



24 August 2005

Mr. Glen Bruening, General Counsel
Mr. Robert Leslie, Acting General Counsel
New York State Department of State
41 State Street
Albany, NY 12231

re: Request for DOS to withdraw its opposition to
granting LaLa Wang the AIV license

Dear Messrs. Bruening and Leslie,

The Counsel's Office of the New York Department of State is charged with oversight of the Division of Licensing Services, including Hearings. While it is customary for appeals to proceed through the usual course of Administrative Law Judge Hearings, I believe that my Hearing scheduled for 31 August 2005 represents an unusual case of decade-long selective enforcement and warrants the intervention on your part to withdraw the DOS's demand for a Hearing to reverse ALJ Felix Neals' December 2004 decision granting to me the Apartment Information Vendor ("AIV") license.

Recent evidence leads to the inevitable conclusion of selective enforcement against myself and my company, MLX, by the DOS which is correctable only by your intervention.

1. In June 2005, the DOS issued a Proposed Rule Making for the AIV law acknowledging that a) the law is "obsolete," b) the majority of AIVs are unlicensed, and c) the goal is "to safeguard consumers by encouraging apartment information vendors to become licensed." So, even if MLX were (which it is not) an AIV, the policy of the DOS should be to grant me an AIV license (See Exhibit C for comments).
2. Concurrently, in the last few years, DOS officials have been working side by side with the state legislature to amend the Real Property Law so that licensed real estate brokers would not be required to obtain an AIV license. This legislature is intended to correct the very injustice of the suspension of my real estate broker's license six years ago for the sole reason I refused to obtain an AIV license which we believed did not apply to our robust business and would have caused us to eliminate all valuable components of our real-time, on-demand service or continue to offer our services, thereby violating the law. So, again, the DOS should err on the side of giving me a pass to the AIV license.

Given the absence of any consumer complaints and the fact that thousands of real estate brokers continue to depend upon MLX's professional version of services, the DOS' opposition to my application for the AIV license is not justifiable. In fact, with a newly enlightened DOS, a decade's worth of evidence can now be interpreted to support MLX's consistent position: that the AIV law is antiquated, unconstitutional and selectively enforced (See Exhibit A.).

- In April 1995, Secretary of State Alexander Treadwell pronounced the Apartment Information Vendor law "onerous" and that it "should be amended."
- The DOS has deemed me "untrustworthy" for having operated an unlicensed AIV. In fact, MLX is not and has never been AIV because information concerning "location and availability" has always been given for free.
- Although every *licensed* AIV violates every AIV rule and, therefore, should be deemed "untrustworthy," the DOS refuses to prosecute licensed AIVs or hold them to a similar standard of "trustworthiness."



Outside the DOS, it is the universal opinion of elected state officials -- from Attorney General Eliot Spitzer to state Senators and Assemblymen who have appealed to senior DOS officials to cease their selective enforcement against myself and MLX -- that MLX is not and has never been an AIV.

There is not and has never been an issue of consumer harm by MLX or myself. The DOS's posture of coercing MLX to change its business model and reduce its services to consumers is not only having a chilling effect upon innovative entrepreneurs like myself, but also depriving consumers of a transparent market which eliminates broker steering and the opportunity to save millions of dollars.

Two weeks ago, we inquired of the DOS whether robinlist.com was an AIV. Today, we received their answer. "Unlicensed businesses that provide these services do not fall under the jurisdiction of this department" (See letters in Exhibit D). Why, then, did the DOS issue a complaint against MLX.com in 1999 for operating as an unlicensed Apartment Information Vendor? And why now oppose the granting of the AIV license to me?

In the context of all the issues which face New York State -- security, budget deficits, affordable housing, corporate governance -- how does the DOS justify wasting taxpayers' money in its campaign against MLX and myself?

Let me speak plainly: my crime is not about AIV licensure, it is about having angered senior officials by my persistence in standing up against an unconstitutional law which has been misapplied and arbitrarily and capriciously enforced. The party line of the DOS has been to obstruct my license applications and ability to conduct full-scale pro-consumer business.

When handing down decisions in the recent Worldcom debacle, Judge Barbara Jones held Betty Vinson accountable for her role in carrying out a superior's orders to phony up accounting records: "Had Ms. Vinson refused to do what she was asked, it's possible this conspiracy might have been nipped in the bud." There is no difference between Vinson's conduct (because she feared the loss of her job) and that of the many DOS players who have caused the demise of MLX's business and deprived consumers of tools for better home hunting decisions and the opportunity to save millions of dollars of savings.

Like Judge Barbara Jones, you sit in a place to determine whether to condone the selective enforcement actions of the DOS or to break the cycle now. We urge you to withdraw the DOS' opposition to the granting of my AIV license and cancel the re-Hearing scheduled 31 August 2005.

Sincerely,

LaLa Wang

LaLa Wang



EXHIBIT A

Background

MLX, a licensed real estate broker, with a vision of creating an open real estate marketplace to connect renters, buyers, landlords and brokers to achieve efficiencies and reduce transaction costs, sought out Secretary of State Alexander Treadwell in 1995 to bring to his attention the antiquated AIV law which regulated entities which sold information "concerning location and availability of property" for rent. SOS Treadwell agreed that the AIV law was "onerous" and "should be amended." Four years later, the DOS forced MLX into an Administrative Hearing because, believing this antiquated law did not pertain to our brokerage business, we refused to obtain an AIV license. We knew that taking the AIV license would both have denied consumers access to information and functionality they wanted and exposed our company to potential fines of millions of dollars for the ten thousand "violations" per day attributable to our pro-consumer online partnerships with Yahoo, Homestore, and other organizations.

In 2000, an Administrative Law Judge determined that MLX was an "unlicensed AIV" and revoked the real estate broker's license of MLX's CEO. Attorney General Eliot Spitzer's attempt to intervene on our behalf was unproductive; the DOS refused to restore Wang's broker's license. Wang's writ of certiorari to the U.S. Supreme Court was denied.

LaLa Wang Applies for the Apartment Information Vendor License

With no remaining options, Wang applied for and, after nine months, was denied, the AIV license. Upon appeal, an Administrative Law Judge determined Wang to be trustworthy and granted Wang the AIV license, only to have the DOS oppose the license and schedule a re-Hearing for 31 August 2005.

Proposed Rule Making for the Apartment Information Vendor Law

The Proposed Rule Making for the Apartment Information Vendor Law (see Exhibit B), published 15 June 2005, makes clear that a) the AIV rules are "obsolete," b) "certain agency regulations have failed to keep up with advances in technology and the evolution of the apartment information industry, and c) "the majority of apartment information vendors operating in New York State are doing so without a license" (See Exhibit C for excerpts and comments).

In fact, the record demonstrates that no *licensed* AIV has ever abided by any of the 15 AIV requirements and that the DOS has willfully neglected to enforce compliance or apply like suspensions or revocations to either *licensed or unlicensed* AIVs.

NYDOS Abuse of Power

It is, of course, disappointing and repugnant to believe that New York State officials can behave in unscrupulous ways. The combination of a) acknowledgments by the DOS in its Proposed Rule Making for the AIV law and b) the DOS's refusal to prosecute licensed or unlicensed AIV which have been violating the AIV law on a daily basis clearly demonstrate the DOS selective enforcement against MLX and myself. Furthermore, pending legislative changes, in which NYDOS representatives have participated over the past several years, to amend the Real Property Law such that licensed real estate brokers would be exempt from the AIV law, lend further credence to MLX's initial assertions a decade ago that, with a broker's license, MLX should not have been forced to obtain the limiting AIV license.

In 15 years, MLX has had no consumer complaints. MLX's professional version continues to be a mainstay for thousands of real estate brokers. The New York DOS's selective enforcement against MLX is not motivated by consumer protectionism or justice. It is a punishment for Wang's "defiance" for fighting for her constitutional rights of free speech and due process.



STATE OF NEW YORK
DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231-0001

GEORGE E. PATAKI
GOVERNOR

RANDY A. DANIELS
SECRETARY OF STATE

June 22, 2005

Lala Wang
Principal Connections Limited
11 West 25th Street
New York, NY 10010

Dear Ms. Wang:

A Notice of Proposed Rule Making was published in the June 15, 2005 edition of the New York State Register by the Department of State. The Notice of Proposed Rule Making proposes the amendment of 19 NYCRR § 190.1, § 190.2, § 190.3, § 190.6 and § 190.7 and the repeal of 19 NYCRR sections 190.4 and 190.8. A copy of the Notice of Proposed Rule Making, including a copy of the text of the proposed rule, the regulatory impact statement, regulatory flexibility analysis, rural flexibility analysis and job impact statement are enclosed.

There are no public hearings scheduled. However, comments on the proposed rule making may be submitted to: Whitney A. Clark, NYS Department of State, Counsel's Office, 41 State Street, Albany NY 12231. Public comment on the proposed rule will be received until July 30, 2005.

Sincerely,

Whitney A. Clark
Assistant Counsel

WAC/dw
Enclosure

Department of State

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Apartment Information Vendors

I.D. No. DOS-24-05-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of sections 190.1, 190.2, 190.3, 190.6 and 190.7 and repeal of sections 190.4 and 190.8 of Title 19 NYCRR.

Statutory authority: Real Property Law, section 446-i

Subject: Apartment information vendors.

Purpose: To better regulate the apartment information vendor industry in light of the increased use of the internet as a tool for the distribution of apartment information and repeal obsolete rules that made compliance and regulation difficult.

Text of proposed rule: Section 190.1 is amended to read as follows:

Section 190.1 Contract.

(a) [An agreement between an apartment information vendor and a customer shall not be enforceable unless a fully executed, sequentially numbered contract in the form set forth in subdivision (b) or (c) of this section is delivered to the customer.

(b) The form of the standard apartment information vendor contract-
rental shall be [printed on 8½" by 11" paper,] as follows:

[No. _____ (enter sequential number)]

NO FEE IS TO BE PAID WHEN THIS CONTRACT IS SIGNED. THE CUSTOMER MUST SIGN AND RECEIVE A SEPARATE ESCROW AGREEMENT BEFORE AN ADVANCE FEE MAY BE COLLECTED.

STANDARD APARTMENT INFORMATION VENDOR CONTRACT-RENTAL

Agreement between (vendor) _____ (print name and address of apartment information vendor) _____ and (customer)(customer's name and address)

(1) Customer seeks information regarding living accommodations with the following specifications:

- Date available _____
- Geographical location _____
- Type of accommodation (apartment, house, etc) _____
- Number of rooms _____
- Elevator service required _____
- Monthly rental range _____

(2) Vendor represents that the following listings meet customer's specifications as set forth in paragraph (1): Address _____ (include nearest intersection) Name and telephone number of owner or managing agent: _____ Number of rooms _____ Monthly rent _____ Utilities included _____ Floor location _____ Elevator service available _____ Date available _____ (Additional listings shall be set forth on reverse or attachment)

(3) The customer agrees to pay a fee of _____ payable when the customer rents or leases an apartment as a result of information supplied by the vendor. If, however, one month's rent for the apartment rented or leased by the customer is less than this amount, the fee shall be automatically reduced to an amount equal to one month's rent.

(4) The vendor agrees to be personally responsible and liable for carrying out the terms of this agreement.

(5) This document has been filled out and signed by: _____ (Print full name and address of authorized agent)

Signature of Customer (actual or electronic)

Actual or electronic signature of Vendor, or [his] duly authorized agent
ANY COMPLAINTS ABOUT THIS APARTMENT INFORMATION VENDOR SHOULD BE MADE TO:

New York State
Department of State
Division of Licensing Services
270 Broadway

New York, N.Y. 10007

Telephone: (212) 488-3671

OR You may contact any local office of the New York State Department of State.

(b) [(c)] The form of the standard [apartment information vendor] apartment sharing contract [is to be used by apartment sharing agents only, and] shall be [printed on 8½" by 11" paper], as follows:

[No. _____ (enter sequential number)]

[ANY COMPLAINTS ABOUT THIS APARTMENT SHARING AGENT SHOULD BE MADE TO:

New York State
Department of State
Division of Licensing Services
270 Broadway New York, N.Y. 10007

OR You may contact any local office of the New York State Department of State.]

STANDARD APARTMENT SHARING CONTRACT

Agreement between [vendor] agent _____ (Print name and address of apartment [information vendor] sharing agent) and (customer) _____ (customer's name and address)

(1) Customer seeks information regarding shared living accommodations with the following specifications:

- Date available _____
- Monthly rental range _____
- Geographical location _____
- Type of accommodation (apartment, house, etc) _____
- Number of rooms _____
- Elevator service required _____
- Other requirements _____

(2) [Vendor] Agent represents that the following listings meet customer's specifications as set forth in paragraph (1): Address _____ (include nearest intersection)

Name and telephone number of owner or primary tenant _____

- Number of rooms _____
- Monthly rent _____
- Utilities included _____
- Floor location _____
- Elevator service available _____
- Date available _____

(Additional listings shall be set forth on reverse or attachment)

(3) Fee _____

(4) The [vendor] agent agrees to be personally responsible and liable for carrying out the terms of this agreement.

(5) This document has been filled out and signed by: _____ (Print full name and address of authorized agent)

Signature of Customer (actual or electronic)

Actual or electronic signature of [Vendor] Agent, or [his] duly authorized agent

ANY COMPLAINTS ABOUT THIS APARTMENT SHARING AGENT SHOULD BE MADE TO:

New York State
Department of State
Division of Licensing Services
270 Broadway New York, N.Y. 10007

OR You may contact any local office of the New York State Department of State

Section 190.2 is amended to read as follows:

Section 190.2 Escrow agreement required for advanced fee.

(a) No apartment information vendor or employee thereof shall collect a fee prior to a customer obtaining an apartment as a result of the information supplied by the apartment information vendor unless said vendor shall deliver to the customer a fully executed contract as described in section 190.1 of this Part and a fully executed separate escrow agreement as described in subdivision (d) of this section.

(b) Any advance fee collected by an apartment information vendor or employee thereof shall be deposited in the vendor's escrow account no later than the business day following the day on which it is received.

(c) The provisions of this section shall not apply to an apartment [information vendor] sharing agent who deals solely with apartments to share.

(d) The form of the standard apartment information vendor escrow agreement shall be as follows: [No. _____ (enter sequential number)]

APARTMENT INFORMATION VENDOR STANDARD ESCROW AGREEMENT

Agreement between (vendor) _____ (print name and address of apartment information vendor) and (customer) _____ (customer's name and address) entered into on _____ (date).

(1) Vendor acknowledges receipt this day of an advance fee from the customer, in the amount of _____.

(2) In consideration of customer's payment of such fee before an apartment has been obtained, and in accordance with the provisions of article 12-C of the Real Property Law, vendor agrees to deposit such fee in escrow, less _____ (not more than \$15) (Fee for administrative expenses).

(3) The vendor shall deposit the advance fee in: _____ (print name and address of bank, and account number where escrow will be deposited)

AMOUNT OF THE ADVANCE FEE

(4) The vendor may not receive an advance fee which is greater than one month's rent for any of the apartments on the list supplied to the customer.

(5) If the monthly rental of the apartment rented or leased by the customer through information supplied by the vendor, is less than the advance fee, the customer shall receive a refund equal to that portion of the advance fee that is in excess of the amount of the monthly rental. This refund shall be made within 10 days of the date on which customer makes a written request for said refund.

PROCEDURE FOR OBTAINING A REFUND

(6) It is understood and agreed that the customer has an absolute right to receive a refund of the full advance fee if he or she follows the following directions: (a) The customer will receive a refund when the vendor is notified that the customer has not leased or rented and does not intend to rent or lease an apartment, or other residence, through information supplied by the vendor. (b) The notice must be in writing signed by the customer. (c) The notice may be delivered to the vendor either in person or by first class mail to the vendor's address set forth above.

(7) The vendor shall refund the advance fee, less the fee for administrative expenses set forth in paragraph (2) above, within 10 days of receipt of the notice; and the customer shall NOT be required to present evidence that he or she actively pursued the information supplied by the vendor to be eligible for a refund. *The vendor may elect to remit refund payments by check or, where the customer paid by credit card, by check or refund to the credit account used by the customer.*

(8) The vendor agrees to be personally responsible and liable for carrying out the terms of this escrow agreement.

(9) This document has been filled out and signed by: _____ (Print full name and address of authorized agent)
 _____ (Signature of Customer, actual or electronic) Date _____
 _____ (Actual or electronic signature of Vendor, or his, her or its duly authorized agent) Date _____

Date Delivered to Customer: _____

ANY COMPLAINTS ARISING FROM THIS AGREEMENT MAY BE MADE TO:

New York State
 Department of State
 Division of Licensing Services
 270 Broadway
 New York, N.Y. 10007

OR You may contact any local office of the New York State Department of State.

Section 190.3 is amended to read as follows:
 Section 190.3 Records to be maintained. The following records of every business transaction must be maintained in paper, computer and/or electronic form at the principal office of the vendor for a period of three years:

- (a) duplicate signed copies of all contracts;
- [(b) copies of notices to the Department of State pursuant to section 190.4 of this Part;
- (c) copies of landlord's authorization for each apartment to which prospective tenants are referred;] and
- (b) [(d)] duplicate signed copies of escrow agreements.

Apartment information vendors maintaining electronic and/or computer records shall preserve said records by retaining duplicate off site, paper or electronic files. Electronic file backup shall occur no less frequently than once every two weeks.

Section 190.4 is repealed
 Section 190.6 is amended to read as follows:

Section 190.6 Restrictions on apartments listed No apartment information vendor or employee thereof shall refer a prospective tenant to an apartment unless [:]

[(a) the apartment information vendor agent has the written authority of the owner to list the apartment and

(b)] the apartment meets the specifications of said tenant as set forth in the standard apartment information vendor contract

Section 190.7 is amended to read as follows:

Section 190.7 Supervision of employees. Each apartment information vendor shall supervise [his] its employees to insure [their] compliance with all requirements of the provisions relating to apartment information vendors in article 12-C of the Real Property Law and this Part. [Any violation of the law or regulations by an employee shall be attributable to the vendor, and the vendor shall be held responsible for such violations.]

Section 190.8 is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Whitney A. Clark, Department of State, Counsel's Office, 41 State St., Albany, NY 12231. (518) 474-6740, e-mail: wclark@dos.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority:
 Real Property Law section 446-i provides specific authority to the Secretary of State to promulgate regulations to accomplish the purposes of Article 12-C of the Real Property Law. The Legislature passed Article 12-C in 1980 to regulate the apartment information vendor industry. The purpose of Article 12-C is to provide improved safeguards for the customers of apartment referral agents. To meet this purpose, the Department of State has issued rules and regulations which are found at Part 190 of Title 19 NYCRR.

Since the enactment of these regulations, it has become apparent that a majority of apartment information vendors operating in New York State are doing so without the benefit of a license. Based upon testimony and comments received in connection with complaint investigations and enforcement proceedings brought by the Secretary of State against apartment information vendors, the Secretary of State has determined that certain agency regulations have failed to keep up with advances in technology and the evolution of the apartment information industry. In order to accomplish the purposes of Article 12-C of the Real Property Law, the Secretary of State is issuing the current rule-making as authorized by section 446-i of the Real Property Law.

2 Legislative Objectives:
 In support of the amendments made to Real Property Law Article 12-C in 1980, the Department of State issued a Memorandum that cited pervasive abuses in the apartment information vendor industry as the need to enact laws and regulations governing apartment information vendors. McKinney's 1980 Sessions Laws, chapter 805, page 1816. The Department of State found that the apartment information vendor industry was plagued by unethical practices including referrals to unavailable or nonexistent apartments, apartments that did not meet the customer's specifications or which were uninhabitable, false and misleading advertising, inability to obtain promised additional listings, a failure to divulge refund policies, rude treatment and intimidation. By enacting Real Property Law Article 12-C, the Legislature sought to provide necessary protections to consumers.

The Secretary has found that consumers continue to fall prey to unethical practices such as those cited by the Department of State in its 1980 Memorandum. Compounding the problem of unethical practices by some apartment information vendors is the prevalence of unlicensed operation in the industry. The Department of State must take measures to safeguard consumers by encouraging apartment information vendors to become licensed. The proposed rule encourages licensed operation by repealing obsolete provisions and amending regulations that no longer provide consumers with the protections intended by Article 12-C. By addressing technological advances and the evolution of the apartment information industry, the amended regulations will encourage licensed operation. Therefore, this rule accords with the public policy objectives which the Legislature sought to advance by enacting Article 12-C of the Real Property Law.

3 Needs and Benefits:
 Pursuant to Article 12-C of the Real Property Law, the Department of State is charged with regulating the apartment information vendor industry. In connection with investigating consumer complaints and resulting enforcement proceedings, the Department of State has learned that the

majority of apartment information vendors operating in New York State are doing so without a license.

With the proliferation of technology, the Internet has emerged as the preferred means by which many apartment information vendors conduct business. The existing agency regulations were drafted at a time when the unique characteristics and challenges of e-commerce were not factors to be considered. The evolution of the industry has resulted in obsolete and dated provisions in the agency regulations that should properly be amended so as to ease compliance and enforcement while continuing to provide optimum protections to consumers.

Accordingly, the Secretary of State has determined that the instant rule making is necessary. This rule will provide the necessary amendments to Part 190 by repealing obsolete provisions and amending the regulations to encourage licensed operation while, at the same time, providing necessary protections to consumers.

4. Costs:

a. Costs to regulated parties:

Regulated parties include licensed apartment information vendors.

The rule does not impose any new requirements or prohibitions on apartment information vendors and should not lead to any costs to regulated parties for the implementation of and continuing compliance with the rule. Rather, the rule will reduce costs incurred by regulated parties by eliminating recordkeeping and other cost incurring requirements.

b. Costs to the Department of State:

The rule does not impose any costs to the agency, the state or local government for the implementation and continuation of the rule.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule continues the existing requirement that apartment information vendors use a standard form contract and, for those accepting advance fees from customers, the use of a standard apartment information vendor escrow agreement. The requirement that apartment information vendors maintain duplicate signed copies of these records at the principal office of the vendor for a period of three years is continued.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

No significant alternatives exist to be considered.

9. Federal Standards:

There are no federal standards regulating apartment information vendors. Consequently, this rule does not exceed any existing federal standard.

10. Compliance Schedule:

Apartment information vendors can comply with the amended regulations immediately upon publication.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to all licensed apartment information vendors doing business in New York State. Currently, only a small percentage of apartment information vendors are actually licensed by the Department of State. A majority of apartment information vendors choose to operate without the benefit of a license because, some have argued, the existing regulations make compliance too difficult. The Department of State estimates that most apartment information vendors are small businesses, or work for a small business. Because so many apartment information vendors are unlicensed, the Department of State does not have a practical way of estimating how many apartment information vendors will be affected by the proposed rule.

The rule does not apply to local governments.

2. Compliance requirements:

The rule does not impose any new reporting or recordkeeping requirements on licensees. Rather, the rule seeks to reduce reporting and recordkeeping requirements that have proven of little benefit to the Department in regulating the apartment information vendor industry and in providing protection to the public.

The rule amends section 190.1 of Title 19 NYCRR to eliminate the requirement that apartment information vendors print the form contract on 8½ by 11 inch paper. Section 190.1 is further amended to eliminate the current provision that renders the contract unenforceable unless it is fully executed and sequentially numbered in the form set forth in section 190.1. The other amendments to section 190.1 are stylistic in nature and do not impose any substantive requirements on apartment information vendors.

Section 190.2 of Title 19 NYCRR requires the use of an escrow agreement by apartment information vendors who collect advance fees from customers. As with the amendments to section 190.1, no new recordkeeping or other requirements are placed on apartment information vendors by reason of the amendment to section 190.2. The amendment to section 190.2 deletes a requirement that the apartment information vendor sequentially number each escrow agreement.

The amendments to section 190.3 of Title 19 NYCRR eliminate the requirement that apartment information vendors maintain copies of notices to the Department of State and copies of landlord authorizations for each apartment to which prospective tenants are referred.

Section 190.4 Title 19 NYCRR is repealed. The repeal of this section will eliminate the existing requirement that apartment information vendors file with the Department written notices of the grant and/or revocation of authority to employees to execute contracts or receipts on behalf of the apartment information vendor.

The amendments to sections 190.6 and 190.7 of Title 19 NYCRR do not impose any reporting or recordkeeping requirements on apartment information vendors and do not require apartment information vendors to undertake any affirmative acts. Rather, section 190.6 is amended to eliminate the current prohibition on apartment information vendors referring customers to apartments unless the apartment information vendor has the written authority of the owner to list the apartment. The amendment to section 190.7 deletes that portion of the existing regulation that attributes to and holds the apartment information vendor responsible for violations of the law or regulations by the apartment information vendor's employees.

Section 190.8 of Title 19 NYCRR is repealed.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

A licensee will not need professional services in order to comply with the rule.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The cost of compliance and the variations in the costs of compliance are detailed in section 4 of the Regulatory Impact Statement.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Since the rule provides varied options for compliance with the recordkeeping requirements imposed on apartment information vendors, it will be technologically feasible for apartment information vendors to comply with the rule. The reduction in recordkeeping requirements will make compliance economically feasible.

6. Minimizing adverse economic impact:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any additional reporting or recordkeeping requirements on apartment information vendors and does not require apartment information vendors to take any affirmative acts to comply with the rule other than those acts that are already required of apartment information vendors pursuant to RPL Article 12-C and those portions of the agency regulations which have not been amended or repealed by this rule.

7. Small business participation:

The Department will mail a copy of the Notice of Proposed Rule Making to all licensed apartment information vendors. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the *State Register*. Small businesses and local governments subscribe to this publication and, as such are likely to obtain notice of the proposed rule making. Comments will be received and entertained.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

This rule seeks to better regulate the apartment information vendor industry by amending existing agency regulations and repealing two obsolete provisions. This rule placed no new requirements on apartment information vendors. As amended, the agency regulations will actually reduce the recordkeeping, reporting and other compliance requirements imposed upon apartment information vendors.

The service offered by apartment information vendors is to assist customers in locating apartments. Such a service is more desirable in high population areas where housing can be difficult to find. For this very reason, the vast majority of licensed apartment information vendors in

New York, are located in the New York Metropolitan area and are unlikely to operate in rural portions of the State

Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for apartment information vendors.

The rule amends the agency's existing regulations applicable to apartment information vendors and repeals two existing, obsolete regulations in order to better regulate the apartment information vendor industry. The rule does not impose any additional requirements on apartment information vendors and, rather, seeks to make compliance with the agency's regulations easier for apartment information vendors by amending and repealing regulations that made compliance and enforcement difficult. Compliance with the amended regulations will not have any foreseeable impact on jobs or employment opportunities for apartment information vendors.

Office of Temporary and Disability Assistance

EMERGENCY RULE MAKING

Section 8 Housing Vouchers

I.D. No. IDA-24-05-00009-E

Filing No. 595

Filing date: May 31, 2005

Effective date: May 31, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 352.3(d)(2)(i), 352.5(b), (f)(2) and (5)(i); and addition of section 352.3(d)(2)(ii) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 355(3)

Finding of necessity for emergency rule: Preservation of general welfare

Specific reasons underlying the finding of necessity: Under the current shelter rules, recipients of public assistance who participate in the section 8 voucher program receive a lesser section 8 subsidy than other families based solely on the fact that they also receive public assistance. As a result of the reduced section 8 subsidy, a family receiving public assistance will receive a greater amount of assistance but will also receive lower food stamp benefits. The proposed amendments are aimed at ensuring that public assistance recipients who are in receipt of section 8 subsidies are not disadvantaged when compared to non-public assistance recipients with the same level of income

Subject: Section 8 housing vouchers.

Purpose: To establish a reasonable shelter schedule for persons and families receiving temporary assistance and rent subsidies under the section 8 voucher program.

Text of emergency rule: Section 352.3(d)(2)(i) is amended to read as follows:

(i) [Section 236 rental assistance program,] *Subsidized housing other than section 8 housing vouchers* [section 8 housing program (noncertificate)]. The rent allowance for tenants of housing subsidized under [the section 236 rental assistance program or the section 8] a housing assistance payments program, *except as provided in subparagraph (ii) of this paragraph*, is the amount of rent actually paid (exclusive of the subsidy) but not more than the amount in the applicable schedule in subdivisions (a) and (b) of this section

Section 352.3(d)(2)(ii) is added to read as follows:

(ii) *Section 8 voucher program*

(a) *The rent for recipients whose rental housing payments are subsidized under the section 8 voucher program (not including a recipient participating in the program of special allowances for owners of manufactured homes) shall be the amount actually paid, but not in excess of the amount (rounded to the nearest whole dollar) equal to 30 percent of the*

applicable standard of need by family size and district of residence, considering only the SA-2a, SA-2b, SA-2c schedules contained in section 352.2(d) of this Part, and the local agency monthly shelter allowance schedule with children, exclusive of any supplement. For the purpose of this subparagraph, the allowance amounts are those in Office regulation and in effect on the filing date of this subparagraph.

(b) *Subparagraph (a) of this subdivision shall not apply to recipients whose section 8 vouchers are provided by public housing authorities or other local section 8 voucher issuing agencies that routinely determined the tenants' share of the rent due and payable for months commencing on or before October 1, 2004 to be the local agency shelter maximums under subdivision (a) of this section.*

(c) *The Office shall develop an administrative process to certify whether subparagraph (a) or (b) shall apply to each individual public housing authority or other local section 8 voucher issuing agency.*

The introductory language of section 352.5 (b) and sections 352.5(f)(2) and 352.5(f)(5)(i) are amended to read as follows:

(b) Fuel for heating allowances.

Each social services district must grant an allowance for fuel for heating to a public assistance applicant/recipient or self-maintaining grantee in receipt of public assistance for a dependent child or children when it is documented that the applicant/recipient/grantee is the tenant of record, as defined in subdivision (a) of this section, with primary responsibility for payment of the residential heating costs. A fuel for heating allowance must also be granted to a public assistance applicant/recipient/grantee whose utility heating bill may include costs for service for the applicant/recipient/grantee's own residential unit and for space outside that unit or whose non-utility heating bill includes costs for the applicant/recipient/grantee's own residential unit and for other residential units when it is documented that the applicant/recipient/grantee is the tenant and customer of record as defined in subdivision (a) of this section. When a fuel for heating allowance is granted to an applicant/recipient/grantee who is the customer of record for a utility bill which may include costs for service for the applicant/recipient/grantee's own residential unit and for space outside that unit, the social services district must determine whether a referral for a shared meter investigation, in accordance with the provisions of section 52 of the Public Service Law, is appropriate. [A fuel for heating allowance is not granted to an applicant/recipient/grantee budgeted in accordance with the Section 8 certificate housing provisions outlined in section 352.3(d)(2)(ii) of this Part.] To have primary responsibility for the payment of residential heating costs, the applicant/recipient/grantee must be the customer of record, as defined in subdivision (a) of this section, for the residential heating bill with a home energy vendor. Fuel for heating allowances must be provided on a 12-month heating season (October 1st September 30th) in accordance with the following schedules and must be based upon the applicant/recipient/grantee's primary residential heating source:

(2) Payment must be provided as a nonrecoupable grant when it is documented that during the period specified in paragraph (1) of this subdivision the recipient has fully applied the public assistance grant to purposes intended to be included in such grant. Such documentation for recipients [not budgeted in accordance with the Section 8 certificate housing provisions outlined in section 352.3(d)(2)(ii) of this Part] must include proof of payment of: an amount at least equal to the combined Home Energy Allowance and Supplemental Home Energy Allowance (HEA and SHEA) budgeted in the public assistance grant to domestic (lights, cooking, hot water) energy costs; the monthly fuel for heating allowance budgeted in the public assistance grant to incurred heating costs; and the monthly shelter allowance budgeted in the public assistance grant to shelter costs. In addition, there must be no other evidence of mismanagement. [Documentation for recipients budgeted in accordance with the provisions outlined in section 352.3(d)(2)(ii) of this Part must include proof of payment of: an amount at least equal to the combined Home Energy Allowance and Supplemental Home Energy Allowance (HEA and SHEA) budgeted in the public assistance grant to domestic energy costs (lights, cooking, hot water); an amount at least equal to the shelter allowance budgeted in the public assistance grant towards shelter, heating, water, and other shelter-related items covered by the federal Department of Housing and Urban Development utility allowance. In addition, there must be no other evidence of mismanagement.]

(i) if the recipient's utility bill represents "heat only," [and the recipient does not reside in or is not budgeted in accordance with the Section 8 certificate housing provisions outlined in section 352.3(d)(2)(ii) of this Part,] the recipient's monthly fuel for heating allowance is removed from the recipient's monthly grant. [If the recipient's utility bill represents