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### RENT STABILIZATION

# The ‘Good Cause Eviction’ Bill: Proposal Under Consideration



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New York State lawmakers are currently considering Senate Bill S3082, also known as the “Good Cause Eviction” bill (GCE). GCE is a sweeping proposal that would apply to virtually all free-market housing accommodations in New York State; it would not apply to apartments already subject to rent regulation or owner-occupied buildings with fewer than four units (together with other very narrow exceptions). GCE’s backers and opponents are engaged in intense lobbying efforts in Albany and throughout the state.

While it is unclear whether GCE will become law, all real estate practitioners should be familiar with its provisions given its wide scope and its possible enactment. (In the interest of full

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disclosure, one of this column’s authors, Alexander Lycoyannis, testified before a New York State Senate committee in opposition to S3082 on Jan. 7, 2022.)

GCE provides that unless an owner establishes to a court’s satisfaction one of several specified grounds for removal, “[n]o landlord shall remove a tenant from any housing accommodation, or attempt such removal or exclusion from possession, notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated...”

In other words, GCE essentially eliminates the concept of a fixed-term residential lease in housing accommodations to which it applies. The default position in any landlord-tenant dispute, even where the lease expires, would be that unless the owner can affirmatively establish “good cause”

to evict, the tenant is entitled to remain in possession.

The grounds for “good cause” to remove a tenant are limited.

### ‘Unreasonable’ Rent Increases

The nonpayment of rent is one “good cause” for eviction. However, the tenant’s obligation to pay rent is modified by the requirement that the unpaid rent not be the result of an “unreasonable” rent increase. Notably, the bill does not define “unreasonable.” S3082 does declare that a rent increase above 3% or 150% of CPI, whichever is greater, is presumptively unreasonable, but the bill pointedly does not state that a rent increase below those amounts is presumptively reasonable. Thus, tenants would be free to challenge a rent increase of any amount as “unreasonable.”

While they could theoretically defeat claims of unreasonable rent increases in court, owners would

need to seriously consider whether *any* prospective rent increase would justify the attendant legal expense necessary to defend it as “reasonable.” Furthermore, reasonableness is generally a factual question, so court decisions declaring the reasonableness or unreasonableness of rent increases in certain situations may provide limited guidance to owners and their counsel in setting appropriate rents.

Moreover, a tenant may also challenge any rent increase—or the separate “good cause” basis that the tenant has violated a substantial obligation of the tenancy—as having been imposed “for the purpose of circumventing the intent of this article.” However, neither GCE’s “intent” nor acts that would constitute “circumventing” it are defined in S3082’s language, and thus would have to be ascertained by the courts.

In sum, GCE would strongly incentivize owners to simply leave rents at current levels and avoid the time and expense necessary to justify even small rent increases in New York court proceedings.

### Owner’s Use

At the Jan. 7 hearing, GCE’s proponents asserted that owner’s use is readily available as a “good cause” basis for eviction.

However, the bill’s language reveals that for buildings with 12 or more units, owner’s use recovery is entirely unavailable. And, in buildings with fewer than 12 units, recovery of a single apartment would only be available if the owner can demonstrate “immediate and compelling necessity” — a

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It is not a stretch to say that the New York real estate industry is intensely focused on the possibility of GCE becoming law and, if enacted, the profound effect it would have on New York’s free-market housing stock.

difficult standard to meet which would, again, require significant legal expense with no certainty of success (*see e.g. Buhagiar v. NY State Div of Hous & Comm Renewal*, 138 AD2d 226 [1st Dept 1988]; *Pam v. Weaver*, 9 Misc 2d 1029 [Sup Ct, Kings County 1957]; *Hammond v. Marcely*, 58 NYS 2d 565[Mun Ct 1945]).

### Occupancy Causes Violation of Law

“Good cause” also exists if occupancy by the tenant is in violation of law or causes a violation of law, and the owner is subject to criminal or civil penalties as a result—but only if a vacate order is issued.

This would mean, for example, that a tenant operating an illegal short-term rental business via Airbnb or similar platforms (*see e.g. Multiple Dwelling Law* § 4[8][a]) may continue to do so without fearing eviction as long as the local municipality does not issue a vacate order—which is often the case, with New York City usually opting instead to issue violations to the owner. Thus, an owner could be faced with a steady stream of government fines for the conduct of a tenant it is powerless to remove.

### Other ‘Good Cause’ Bases

Other “good cause” justifications include nuisance, using the apartment for illegal purposes (such as, for example, drug dealing or prostitution) and refusal of access. In general, however, all “good cause” bases would likely require discovery, extensive fact-finding and considerable legal expense to establish.

### Broad Language

Notably, GCE could apply far beyond standard landlord-tenant relationships. The bill’s definitions of “landlord,” “tenant,” “rent” and “housing accommodation” are very broad and, arguably, could grant virtually any person in occupancy of real property the right to remain in

possession over the owner's wishes, notwithstanding the initial terms on which that person entered the property.

Specifically, S3082 defines a "landlord" to include, among other things, "any...person receiving or entitled to receive rent for the occupancy of any housing accommodation," and a "tenant" to include "any... person entitled to the possession, use or occupancy of any housing accommodation." Additionally, the bill defines "rent" to include "any consideration...demanded or received for or in connection with the possession, use or occupancy of housing accommodations," and "housing accommodation" to include "any residential premises."

Thus, for example, (1) a roommate, (2) a college student living in a dormitory, and (3) a week-long vacation home renter arguably could not be evicted when their terms of occupancy expire unless "good cause" exists.

Additionally, at the Jan. 7 hearing, several senators asserted that GCE is not intended to apply to condominiums and cooperatives. However, the definitions above seem to provide otherwise. Indeed, should the application of GCE to a cooperative or condominium unit be challenged in court, the statutory language

would likely control over any alleged contrary legislative intent (*see e.g. Kuzmich v. 50 Murray St. Acquisition LLC*, 34 NY3d 84 [2019]).

### Constitutional Questions

Should it become law, GCE could be vulnerable to constitutional challenge.

The U.S. Supreme Court recently held that a state regulation compelling property owners to permit certain individuals access to real property for three hours per day, 120 days per year was a *per se* physical taking for which just compensation is required (*see Cedar Point Nursery v. Hassid*, 141 S Ct 2063 [2021]). If requiring such limited access to real property is a physical taking requiring just compensation, then it can certainly be argued that eliminating fixed-term leases and compelling continuous occupancy of real property over the owner's objection is also an unconstitutional taking (*see also Pakdel v. City and County of San Francisco*, 141 S Ct 2226 [2021]).

In addition, the Contract Clause provides that "[n]o state shall... pass any...Law impairing the Obligation of Contracts" (U.S. Const. art. I, § 10, cl. 1). It could be argued that GCE impairs the obligation of contracts in that it impairs a lease or rental

agreement for a defined period at the conclusion of which the tenant or occupant must vacate, and instead confers perpetual occupancy rights (*see e.g. Melendez v. City of New York*, 16 F4th 992, 999 [2d Cir 2021]).

### Conclusion

As of this writing, it does not appear that S3082 has moved forward in the New York Legislature since the Jan. 7 Senate committee hearing. Additionally, there are conflicting reports about GCE's level of support in the Legislature as well as when, or if, its backers intend to push the bill forward during this legislative term. Nevertheless, it is not a stretch to say that the New York real estate industry is intensely focused on the possibility of GCE becoming law and, if enacted, the profound effect it would have on New York's free-market housing stock.