

**CITY OF NEW YORK
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**

Notice of Adoption

Notice of Adoption of rules relating to order to correct underlying conditions program rules.

NOTICE IS HEREBY GIVEN pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development by sections 1043 and 1802 of the New York City Charter and Administrative Code sections 27-2041.2 and 27-2090, and in accordance with the requirements of New York City Charter section 1043, that the Department promulgates amendments to paragraph 1 of subdivision c of section 44-03 of Chapter 44 of Title 28 of the Rules of the City of New York relating to the repair of underlying conditions. On July 20, 2023, HPD held a public hearing on the proposed rule. No comments were received.

Statement of Basis and Purpose

Subdivision c of Administrative Code section 27-2091, which was added by Local Law 6 of 2013, grants HPD the authority to issue an order to a building owner to correct any underlying condition existing in that building that has caused or is causing a violation of the Housing Maintenance Code, the New York State Multiple Dwelling Law, or any other state or local law that imposes requirements on dwellings. This is known as the Underlying Conditions Program. HPD selects approximately 50-100 buildings, per year, for participation in the Underlying Conditions Program. Selection is based on the severity of violations and the number of dwelling units affected by the underlying condition.

HPD promulgated rules that set criteria for selection of buildings for the Underlying Conditions Program, requirements regarding owner compliance with the Underlying Conditions Order, issued in accordance with Administrative Code section 27-2091, and circumstances under which HPD may rescind an Underlying Conditions Order. Amendments to the rules in 2022 added consideration of certain health indicators by the Department of Health and Mental Hygiene that are related to housing conditions as a factor to prioritize in the selection of buildings. These amendments to the rules clarify the documentation required to demonstrate correction of the underlying conditions relating to mold and water leak violations in order to achieve compliance with the order and secure its dismissal. This clarification, regarding documentation, is intended to assist owners in correcting their violations relating to indoor allergen violations more expeditiously by informing them of the documents necessary to complete their certification of correction, which will assist in the rescission of the Underlying Conditions Order.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

§ 1. Paragraph 1 of subdivision c of section 44-03 of Title 28 of the Rules of the city of New York is amended to read as follows:

(1) If there are no Underlying Conditions:

- (i) An owner must submit an affidavit from a New York State licensed professional engineer or registered architect in a form approved by the Department stating that there are no Underlying Conditions that are causing the mold and water leak violations; [and]
- (ii) An owner must submit a completed dismissal request form pursuant to 28 RCNY Chapter 9; and
- (iii) An owner must submit evidence that the building is in compliance with Administrative Code §27-2017.2(b) and 28 RCNY §54-02. An owner may elect to use the Control of Pests and Other Asthma Allergen Triggers – Sample Investigation Form available at: [indoor-allergen-hazards-sample-investigative-report.pdf \(nyc.gov\)](#) to document the inspection and any remedial actions taken.

§2. Subparagraph (i) of paragraph 2 of subdivision (c) of section 44-03 of Title 28 of the Rules of the City of New York is amended to read as follows:

(i) An owner must submit an affidavit from a New York State licensed professional engineer or registered architect in a form approved by the Department identifying the Underlying Condition that was the source of the mold or water leak violations, stating that the Underlying Condition and related violations were properly repaired, [and] identifying who repaired the Underlying Condition and related violations [;], and stating that such work to correct mold violations was performed pursuant to the work practices provided in Administrative Code § 27-2017.9 and 28 RCNY §54-04(b).

§3. Subparagraph (ii) of paragraph 2 of subdivision (c) of section 44-03 of Title 28 of the Rules of the City of New York is renumbered subparagraph (iii), and a new subparagraph (ii) is added, to read as follows:

(ii) An owner must submit evidence that the building is in compliance with the owner’s responsibility to notify tenant occupants and to investigate complaints, pursuant to Administrative Code §27-2017.2 (b) and 28 RCNY §54-02. An owner may elect to use the Control of Pests and Other Asthma Allergen Triggers – Sample Investigation Form available at: [indoor-allergen-hazards-sample-investigative-report.pdf \(nyc.gov\)](#) to document the inspection and any remedial actions taken.

(iii) An owner must submit a completed dismissal request form pursuant to 28 RCNY Chapter 9.