



## Guidance for landlords and sponsors on tenant buyouts

By Erica F. Buckley and Ari Lipsky

On November 3, 2017, New York State Attorney General Eric T. Schneiderman announced a \$132,000 settlement reached with a prominent landlord located in Bushwick, Brooklyn, for violation of New York City's new anti-harassment law specifically addressed to regulate tenant buyout offers in residential rental buildings. According to the New York Attorney General's (NYAG's) office press release, the landlord, after having purchased buildings in Bushwick, approached rent-stabilized tenants and offered them money to move out of their apartments—a tactic generally known as a “buyout offer.” The NYAG press release also stated that the landlord failed to provide tenants with the required written notice under New York City local law enacted in December of 2015. A copy of the press release is available [here](#).

Therefore, for any landlord or sponsor seeking to propose a buyout offer to a tenant, written notice to the tenant must accompany the buyout offer, following the guidelines detailed in Title 27, Chapter 2, Subchapter 1, Article 1, Section 2004(a)(48)(f-2) of the New York City Administrative Code (the Tenant Buyout Law). As per the Tenant Buyout Law, the following statements must be made as part of the written notice:

- That the tenant is being contacted by the landlord regarding a proposed buyout offer.
- That the tenant has every right to reject the proposed buyout offer, and doing so will not have any negative consequences on the tenant's ability to remain in occupancy of his/her residence.
- That the tenant may seek legal counsel and/or refer to “The ABCs of Housing” guide on the Department of Housing Preservation and Development (HPD) website before reaching a decision regarding a buyout offer, a copy of which is available [here](#);
- That the buyout offer is being made by or on behalf of the landlord.
- That the tenant can, in writing to the landlord, refuse to be further contacted regarding any proposed buyout offer, and such written refusal will bar the landlord from contacting the tenant regarding any proposed buyout offer for 180 days.

In addition to the required written notice, a landlord or sponsor also must be cognizant of the manner in which he communicates with the tenant regarding the buyout offer. Specifically, Subsection (f-3) of the Tenant Buyout Law provides that a landlord may not propose a buyout offer by (1) threatening, intimidating or using obscene language; (2) communicating with tenant at such unusual hours of the day or in such a manner that can reasonably be expected to abuse or harass the tenant; (3) communicating with tenant at the tenant's place of employment without the prior written consent of the tenant; or (4) knowingly falsifying or misrepresenting information provided to the tenant as part of the proposed buyout offer.

For those landlords looking to convert residential rental buildings to cooperative or condominium status, there is an additional level of disclosure necessary. The NYAG, through the Department of Law of the State of New York, published a memorandum on July 9, 2015, titled "Tenant Buyouts" (the Tenant Buyout Memo). In this memorandum, the NYAG takes the position that certain buyouts consummated prior to the submission of the Red Herring and all buyouts during the review of the Red Herring violate the Martin Act. Moreover, if the sponsor intends to offer buyouts, this fact must be stated in the Red Herring and Black Book, along with a disclosure regarding tenants' rights to say "no" to the buyout and instead remain in occupancy as a non-purchasing tenant (or to buy and become a homeowner). Therefore, for those sponsors looking to convert residential buildings to cooperative or condominium status, the offering plan must comply with the Tenant Buyout Memo as well as the Tenant Buyout Law—both of which must be adequately disclosed. A copy of the NYAG Tenant Buyout Memo is available [here](#).

Attorney General Schneiderman has made it clear that the NYAG will "aggressively enforce" laws aimed at protecting tenants from harassment, including those governing tenant buyout offers. Therefore, any landlord or sponsor considering proposing a buyout offer in residential rental buildings, especially those converting to cooperative and condominium status, should diligently follow the guidelines set forth above.

For more information on the content of this alert, please contact your regular Nixon Peabody attorney or:

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