

REBNY Testimony | March 23, 2026

The Real Estate Board of New York to The New York City Loft Board

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY appreciates the opportunity to provide comments on the proposed Protected Occupancy amendments and the proposed amendments to Article 7-B Compliance and amendments to the fine schedule.

Protected Occupancy

The proposed amendments would codify the Loft Board's comprehensive review and evaluation of evidence in determining whether a tenant qualifies for protected occupancy.

The proposed changes would clarify that representations or deductions on tax returns prior to filing for protected occupancy are not determinative on their own and would expand the range of evidence that the Loft Board may consider. Additional documentation such as employment records, school records, and bank records could be used to help determine whether a unit is being used as a tenant's primary residence.

Providing the Loft Board with broader authority to review multiple forms of documentation is a positive step. These amendments would allow the Board to take a more holistic approach when evaluating protected occupancy claims and ensure that determinations are based on a comprehensive review of relevant evidence rather than reliance on a single factor.

The Loft Board should provide clear guidance on how these evidentiary factors will be weighed in protected occupancy determinations to ensure transparency and predictability for both tenants and building owners.

Article 7B Compliance

The proposed amendments would change how building owners demonstrate compliance with the fire and safety standards of Article 7-B and would require owners to obtain a Temporary Certificate of Occupancy (TCO) or Final Certificate of Occupancy (CO) where an Article 7-B certification was previously filed prior to the effective date of these rules.

Requiring Department of Buildings (DOB) verification of compliance is a constructive change. The current reliance on self-certification has created uncertainty and, in some cases, legal challenges due to the relationship between Article 7-B compliance and Loft Law legalization rent increases. Establishing DOB as the sole authority responsible for determining compliance would provide greater clarity, consistency, and administrative certainty for both owners and tenants.

However, the proposed fine structure raises significant concerns. The imposition of penalties on building owners who achieved compliance milestones years ago is inequitable. Owners who previously satisfied Article 7-B certification requirements under the rules in place at that time should not be subject to new penalties because a building has not yet obtained a Final Certificate of Occupancy.

In many cases, the delay in obtaining a Final CO is not the result of noncompliance but rather structural realities associated with mixed-use buildings. Many loft buildings contain both residential and commercial uses, and the commercial space often provides the revenue necessary to finance the legalization of residential units and maintain building operations. Where commercial tenant turnover occurs, a common situation in mixed-use properties, open alteration applications at DOB may prevent issuance of a Final Certificate of Occupancy for the building as a whole. As a result, owners may be unable to obtain a final residential CO even where substantial legalization work has been completed.

This dynamic has been common practice in loft buildings for decades. Commercial income is frequently necessary for owners to pay property taxes, building staff, and ongoing maintenance costs while completing the complex legalization process required under the Loft Law.

Rather than imposing retroactive penalties, the Loft Board should work with DOB to identify the underlying reasons buildings have not obtained Final Certificates of Occupancy and consider alternative compliance pathways for buildings that previously satisfied Article 7-B requirements. Any enforcement framework should recognize the practical realities of mixed-use buildings and avoid penalizing owners who made good-faith efforts to comply with earlier regulatory requirements.

Thank you for your consideration of these points.

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