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Are YOU Registered? An Analysis of Buffalo's Rental Registry Code

Abstract

Buffalo's Dwelling Unit Registration code was passed in 2004 and became effective in 2005. The City of Buffalo had previously enacted a Multiple Dwelling Unit Registration law, which required owners of multiple dwelling units (three or more units) to register their property and obtain a certificate of occupancy, but the City did not have any required registration for single and double residential dwellings. The purpose of the Rental Registry code is to create a database that lists single and double residential dwelling owners' contact information for future problems. Owners of single and double residential dwelling units pay annual registration fees. The data is collected through a report in the city's computer system with the ability to cross-reference properties and owners to see which properties are registered. The Rental Registry code is designed to be a tool for legislators to enforce registration. Like many pieces of legislation it is not always strictly enforced. The courts are permitted to use the Rental Registry code to impose fines, but have not done so consistently.

Keywords

Buffalo, Housing/Neighborhoods, Housing Conditions and Repairs, Neighborhood Renewal, Report, Other, PDF



Are YOU Registered? An Analysis of Buffalo's Rental Registry Code

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November 19, 2009

Executive Summary

Buffalo's Dwelling Unit Registration code was passed in 2004 and became effective in 2005. The City of Buffalo had previously enacted a Multiple Dwelling Unit Registration law, which required owners of multiple dwelling units (three or more units) to register their property and obtain a certificate of occupancy, but the City did not have any required registration for single and double residential dwellings. The purpose of the Rental Registry code is to create a database that lists single and double residential dwelling owners' contact information for future problems. Owners of single and double residential dwelling units pay annual registration fees. The data is collected through a report in the city's computer system with the ability to cross-reference properties and owners to see which properties are registered. The Rental Registry code is designed to be a tool for legislators to enforce registration. Like many pieces of legislation it is not always strictly enforced. The courts are permitted to use the Rental Registry code to impose fines, but have not done so consistently.

Like any new program, the Rental Registry code has its problems. Tracking down out-of-state owners is costly and the computer system is antiquated. The lack of personnel in the Rental Registration unit makes it difficult to maintain an updated system. The Rental Registry code also has mandatory and discretionary language for different fines and penalties. Housing court judges have imposed very few mandatory \$75 fines and no notices to vacate. The Rental Registry code differs from that of other cities, such as Minneapolis, which requires an owner to pay \$1,000 for an inspection conducted before a property is registered. Despite its flaws, Buffalo's Rental Registry code has reduced the number of absentee landlords, helped to preserve the character of the buildings, and protected the welfare of the public.

Applicability and Requirements (including fines and penalties)

The Common Council of the City of Buffalo passed the Rental Dwelling Unit Registration code under Chapter 264-Licensing of Rental Housing Business-on July 6, 2004. The Rental Registry code requires owners of properties containing one or two dwelling units that are not owner occupied to obtain a rental dwelling unit registration certificate before renting out a property. The Rental Registry code does not apply to hotels, motels, bed-and-breakfast inns, hospitals or nursing homes. Multiple dwellings are subject to separate Multiple Dwelling laws and must obtain certificates of occupancy.

The first year fee is \$20 for a one -family and \$40 for a two- family dwelling. The Rental Registry year runs from January 1 to December 31. The rental registration certificate is renewed annually, and the fee thereafter is half the first year's fee. The rental registry certificate is valid for one year and may be transferred to any individual who has acquired ownership of a registered building for the unexpired portion of the one year term for which it was issued. The property owner must also file an application to transfer the rental registration certificate with the Commissioner within thirty days of the title transfer.

The bills for rental registration are sent out in January and are due within 30 days. The City sends out notices in February to the properties that have failed to pay their rental registration fee. The annual registration fee doubles 30 days after the due date has passed and a second invoice for payment has been sent by first-class mail to the owner. ¹ This fine and second invoice is sent in April. In addition, a summons "will be issued after the due date has passed and a fine in the amount of \$75.00 will be imposed in addition to all outstanding registration fees and late charges." ² These final notices are mailed out in July. The Housing Court may also issue a

notice to vacate and order “all tenants removed for failure to register a dwelling unit 30 days after the due date has passed and after notice to the owner and occupants by the Commissioner.”³ Approximately 5,800 fines (late fees which are double the registration fee) were sent out in the beginning of October 2009. Contrary to the mandatory language of the Rental Registry code, few \$ 75 fines plus late fees have been assessed, and no notices to vacate have been issued since the Code went into effect.⁴

Purposes/Goals

The purpose of the Rental Registration code is to create a database that contains relevant information regarding all one and two family dwelling units in the City of Buffalo that are not owner occupied. The database includes the names and addresses of the owners (and agents, if the owner is from out-of-state), so they can be contacted. The Rental Registration code provides a means of tracking absentee landlords and targeting trouble areas without bringing owners to court. The Rental Registration code also establishes a means for the courts and legislators to enforce penalties for failure to register. According to Chief Inspector Lou Petrucci, although some of the language in the code is mandatory, the fines and penalties in the Rental Registry code are meant to be applied on a case-by-case basis.

The goal of the Rental Registration program is to improve the safety and habitability of Buffalo rental housing units. In addition to its registration provisions, the Registration code includes an enforcement scheme for housing code violations as to the properties it covers. This scheme overlaps with, but is slightly different than, the general code enforcement scheme in the Buffalo city code. For example, the Registration code states that if the housing inspector finds a violation, he shall issue a notice of violation, and that if, upon re-inspection, the property is still in violation, the Commissioner of Inspections “shall deny a certificate or revoke any issued

certificate.”⁵ The Rental Registration code also makes tenants responsible for abiding by the occupancy limits and lawful use of the dwelling, maintaining sanitary conditions, keeping the property properly maintained and keeping pets under control.

The Rental Registration code is slowly meeting its goal of landlord accountability. By providing names, addresses and phone numbers, the City has been able to lower the number of absentee landlords by contacting landlords instead of bringing them to court. Landlords for the most part have been cooperative.⁶

How is the data for the Rental Registration Code collected?

From its inception, the Rental Registry program collected its data regarding single and double residential dwellings through a Crystal report. A Crystal report is a report that provides data on properties that is run through software from the city’s Hansen computer system. The Crystal report shows which people are receiving mail at the addresses listed. The Hansen computer system allows the City to cross-reference properties (using the Accurant system) to see if water bills, utility bills and tax information are being sent to the property listed or to a different property. The Accurant system can also find an individual by social security number, which also shows their residential history. The City has found that some property owners list more than one property as a primary residence for tax benefits, and others list bills to different names and addresses. The City wants to have accurate information and go after slumlords who are not taking care of their properties.

Through the system’s software the City can also generate information by census tract to get information on different properties. If it is found that an individual’s bills are not being sent to the primary address, the City sends a notification of registration

to the address where the bills are being sent. Between 4,000 and 5,000 pieces of mail were returned to the City to be manually sorted. Mrs. Petrucci, then head of the Department of Collections for the City of Buffalo, started manually sorting the mail on her living room couch four years ago when the Rental Registry program began. Although the Accurant system provides cross-references, the forwarding mailing addresses still need to be manually put into the database. The City also looks in the phone book to see the listed addresses to uncover any discrepancies. The Accurant system has been helpful in providing owners' contact information but the goal of having an accurate database remains a work in progress. Much of the work is still manually done and is therefore time-consuming and inaccurate. The City of Buffalo is focused on tightening up the database, dealing with returned mail and seeing how it can update the system. A new computer system, currently in the works, will be more efficient and reduce some of the flaws inherent in the current system.⁷

Classification of properties

In addition to cross-referencing to account for the number of registered properties, the Hansen computer system has become more precise since it is constantly updated by the employees of the courts and inspectors. For example, the inspectors that Chief Inspector Petrucci sends out notify Mr. Donovan from the Rental Registry office if a letter of violation is returned, allowing the City to take note of the unregistered properties. From the Crystal report, the City can determine under which category the property falls. The property will be categorized as follows:

- A single or double residential dwelling which is covered by the Rental registry code.
- A row house which is treated as a single or double residential dwelling but could have four or five units. Row houses were registered in the 1960s and there is a card catalog

with all of the listed row properties. After inspection to determine if a row house is a single, double or multiple dwelling, row houses that are found to have one or two units are covered under the Rental Registry code.

- Mixed use is considered the “catch all” of building classifications. Some of the mixed use properties have a bar or restaurant in the front and residential dwellings in the back. The residential portions are covered by the Rental Registry Code. There are approximately 3,000 mixed uses in the city of Buffalo.
- The 311 classification covers apartment buildings, which in some cases are simply single or double dwellings.

After a 311 building has been inspected and is found to be a single or double dwelling, it is covered under the Rental Registry code. Otherwise these buildings fall under the Multiple Dwelling law. An inspection is conducted by Mr. Ziolkowski, City director for the Multiple Dwelling unit, to determine if the row houses or 311 buildings are really multiple dwellings or if they have been reduced to single family homes. Most individuals comply with the inspection requests.⁸ Mr. Ziolkowski works from a list of 500 apartment buildings to see if they are owner occupied. He generally visits three or four of these properties a day to determine their classification in order to clean up the system and make it more efficient. If the property assessment report and the report from Mr. Ziolkowski differ, the property is either classified as a row house, a single or double residential dwelling or a multiple dwelling unit. This is clarified by an additional inspection. Mr. Fanaran, Director of the Rental Registration program, estimates that less than five percent of all properties are unregistered.⁹

Throughout the past four years, the Rental Registration program has seen significant improvement in reducing the number of absentee landlords and augmenting the number of

registered properties. The number of registered properties increased from 22,000 in 2005 to 27,000 in 2009. To prove ownership and further its goal of creating a system that is as accurate as possible, the City requires a copy of the owner's driver's license or utility bill. The contact information has allowed the City to use its list from assessments and go back to the properties that have not paid and track them down. ¹⁰

What happens to multiple dwelling units?

The Rental Registration code only covers single or double residential dwellings that are not owner occupied. What happens to multiple dwelling units? How are they accounted for? The Multiple Dwelling law is more complicated than the Rental Registration code. Once a multiple dwelling unit is purchased, there is a one- time registration fee. Owners of multiple dwelling units do not have to register each year as is required under the Rental Registry code. Owners have to give current and accurate contact information and agent information (if the owner is from out -of state). They are also required to obtain a certificate of occupancy. Unlike single or double dwellings that are inspected inconsistently and mostly by complaints, multiple dwelling units must comply with the New York State Code which, under the 2007 amendment, requires multiple dwellings to be inspected every three years to update their certificate of occupancy. There are over 4,000 multiple dwellings in Buffalo and the City is in the process of having all inspected pursuant to the state code. ¹¹

Unlike the Rental Registry code where mass notices are sent out, the multiple dwelling notifications are done on an individual basis. The City is in the midst of getting an updated computer system. However, the current Hansen computer system provides information regarding complaints, certificates of occupancy and dates as to when the inspections took place. Alerts come up in the computer system when a property is up for inspection. There is no number

on how many of the 4,000 properties are inspected every three years but the City does its best. All of the multiple dwelling units are registered. If they are not registered to the proper owner, a notice of violation is sent out and the owner may be taken to court. Furthermore, Multiple Dwelling laws are more complicated than the Rental Registry code because a notarized signature is required to verify that the certificate of occupancy was updated. ¹²

The City of Buffalo attempts to be consistent in making inspections for multiple dwellings. Nevertheless, some properties are inspected more regularly than others. The notice is sent to the multiple dwelling units indicating when the registration fee is due. Inspections are conducted every three years according to New York State law. A leasing director stated as follows: “we are alerted when an inspection will occur and the City is vigilant in inspecting our properties.” ¹³

Problems with the language of the Rental Registry Ordinance

The first issue that fosters ambiguity is the use of the term “building,” which is not defined. The Rental Registry code defines “dwelling unit” as “a single residential accommodation which is arranged, designed, used or, if vacant, intended for use exclusively as a domicile or residence of one or more human beings.” ¹⁴ Section 264-6 states that “building” and “dwelling units” are subject to notices of violation after inspection. This appears to contradict some City materials which describe the Rental Registry code as applying only to single and double residential units. ¹⁵ However, not all of the properties covered are single or two-family homes. Some of the properties that fall under the category of “building” include two-family homes in the front and smaller single cottages in the rear. Other structures that have multiple uses include a business in the front and living quarters in the back. ¹⁶

Another problem is that the Rental Registry code has both discretionary language

(“may”) and mandatory language (“will”), especially with regard to registration fines. For example, under § 264-13, “a summons will be issued 60 days after the due date has passed and a fine in the amount of \$75 **will** be imposed in addition to all outstanding registration fees and late charges.” Despite the mandatory language, the City of Buffalo Housing Court has not been stringent on imposing the fine. Violations for failure to register are usually only addressed when the court sets fines for housing violations. The inspectors are required to go on the Hansen computer system before inspecting a property to see if the property is registered. If the inspector does not check, the property will remain unregistered.¹⁷ The Rental Registry code is still new to the community. Judges will likely impose fines more readily as property owners become more familiar with the Rental Registry code.¹⁸ Unfortunately, the lack of enforcement reflects an apathetic view toward the Rental Registry code. If it was consistently enforced, there would probably be less repair and safety issues. The property owners’ contact information would also be more accurate. Although homeowners usually comply once they are summoned to court, they should still pay fines since it will deter future non-compliance.

Under the same section of the Rental Registry code “a notice to vacate **may** be issued.”¹⁹ Despite the 13,000 notices of violation sent out in 2009, there has not been a notice to vacate issued since the law’s enactment. A notice to vacate is issued if the house is uninhabitable after being inspected and the owner consistently fails to comply with housing code regulations, including lack of heat, hot water, or sewer problems. An owner will not be issued a notice to vacate for solely failing to register the property.²⁰ According to Chief Inspector Petrucci, the City did not intend to issue mandatory orders to vacate because of the public policy concern of leaving tenants homeless and the burden that would be placed on the city’s shelter system. For

the same policy reasons, the City of Buffalo does not use denial or revocation of rental registration certificate as a way to address housing problems.

The fine provision gives greater discretion to the judge. The Rental Registry code addresses fines in general. It states: “Notwithstanding the lack of a specific reference thereto, failure to comply with any sector, provision or requirement in this chapter shall be a violation and shall be punishable by a fine or penalty of no more than \$1,500.”²¹ “Failure to comply” is not defined in the Rental Registry code. Hence it is within the judge’s discretion to set the fine at any amount up to \$1,500.

Under § 264-6, the Commissioner shall issue a notice of violation if the Commissioner finds “noncompliance with the housing code.”²² What does “noncompliance with the housing code mean?” Although failure to register would likely fall under “noncompliance with the housing code,” like an order to vacate, a notice of violation will not be issued for only failing to register. Despite the judges’ lack of enforcement, Mike Donovan indicated that an owner’s failure to respond to notices is sufficient to send an inspector out to look for other violations which may cost the owner hundreds of dollars in building code violations.²³

Furthermore, an owner does not receive a “certificate” for rental registration in the ordinary sense of the word as stated in § 264-3. An owner of a single or double residential dwelling unit is not required to obtain a certificate of occupancy. Unlike the certificate of occupancy, where the owner gets a piece of paper and displays it on the property, the owner does not get a piece of paper that certifies that his property is registered under the Rental Registry code. Although the Rental Registry code suggests that the owner gets a certificate, he only gets a license to do business and rent his property by paying the nominal registration fee and providing contact information.²⁴ Thus, an owner does not receive a certificate.

Another place where the law and practice diverge is §264-21, which states that the fees paid from the Rental Registry program “**shall** be solely for the hiring of an additional staff person and/or necessary equipment for the Rental Dwelling Unit Registration Program in the Department of Permit and Inspection Services.”²⁵ However, the fees have been put into the city’s general fund, and the City allocates a different amount of money to the Rental Registration program each year according to the budget. The amount of money the program gets depends on budgetary demands, who is elected and how they wish to distribute the money.²⁶ Unless a court requires funds to be used “solely for the hiring of an additional staff person and/or necessary equipment for the Rental Dwelling Unit Registration Program,” the City will allocate the money according to its budgetary needs.²⁷ Perhaps as the Rental Registry code gains more awareness and is applied rigorously, the funds will be allocated as required.

The lack of funds coincides with the lack of staffing. The community is upset by the allocation of funds because there is no designated inspector to stay on top of the notices sent to the owners and there is no follow up to see if the notices were sent out and if the owners registered their property.²⁸ Originally there was to be an entire division of the Permits and Inspections Department dedicated to the Rental Registration code, which was to be responsible for sending out the inspectors to the properties. Currently the inspectors are swamped by the 18,000 complaints that were made this year for housing violations. There is no designated inspector to handle the Rental Registration notices. In addition, the office space for the Rental Registry program is outdated. The desks are from the 1940s, there is only one printer for over twenty people and the entire layout is piecemeal. Another problem is the city’s primitive computer system. The current system does not create spreadsheets, which would be efficient for the inspectors and allow them to target the properties that are red flagged. Although the

inspectors do not expect optimal working conditions, the inspectors would like some modifications.²⁹

One challenge of the Rental Registration program has been the excessive costs in tracking down out-of-state owners. E-mail has been an effective mode of communication and avenue for transmittal of documents. Letters can take weeks to be received through the mail and additional weeks to be sent back to the City of Buffalo. Most out-of-state owners comply with the Rental Registry code and respond to the City's demands and communication. However, there are many owners from Israel and South Africa who do not register their properties and are hard to reach. If a court case is filed, Buffalo has a process server who will serve defendants around the world but it is costly and burdensome for the City. The worldwide process server costs twenty times as much as a local process server.³⁰ The City of Buffalo thus incurs high costs in assuring that properties are registered and properly maintained.

The certificate of rental registration is not a required document in court proceedings commenced by landlords. Despite the City's desire to have all the properties registered, when a landlord files papers in court for a notice of eviction, the court does not require proof that the property is registered. The judges have discretion to request the registration information. The Chief Clerk for Buffalo City Court told me that a judge only requested the certificate of registration twice in her five years working at City Court.³¹ Although the certificate of rental registration is not required and many judges do not ask for it, it would be a cost effective way to find those owners who have failed to register their properties.

The law is unclear as to who can file suit to enforce the Rental Registry code. It states that "any charges involving violations of this chapter may be brought before the Housing Part in Buffalo City Court" without designating who has standing.³² Bernadine Butler, lawyer

for Neighborhood Legal Services, told me that no tenant has used the Rental Registry code as a basis for a lawsuit.³³

Although the Rental Registry code has become more well-known since it was first enacted, many landlords are unaware that vacant properties must be registered, despite the fact that it is clearly stated.³⁴

How does Buffalo's Rental Registry code compare to other cities?

The Cleveland Rental Registry code has been around since the 1960s. Landlords of a single residential dwelling unit must register their property annually and pay a \$35 fee. Each year over \$ 1.5 million dollars goes to the general fund for the City of Cleveland.³⁵ The purpose in enacting the Rental Registration code in Cleveland was similar to Buffalo, namely to maintain its housing stock, make sure all violations were cited and remedied and have current contact information for all landlords. Approximately 80 percent of the landlords comply. Legal actions are commenced against those who do not comply.

In New York City, rental registration is taken very seriously. Eviction actions will be dismissed if the landlord has not registered. The New York City Rental Registration code is used primarily for complaints, especially lack of heat and hot water.³⁶ According to Jeffrey Cohen, a New York City Real Estate Attorney, the City of New York is very aggressive in code compliance and inspections. The housing court judges generally side with tenants and the Inspections department is up to date on its inspections. Unlike Buffalo, New York City landlords must prove that their properties are registered in order to remove code violations.

Minneapolis passed a law in 1991 which requires property owners to license their residential rental property. Residential rental property includes single and multi-family homes

occupied by someone other than the owner. The purpose of the Minneapolis law, Article 16, is to give public safety agencies a way to contact owners. It also provides municipalities a way to supply property owners and managers with information about city programs and resources.³⁷ Approximately 19,000 rental units are registered in Minneapolis. Owners pay \$ 65 annually for a single family dwelling and \$ 19 for each additional unit. The City of Minneapolis discovers unregistered properties in different ways. When a new tenant calls the water company to put the water in his or her name, the water company determines if the property is registered. If the property is not registered, the owner will have to pay a \$500 fee for the unregistered property. The City also finds out about unregistered properties through tenants' complaints. Furthermore, inspectors walk around the neighborhood from time to time, and if they notice properties that used to be vacant, they check to see if the property is registered. Before an owner obtains a rental registration certificate, he must pay \$1000 for an inspection. The properties are inspected every five years. The computer system is efficient and lets the city employees know when a property is up for inspection.³⁸

What changes should be made to Buffalo's Rental Registration code?

First, there must be more personnel to make sure that the notices are being sent out and landlords are in compliance with the Rental Registration code. If Buffalo had liaisons between divisions the system would be much more efficient. Notices would be checked to make sure they were sent out and the City would have more precise numbers of unregistered properties. An updated computer system that has pop ups red flagging the violations would make it easier to contact the appropriate landlords. Perhaps even a report listing the violations that would show up on Hansen's main screen could make the system more efficient- especially in advising when inspections need to take place. If the employees had access to all the registered properties on one

screen as they go through the returned notices of violation on another screen, it would also be easier to track down delinquent landlords. Unfortunately this may be impractical economically. In Rochester inspections take place prior to occupancy. The Corporation Counsel in Rochester also writes up all court documents, while in Buffalo the inspectors draft these documents. The inspectors in Buffalo draft court documents for 2,700 to 2,800 court cases each year.³⁹ If the Corporation Counsel in Buffalo drafted the court documents, the inspectors would have more time to complete inspections. Furthermore, if the Buffalo judges requested a copy of the rental registration certificate when a landlord filed an order to vacate, compliance with the Rental Registry code would clearly increase.

¹§ 264-13(A) (2005).

²Id.

³Id.

⁴Telephone Interview with Lou Petrucci, Chief Housing Inspector for the City of Buffalo (Oct. 21, 2009).

⁵ § 264-13(A)(2005).

⁶Telephone Interview with Lou Petrucci (Oct. 21, 2009).

⁷Id.

⁸Id.

⁹Telephone interview with Sam Fanaran, Director of Rental Registration Program, City of Buffalo (Oct.2, 2009).

¹⁰Telephone interview with Gary Ziolkowski, City of Buffalo employee for Multiple Dwellings, (Oct.13, 2009).

¹¹Id.

¹²Id.

¹³Telephone interview with Meredith, Director of Residential Leasing Department for Ellicott Development residential apartment buildings (Oct. 14, 2009).

¹⁴§ 264-2 (2005).

¹⁵<http://www.ci.buffalo.ny.us/files/1_2_1/Misc/rrflyer2008.pdf> (Nov. 13, 2009).

¹⁶ Telephone interview with Mike Donovan, City of Buffalo employee for the Rental Registration program (Oct. 5, 2009).

¹⁷ Telephone Interview with Lou Petrucci (Oct. 24, 2009).

¹⁸ Telephone interview with Mike Donovan (Oct.5, 2009) and Telephone interview with Lou Petrucci (Oct. 7, 2009).

¹⁹ § 264-13(A) (2005).

²⁰ Telephone Interview with Lou Petrucci (Oct. 7, 2009).

²¹ § 264-13 (B) (2005).

²² § 264-6 (2005).

²³ Telephone Interview with Mike Donovan (Oct. 5, 2009).

²⁴ Telephone Interview with Lou Petrucci (Oct. 7, 2009).

²⁵ § 264-21 (B) (2005).

²⁶ Telephone Interview with Sister Jeremy Midura, Member of Voice Buffalo and the Problem Properties Task Force (Oct. 5, 2009).

²⁷ Telephone Interview with Mike Donovan (Oct. 5, 2009).

²⁸ Telephone Interview with Sister Jeremy Midura (Oct. 5, 2009).

²⁹ Telephone Interview with Lou Petrucci (Oct. 7, 2009).

³⁰ Id.

³¹ Telephone Interview with Sharon Thomas, Chief Clerk for the Buffalo City Court (Oct. 7, 2009).

³² § 264-13 (B) (2005).

³³ Telephone interview with Bernadine Butler, Attorney for Neighborhood Legal Services (Oct. 5, 2009).

³⁴ Telephone Interview with Mary Scarpine, Assistant Corporate Counsel for City of Buffalo, (Oct. 13, 2009).

³⁵ Interview with Theresa Allen, director of Rental Registration for Cleveland (Oct. 6, 2009).

³⁶ Interview with Jeff Cohen, New York City real estate attorney (Oct.5, 2009).

³⁷ <http://www.ci.minneapolis.mn.us/inspections/docs/rental_licensing.pdf> (Oct. 8, 2009).

³⁸ Telephone Interview with Cleopatra, Customer Service Agent for City of Minneapolis (Oct. 16, 2009).

³⁹ Telephone Interview with Lou Petrucci (Oct. 7, 2009).