

Chapter 39: Revocation of Tax Benefits

§ 39-01 Definitions.

As used in this chapter, the following terms shall have the following meanings:

Administrative Code. "Administrative Code" shall mean the Administrative Code of the City of New York.

Application. "Application" shall mean, collectively, any application for Tax Benefits submitted to HPD and all documents submitted therewith.

Approval Date. "Approval Date" shall mean the date upon which HPD approves the Certificate of Eligibility as stated therein.

Assistant Commissioner. "Assistant Commissioner" shall mean an Assistant Commissioner of HPD who has jurisdiction over Tax Benefit programs or such other person as may be designated in writing by the Commissioner of HPD.

Cause. "Cause" shall mean any Violation, Misrepresentation, Omission, Failure, or Discrimination, without regard to the date upon which HPD discovers such Violation, Misrepresentation, Omission, Failure, or Discrimination.

Cause Date. "Cause Date" shall mean the first date upon which any Cause occurred, without regard to the date upon which such Cause was discovered by HPD.

Certificate of Eligibility. "Certificate of Eligibility" shall mean a written final determination by HPD, issued on the basis of an Application, that a Property is eligible for the Tax Benefit. A Certificate of Eligibility shall not include a declaratory ruling or any other preliminary or informal communication regarding an actual or prospective Application.

Comments. "Comments" shall mean any written comments and/or information that the Taxpayer submits to HPD during the Comment Period regarding the alleged Cause for Revocation of a Tax Benefit.

Comment Period. "Comment Period" shall mean a period specified in the Initial Notice during which the Taxpayer may submit Comments to HPD.

Cure Agreement. "Cure Agreement" shall mean an agreement with a Taxpayer (i) requiring such Taxpayer to cure a Cause for Revocation, and (ii) providing that the Tax Benefit will remain in place if the Taxpayer and any successors or assigns comply with all of their respective obligations thereunder; provided, however, that such agreement may provide for the partial or temporary Revocation of a Tax Benefit in the event of a partial cure or a cure that does not rectify a period of non-compliance.

Determination Notice. "Determination Notice" shall mean a written notice from HPD to the Taxpayer delivered after the Hearing or, if there is no Hearing, after the Comment Period stating the determination of the Assistant Commissioner regarding whether a Tax Benefit will be Revoked or will remain in effect. Any Determination Notice stating that a Tax Benefit will be Revoked shall specify the Revocation Date.

DHCR. "DHCR" shall mean the Division of Housing and Community Renewal of the State of New York or any successor agency.

Discrimination. "Discrimination" shall mean the direct or indirect denial to any person of any housing accommodations in the Property receiving the Tax Benefit, or any of the privileges or services incident to occupancy of such housing accommodations, in violation of any local, state or federal law prohibiting discrimination on the basis of race, color, creed, national origin, gender, sexual orientation, disability, marital status, age, religion, alienage or citizenship status, or the use of, participation in, or eligibility for a governmentally funded housing assistance program, including, but not limited to, the section 8 housing voucher program and the section 8 housing certificate program, 42 U.S.C. §§ 1437 et seq., or the senior citizen rent increase exemption program, pursuant to either chapter seven of title 26 or section 26-509 of the Administrative Code; provided however, that "Discrimination" shall not include any act for which the applicable Law does not permit the Revocation of the Tax Benefit. The term "disability" as used in this subdivision shall have the meaning set forth in § 8-102 of the Administrative Code.

DOF. "DOF" shall mean the Department of Finance of the City of New York or any successor agency.

Effective Date. "Effective Date" shall mean the date upon which a Tax Benefit commences pursuant to applicable Law.

Expiration Date. "Expiration Date" shall mean the date upon which a Tax Benefit would expire pursuant to applicable Law.

Factual Issue. "Factual Issue" shall mean one or more issues of fact which, if resolved in favor of the Taxpayer, would require the conclusion that Cause for Revocation does not exist.

Failure. "Failure" shall mean the failure to (i) keep, preserve or make available upon request by HPD any Records required to be kept and maintained pursuant to 28 RCNY § 39-06 or pursuant to any other provision of this title or any Law, (ii) appear before HPD at any time or place named in a summons, or (iii) give testimony under oath as may be relevant or material to HPD's inquiry relating to a Tax Benefit.

Hearing. "Hearing" shall mean an administrative hearing regarding one or more Factual Issues to determine whether there is Cause to revoke a Tax Benefit, at which administrative hearing the Taxpayer may be represented by counsel and may present witnesses and other evidence.

Hearing Notice. "Hearing Notice" shall mean a written notice from HPD to the Taxpayer stating the date, time, and location of a Hearing, identifying one or more Factual Issues to be addressed at such Hearing, and informing the Taxpayer that he or she may be represented by counsel and may present witnesses and other evidence at such Hearing.

Hearing Officer. "Hearing Officer" shall mean a person designated by HPD.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York or any successor agency.

Initial Notice. "Initial Notice" shall mean a written notice from HPD to the Taxpayer stating the intention to Revoke a Tax Benefit for Cause and the proposed Revocation Date, identifying the Property and Tax Benefit affected, briefly describing the alleged Cause for Revocation of such Tax Benefit, stating the Comment Period, and providing an address for the submission of Comments during the Comment Period.

Law. "Law" shall mean, collectively, the Real Property Tax Law, any provision of the Administrative Code enacted pursuant thereto, and any rule of the City of New York promulgated pursuant thereto.

Misrepresentation. "Misrepresentation" shall mean the submission of an Application which contains incorrect, misleading or fraudulent information.

Noticed Property. "Noticed Property" shall mean a Property that is the subject of an Initial Notice, Pre-Hearing Notice, Hearing Notice, or Determination Notice.

Omission. "Omission" shall mean the submission of an Application which omits material information.

Pre-Hearing Notice. "Pre-Hearing Notice" shall mean a written notice from HPD to the Taxpayer stating (i) that the Taxpayer may request a Hearing prior to Revocation regarding one or more Factual Issues identified in such notice, (ii) the date by which such written request must be received by HPD,

and (iii) an address for the submission of such written request.

Property. "Property" shall mean the real property receiving a Tax Benefit, including the land and all improvements thereon.

Records. "Records" shall mean all books, papers, records or other data which may be relevant or material to any Application or Tax Benefit, including an annual schedule of rents for each dwelling unit in the Property where so required by the Law governing any Tax Benefit.

Revocation or Revoke. "Revocation" or "Revoke" shall mean any partial or total suspension, reduction, termination or revocation of any Tax Benefit which takes effect as of a date which precedes the Expiration Date of such Tax Benefit, except where State law specifically authorizes the termination of one Tax Benefit upon the commencement of another Tax Benefit.

Revocation Date. "Revocation Date" shall mean the date as of which HPD proposes to Revoke, or does Revoke, a Tax Benefit. The Revocation Date may be upon such date as HPD may determine, but shall not precede the Cause Date unless the Property received a Tax Benefit before fulfilling all eligibility criteria for such Tax Benefit, in which case the Revocation Date may precede the Cause Date.

Tax Benefit. "Tax Benefit" shall mean any exemption from or abatement of real property taxation pursuant to Law with respect to which HPD makes determinations of eligibility.

Taxpayer. "Taxpayer" shall mean (i) the individual or entity located at the address to which DOF sends tax bills for the applicable Property, (ii) any current holder of fee title to such Property whose interest is clearly recorded in the office of the City Register in the applicable borough, and (iii) any current mortgagee of such Property whose mortgage interest in such Property is clearly recorded in the office of the City Register in the applicable borough.

Violation. "Violation" shall mean any non-compliance with applicable Law.

(Amended City Record 3/15/2017, eff. 4/14/2017)

§ 39-02 Revocation of Tax Benefits for Cause.

(a) HPD may Revoke a Tax Benefit for Cause at any time through the procedure set forth in this section.

(b) HPD shall deliver an Initial Notice to the Taxpayer by the method provided herein for delivery of notices.

(c) The Taxpayer may submit Comments to HPD during the Comment Period. HPD may thereafter meet with such Taxpayer if such Comments contain either (i) credible evidence that a Factual Issue exists, or (ii) a proposed cure for the alleged Cause for Revocation which HPD determines may be reasonably practicable.

(d) [Reserved.]

(e) If HPD determines that the alleged Cause for Revocation of the Tax Benefit is curable and that the Taxpayer has proposed a practicable cure, HPD may enter into a Cure Agreement with such Taxpayer. HPD may require the Taxpayer to record any such Cure Agreement against the Property receiving such Tax Benefit.

(f) If HPD does not enter into a Cure Agreement with the Taxpayer and either receives no Comments during the Comment Period or determines after reviewing such Comments that there is no Factual Issue concerning the Cause for Revocation, HPD shall deliver a Determination Notice to the Taxpayer by the method provided herein for delivery of notices stating that the Tax Benefit has been Revoked as of the Revocation Date set forth therein.

(g) If HPD determines that a Factual Issue exists, HPD shall deliver a Pre-Hearing Notice to the Taxpayer by the method provided herein for delivery of notices.

(h) If the Taxpayer requests a Hearing after receiving a Pre-Hearing Notice, HPD shall schedule a Hearing and shall deliver a Hearing Notice to the Taxpayer by the method provided herein for delivery of notices. Notwithstanding any provision of these rules to the contrary, a Taxpayer may waive its right to a Hearing.

(i) At the Hearing, the Taxpayer will have an opportunity to present witnesses and other evidence regarding any Factual Issue specified in the Hearing Notice.

(j) Upon conclusion of any Hearing, the Hearing Officer shall issue a written report containing findings regarding the Factual Issue(s) and a recommendation regarding whether or not the Tax Benefit should be Revoked.

(k) The Hearing Officer shall forward such report and recommendation, together with the record of the Hearing, to the Assistant Commissioner.

(l) The Assistant Commissioner shall review the report and recommendation of the Hearing Officer, shall determine whether or not the Tax Benefit should be Revoked and shall thereafter deliver a Determination Notice to the Taxpayer by the method provided herein for delivery of notices.

§ 39-03 Requirements of Law Survive Revocation.

The Revocation of a Tax Benefit pursuant to this chapter shall not exempt any housing accommodations in the applicable Property from continued compliance with the requirements of the Law pursuant to which such Tax Benefit was granted, including, but not limited to, any provision of such Law regarding rent control or rent stabilization. Such housing accommodations shall be operated in compliance with such requirements of such Law until the Expiration Date or for such longer period as may be specified by Law.

§ 39-04 Rent Stabilization.

At any Hearing, the information contained in DHCR's database shall be definitive evidence of whether any housing accommodations have been registered with DHCR which may only be rebutted by the presentation of certified copies of other DHCR documentation.

§ 39-05 Notices.

HPD shall deliver all Initial Notices, Pre-Hearing Notices, Hearing Notices, and Determination Notices to the Taxpayer by mail to (i) the address to which DOF delivers real property tax bills for the Noticed Property, (ii) the last address indicated in documents recorded in the office of the City Register for any Taxpayer holding fee title to the Noticed Property, (iii) the last address indicated in documents recorded in the office of the City Register for any Taxpayer holding a mortgage on the Noticed Property, (iv) the address of any owner registered for the Noticed Property in accordance with Article two of subchapter four of Chapter two of Title twenty-seven of the Administrative Code, and (v) the address of any agent registered for the Noticed Property in accordance with Article two of subchapter four of Chapter two of Title twenty-seven of the Administrative Code. Any such notice shall be deemed to have been given upon the third day after such notice has been deposited in the United States mail.

(Amended City Record 3/15/2017, eff. 4/14/2017)

§ 39-06 Record Keeping, Subpoenas and Oaths.

(a) For any Application granted on or after January 1, 2010, the Taxpayer shall keep and maintain all Records for six years after the later of the Approval Date or the Effective Date, and shall make such Records available for inspection by HPD upon written request therefor. For any Application

granted before January 1, 2010, the Taxpayer shall keep and maintain all Records required by the Law pursuant to which the Tax Benefit was granted or by any other applicable law or rule.

(b) At any time subsequent to the filing of an Application, HPD may (i) examine any Records, and (ii) summon any person, including, but not limited to, the Taxpayer or an officer, director, member or employee of the Taxpayer, or any person having, or having had, possession, custody or control of Records requested or granted, or any person or firm that participated in the construction, conversion or rehabilitation of the Property that requested or was granted the Tax Benefit, to appear before HPD at the time or place designated in the summons or to produce such Records, and to give such testimony under oath as may be relevant or material to the Tax Benefit requested or granted.