Adam Leitman Bailey owns a 17-attorney real estate law firm, Adam Leitman Bailey, P.C. It is one of four law firms with landlord-tenant practices in New York State to earn an AV[®] Martindale-Hubbell rating and the only law firm in the state WITH A LANDLORD_TENANT PRACTICE to have both an AV rating and a lawyer with a Super Lawyer ranking. He and his law partner Dov Treiman recently collaborated to produce the first 21st-century form leases for Blumberg-Excelsior.

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