

Loft Clauses

What happens if the city steps up enforcement of Soho's artist-in-residence laws?

By [S.Jhoanna Robledo](#) Published Jul 9, 2007



The way it was: The Soho loft of artists Bill and Yvonne Tarr circa 1970.
(Photo: John Dominis/Time Life Pictures/Getty Images)

In order to get the full asking price—\$3.2 million—Corcoran broker Cornelia Dobrovolsky had to wait four months on her Soho listing, a 2,500-square-foot loft on Mercer Street, near Broome. The seller worked in the insurance business, and the buyer was in the film business. But during due diligence, Dobrovolsky says, an issue cropped up with the building's certificate of occupancy (a.k.a. C of O)—documentation all city dwellings need in order to be legally habitable. The building's C of O was supposedly in jeopardy because the building was filling up with non-artists.

In most city neighborhoods, this wouldn't be an issue. But in 1977, Soho, and Noho, were zoned for "joint living-working" spaces, meaning properties there are for so-called artists-in-residence (AIR) only. Never mind that these days, hedge-funders, traders, and lawyers—not artists—are the ones usually buying. "The whole thing is absurd," says Dobrovolsky, who ended up dropping the final sale price by \$200,000 to get the buyer to sign on the dotted line.

It's a little-known fact that to live in a loft in most Soho buildings, at least one loft resident has to be certified by the city as an artist. In typical New York fashion, the vetting process is byzantine, requiring individuals to be engaged in the "fine arts"; to demonstrate a "serious, consistent commitment" to their art; and need a large space. It's notoriously fickle, says lawyer Margaret Baisley, who represents a number of buildings dealing with AIR issues. Choreographers and filmmakers for instance, get a pass, but dancers and actors and musicians do not.

For years, says real-estate attorney Steven Wagner, sellers worked around the issue by having purchasers sign "Soho letters" acknowledging they were aware of the need for AIR certificates and may be asked to produce them should building inspectors come nosing around. Brokers say that until recently, there was no real reason to worry. Loft-livers were rarely asked for them. "People sign [Soho letters] as a matter of course on the assumption that the city won't enforce it, but that doesn't mean they won't," says Wagner, who doesn't like them. Indeed, as more co-ops bring their properties up to code or convert to condominiums, enforcement appears to be stepping up,

leaving some owners scrambling to comply—*Quick, find a craftsy roommate!*—and real-estate types wringing their hands.

Attorney Neil Garfinkel recently agonized over what to tell a client interested in an AIR loft. “It’s becoming a bigger issue. If [my clients] are at all unsure, I say, ‘You need to be careful going forward,’” he says. If a city inspector finds even one loft without a city-certified AIR, it can issue a building violation. “It’s ridiculous! There’s no way for the buildings to clear the violations unless it evicts non-artists or has them find an artist roommate to live with,” says Stacey Max, head of Bellmarc Realty’s downtown office. “Just the fact that all of this is pending makes it riskier to buy in Soho.” Apparently, there are more than a few co-ops under Department of Buildings scrutiny for AIR-related violations. The DOB’s position? “The law has not changed, nor has our enforcement of the law,” says spokesperson Kate Lindquist. “We continue to enforce the AIR regulations as we always have.”

For now, no one seems to fear a true crackdown, but there have been enough headaches that some are lobbying for rezoning. “[It’s] obsolete,” declares Baisley. “Preserving Soho for artists is an absurdity. We don’t zone for butchers, bakers, and candlestick makers.” Even longtime Soho denizens like Sean Sweeney are willing to discuss changing the law—though they’re not quite onboard yet. “All of a sudden, we have to feel pity for Wall Streeters?” asks Sweeney, who heads the neighborhood coalition SoHo Alliance. “We’d be open as long as we have input from the neighborhood’s pioneers.”

After all, rezoning would have an impact on the remaining artists, too. They’re “walking out of lofts with big checks under their arms,” says Prudential Douglas Elliman broker Leonard Steinberg. “This is their retirement fund. Many mediocre artists owned these lofts, and they didn’t sell a lot of art. But they had great real estate.”