

## *Happy New Year! It's Luxury Deregulation Time Again!*

**S**tarting January 1<sup>st</sup>, Owners of rent regulated apartments with legal rents of \$2,000 or more per month may, once again, petition for luxury deregulation, i.e. high rent / high income rent deregulation. This is an administrative procedure that results in the deregulation of a rent regulated apartment if the household income exceeded \$175,000 in the two years preceding the year the petition is filed with DHCR. In 2006, a tenant's 2004 and 2005 income is considered.

BBW&G recommends that owners consider filing for luxury deregulation against all rent regulated apartments (both rent stabilized **and** rent controlled), with legal rents of \$2,000 or more.

When reviewing rent rolls, also consider those apartments which will reach the \$2,000 monthly rent level for the first time on or before May 1, 2006.

It does not matter if a tenant is paying a rent of less than \$2,000, as long as the apartment's legal rent meets the \$2,000 threshold on or before May 1<sup>st</sup>.

An owner may also combine the legal rent of multiple apartments rented by the same tenant in order to reach the \$2,000 amount.

Owners who filed luxury deregulation proceedings in 2005 should review whether DHCR has previously determined if a tenant's household's 2004 income met the \$175,000 level. If DHCR  
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## *BBW&G Expands Condominium Conversion Practice*

**I**n response to the hot condominium market, BBW&G has substantially expanded its condominium conversion practice. While the firm has primarily been involved in the drafting and submission of condominium plans for several years, the continued upswing in the condominium market has resulted in an unprecedented demand for offering plans from both old and new clients.

We are finding that our efforts have resulted in quicker turnaround for our clients by the Attorney General's Real Estate Finance Department, which is charged with the review of conversion plans, resulting in even greater efficiency and cost effectiveness. The firm is currently involved in the preparation and filing of plans

***... an unprecedented demand for offering plans from both old and new clients.***

to convert rental buildings to condominium ownership, as well as new construction condominiums, in several  
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### Special Points of Interest:

- **Serve your Income Certification forms on eligible tenants before May 1, 2006.**
- **Avoid rent reductions based upon elimination of services by filing for a DHCR modification order.**
- **How and when to address a tenant's sublet request.**

### *It's Luxury Deregulation Time Again...*

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has already determined that a tenant's household's 2004 income was below \$175,000, you will not meet the "two consecutive year" threshold for income – but calendar to file for luxury deregulation against this tenant again in 2007.

Luxury deregulation works like this—on or before May 1, 2006, owners must serve eligible tenants (those with a legal rent of \$2,000 or more), with an Income Certification Form ("ICF"). The ICF requires tenants to answer whether their household's annual income (defined by the Rent Stabilization Code as the Federal adjusted gross income as reported on a N.Y.S. income tax return), exceeded \$175,000 in 2004 and 2005. The ICF also requests that the tenants reveal the names of all persons occupying the subject apartment.

On or before June 30, 2006, owners must file a "Petition by Owner for High Income Rent Deregulation" with DHCR for each

tenant the owner seeks to deregulate. The Petition must be filed with two copies of the ICF, as well as proof that the ICF was properly served upon the tenant.

The owner's High Income Rent Deregulation Petition requests that DHCR do one of the following:

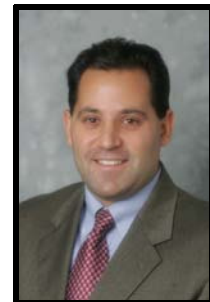
- ▶ Issue an Order of Deregulation based upon the tenant's admission in the ICF that the total annual household income exceeded \$175,000; or
- ▶ Request that DHCR verify the tenant's household income because the owner contests the tenant's claim that the household income was below the threshold for one or both test years; or
- ▶ Request that DHCR verify the tenant's household income because the tenant failed to answer the ICF.

Notably, a petition must be filed with DHCR *even if the tenant admits that the household income exceeded the threshold.*

After verifying the tenant's household income with the New

York State Department of Taxation and Finance, DHCR will issue an Order of Deregulation if it is determined that the tenant's household income exceeded \$175,000.00 in 2004–2005, or if the tenant defaults in the proceeding, thereby removing the apartment from rent regulation.

*This article was written by Joshua Losardo, an associate practicing in BBW&G's Administrative Law, Transactional and Bankruptcy Departments. For more information about Luxury Deregulation, please contact Mr. Losardo, or partners Sherwin Belkin, Martin Heistein, or Kara Rakowski.*



Joshua Losardo

### *BBW&G Expands Condominium Conversion Practice...*

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key areas throughout the City, including the Upper West Side, Soho, Chelsea and Midtown East. BBW&G is also involved in representing sponsors of existing converted buildings throughout the City who need amendments filed on an expedited basis to comply with Attorney General requirements or reflect price increases or to keep their plans from lapsing. BBW&G also regularly handles other matters with the Attorney General's office, including filing CPS-1 ("testing the market") appli-

cations, and representing condominium Boards and sponsors regarding complaints filed with the Attorney General.

*This article was written by Robert Jacobs, a partner in BBW&G's Transactional Department. For questions on condominium conversions and related matters, please contact Mr. Jacobs (who has drafted and filed the plans with the AG's Office) or fellow Transactional Department partner Aaron Shmulewitz (who has drafted and filed the plans and who also represents several hundred co-op and condo boards throughout the City).*



Robert Jacobs



Aaron Shmulewitz

## *A Means to Change Required Services: The Modification Application*

The Rent Stabilization Law prohibits an owner from discontinuing any “required services” at its building. A required service is defined as any service which an owner was providing, or was required to provide, on or after the “base date,” which in most cases is May 31, 1968 or June 30, 1974.

Required services fall into two general categories. First, there are services which an owner is specifically required by law to provide – services such as the provision of heat, hot water, janitorial services, repairs, etc. Second, there are services which an owner provided on the base date, or provided at any time thereafter – such as doorman services, laundry facilities and recreational facilities. (The rent control law contains provisions analogous to those found in the Rent Stabilization Law. However, the Rent Control Law refers to such services as “essential services,” and the base date for required services is April 30, 1962.)

If a tenant or tenants file a complaint with DHCR alleging that the owner has discontinued a required service relating to a building or an individual apartment, and DHCR determines that the owner had in fact, discontinued such service, DHCR will usually issue an order: (a) directing the owner to restore the service; and (b) reducing the rent of each tenant who signed the complaint.

In such case, the owner will not be permitted to restore the rent or rents to their prior level until it restores the service, files an application with DHCR requesting permission to restore the rent and DHCR grants the application.

An owner may determine that it is not practical or economically feasible to maintain a certain required service in the manner in

which it was being provided. The owner may believe that it can simply discontinue the service and accept a rent reduction as the “cost of doing business.”

The problem with such a decision is that an owner’s failure to restore a required service as directed by DHCR will have consequences far more serious than a rent reduction. First, an owner will not be permitted to increase rents at its building based upon its installation of a major capital improvement, if it had failed to comply with a DHCR rent reduction order. Second, a tenant has the right to commence a “compliance proceeding” if the owner fails to restore a service as directed by a DHCR Order. If DHCR concludes that the owner has failed to comply with such order, it may impose substantial fines against the owner.

There is a mechanism, however, for an owner to obtain permission from DHCR to “modify” its obligation to provide a required service. The Rent Stabilization Code provides that an owner may file an application for permission to modify or substitute a required service, with either a reduction in rent or no reduction in rent, if such modification or substitution “is not inconsistent with the Rent Stabilization Law or the Code.” (The Rent and Eviction Regulations, which relate to rent controlled apartments, provides that an owner must maintain essential services unless and until it files an application to decrease such services and DHCR grants its application.) The key is that obtaining a Modification of Services Order allows an owner to safely avoid penalties or other dire consequences for eliminating or changing a previously required service.

BBW&G has been successful in obtaining orders granting permission to modify various types of required services. For example, we have obtained orders:

- granting permission to close a laundry room (and thus recover the space for the owner’s use) and in place, authorize the building’s tenants to either install laundry machines in their apartments, or accept a permanent rent reduction in the amount of \$25.00 per month;
- granting an owner who was required to replace parking garages at its building, permission to replace parking spaces only for those tenants who still wished to rent parking spaces; construct a garage at a location which was more convenient than the location where the located original garage was; and construct the new garage from materials which were more cost efficient than the materials from which the original garage was constructed;
- granting permission to discontinue the provision of doormen at the side entrance door to a building, at no reduction in rent, and in place of the services provided by the doormen: lock the side entrance door; install a bell and buzzer system and various security cameras at the building; and during peak hours, provide an assistant to the doorman who is stationed at the front door;
- granting permission to remove a gate which had been

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*The Modification Application. . .*  
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located in the stairwell of a building, in exchange for rent reductions in the amount of \$3.00 per month;

- granting permission to convert the freight elevators at a building from manual operation (i.e., operation by elevator operators) to automatic operation, at no reduction in rent, in exchange for the installation of various security cameras at the building; and an agreement the owner would continue to provide any janitorial services that the elevator operators had been providing;
- allowing an owner to convert from master metered electric to submetered or direct metered electric service;
- allowing an owner to convert

from a manned elevator to an automatic elevator;

- permitting the elimination of a doorman, where replaced by a video intercom manned by a concierge;
- eliminating building staff deliveries mail to the tenants' apartments in a luxury building; to be replaced by a central mailbox and package area where tenants would retrieve their own mail and other deliveries;
- granting elimination of fireplaces that were no longer functional and/or not capable of being safely restored to service.

In sum, a "modification application" can be a valuable tool for an owner who may be unable to or does not wish to maintain a service in the manner in which it

had been previously provided. The order gives the owner greater control over the operation of its building, while providing protection against penalties, fines or other negative ramifications.

*This article was written by Phillip Billet, an associate practicing in BBW&G's Administrative Law Departments. For more information about Modification Applications, please contact Mr. Billet, or partners Sherwin Belkin, Martin Heistein, or Kara Rakowski.*



Phillip Billet

## *The Sublet Request: It's All About the Timing*

**M**any owners are wary of tenants who seek to sublet their apartments. Although there are sublet requests that are *bona fide* and made in good faith, owners often find that sublets are a subterfuge for tenant profiteering. Others find that tenants who sublet during a "temporary" absence, really have no intention of returning. While others feel that subletting represents a loss of control over the screening of those who will occupy the building.

The rules pertaining to subletting are generally set forth in Real Property Law §226-b. Where Rent Stabilized tenants are involved, the requirements of Rent Stabilization Code §2525.6 also apply. This article is *not* intended to address all of the rules, requirements and procedural

requirements that affects both owners and tenants where sublets are concerned. Rather, this article will address one issue only: the mandatory time frames within which the owner must act when addressing a sublet request.

Specifically, the statute provides for the following steps to be taken by the parties:

- the tenant requests permission to sublet;
- the owner may request additional information pertaining to the sublet; **the owner must request such additional information within ten days from the request. If the owner elects not to ask for additional information, the owner must consent or reject the request within**

**30 days.** It is crucial to keep the envelope in which the request was received so that you have a record of the date of mailing. Often the sublet request may be dated well in advance of the date it is actually posted – **it is the date of posting, not the date written on the request that starts the process;**

- **Remember:** If you miss the ten days to ask for more information, you still have thirty days from the time the request was made to review it and then consent or reject;
- the tenant must respond to the owner's request for additional information in order to substantiate the propriety

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*It's All About the Timing . . .*  
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of the tenant's request; **until the tenant responds, the owner is under no obligation to do anything further to process the request;**

- once the tenant responds to the request for additional information, the owner then has a **thirty (30) day** statutory period to review the information provided by the tenant and then must consent or reject the request; **if the**

**owner fails to respond in 30 days, the owner is deemed to have consented.**

The potential grounds for rejection are many because the procedural and substantive requirements of a proper sublet request are actually quite complex. However, if the owner does not act with speed and take all steps within the mandatory time frames, the owner can find that it has consented to a sublet request that the owner is not really pleased with.

*This article was written by Sherwin Belkin, a partner practicing in*

*BBW&G's Administrative Law Department. For more information about residential sublet requests, please contact Mr. Belkin.*



Sherwin Belkin

## BBW&G NEWS

### MAY I QUOTE YOU?

**Edward Baer**, a BBW&G Litigation Department partner, and Co-Chair of the New York State Bar Association's Real Property Law Section Committee on Landlord and Tenant Proceedings, co-authored The New York State Bar Foundation's "Understanding the Law: A Practical Guide For New York Residents."

**Craig Ingber**, a BBW&G Transactional Department partner, was featured in *The Commercial Lease Law Insider's* article on limiting a commercial tenant's storage area in order to avoid a loss of the percentage rent. Mr. Ingber cautioned owners against using confusing or vague terms. Rather he suggested that the lease clearly spell out the minimum square footage that the tenant must use for retail purposes, and the maximum for storage. Because storage space does not generate income, failing to clearly delineate the allocation of space usage between retail and storage can reduce the percentage rent due to the owner.

**Aaron Shmulewitz**, also a BBW&G Transactional Department partner, will be part of the panel discussing "Real Estate Closings in New York: From the Residential Home to the Multi-Unit Dwelling" sponsored by Lorman Education Services. Mr. Shmulewitz was also quoted in *The New York Times'* Real Estate Section "Q&A" column regarding a condo board's right to govern the common elements of a building. He noted that the board must act pursuant to the bylaws and house rules, but must also act within the constraints of its fiduciary duties.

**Sherwin Belkin**, a BBW&G Administrative Law Department partner, was interviewed for *WNYC Radio's* "Market Watch" program regarding the representation of owners and developers in dealing with occupied residential and commercial spaces that, if vacated, would create significant economic opportunities for the owner or developer.

**Kara Rakowski**, another BBW&G Administrative Law Department partner, lectured at the Real Estate Board's broker's licensing program on Rent Regulation and Fair Housing Laws.

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**PLEASE NOTE:** This newsletter is intended for informational purposes only and should not be construed as providing legal advice. This newsletter provides only a brief summary of complex legal issues. The applicability of all or any of the issues described in this newsletter is dependent upon your particular facts and circumstances. Accordingly, it is suggested that prior to attempting to utilize or implement any of the suggestions provided in this newsletter, you should make sure to consult with your attorney.

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