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REAL ESTATE LEGISLATION

Impact of the New NYC Rent Law on Landlords and Tenants



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On June 14, 2019, Governor Andrew Cuomo signed off on the “Housing Stability and Tenant Protection Act of 2019” (TPA) (see Senate Bill 6458), a package of rent laws which represent a sea change from the laws that have governed landlord-tenant relations in New York City for decades, and significantly bolster residential tenant protections for the more than 2.2 million rental units in NYC. As expected, public reaction to the TPA is sharply divided, with tenant advocates celebrating it as addressing long-time housing inequality brought on by steeply rising rents, while landlords predict that the TPA will disincentivize investment in new development and redevelopment of residential rental buildings, ultimately harming both landlords and tenants.

This article summarizes the 2019 legislation and its impact on the residential rental market in New York City, including how both landlords and tenants are expected to adapt to this new reality.

The Tenant Protection Act

The changes to longstanding law brought about by this new package of laws are far-reaching. Some of the more notable changes include:

Codification of Rent Stabilization and Rent Control Laws. With respect to the nearly one million rent-regulated units, rather than having terms that conclude every four-to-eight years, the TPA permanently codified Rent Stabilization and Rent Control regulations in New York City, and the Emergency Tenant Protection Act in Nassau, Rockland and Westchester counties, meaning the Rent Guidelines Boards of individual counties shall no longer promulgate adjustments in the legal regulated rent for vacancy leases, and landlords are now bound by the last stated rent

of an apartment, even if the tenant vacates, subject to annual renewal increases. (See NYC Admin. Code 26-510(j).)

No More Vacancy and Income Deregulation. High-rent vacancy deregulation, a provision within the Rent Stabilization and Rent Control laws, which allowed landlords to deregulate a unit in the event it became vacant and the legal regulated rent (for rent stabilized units) or the maximum rent (for rent-controlled units) was at or above the deregulation threshold when rented to a new tenant, has been repealed. (See NYC Admin. Code 26-504.2.) High-income deregulation, which permitted a landlord to deregulate a unit, or remove the unit from all rent regulations in the event a rent-stabilized tenant earned over \$200,000 per annum for two consecutive years, has likewise been repealed. (See NYC Admin. Code 26-504.3.) As a result, all rent regulated apartments will stay regulated until they become

vacant regardless of the income of the tenant. In addition, vacancy bonuses, which allowed property owners to raise rents as much as 20% each time a unit became vacant, have been eliminated. (See NYC Admin. Code 26-511(14).)

Caps on Rent Increases. Individual Apartment Improvements (IAs), which permitted property owners to increase rents based on improvements made to individual apartments, are now capped at \$15,000 every 15 years, and expire after 30 years. (See NYC Admin. Code 26-511(13). Major Capital Improvements (MCIs), which permitted property owners to increase rents based on the costs of building improvements, are now capped at 2%. (See NYC Admin. Code 26-405.1). The practice of charging a tenant a “preferential rent,” a rent amount charged to a rent stabilized tenant that was lower than the legal registered rent, is no longer permitted. Under the TPA, the rent currently charged to a rent stabilized tenant, even if less than the legal registered rent, becomes the base rent off which a landlord may implement increases going forward. (See NYC Admin. Code 26-511(14).)

Approval Threshold for Conversion Increased. Landlords who wish to convert rent-stabilized buildings to condominium or cooperative ownership must now obtain agreements to purchase from 51% of the bona fide tenants

in occupancy of all units, up from 15%. (See GOL352-eeee.)

Security Deposit and Other Leasing Procedures Modified. With respect to all units (both regulated and market rate), at lease commencement, security deposits have been capped at one month’s rent (see GOL 7-108(1-a), application fees for apartments have been capped at \$20, inclusive of background check fees (see RPL 238-a), and landlord “blacklists” have been banned, meaning landlords will no longer be able to refuse leases to tenants who have been sued in housing

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court (see RPL 227-f). Landlords must give at least 30 days’ notice to tenants if they intend to raise rents by more than 5%, with the notice requirements increasing based on a tenant’s time in occupancy. (See RPL 226-c.) Late fees are now capped at lesser of \$50 or 5% of the monthly rent, and may only be charged after payment of rent is late by 5 or more days. Id. In the event a tenant vacates an apartment in violation of the

terms of the lease, including prior to lease expiration, landlord is required to mitigate its damages by re-letting the apartment. (See RPL 227-e.)

Predicate Notice and Summary Eviction Proceeding Procedures Modified. If rent is not received within five days of the date specified in the lease to receive payment, landlords are required to send a notice via certified mail to the tenant demanding payment. Failure to send such notice may be used as an affirmative defense in a nonpayment summary proceeding. (See RPL 235-e.) Statutory rent demands must be written and must provide tenants with fourteen days to make payment (up from three days). (See RPL 711(2).) In the event a landlord commences a summary proceeding, tenants will now have ten days to answer a petition (up from five days previously). (See RPL 732(1).) Where such proceeding is based upon a claim that the tenant has breached a provision of the lease, the court may grant a thirty-day stay of issuance of the warrant (up from ten days), during which time the tenant may cure its default. (See RPAPL 753(4).) If a tenant has been evicted, judges may stay execution of a warrant for up to one year (from six months) if the tenant is unable to find alternate housing close-by. (See RPAPL 732(2).) In determining whether to grant a stay, judges must consider how an eviction

will affect a tenant's well-being, including the school enrollment of the tenant's children.

The TPA poses potentially negative downstream consequences for both landlords and the city of New York. Initially, for landlords, the permanent codification of the Rent Stabilization and Rent Control laws eliminates landlords' ability to challenge renewal rents. The inability to deregulate units may negatively impact the value of regulated buildings, resulting in the waterfall effect of lower sale prices when and if owners choose to sell, and the tax revenue generated therefrom for the city. Landlords may also be disinclined to invest in rent-regulated buildings due to the repeal of high-vacancy deregulation and caps on both MCI's and IAI's, causing buildings to fall into disrepair. Moreover, smaller landlords, unable to absorb escalating building costs without the ability to raise rents, may be forced out of business.

As for the city of New York, due to a lack of financial motivation, the TPA may ultimately discourage developers from investing in new residential construction throughout New York City, thereby perpetuating the housing shortage, decreasing tax revenue and prolonging unsafe neighborhood conditions. The TPA may prove to aggravate the housing affordability crisis, as many rent-regulated apartments are occupied by upper-class tenants as opposed

to low-income tenants the TPA purports to protect.

Given the stringent tenant protections newly afforded to these regulated apartments, the turnover rate on regulated apartments is likely to be very low. As a result, free market apartments will become increasingly more expensive, putting added pressure on public housing units which already have long wait lists and a lack of funding. Government income, generated partially by real estate tax

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revenue, may be materially negatively affected.

On the other hand, tenants throughout the five boroughs are likely breathing a sigh of relief after the passing of the TPA. For regulated tenants, rents increases will be nominal due to the stringent limitations placed on landlords. However, market rate apartments may see increased rental rates on account of the lack of turnover of regulated apartments and the inability to deregulate. Landlords can no longer use blacklists and security deposits and application fees will be much lower. Summary eviction proceedings will become

even more protracted, with evictions becoming even more difficult to effectuate.

What Happens Next?

Several prominent real estate advocacy groups are already preparing to challenge the TPA on the grounds that it violates building owners' constitutional right against an unlawful taking of property, and litigation concerning the TPA is a certainty. In the meantime, however, in an effort to avoid the financial blow the TPA may cause and find solid footing in this new legislative landscape, building owners are likely to focus their efforts on the acquisition of rental properties not subject to rent regulation. Although more difficult to achieve under the TPA given the new increased approval threshold, building owners may also consider converting current rental buildings to cooperative or condominium ownership whereby owners can offer apartments to 51% of the current tenants for a premium, renovate the remaining apartments and sell them for a profit.