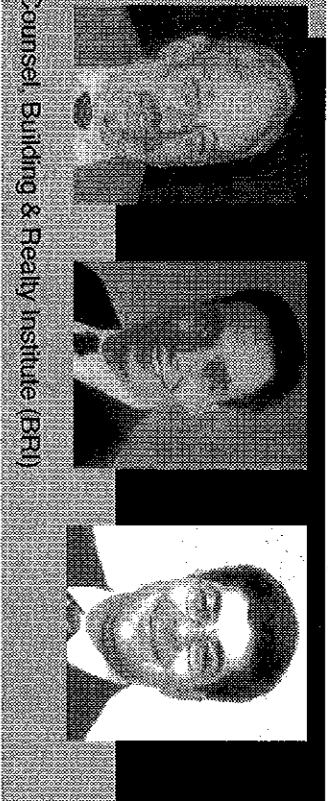


Section 8 Revisited Once Again and Again

COUNSELS' CORNER

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WHITE PLAINS - In a recent decision, the Appellate Term, Ninth and Tenth Judicial District, in the matter of 7 Highland v. McCray, has cast the issue of the ability of a Landlord to take advantage of the repeal of the "take one take all" and "endless lease" requirements of Section 8, into abject confusion.

This matter arose out of a non payment proceeding brought against a tenant who had been receiving Section 8 payment and the Landlord chose to opt out of the program regarding this tenant at the end of her lease renewal. The Yonkers City Court, based on prior decisions of, among others, the New Rochelle City Court, issued a judgment in favor of the Landlord. The Tenant appealed, with support from the Yonkers Housing Authority, claiming that the landlord had to continue to accept Section 8 payments on behalf of the tenant.

In this case the landlord had purchased the building after the prior landlord had decided to accept Section 8 subsidies. The Appellate Division reversed, and while not directing the landlord to accept the Section 8 payments, dismissed the petition. The court said that since the landlord had previously renewed the lease on the same terms and conditions as existed prior thereto, including the acceptance of the Section 8 rent payments, it did not have the option at a later time (after

the building was purchased by a new landlord), of failing to renew on the "same terms and conditions," including the participation in the Section 8 program. The Court declined to decide one of the primary issues put forth by the Landlord, i.e., that the Federal law pre-empt the state law in this regard and that a determination of this nature in effect puts state law above federal law. The Court appeared to be more concerned about protecting the Tenant's "right" to get Section 8 payments once the landlord had taken some action to confirm same - in this case by formerly renewing leases containing the Section 8 rental subsidies and the Housing Assistance Payment Contracts under Section 8. The court concluded that since in the prior lease renewals the tenant had not agreed to pay the Section 8 portion of the rent, the Landlord could not now compel the tenant to do so, in effect reinstating the "endless lease" provision previously amended out of the law by Congress in 1996 and 1998. The Court refused to direct the Landlord to accept Section 8 rent payments since City Courts do not have injunctive powers and this would be in effect, an injunctive relief. Thus, the Landlord is left with the option of accepting Section 8 rent, or none at all over the tenant's portion - not an acceptable option for any landlord.

The Apartment Owners Advisory Council(AOAC), as advisor and representative of its member apartment owners was concerned that the issues raised in this case, while presumably long dormant and decided as a result of the 1996 and 1998 repeal(s) of the "endless lease" provisions of the Section 8 program, will have a substantial impact on every member of the AOAC. The issues transcend the individual landlord and tenant herein and impact on every landlord who wants or does not want to participate in various government

programs, such as Section 8. It is the position of the AOAC that to mandate, once again, the "take one, take all" and "endless lease" provisions, which were repealed by Federal Law, under the guise of the EITPA, would destroy the Section 8 program by eliminating its voluntary nature and thus, eliminating any landlord participation in the program in the first instance. The AOAC believes that the decision of the City Court, New Rochelle, in the case of 30 Eastchester, LLC v. Healy, 2002 WL 553709 (2002) was accurate and correct, where the Judge said "Since its inception, a hallmark of the Section 8 program has been its voluntary aspect. No landlord is required to participate in the Section 8 program or to take a Section 8 tenant.... At present, however, these obligations do not include the requirement that the landlord remain forever

bound to a Section 8 tenant or the Section 8 program. (emphasis added). This amendment [the repeal of the "endless lease" and "take one take all" provisions] was made a permanent part of the Housing Act in 1998. The effect of the statutory change was to eliminate the "endless lease" interpretation of such provision and clarify that a landlord could terminate a Section 8 tenant's lease and a tortiori, its participation in the Section 8 program when the term of the tenant's lease expires."

The Landlord has applied for permission to appeal and we shall keep you advised on the next step in this saga.

Editor's Note: Finger and Finger is chief counsel to the Building and Realty Institute (BRI). The firm is based in White Plains.

THE HANLEY REPORT

By Jeff Hanley
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A Look Back and a Look Forward

ARMONK - A recent tradition is one of the major highlights of this month's issue of *IMPACT*.

Continuing a section we've featured each December in recent years, the center pages of this edition feature a "Year in Review Photo Display." The report features a review of some of the more memorable meetings and seminars that were produced for members of the building, realty and construction industry by the Building and Realty Institute (BRI).

The BRI, the publisher of *IMPACT*, sponsored more than 55 meetings and seminars during 2005. As always, the conferences covered issues of importance to the BRI and its affiliate organizations: The Apartment Owners Advisory Council (AOAC), the Cooperative and Condominium Advisory Council (CCAC) and the Advisory Council of Managing Agents (ACMA). The BRI is one of the largest business membership organizations in New York state. The association has more than 1,700 members in 14 counties of New York.

Other highlights of the issue include:

- A Page One report on the Nov. 29 meeting of the Westchester County Rent Guidelines Board. The board certified its guideline increases for renewal leases between October 1, 2005 and September 30, 2006 at the meeting amidst some tense moments.
- A Page One report on the November 7 General Membership Meeting of the CCAC. The report, prepared by Dorothy M.

Finger of Finger and Finger, chief counsel to the BRI, reviews an important presentation at the meeting on the various insurance coverages co-ops and condos should have in place. Levit-Furist Associates, insurance manager for the CCAC and the BRI, coordinated the program in conjunction with the CCAC's staff.

- A report in Co-op and Condo Corner on what facts boards of directors should keep in mind this winter on heating issues. Herb Rose authored the article, which is "can't miss reading" for boards and property managers.
- A feature story on how Pat Baldotti, a longtime member of the BRI, is helping an athlete pursue his dream of competing in the upcoming Winter Olympic Games in Torino, Italy. The games are scheduled to begin in February.
- A photo report on the Dec. 8 Industry Appreciation and Holiday Reception of the BRI at the historic Estherwood Mansion in Dobbs Ferry. Several longtime BRI members were cited for their noteworthy contributions to the building and realty industry at the event.
- A Development Case Study on how CPC Resources Inc., a subsidiary of The Community Preservation Corporation

(CPC), helped to coordinate "A Hudson River Revival" in an update municipality. CPC's a longtime member of the BRI.

- A report on Ginsburg Development LLC (GDC) receiving three building and realty industry awards. GDC is also a longtime member of the BRI.

What's Ahead

A Page One story summarizes the scheduling of the BRI's first General Membership Meeting of 2006. The meeting, set for Thursday, Jan. 19, will feature Westchester County Executive Andy Spano as the guest speaker. Spano will review issues of importance to building and realty industry members.

The report also mentions that 2006 marks the 60th anniversary of the formation of the BRI. The anniversary will be commemorated throughout the year. Many members of the BRI probably remember the association marking its 50th anniversary in 1996 with year-long events. The association will repeat that commemoration in the year ahead. More details will follow in the weeks ahead.

Enjoy the issue - and a happy, healthy and prosperous New Year to all of our readers!

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