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Suddenly, SoHo Heeds Law on Artists' Lofts

By CHRISTINE HAUGHNEY NOV. 11, 2010

As SoHo's iron-boned, sprawling lofts became gold mines over the past two decades, co-op boards, banks, brokers and the city itself winked at a rule requiring that they be reserved for working artists.

But over the last year or so, something odd began to occur: people started paying attention to the rule.

Apartments, even those in buildings with the prestige of famous residents, have languished on the market. Banks began withholding mortgages. Co-op boards began ordering residents to apply to the city for certification as artists.

And last year, for the first time anyone could remember, the city rejected as many applications as it approved, in a cryptic process that mystifies those who have gone through it.

The bottom has not dropped out, and the typical artist will still be unable to afford to move in. But the sudden re-awakening of the artist-in-residency requirement is making it hard for SoHo to keep up its real estate vibe.

At 158 Mercer Street, for example, one buyer who offered \$8.2 million, the asking price, for a loft several months ago backed out after his lawyer warned him about the artist requirement.

The sellers' broker, Jan Hashey, cut the price to \$6.9 million but found no takers, and three other apartments in the 22-unit building have been for sale for more than three months, even though the building has the requisite star power: among the residents is Jon Bon Jovi (a certified artist, to boot).

"At these prices, buyers' attorneys are very loath to advise people to put that kind of investment into something that's limited," said Ms. Hashey, who is also a certified artist. "It's like a lien on the property."

No one can say for sure what caused the re-awakening of the artist proviso, though tightened lending requirements by banks appear to be one reason. Although artists have for years pressed the city to more aggressively enforce the rule, the two agencies with the largest roles in SoHo real estate deny they are doing anything different, and available records do not shed much light.

The rule, rooted in city zoning laws dating back at least three decades, covers nearly all owner-occupied residential buildings in roughly five dozen blocks north of Canal Street. The laws permitted the use of these former industrial spaces as residences, so long as each apartment contained an artist certified by the city.

It has never been entirely clear who qualifies as an artist; the applications and even the names of the two judges who decide are not available to the public. Some SoHo residents have questioned how Mr. Bon Jovi and the hotelier André Balazs, among others, could obtain certification, since neither would seem to require a SoHo space for their work, one of the major criteria for certification, along with educational credentials and a body of work that has been displayed and written about in the previous five years.

The city said it could not divulge the judges' rationale, and representatives of both men declined to comment. "The law defines artists broadly and includes a variety of disciplines," said Danai Pointer, a spokeswoman for the Department of Cultural Affairs.

The city's Department of Buildings would not grant permanent certificates of occupancy to these buildings unless each apartment had a certified artist. But for years, the department, which had more pressing issues to worry about, effectively overlooked the fact that many residents were not artists by repeatedly granting these buildings temporary certificates.

And co-op boards asked their progressively wealthier buyers simply to sign a document that became known as the SoHo letter, which acknowledged that the buyer knew about the requirement and could be asked to produce proof of certification if anyone asked, which almost no one ever did.

But banks, which have been tougher on all kinds of borrowers as a result of the foreclosure crisis, are now skittish about giving loans in buildings that have an artist-in-residency requirement, said Eric Appelbaum, president of Apple Mortgage. Banks worry that if mortgaged apartments go into foreclosure, the artist rule may make them harder to resell.

Buyers who can pay all cash but have no certification are meeting resistance from co-op boards suddenly worried about the buildings' long-term legal status, and the future marketability of apartments. Even current residents have been asked to seek certification by some buildings, agents say, though they said they knew of no one being forced to leave for lack of it.

Some agents and co-op board members say that the Buildings Department has become more insistent, declining to renew temporary certificates of occupancy in some cases. The building at 158 Mercer, for example, has not had one since March 2008, despite having been granted more than 40 since the early 1980s.

But the Buildings Department said that 158 Mercer had other issues, including tests of the building's smoke detectors and repairs to the elevators that the city has not approved. "There has been no change in department policy toward enforcing artist-in-residence requirements," said Carly Sullivan, a Buildings Department spokeswoman.

Amy Gotzler, a spokeswoman for Brown Harris Stevens, which manages 158 Mercer, said the building was "working with the Department of Buildings to

reinstate their temporary certificate of occupancy.”

The Department of Cultural Affairs has certified roughly 3,400 artists since 1971, but the number of applicants shrank as the lofts filled out and the requirements began to be ignored. From 2003 to 2008, the department certified 164 artists and rejected 11.

But in 2009, the department accepted 14 artists and rejected 14. This year there have been 6 rejections and 14 acceptances.

City officials could not explain this sudden stinginess. “We are not seeing any major changes in the pattern or overall amount of these requests,” Ms. Pointer said.

A review of some rejection letters with names redacted, obtained through Freedom of Information Act requests, provides something of a tinted view of the neighborhood’s art scene, and of art criticism. The judges rejected a jewelry maker for producing work that was too commercial and a photographer whose pieces did not show enough “focus, quality and commitment.” Others were turned down for being a student, a “hobbyist” or an “interpretive artist.” One rejection letter stated that “while your work as an advocate and adviser to artists working in film is surely valuable to the film community, this role does not fit the legislative criteria of the Artist Certification Guidelines.”

Sean Sweeney, director of the civic group the SoHo Alliance, said that brokers had approached him about trying to persuade the city to do away with the artist-in-residence regulation. Mr. Sweeney, who has lived in SoHo for 33 years, said he had declined to do so; he said one West Broadway co-op tried to evict one artist because he could not help pay for his building’s lobby renovation.

Echoing the tension that still exists between the old SoHo and new, Mr. Sweeney added that he would rather see a banker’s closing fouled up “than to see a pioneer evicted because that financier’s trophy wife wants a crystal chandelier in the lobby.”

But Meg Siegel, a Sotheby’s real estate broker, said the requirements had outlived their time and had only held up an already sluggish market.

“Why don’t we come to some respectful decision with the artists who live here?” she said, suggesting perhaps a “fabulous sculpture praising the people who were pioneers.”

“SoHo,” she added, “is living a big charade.”

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