How to Comply with New Smoke Detector Requirements

In late December 2013, Mayor Bloomberg signed new smoke alarm regulations that came into effect in April 2014. Local Law 112 of 2013 was signed to address the public safety concern that apartments may be equipped with smoke alarms that no longer function properly. Properly installed and working smoke alarms can provide an early warning of the presence of fire, allowing sufficient time for occupants to escape. But all too often batteries that power alarms are either removed or not replaced when they expire.

(continued on p. 2)

Realty Advisory Board and Local 32BJ Reach New Labor Agreement

Averting a possible strike, SEIU 32BJ, the union representing residential building service workers in Manhattan, Queens, Brooklyn, and Staten Island, recently reached a labor agreement with the Realty Advisory Board, which negotiates collective bargaining agreements on behalf of property owners and operators with unions that represent their maintenance and operating employees. The deal covers more than 30,000 residential building service employees, including doormen, porters, handymen, and building superintendents, who work in more than 3,000 residential rentals, co-ops, and condos.

The negotiators came to an agreement nine days before the existing contract’s April 20 expiration. The agreement must be ratified by votes from 32BJ members and the full RAB board. Members of the 32BJ bargaining committee said in a statement that they plan to vote for ratification and are encouraging other members to follow suit. If ratified, the contract would continue a string of on-time agreements between the two parties. The last time 32BJ workers in the city went on strike was 1991.

In a statement, Howard Rothschild, president of the Realty Advisory Board, stated, “We are pleased to have reached a tentative agreement well before the contract deadline. We have once again shown...”

(continued on p. 6)
Smoke Detectors (continued from p. 1)

The New York City Fire Department (FDNY) reports that more than 77 percent of last year’s fire-related fatalities occurred in residences without working smoke alarms. “A working smoke alarm is critical to surviving a fire in the home. By alerting residents when a fire is present, smoke alarms provide the early alert and time needed to escape,” said Lieutenant Anthony Mancuso, director of Fire Safety Education for FDNY. “We encourage property owners and residents to understand the importance of smoke alarms; to replace any outdated, damaged, or missing alarms to comply with the new law; and to help keep New York City families safe.”

New Smoke Detector Requirements
Specifically, Local Law 112 amended article 312 of chapter 3 of title 28 the Administrative Code to require owners to replace required smoke alarms when they exceed the manufacturer’s suggested useful life.

Alarms installed before the effective date of the law (April 1, 2014) must be replaced by the later of six months after the effective date of the law or the expiration of the manufacturer’s suggested useful life of the alarm. A smoke alarm installed before the effective date and whose end of useful life isn’t known must be replaced with a compliant alarm within seven years of April 1, 2014.

And all newly installed alarms must be equipped with an audible “end of life” warning device and with a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years. A long-life battery sealed inside an alarm makes it virtually tamper proof and eliminates the risk of tenants disabling the alarm.

The law also amended the Housing Maintenance Code to clarify owner and tenant responsibilities. Owners are required to inform tenants of the owner’s duty to replace expired alarms, and tenants are required to reimburse owners for such replacement in the same manner as for newly installed alarms.

Summary of Owner Responsibilities
All owners of residential buildings containing three or more apartments must install one or more approved smoke detectors in each apartment unless each apartment in the building is fully sprinklered. The following summarizes how to comply with the smoke detector law:

Installation. Owners must provide and install at least one approved and operational detecting device in each apartment within 15 feet of the primary entrance to each sleeping room. Smoke alarms must comply with Underwriters’ Laboratories 217 standard and have a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years. It also must emit an audible notification at the expiration of the useful life of the alarm.
Smoke detectors may be mounted on either the wall or ceiling. If mounted on the wall, the detector must be four to 12 inches from the ceiling. If installed on the ceiling, a detector must be at least four inches from the wall.

**Posting.** Owners must post a notice in a common area informing occupants of their right to have smoke detectors. See our Model Notice: Post Smoke Detector Notice in Building’s Common Area.

**Maintaining detectors.** Tenants must maintain their smoke detectors once they’ve been installed. But owners must replace any detector that has been stolen, removed, missing, or rendered inoperable before a new tenant moves in if the prior tenant hasn’t replaced it.

But a smoke detector that becomes inoperable during the first year through no fault of the tenant must be repaired or replaced by the owner within 30 days.

**Records.** Owners must keep all records relating to the installation and maintenance of the detector and provide them to the Department of Housing Preservation & Development’s Division of Code Enforcement (HPD), the Department of Buildings, the Department of Health and Mental Hygiene, and the FDNY if requested. Information to save includes records of smoke detector installation, listing the apartment number, date of installation, date the detector was tested, date any maintenance work was performed, date any tenant requested repair or replacement, and the tenant’s name.

**Certificate of installation.** Within 10 days after all detectors have been installed in a building or when devices are changed according to the requirement time frames or whenever broken/missing devices are replaced, an owner must file a Certificate of Satisfactory Installation with HPD.

You can file either by using HPDONLINE (https://webapps.hpdnyc.org/HPDONLINE/provide_address.aspx) or by printing and properly completing certification of the installation forms. You must be validly registered with HPD in order to file this certificate online or using the forms.

**Charge to tenants.** Each tenant must reimburse the owner a maximum of $25, or a maximum of $50 where a combined smoke and carbon monoxide detecting device is installed, for the cost of providing and installing each detector. The tenant has one (1) year from the date of installation to make such payment to the owner.

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**Model Notice**

Post Smoke Detector Notice in Building’s Common Area

This notice must be posted in the public area of a building near the certificate of inspection. The notice must: (1) have letters not less than three-sixteenths of an inch in height; (2) have letters in bold type that are properly spaced to provide good legibility against a background of contrasting colors; (3) be durable and substantially secured to the common area where posted; (4) be of metal, plastic, or decal; (5) be posted in a well-lit area, so that the notice is easily legible; and (6) use language that captures all of the information in the Model Notice below.

**NOTICE: SMOKE DETECTORS**

The owner, ____________________________, of this building located at ____________________________, is required by law to post this notice advising tenants that the owner is required by law to provide and install one or more approved and operational smoke detectors in each apartment in this building and to periodically replace such devices upon the expiration of their useful life in accordance with article 312 of chapter 3 of title 28 of the New York City Administrative Code.

The law further makes the tenant of each apartment responsible for the maintenance and repair of the detectors installed in the apartment and for replacing any or all detectors which are stolen, removed, missing, or become inoperable during the occupancy of the apartment with a device meeting the requirements of article 312 of chapter 3 of title 28 of the Administrative Code.

The law also provides that the tenant of each Class A apartment in the building in which a battery-operated smoke detector is provided and installed shall pay the owner a maximum of twenty-five dollars ($25), or a maximum of fifty dollars ($50) where a combined smoke and carbon monoxide detecting device is installed, for the cost of providing and installing each detector. The tenant has one (1) year from the date of installation to make such payment to the owner.
Q & A

Preventing Fraud in Affordable Housing

Q The building I own receives tax benefits through the 421-a Affordable Housing Program. In exchange for these benefits, I must rent 20 percent of the apartments to low- to middle-income families and these units are subject to Rent Stabilization. To qualify for one of these coveted apartments, an applicant must meet strict household and income qualifications. If an applicant does qualify and becomes a tenant, he must certify household composition and income on an annual basis as a condition of his continued tenancy. I just discovered that a tenant in one of these affordable apartments has been concealing income for years, and had he disclosed this information, he wouldn’t have qualified for the apartment he’s been living in. Should I try to evict him now, or have I waived my right to do so? How is a court likely to rule?

A “You should absolutely seek to evict this tenant right away,” says Jeff Seiden, partner at Borah, Goldstein, Altschuler, Nahins & Goidel, P.C. The scarcity of affordable housing in New York City combined with the strict income requirements to obtain one of these units has led many applicants to withhold and conceal information about members of their household and their assets in an effort to qualify—and continue to qualify—for these affordable apartments, he says.

The good news, says Seiden, is that in a recent decision, an appeals court has made a strong statement that the failure of a tenant to fully disclose his assets and income, no matter when it’s discovered, constitutes material noncompliance with the Affordable Housing Program and will be grounds for eviction. This decision is a positive step in enabling owners to enforce the Affordable Housing Program rules and regulations and to protect their receipt of tax credits, he says.

In its strongly worded recent decision, the Appellate Term upheld a trial court’s finding that the failure of a tenant to fully disclose his assets and income is a noncurable ground for eviction as it constitutes a material noncompliance with the Affordable Housing Program, Seiden explains. In this case, the trial court found that in a tenant’s initial 2002 application and in his subsequent annual income certifications through 2006, the tenant failed to disclose hundreds of thousands of dollars in funds held in joint accounts with his mother in a New Jersey bank.

The tenant’s fraud wasn’t discovered until after he completed his 2007 recertification, when the owner discovered that he was reporting interest income on his taxes from a savings account in a New Jersey bank. Upon this discovery, the owner verified with the bank that the tenant was a joint holder of multiple accounts, which contained funds in excess of $200,000.

The tenant tried to convince the court that he didn’t intentionally fail to disclose his assets on his application and annual recertifications—he claimed that the jointly held funds were his mother’s assets and not his.

However, the tenant had signed signature cards for two of these accounts, giving him full access to the funds. The court determined that these accounts were assets that should have been disclosed on his initial application and annual recertifications. Despite the fact that the tenant had been residing in an affordable apartment for five years when these accounts were discovered, the court ruled it still constituted grounds for termination and eviction.

This is extremely important, because if the court were to permit a tenant to use the lack of intent as an excuse for noncompliance, it would create a loophole that would certainly encourage fraud, making the tax credit rules almost impossible to enforce, says Seiden.

The tenant also argued that since the accounts were located in a New Jersey bank, New Jersey banking laws should apply in determining ownership of the funds in the accounts. But the court rejected that argument and properly interpreted the HUD Handbook as not requiring an owner to adopt a particular state’s banking laws when determining eligibility for an affordable apartment in New York. To do so would permit an applicant to place his money in a joint account in another state or country and then claim that the money isn’t an asset for purposes of determining eligibility for low-income housing. That interpretation, notes Seiden, would permit unqualified persons to obtain low-income apartments by concealing their true wealth, and withhold these
low-income units from the people the program was designed to help.

“The biggest challenge for owners who manage apartments in the 421-a Affordable Housing Program is to ensure that the information they receive from applicants and tenants is truthful and complete. This ruling should aid owners in enforcing the rules of the Affordable Housing Program, as the court has made a strong statement that it is irrelevant how long the tenant has been living in the low-income apartment when the fraud is discovered,” says Seiden [501 West 41st St. Assocs. v. Annunziata, November 2013]. ♦

**DOB Violations: Tenant’s Rental to Tourists Violated Building Code**

DOB issued violation notices to landlord for operating an apartment building for transient use, as well as related violations of sprinkler, egress, and fire alarm regulations based on the building’s use for transient occupancy. At a hearing before the ALJ, a tenant testified that he had rented portions of his four-bedroom apartment to boarders through Airbnb, but claimed that he occupied the apartment with his roommate at the same time. The ALJ dismissed the violations after a hearing.

DOB appealed and won. ECB found that occupancy of the apartment by four tourists for less than 30 consecutive days while the permanent occupants were present in the apartment wasn’t consistent with using the apartment for permanent residence purposes. It was undisputed that on the date of the violations, the apartment was occupied by tenant, his roommate of 20 months, as well as two tourists who rented for two and five nights respectively. Total fines imposed against the landlord were $8,000.

• 448–452 West 57 Associates LLC: ECB App. No. 1400043 (3/27/14)

**DOB Violations: Must Landlord Remove Gas Meters in Hallways?**

DOB issued a violation notice to landlord for failing to maintain a building in a safe and code-compliant condition. DOB’s inspector noted that there were gas meters and gas piping installed in the public hallways of the building. Landlord claimed that the meters and piping were installed when the building was built in 1897. DOB argued that work on three gas meters in apartments was done in 2000 and 2003. The ALJ ruled against landlord and fined it $1,000. Landlord appealed, claiming that the meter work done in 2000 and 2003 didn’t require that all meters be removed from the public hallways, as required by the 1968 Building Code.

ECB ruled for landlord in part. Landlord hadn’t claimed that the meter work was a material alteration that brought the building or meters under the 1968 Building Code. Replacement of existing meters is exempt from the requirement that meters not be located in public hallways. But ECB sent the case back to the ALJ for further fact-finding on whether the meters were installed in the public hallways before 1938.

• 417 East 6 LLC: ECB App. No. 1400093 (3/27/14)

**Landlord’s Negligence: NYS Top Court Dismisses Tenant’s Mold Exposure Claim**

Tenant sued former landlord for personal injuries based on her exposure to mold and other toxins in her first-floor apartment. In 2002 and 2003, the building basement below tenant’s apartment was damaged by flooding. In 2003, a steam pipe burst in the apartment and water from the basement leaked out. Soon after that, tenant noticed mold in her bathroom and experienced body rash, shortness of breath, fatigue, disorientation, and headaches. Prior landlord told her to clean the bathroom with bleach and install a dehumidifier. She did so, and her symptoms disappeared.

Later that year, the building was sold and new landlord began renovation work in the basement. Tenant again experienced symptoms that didn’t respond to medication. She moved out and stopped paying rent. Landlord sued her for nonpayment.

The housing court ruled for tenant and gave her a complete abatement. Tenant then sued landlord. The court granted landlord’s request to dismiss the case without a trial. Tenant appealed, and the case was reopened.

(continued on p. 6)
Landlord v. Tenant (continued from p. 5)

The appeals court ruled that tenant had grounds for the case. Tenant’s experts had shown there were several studies linking toxic mold with symptoms like tenant’s. Two of the judges disagreed, stating that there was insufficient proof that the studies were generally accepted in the relevant scientific community.

Landlord then was granted permission to appeal by New York’s highest court, which dismissed tenant’s case. Among other things, the Court of Appeals ruled that tenant failed to show specific causation required to support a claim that her injuries were caused by indoor exposure to dampness and mold. Tenant’s expert didn’t identify the specific disease-causing agent she claimed she was exposed to and didn’t explain why he ruled out other diseases that were common causes of many of tenant’s medical conditions.

Management Basics (continued from p. 1)

how labor and management can sit down and work together with a shared purpose and find common ground.”

The new four-year agreement includes an average annual wage increase of 2.71 percent or approximately 11.3 percent over the length of the contract. The deal also fully protects the generous benefits packages that 32BJ members receive, including full family health insurance covering medical, dental, optical, and prescription drug coverage, with no employee premium contribution, and a defined benefit pension fund and 401K annuity with an employer contribution.

Here’s a rundown of the terms of the agreement:

Agreement length. The agreement is effective as of April 21, 2014, and will expire on April 20, 2018.

New hire rate. “Other” employees that are newly hired in the industry may be paid 75 percent of the minimum hourly rate for the first 21 months of their employment and 85 percent of the minimum hourly rate for the second 21 months of their employment. This provision doesn’t raise the vacation relief rate, which remains at 60 percent of the regular hourly rate, or affect those employees who are already receiving the 80 percent wage rate.

Schedule of wage increases:

(a) OTHERS:
1. Effective April 21, 2014—$25.60 per week ($0.64 per hour).
2. Effective April 21, 2015—$21.00 per week ($0.525 per hour).
3. Effective April 21, 2016—$22.00 per week ($0.55 per hour).
4. Effective April 21, 2017—$27.80 per week ($0.695 per hour).

(b) HANDYPERSONS:
1. Effective April 21, 2014—$27.60 per week ($0.69 per hour).
2. Effective April 21, 2015—$23.00 per week ($0.575 per hour).
3. Effective April 21, 2016—$24.00 per week ($0.60 per hour).
4. Effective April 21, 2017—$29.80 per week ($0.745 per hour).

(c) SUPERINTENDENTS:
1. Effective April 21, 2014—$28.60 per week ($0.715 per hour).
2. Effective April 21, 2015—$24.00 per week ($0.60 per hour).
3. Effective April 21, 2016—$25.00 per week ($0.625 per hour).
4. Effective April 21, 2017—$30.80 per week ($0.77 per hour).

Fund contribution increases. There are five types of funds. This lists the contributions for each fund according to the terms of the agreement:

1. Health Fund:
   • Effective Jan. 1, 2014—$15 per week
   • Effective Jan. 1, 2015—$15 per week

2. Pension Fund:
   • Effective Jan. 1, 2014—$4 per week
   • Effective Jan. 1, 2015—$4 per week
The parties also agreed to conduct additional training classes that will be added for identifying and preventing elder abuse and ensuring a respectful workplace.

5. Supplemental Retirement Savings Plan:
- No contribution change during the agreement.

Additional information regarding health fund. Given the uncertainty of the implementation of the recently enacted healthcare legislation and future legislation, both parties agreed that there won’t be duplication of coverage.

The parties also agreed to continue the Health Study Committee to achieve a savings of at least $70 million annually in the expenses of the Health Fund and that these savings will constitute a permanent savings to the Health Fund, preserving a minimum reserve of six full months of benefit costs and operating expenses for the funds.

And the waiting period has been changed from three months to 90 days for regular employees to comply with federal healthcare legislation. Vacation relief employees aren’t entitled to health fund coverage for the first five months of employment.

Contribution cap. The parties agreed to have a maximum contribution for health and pension in calendar year 2016 of $20.80 per week and 2017 of $23.20 per week.

Sickness benefits. The parties agreed that the paid leave benefits in the collective bargaining agreement are comparable to or better than those provided in the New York City Earned Sick Time Act (NYC Admin. Code §20-911). The provisions of the act are therefore waived.

Reduction in force. The union committed to expeditious utilization of the reduction in force provision and to meet monthly to address staffing changes at buildings.

Security background checks. In the past employers had the right to perform a security background check on a new employee or when the status of the building or employee changed. In the new agreement employers will also have the option of performing a security background check on current employees if there’s reasonable cause.

Employers seeking to perform a security background check on a current employee may do so after written notice to the union and the employee, in which the location and time of the incident are revealed. The union may then object to the background check object to the background check within five days, and if there remains an issue, there will be expedited arbitration.

In the event that the union doesn’t object, then the security check may be performed. Any information obtained in the security background check not directly related to the incident that gave rise to the check may not be used for any disciplinary action against the employee.

National Labor Relations Board. The contract allows for the deferral of unfair labor practices filed with the National Labor Relations Board to arbitration.

Committees. The parties agreed to create three new committees first convened after the 2012 Commercial Building Agreement. The Joint Advancement Project will concentrate on political issues from which the industry and union may derive common benefits. The New Development Committee will encourage real estate developers and the union to engage in special agreements that may modify wages, benefits, and work rules in newly constructed buildings to encourage responsible development. The parties will also continue the Veteran’s Transition Committee.

Superintendents and resident managers. In buildings with six or more employees, superintendents and resident managers fall under a contract that’s effective June 21, 2014. These employees will receive a weekly increase as specified in the superintendents section above.

Arbitration. Five additional arbitrators will be employed at the Office of the Contract Arbitrator.

Holidays. The agreement adds Veterans Day as an optional holiday. This won’t increase the number of paid holidays in the agreement.

Leave of absence. All leave time in the agreement will run concurrently with the Family and Medical Leave Act and city and state law, assuming these statutes are applicable. Employees on the job for more than two years, but less than five years won’t be entitled to up to 120 days of medical leave. Employees will also be entitled to up to four weeks of maternity or paternity leave. Note that the leave time in the collective bargaining agreement is unpaid.
Open to Read Your Latest Issue

B U I L D I N G  M A N A G E M E N T  C A L E N D A R

This calendar covers key dates in the period from May 1 through June 16, 2014.

<table>
<thead>
<tr>
<th>DATE</th>
<th>TO DO</th>
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<tr>
<td>5/1 THU</td>
<td>❑ Send Income Certification form to high-rent tenants. Today is the last day to deliver or mail the DHCR Income Certification form to rent-stabilized and rent-controlled tenants whose rent is $2,500 or more per month. If you send the form by mail, make sure your envelope is postmarked no later than April 30, 2014.</td>
<td>Call HPD’s Office of Tax Incentive Programs at (212) 863-5517.</td>
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<td>❑ File J-51 application. The second filing period in 2014 for filing the J-51 tax abatement applications with HPD begins today. Applications can be filed during this period up to and including June 16, 2014.</td>
<td>Go to <a href="http://www.nyc.gov/html/gbee">www.nyc.gov/html/gbee</a></td>
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<td></td>
<td>❑ Submit Annual Water &amp; Energy Benchmarking Data. If you own a large building as defined by Local Law 84 of 2009, today is the last day to submit annual water and energy benchmarking data to the city.</td>
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<tr>
<td>5/26 MON</td>
<td>❑ Use Memorial Day building schedule. Memorial Day is a Building Service Employees’ Union (Local 32B-32J) contract holiday. It’s also a Sanitation Department workers’ holiday, which means there’s no garbage pickup or street cleaning.</td>
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<tr>
<td>5/31 SAT</td>
<td>❑ Heating season ends. Today is the last day of the heating season. Owners are not required to provide heat to tenants from June 1 through Sept. 30.</td>
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<tr>
<td>6/16 MON</td>
<td>❑ File J-51 application. The second filing period in 2014 for filing the J-51 tax abatement applications with HPD ends today. If mailed, the application must be post-marked no later than June 16, 2014.</td>
<td>Call HPD’s Office of Tax Incentive Programs at (212) 863-5517.</td>
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