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Analyzing the New Tenant Protections

By Mark Hakim

On June 14, 2019, New York lawmakers approved, and Governor Cuomo signed, the "Housing Stability and Tenant Protection Act of 2019" (the Act). The Act contains a series of laws affecting all rentals within the State of New York, making permanent New York's rent regulation laws, including the Emergency Tenant Protection Act of 1974. Proponents of the Act state that making these rent regulation laws permanent will ensure that New York's tenants are protected. However, as with any legislation, especially one that seems to have been enacted hastily, there are unintended and possibly quite adverse long-term consequences.

Among the many of its sweeping changes, the Act: 1) repealed high-rent vacancy and high-income deregulation, which had allowed rental units to be deregulated if the maximum legal rent had been reached and/or if the tenants earned more than $200,000 for the previous two years; 2) limits the amount a landlord can increase the rent upon obtaining a vacancy in rent stabilized apartments and removes fuel pass-along charges for rent controlled apartments; 3) limits the "owner use" primary residence provision to the use of a single apartment in a rent regulated building and provides tenants with a cause of action should they be evicted as a result of fraud by a landlord regarding the intended use of the apartment; 4) substantially limits the ability of landlords to charge back to tenants for any Major Capital Improvement (MCI) and Apartment Improvement (IAI) Increases for work in the apartment made by landlords; 5) requires landlords (of all leases) to provide written notice if the landlord intends to not renew a lease or if there is a proposed increase of rent greater than 5% percent for the renewal term; 5) limits the collection of credit search fees and the collection of security (and all payments) to one month's rent, and further prohibits the charging of application fees; 7) limits the amount of late fees that may be charged (lesser of 5% or $50.00); and 8) with respect to cooperative or condominium conversions, eliminates plans which allow a non-purchasing tenant to be evicted and now

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requires 51% of current tenants to approve the non-eviction plan (up from 15%).

The primary purpose stated for the passage of the Act was to provide additional protections for tenants, which it has. However, some of the protections included in the Act may, in the long term, have a more limited benefit for tenants than had been hoped and, moreover, may in fact have unintended negative outcomes. Given the stringent and possibly debilitating limitations imposed by the Act, the moment the Act was passed, real estate valuations of rental buildings (which are tied to current and potential income) likely decreased. Under the old law, individual and permanent rent IAI Increases were permitted by a landlord who performed certain work within an apartment. Such IAI increases were previously permanent, but now the Act has now made such IAI increases temporary for 30-years (requiring extensive record keeping during that period). The percentage of reimbursement has now been lowered to 1/168 (from 1/40). Additionally, the Act drastically caps the amount of MCI that can be passed along to tenants, thus reducing a landlord's incentive to make certain improvements. Landlords are no longer permitted to deregulate an apartment based on the amount of rent charged or a tenant's annual income (commonly referred to as luxury decontrol). Even following a vacancy of an apartment, landlords, even with market rate apartments (which are not subject to any rent control laws), are now limited to the amount they can increase the rent. Landlords will, instead of making voluntary improvements that would increase building property values and enhance tenants' quality of life, now likely make only the absolute necessary (patchwork) repairs to legally maintain the apartments and buildings. Tenants will have longer term security, but in possibly deteriorating buildings and apartments and owners and investors of real estate may now elect to look outside of the real estate areas for investments, thus decreasing building maintenance improvements and the building of new rental buildings under certain tax exemption programs, thereby further impacting tenants.

The Act also contains a provision that will virtually eliminate the conversion of rental property to cooperative or condominium ownership. Prior to the enact of the Act, a landlord could convert its' building to either a cooperative or condominium provided that 15% of the tenants residing in the building executed agreement to purchase their apartment. The Act raised that threshold to 51%. The new higher threshold will substantially prevent building owners from being able to convert those buildings, thus: 1) limiting the pool of potential purchasers of buildings; and 2) decreasing opportunities for tenants to purchase as they may have in the past.

A further consequence of the Act, possibly unintended, is the effect it may have upon cooperative apartment buildings, which make up a large portion of the housing stock in the New York City metropolitan area. Cooperative corporations, unlike condominiums, rely on a landlord-tenant relationship under a proprietary lease (which governs the occupancy of the apartment) executed by each tenant/shareholder and the cooperative corporation. As the Act applies to "all leases," it would seem to include proprietary leases, and while an argument can be made that the Act does not apply because of the nature of the stock ownership of the shareholder (lessee) in a cooperative corporation, previous court decisions have held that the laws affecting leases generally apply to proprietary leases as well. Under the Act, in addition to the numerous other changes which affect coops and leases, generally,

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coop corporations (lessors) cannot charge application fees and are limited in the amount they can collect for credit check fees, each of which are used to vet candidates for purchase and are quite important aspects of the purchase process. Further, the Act limits the amount of security that can be collected to one month's rent (for all leases) and does not permit the collection of future rent either. Many cooperatives which previously approved new shareholders/lessees provided they maintain a maintenance (security) escrow to ensure timely performance of the shareholders'/lessees' obligations may require guarantors or, without other alternatives, may outright reject the applicants. While the Act's applicability to cooperatives is yet untested in the courts, it would be wise for all cooperatives to follow the Act unless and until a court rules otherwise or the legislature, wisely, amends the Act to exempt coops.

The governor and legislature should listen to and hear the concerns of all parties. It is understandable to say tenants should be afforded reasonable protections, but those protections should not be at an extreme detriment to landlords/building owners and the real estate market in general. Landlords/building owners and tenants should not be sparring partners and any legislation should consider that each are part of a symbiotic relationship whose future depends on the other. The legislature should consider finding a better way to protect tenants in a manner that does not discourage investing in the very buildings where these tenants reside. We do not wish to revert back to a City where the housing stock is deteriorating and where there is an aversion to investing in New York's real estate market. Unfortunately, the true impact of the Act and its effects will not be known for quite some time.

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LANDLORD & TENANT

40-Year Lease Invalid

River Tower Owner, LLC v. 140 West 57th Street Corp.
NYLJ 5/20/ 19, p. 19, col. 3
AppDiv, First Dept.
(memorandum opinion)

In landlord's action for a declaration that tenant's lease is illegal and void as against public policy, tenant appealed from Supreme Court's declaration that the lease is void and award of attorney's fees to landlord. The Appellate Division modified to vacate the award of attorney's fees, but otherwise affirmed, holding that the 40-year lease violated the rent stabilization laws.

In 1991, corporate tenant entered into a 40-year lease for an apartment that was rent-stabilized because the building was receiving tax benefits under RPTL 421-a. The lease required tenant to name an occupant for the apartment, but no occupant was ever named. Corporate tenant subleased the premises to two sisters for the duration of the 40-year term. The current landlord purchased the building in 2016, and the sisters surrendered the apartment to the corporate tenant in 2017. Current landlord then brought this action seeking a declaration that the lease is illegal. Corporate tenant counterclaimed for constructive eviction based on work being performed in the building. Supreme Court granted landlord's summary judgment motion and denied tenant's summary judgment motion as moot. Supreme Court also awarded landlord attorney's fees.

In modifying, the Appellate Division upheld Supreme Court's determination that the lease was invalid. First, the court noted that the 40-year term was inconsistent with the rent stabilization laws, which permit only one or two year leases. The court held that the long-term lease essentially removed the apartment from rent stabilization for 40 years. Second, the court focused on the lease's failure to name an individual occupant, and emphasized that stabilized leases to corporate tenant must name an individual occupant to avoid the problem of perpetual leases. The court held, however, that landlord was not entitled to invoke the attorney's fees provision in the lease because the lease was invalid as a whole, and the fees provision in the lease was therefore unenforceable.

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REAL PROPERTY LAW

Cancellation of Satisfaction Denied

Green Tree Servicing, LLC v. Ferando
NYLJ 5/17/19, p. 23, col. 2
AppDiv, Second Dept.
(memorandum opinion)

In an action to cancel and vacate a recorded mortgage satisfaction, mortgagors appealed from Supreme Court's grant of summary judgment to mortgagee. The Appellate Division reversed, holding that mortgagee had not adequately demonstrated that the satisfaction was erroneously or fraudulently issued.

In 2001, mortgagors obtained two loans from GMAC Mortgage Corp, in the amounts of $260,000 and $50,627.43. The first loan was secured by a mortgage executed in 2001 and the second by a mortgage executed in 2004. At the time the 2004 mortgage was executed, mortgagors also executed a consolidation and extension agreement consolidating the two loans into a consolidated $300,000 mortgage. In March 2006, a satisfaction of the mortgage

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