



**LEGAL
SERVICES**

INCORPORATED

TESTIMONY CONCERNING

**INTRO 1504-2017, IN RELATION TO THE CREATION OF AN ENERGY
EFFICIENCY PROGRAM FOR MULTIPLE DWELLINGS.**

AND

**INTRO 1507-2017, IN RELATION TO THE CREATION OF AN ON-SITE
COMPLIANCE CONSULTATION PROGRAM FOR MULTIPLE DWELLINGS.**

PRESENTED BEFORE:

**THE NEW YORK CITY COUNCIL'S
COMMITTEE ON SMALL BUSINESS**

PRESENTED BY:

**MICHAEL GRINTHAL
SUPERVISING ATTORNEY
MFY LEGAL SERVICES, INC.**

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MFY LEGAL SERVICES, INC.,
299 Broadway, New York, NY 10007
212-417-3700
www.mfy.org

Introduction

MFY Legal Services, Inc. envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised or have disabilities. We do this through providing the highest quality direct civil legal assistance, providing community education, entering into partnerships, engaging in policy advocacy and bringing impact litigation. We assist more than 20,000 New Yorkers each year.

Specifically, MFY's Housing Project annually serves thousands of tenants, many of whom are long-term, rent regulated tenants.

Intro 1507-2017

This bill would allow a landlord to request a "compliance consultation" from the Department of Housing Preservation and Development (HPD) to identify code violations and correct them within 60 days, in exchange for which HPD would waive all liability for civil penalties during that 60-day period. MFY understands that this bill seeks to encourage landlords to proactively identify and correct conditions in their buildings, and we support that goal in principle. We also support the bill's incorporation of both carrot and stick, in the form of doubled penalties if a landlord fails to take advantage of the 60-day period to correct violations. This is an important step towards curbing inevitable abuses of the compliance consultation program.

Unfortunately, the threat of increased penalties would not be enough to prevent landlords from manipulating the compliance consultation program. Further, the bill as written would endanger tenants by delaying the correction of hazardous and immediately hazardous violations. Finally, MFY questions whether lack of expert consultation is truly a significant barrier to landlords' correction of violations.

Landlords should not be able to request compliance consultations (and the accompanying immunity from civil penalties) after violations have already been placed. A landlord that has received a notice of violation does not need a consultation to confirm the existence of the violation. Rather, landlords would inevitably make use of this provision as a get-out-of-jail-free card to shield themselves from penalties and extend the statutory time to correct hazardous and immediately hazardous conditions, with no benefit to the City or to tenants. When a landlord has ignored tenant complaints of visible violations, it needs stronger incentives to make repairs, not an expert consultation to confirm what it has already been shown.

The bill currently allows HPD to designate any violation – including hazardous (class B) and immediately hazardous (class C) violations – as "eligible" for the compliance consultation program, and makes all non-hazardous (class A) violations automatically eligible. Hazardous and immediately hazardous violations should be categorically excluded from eligibility. It is simply too dangerous to delay correction of these violations. No tenant should ever have the experience of calling HPD to report a lack of heat, a cascading water leak, or a ceiling collapse, only to be told that the landlord need not correct the condition for 60 days. As written, this bill would create temporary lawless zones in which tenants would have no immediate recourse for conditions that threaten their health and safety.

Nor should all non-hazardous violations be eligible. Landlords do not need expert consultation to determine that peeling paint, cracked plaster, missing apartment numbers, or blown lightbulbs should be repaired. Landlords are already responsible for retaining expert workers to assess their buildings and identify potential code violations. Indeed, they benefit from tax-deductions for the expense of doing so. The vast majority of violations are placed in response to tenant complaints, meaning that most violations are already obvious and identifiable. It is doubtful that landlords' failure to correct these violations is actually caused by lack of understanding or awareness in any but a very few imaginable circumstances. If the goal of the bill is to help landlords identify potential violations of which they might otherwise be unaware, then the bill should provide express, detailed guidance to HPD in targeting only easy-to-miss violations or violations of a bureaucratic nature such as wrongly posted notices.

Finally, the bill should limit the frequency with which landlords can request compliance consultations. Currently the bill limits consultations for already-placed violations to every five years. The same limit should apply to all consultations.

MFY does support the bill's application of doubled penalties for violations that are not corrected within the 60-day grace period. This is a necessary condition to help ensure that landlords will make use of the grace period to correct violations. Given the importance of this provision, MFY urges that the application of double penalties be made mandatory and nonwaivable by HPD. The City's experiences with widespread J-51 and 421-a fraud show that it does not work to give landlords immediate, guaranteed benefits up front in exchange for uncertain enforcement down the line.

Intro 1504-2017

This bill would allow landlords to mitigate civil penalties when they correct violations by making energy-efficient improvements. MFY supports the principle and goal of increased energy efficiency. MFY strongly supports the bill's prohibition on the use of such improvements as grounds for rent increases such as major capital improvements under rent regulation. This provision is crucial to ensuring that tenants benefit from – or at least do not bear the cost of – increased efficiency and savings. MFY urges that this provision be amended to clarify that improvements under this program cannot be used as a basis for removal of any dwelling unit from rent regulation on the grounds of “substantial rehabilitation” under the Rent Stabilization Code. This amendment, while minor, would further the bill's goal.

Conclusion

While MFY supports the principle of encouraging landlords to be proactive in identifying and correcting violations, MFY believes that Intro 1507, as written, is overbroad and would dangerously expand the time for landlords to correct hazardous and immediately hazardous violations, while putting tenants in unsafe situations. MFY supports Intro 1504's goal of encouraging energy efficiency, but believes the bill needs strengthening to ensure that building improvements do not lead to deregulation and loss of affordable housing.