

Defending Private Dwellings: A Constitutional and Policy Imperative

Legal Foundation

- Private Dwelling – Defined under New York State law as a building occupied by one or two families as a common household. This includes cases where a two-family home is used by a single extended family. It is legally recognized as a private domicile, with heightened privacy protections.
- Multiple Dwelling (MDL § 4(7)) – A building occupied by three or more families living independently, such as apartment houses and tenements, subject to the Multiple Dwelling Law (MDL) and commercial-grade regulations.

Core Distinctions

Private Dwelling	Multiple Dwelling
1–2 families (including one family using both units as one household)	3+ independent households in separate apartments
Common household, shared space, private domicile	Distinct, independent units governed as commercial housing
Minimal state regulation; high autonomy & privacy	Subject to MDL, fire codes, structural & density rules
Protected space under the Fourth Amendment	Treated as public housing stock for regulatory purposes

Constitutional Considerations

- Fourth Amendment – Protects the right of individuals to be secure in their houses from unreasonable searches and government intrusion. Overly intrusive registration, inspection, and compliance regimes designed for apartment buildings violate this protection when applied to a homeowner’s private residence.
- Fifth Amendment / Takings Clause – Burdensome regulations that strip homeowners of economically viable use of their property (such as banning lawful rentals or requiring intrusive alterations) may constitute regulatory takings without just compensation.
- Fourteenth Amendment – Equal protection concerns arise when small homeowners are forced into compliance schemes designed for commercial landlords or corporations, eroding their ability to maintain generational wealth and stay in their communities.

The Threat

There is a growing effort to impose Multiple Dwelling Law–style requirements on one- and two-family private homes — including commercial fire code compliance, intrusive

inspections, and registration requirements.

- This is a legal overreach. Private dwellings were intentionally excluded from the MDL because they are not high-density, multi-unit housing.
- This is a constitutional overreach. Treating them as part of the city's housing stock undermines privacy, autonomy, and the foundational principle that "a man's home is his castle."
- This is an economic overreach. Such rules force small homeowners to bear costs meant for commercial property owners, pushing many toward foreclosure and imminent displacement.

Policy Imperatives

To protect private homeowners, policymakers must:

- Reaffirm Legislative Intent – Recognize that private dwellings are not part of NYC's rental housing stock and should not be regulated as such.
- Codify Explicit Exemptions – Pass legislation such as Intro 948 to shield owner-occupied one- and two-family homes from commercial housing rules.
- Protect Constitutional Rights – Ensure that privacy, property rights, and equal protection principles are not violated by regulatory overreach.

Bottom Line

Private dwellings are constitutionally protected domiciles — not commercial housing stock. Imposing apartment-building regulations on private homes violates the Fourth Amendment right to privacy, risks regulatory takings under the Fifth Amendment, and undermines the ability of small homeowners to maintain stability, build generational wealth, and remain in their communities.