

Identifying and Remediating Building and Fire Code Violations

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SUMMARY

To determine whether your building or a building you are considering occupying is in compliance with the applicable New York City Building and Fire Codes, visit the Department of Buildings (DOB)'s Buildings Information System (BIS), which is available at <http://webapps.nyc.gov:8082/bisweb/bsqpm01.jsp>. Through this on-line query system, you can look up any building by address and view complaints, violations, inspection results and permit applications that have been filed and are either resolved or pending. BIS will reflect three categories of violations: (1) Environmental Control Board violations, (2) Department of Buildings violations, which includes Fire Safety, Boiler and Elevator violations and (3) Bureau of Electrical Control violations.

In the event that a violation is pending against your building, refer to the DOB's fact sheet on resolving violations, which is available at <http://www.nyc.gov/html/dob/pdf/infoviol.pdf>. If a violation is pending against a building in which you are considering leasing space, you should bring this fact to the attention of your prospective landlord and either decline to lease the space until the violations are resolved, or insist that the lease agreement contain a clause obligating the landlord to remedy all pending violations prior to your taking possession of the space.

ANALYSIS

I. How to Access the Building and Fire Codes

The New York City Building Code is set forth in Title 27 of the City's Administrative Code and can be viewed online at <http://www.nyc.gov/html/dob/html/code.html>. Compliance with the City Building Code guarantees compliance with New York State's Building Code.

All Fire Department rules are compiled in Title 3 of the Rules of the City of New York, published by Command Information Services, One Columbia Place, Albany, NY 12207, (518) 436-8647 or (800) 582-8020. Each proposed rule or rule amendment, and each final rule or rule amendment that is subsequently adopted, is published in The City Record, a daily publication of the New York City Department of Citywide Administrative Services, Municipal Building, 1 Centre Street, Room 2208, New York, NY 10007. Proposed rules will be available on the Fire Department's web page (http://nyc.gov/html/fdny/html/rcny_legal/rcny_home.shtml) until publication of a final rule. Final rules will be available on the Fire Department's web page for at least 90 days after publication in The City Record.

II. How to Know Whether Your Building is in Compliance

There is a movement underway to reform the NYC Building Code¹, but for now the Code remains a cumbersome, Byzantine tangle of rules. For instance, according to a November 2002 report prepared by State assembly member Scott Stringer (Democrat, Manhattan) there are 379 categories of hazardous building code violations alone. This does not include violations of other sections of the Code, such as the provisions governing building-accessibility for disabled individuals. Moreover, the City will only provide a building inspector for new construction or buildings undergoing alternations. Thus, it is practically impossible to know whether your building complies with one-hundred percent of the Building Code provisions. But do not despair. There are some simple steps you can take to reduce the likelihood of noncompliance, or to at least avoid leasing space in a building that is out of compliance.

A. Check the Buildings Information System

The Department of Buildings (DOB) maintains the Buildings Information System (BIS), which is available at <http://webapps.nyc.gov:8082/bisweb/bsqpm01.jsp>. Through this on-line query system, you can look up your building -- or a building in which you are considering leasing space -- by address and view complaints, violations, inspection results and permit applications that have been filed and are either resolved or pending. BIS will reflect three categories of violations: (1) Environmental Control Board² violations, (2) Department of Buildings violations, which includes Fire Safety, Boiler and Elevator violations and (3) Bureau of Electrical Control violations.

The owner of a building is primarily, but not solely, responsible for remedying all building or fire code violations.³ In the event that a violation is pending against your building, refer to the DOB's fact sheet on resolving violations, which is available at <http://www.nyc.gov/html/dob/pdf/infoviol.pdf>. If a violation is pending against a building

¹ See Eric Lipton, City Reshaping Building Codes to U.S. Model, N.Y. Times Abstracts, May 17, 2004.

² The Environmental Control Board has the authority to adjudicate a wide variety of matters, including violations of the Air, Noise, Building and Fire Codes.

³ The NYC Administrative Code defines the term "owner" in such a way that it could potentially be construed to include a tenant. The definition states that an "owner" is "[a] person having legal title to [the] premises . . . or any other person having legal ownership or *control of premises*." NYC Administrative Code § 27-232 (emphasis added). Thus, since a tenant arguably has control of the premises, a tenant could conceivably be deemed to be the "owner" for purposes of compliance with the Building Code. Moreover, a tenant is subject to liability if the tenant engages in activity that violates the Building Code. This is because the Administrative Code states that where a Building Code violation is alleged, the owner of the premises involved and any person employed or assisting in the commission of such violation, and any and all persons who shall violate any of the provisions of the Building Code shall severally be held responsible. See NYC Administrative Code § 26-248(a). In sum, depending on the circumstances of the Building Code violation, a tenant may be held liable.

in which you are considering leasing space, you should bring this fact to the attention of your prospective landlord and either decline to lease the space until the violations are resolved, or insist that the lease agreement contain a clause obligating the landlord to remedy all pending violations prior to your taking possession of the space.

B. Check the Fire Department's Public Records Unit

While BIS includes Fire Safety violations, you can also obtain a hard copy report on permits, outstanding violations or corrected violations associated with your building by requesting a "Permit or Notice of Violation Search" from the Fire Department's Public Records Unit.

The cost for such a report is \$10.00 and requests can be made either in person or by mail to:

FDNY Public Records Unit
9 MetroTech Center, 1st Floor
Brooklyn, New York 11201-3857
(USE FLATBUSH AVENUE ENTRANCE)

You must provide the complete street address and borough in which your building is located.

Other building records can be obtained at a charge of \$0.25 per page by providing the Public Records Unit with your street address, borough and the specific record you are requesting. You will be advised of exact amount due.

For additional information regarding the Fire Departments Public Records, call (718) 999-2684.

C. Make Sure Landlord has a Valid Certificate of Occupancy

When renting space, be sure that the landlord possesses a valid certificate of occupancy for the building. Such a certificate indicates that both the Department of Buildings and the New York City Fire Department have separately approved the building as being in compliance with applicable regulations. Also insist that your lease include a provision obligating the landlord to maintain a valid certificate of occupancy throughout the duration of your lease term.

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