

CLIENT ADVISORY

OCTOBER 2004

CHALLENGE TO NEW LEAD PAINT LAW DISMISSED

New York City's new lead paint law, **Local Law 1 of 2004**, which we described in detail in the March 2004 issue of this Client Advisory, became effective August 2, 2004. An effort by landlord organizations to have the statute declared invalid has been rejected by the New York Supreme Court.

In **Matter of Community Preservation Corp. v. Miller**, NYLJ September 2, 2004, p. 19, col. 3 (Sup. Ct. N.Y. Co.), the petitioners were non-profit organizations that were or that represented landlords who purchased and renovated pre-1960's buildings containing low- or moderate-income housing. They claimed that the new lead paint law (1) did not comply with the **State Environmental Quality Review Act, Environmental Conservation Law, §§ 8-0101 et seq. ("SEQRA")**, or the applicable city regulations (**NYCRR 617.7 [b][3]**), (2) was a denial of the petitioners' due process rights, and (3) was beyond the power of the City Council to adopt. They argued that they were injured by the new law because enforcement of its stricter remediation and notification requirements would force them to incur additional financial burdens that would make it impossible for them to purchase and renovate low and moderate income dwellings. This, they argued, would lead to the displacement of area residents and reduced availability of low income housing.

The Court dismissed the petition, holding that the petitioners did not have standing to challenge the new law. Economic harm alone is not enough to create standing to sue under **SEQRA**; there must be environmental injury to the petitioners as well, separate from any injury suffered by the public at large. Here, the Court found, the allegation of an environmental injury based on no more than speculation that the housing stock would decrease because the petitioners would abandon their buildings as a result of increased expenses was not "within the zone of interest protected by **SEQRA**."

In addition, the Court held that the courts had long recognized the power of the City Council to enact such legislation and that the law's presumptions that lead paint is present in certain contexts were not a denial of due process, since these presumptions were rebuttable.

BROKER HELD ENTITLED TO COMMISSION, DESPITE CANCELLATION OF LEASE BEFORE OCCUPANCY

A prospective tenant who found his rented apartment uninhabitable and canceled his lease before moving in has nevertheless been held liable for his broker's commission.

In Srouer v. Dwelling Quest Corp., NYLJ September 17, 2004, p. 18, col. 1 (App. Div. 1st Dep' t), the plaintiff had engaged the defendant broker to assist "in the location and renting of a suitable apartment" and the broker's commission was to be payable upon the signing of a lease. The defendant found such an apartment, a lease was signed and the broker's commission was paid. Upon visiting the apartment before moving in, however, the plaintiff discovered that the bedroom ceiling had collapsed from a water leak and the roof was being ripped up to prevent more leakage. The repairs were expected to take six to eight months, during which there would be constant drilling and the apartment's wraparound terrace would be inaccessible. Upon the plaintiff's demand, the landlord agreed to cancel the lease. The broker refused to refund its commission, however, and the tenant brought suit. The New York City Civil Court ruled in the tenant's favor and the Appellate Term affirmed, holding the transaction was a nullity and the broker had not earned the commission.

Upon further appeal, the Appellate Division disagreed and dismissed the complaint. In a 3-2 decision, it held that by the terms of the brokerage agreement, the commission had been earned at the signing of the lease and nothing in the agreement could be construed as extending the broker's obligation to the tenant past that date. Although recognizing the apparent unfairness of their conclusion, the majority of the Court held that "when established law exists that squarely covers the situation, it should not be ignored in the interests of responding to a perceived unfairness in a unique situation."

The majority of the Court rejected the view of the two dissenting justices that there was "ambiguity" in the contract and refused to consider the testimony of the broker who handled the transaction for the defendant that even she considered the commission not to be earned unless the tenant took occupancy. The Srouer decision reinforces the importance of drafting agreements carefully to provide for even unlikely contingencies

OCTOBER 15, 2004 IS DEADLINE FOR ENTITLEMENT TO \$400 TAX REBATE

New York City Local Law 2004/40, enacted in July, 2004, provides for a \$400 property tax rebate to owners of certain residential property, including cooperatives and condominiums, if they constitute the taxpayer's primary residence and are not in arrears in taxes. However, such rebates will only be sent to homeowners who are in the Department of Finance's records as having filed an application for the **New York State School Tax Relief Program ("STAR")**. Those who have recently moved, or for whom STAR applications may have never been filed, should check with the managing agent of their building as to their status, or should call the Department of Finance Customer Assistance line at (212) 504-4080, with their Social Security numbers available, to confirm whether they are correctly listed. That help line is now announcing that to qualify for the rebate, a STAR application must be filed before October 15, 2004 if not filed previously.