

NYC RENT REGULATION REMAINS A 'TIGHTROPE WALK' FOR OWNERS LOOKING TO DEREGULATE UNITS

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Following the 2015 Altman decision, owners are still grappling with the legal uncertainty surrounding rent regulation. A November 2016 decision by a lower appellate court to reject the Altman ruling has only added to the ambiguity behind setting apartment rent prices in NYC — which has increased the number of class action lawsuits

against owners.

Deborah Riegel, a member of Rosenberg & Estis' Litigation Department, has seen this before. "Roberts drew the legal roadmap on how to do this," she said. In 2009, tenants had a historic Court of Appeals victory with the Roberts decision. Under the ruling, residential properties that took advantage of the J-51 tax abatement while under renovation cannot be deregulated, effectively rolling back rents for the affected tenants.

Altman extends a level of scrutiny toward virtually every unit that has previously been deregulated because of high rent vacancy, giving its impact a far greater reach than Roberts. Two years ago, the Altman decision brought the status of many buildings under question, but as with Roberts, the court left many of those questions unanswered. "There is a huge uncertainty now in what you can rent a unit for and whether it is regulated or at market value, which makes it hard to manage a rental portfolio," Riegel said. "You cannot, as an owner, go to the market and say with any certainty that you have a deregulated unit."

For buildings that owners acquire where the prior owners' records are either incomplete or do not support an earlier deregulation, the situation becomes muddier. Riegel has seen tenant attorneys take advantage of the ambiguity. "There is probably some low hanging fruit for them to grab," she said.



Altman also changed the manner by which the unit can be deregulated. Owners could previously factor in both the vacancy allowance and additional improvement costs to get their rent above the threshold, which increased from \$2,500 to \$2,700 in June 2015. Now, under the ruling,

rents are adjusted according to the amount the last tenant paid prior to vacancy. Because many of these units were not registered with the Division of Housing & Community Renewal, allowances for improvement costs are not taken into consideration.

In some cases, the rollback would cause owners to lose thousands of dollars in monthly rent. Going forward, as long as owners register a unit as rent stabilized and comply with the requirements of the Rent Stabilization Law, vacancy allowances and improvement costs will be added to the rent to increase the legal regulated rent for a new tenant — once the previous occupant leaves. “If you spend \$100K on a unit, you could get all of the improvement costs built into the rent, but it's not going to be deregulated until someone is in the unit and under a lease is paying \$2,700 a month and then vacates,” Riegel said.

Renovations — the most straightforward path to rent growth — have become a balancing act. Owners might want to hold off on luxury finishes. “Maybe you will wait to do that high-end level of improvement, but you can manage it to some extent,” Riegel said. Improvements come with a challenge: make the necessary upgrades to maximize rents and deregulate upon vacancy, but do not encourage the current tenant to stay. “How many developers are going to spend \$100K or more on a renovation that will only result in a new rent stabilized tenancy?”



While Altman is still being contested in the appellate court, the battle is not so much focused on the status of rent stabilized units, but rather on how rents are determined. “Owners need to know what the rules are so that when they go into a project they know how to underwrite it properly,” Riegel said. “There is a tightrope people are walking now, because they do not know what the return will be on those improvements made by their predecessor, if any, or what liability there may be for rent overcharge.”

In the meantime, firms like [Rosenberg & Estis](#) continue to help owners successfully navigate the constantly evolving rent rulebook.

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