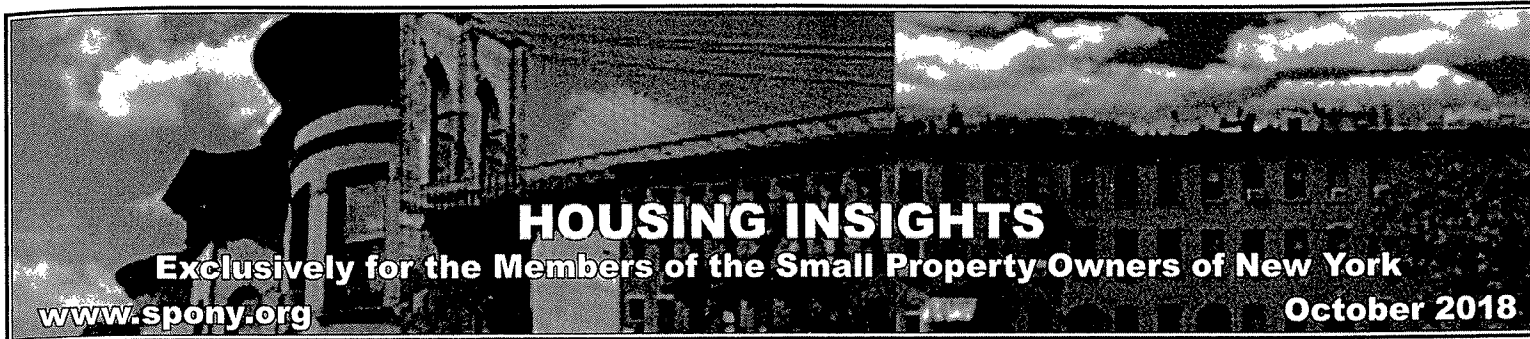




# S.P.O.N.Y.

## Small Property Owners of New York



### MESSAGE FROM THE EDITOR

Dear Fellow SPONY Members,

We hope that the Fall season is off to a pleasant start for you.

No matter how much I would like to put a positive view on it, we as property owners face a truly daunting Election Day on November 6th. We are on the cusp of losing all protection in Albany from irrational anti-landlord, anti-business politics and legislation. We are one vote away from losing the State Senate as our last line of defense against egregious anti-property owner legislation. If Democrats win the Senate, then they will seek to:

- Rewrite and expand ALL existing rent regulation laws in favor of tenants
- End High Rent Vacancy Decontrol
- End statutory vacancy increases and long term vacancy bonuses
- End preferential rents i.e. freezing rents at their current levels with only minimal annual RGB increases
- Eliminating MCI rent increases
- Expand the Tenant Protection Unit

- Move control of rent regulation and income tax legislation writing power away from Albany to NYC, where populist progressive voters view property owners as the enemy and where the City government has historically proven its inability to balance economic realities from irrational populist politics - which gave us the near bankruptcy conditions of the 1970s. Imagine de Blasio writing rent regulations!

If just one of these proposals passes as law, the effects will be devastating. It is most unfortunate that the Democrats see freezing and controlling rents as a way to help tenants. In fact, quite the opposite is true. If these proposals became law, it would only hurt the very tenants they are looking to protect. As bad as the NYCHA housing stock is, the advocates, the courts and the tenants say more money needs to be invested into the buildings to improve the quality of housing for the tenants that live in those buildings. So how would freezing and controlling the private housing stock help the tenants? The bottom line is - IT WON'T.

We implore you to vote with your heart to save your businesses and real estate investments - vote Republican, especially for State level candidates. This is most critical in competitive races in Nassau & Suffolk County and upstate New York as well as Bay Ridge Brooklyn. And do not consider this as a pro-Trump vote - it is a pro-Me vote: If the Senate is lost, it could take decades to regain the protections we had in Albany. Annual SPONY Membership Dues - Fiscal Year 2019 began on May 1st, 2018: Please pay your annual dues promptly. Only paid-up members will be able to attend our group meetings. We are a 100% volunteer-run organization and your dues and support are needed for operations, including the distribution of this newsletter, running meetings, etc. If you set up annual dues payment automatically through PayPal, please adjust the payment date to May 1st of each year.

#### OUR ADDRESS & CONTACT INFORMATION

Small Property Owners of New York Inc. (SPONY)

8802 Ridge Boulevard [Management Office] • Brooklyn, New York 11209 • (212) 410-4600 • SPONYINC@aol.com

## **MANAGING YOUR PROPERTY**

*[ This article was contributed Adam Leithman Bailey, P.C, One Battery Park Plaza,  
Eighteenth Floor, New York, New York, (212) 825-0365. ]*

### **NEW SMOKING POLICY AFFECTING TENANTS**

The new smoking enactment may be regarded either as expanding the rights of nonsmokers or constricting the rights of smokers.

Effective August 28, 2018 is Local Law 147, dealing with smoking policies, amending NYC Administrative Code §17-502 and §17-508, and adding §17-506.1. The law has one of the broadest possible definitions of an "owner" and of a building to which the law applies – finding applications to all classes of ownership, including privately owned buildings as well as cooperatives and condominiums. Without dictating the policy, it requires all affected buildings – all Class A multiple dwellings – to adopt smoking policies. While requiring that it be incorporated in leases, it exempts from incorporation already in place rent regulated or publicly rented units, their tenants, and their successors. However, brand new tenants in these classes are subject to this law. The policy affects both leases and subleases and therefore applies to both owners of a large building and to individual occupants who rent out their apartments.

In spite of the fact that a board of directors of a cooperative or a board of managers of a condominium is free to govern buildings with general wide latitude, this law requires them to vote for a smoking policy, without specifying what the smoking policy is and does not specify whether occupants of a building that has adopted such a policy shall have third party beneficiary status to compel the building's ownership to enforce the policy it adopts.

Under the law, it is [also] perfectly legal for a building to adopt a policy that smoking is completely allowed except where prohibited by law.

While the law requires that the landlord specify exact locations where smoking is prohibited and permitted in and around the building, for the very reason that the law does not specify third party enforcement, the safest policy, from a legal if not marketing point of view, is one that simply allows smoking.

To the extent that the law requires enforcement of the policy, it merely requires that "the owner ... shall incorporate the building's smoking policy into any agreement to rent or lease a dwelling unit..." or "shall incorporate the building's smoking policy into any agreement to rent or purchase the dwelling unit." However, it also sets penalties of \$100 for each instance of failing to adopt or disclose the smoking policy and specifies that those shall be the only penalties for violation.

The law does not specify whether it is sufficient that the lease now state, "it is the policy of this building that there shall be no smoking in the apartments" or that a lease must rather state, "there shall be no smoking in the apartment."

Under one possible reading of this new ordinance, it is enough for a lease to state what the building's policy is without requiring that the occupant actually obey the policy. However, another possible reading of the law is that the lease must both state what the building's policy is and that it will be enforced, presumably with threat of eviction.

Unlike the bedbug history, this law does not require posting of the policy in a prominent place in the building, but allows posting as an alternative to distributing copies of it to all the occupants and maintaining records of such distribution. With stiff fines for failure to abide by these provisions, owners should be careful not to post a summary of the smoking policy, but the actual verbatim policy itself. For this reason, the policy should be written with as few words as possible and posted in as large print as possible.

# **ATTORNEY'S ADVICE**

[ This article was brought to us by Jim Silber, SPONY Executive Committee, and attorney Alexander Lycoyannis of Rosenberg and Estis, PC. Tel. 212-551-8416, alycoyannis@rosenbergestis.com ]

1. <Question> I have a rent-stabilized tenant who smokes so many cigarettes that the smoke comes out into the hall and goes into other tenants' apts, and they constantly complain. We have tried to seal all cracks around the apt door but nothing helps. Is there case law that would help us if we go to court on a nuisance holdover?

<Lycoyannis> The cases turn on whether the owner has imposed a building-wide smoking prohibition or if smoking is prohibited in the tenant's lease. If so, the conduct described (if sufficiently documented and the tenant has not cured despite the opportunity to do so) would form the basis for termination of the tenancy and a holdover proceeding. If not, the conduct could still conceivably form the basis for a holdover proceeding; but there is a line of cases holding in such circumstances that "[t]o the extent odors emanating from a smoker's apartment may generally be considered annoying and uncomfortable to reasonable or ordinary persons, they are but one of the annoyances one must endure in a multiple dwelling building." *Ewen v Maccherone*, 32 Misc 3d 12, 15 (App Term 1st Dept 2011). Even so, serving a notice may make the tenant mindful that their behavior is negatively impacting their neighbors and result in a reduction in the offensive behavior.

2. <Question> One of my tenants wants to put a temporary wall up between his kitchen and dinette for his new baby. Must I let him do this? The lease says no alterations but would a judge say a temporary wall is not an alteration?

<Lycoyannis> It depends on the exact nature of the "temporary wall." If the proposed "wall" is a full floor-to-ceiling partition that is affixed to the apartment, it would likely violate not only the lease but the New York City Fire Code, so the owner should not consent. If, however, the "wall" is something less, such as a partition that has clearance above and below and is not permanently affixed to the apartment's walls, it is doubtful that a court would deem it a prohibited alteration.

3. <Question> I have to put up a sidewalk bridge on my building to do exterior work. The tenant on the 2nd floor says it ruins her view and wants a rent reduction. Am I required to give one?

<Lycoyannis> I am aware of no statute or case law requiring an owner to give a rent reduction in these circumstances. Based on the facts presented, the owner is not engaging in any activity that decreases the tenant's use and enjoyment of her apartment. The owner's obligation to perform necessary work to its building overrides any right the tenant may have to a particular view outside of her apartment.

4. <Question> I have a market rate exempt apt where I do not want to renew the lease for the tenant. How much notice should I give him, and in the letter, should I tell him why I do not want to renew the lease?

<Lycoyannis> You do not need to advise a market rate tenant why you do not wish to renew. There is no hard-and-fast rule as to timeframe, but in order to permit the tenant sufficient time to relocate, avoid a potential holdover situation and allow for sufficient time to find a suitable replacement tenant, I recommend that you give no less than 60-90 days' notice.

5. <Question> If a tenant has a roommate, how much can he legally charge him as part rent? When would it be considered a sublet and not a roommate.?

<Lycoyannis> A sublet involves the named tenant moving out and the sublessee taking over possession of the entire apartment. By contrast, a roommate lives in the apartment simultaneously with the named tenant. In a market rate apartment, the tenant can charge whatever a roommate is willing to pay; in a rent-stabilized apartment, a tenant generally cannot charge his or her roommate more than that roommate's proportionate share of the rent (e.g. where a rent-stabilized tenant has one roommate, that roommate generally cannot be charged more than 50% of the rent, subject to adjustment if the roommate is paying for additional amenities and benefits such as internet, cable and

## **ATTORNEY'S ADVICE...** *continued from Previous Page*

furnishings). However, while a roommate can seek a refund of any overcharge in court, a landlord has no right to evict a rent-stabilized tenant based on the tenant's overcharge of a roommate.

6. <Question> I have a tenant who always lets friends stay in her apt when she travels every month. She says it is not a sublet and gets no money for doing it. It changes the nature of our building and makes it more transient. How can I make her stop?

<Lycoyannis> This is an unusual set of facts. Generally, apartments in Class A multiple dwellings cannot be rented for fewer than 30 consecutive days – for example, short-term rentals for profit via websites like AirBnB.com. However, under the governing statute, stays of fewer than 30 consecutive days in residential apartments are allowed where there is “incidental and occasional occupancy . . . by other natural persons when the permanent occupants are temporarily absent for personal reasons such as vacation or medical treatment, provided that there is no monetary compensation paid to the permanent occupants for such occupancy.” It appears that no monetary compensation is being accepted for these short-term stays; enforcement efforts in court usually involve shutting down illegal hotel rooms being operated for profit in residential apartments. However, it also appears from the facts presented that these stays are not “incidental and occasional” but systematic and occurring on a regular basis. It is unclear how the courts would interpret this requirement. Nevertheless, the owner would be within its rights to write a letter to the tenant reciting the requirements of the statute and documenting that complaints have been received from other tenants concerning the transient use of the apartment; this alone may result in the tenant curtailing the offending behavior. Additionally, the owner, to the extent possible, should document exactly how many days per month the tenants’ “friends” stay in the apartment for possible use in a later court proceeding if the letter does not have the desired effect.

## **LEGISLATIVE RADAR**

*[This section was contributed by Chris Athineos, SPONY Executive Committee Member ]*

### **CITY HALL UPDATE**

As a result of the tragic fires that have taken place in New York City over the last five months, there has been an intense focus by the NYC Council on ways to reduce or eliminate the resulting loss of life. The Council had a hearing in late February on five bills. One of the bills would mandate self-closing doors on all apartment entry doors. This is actually the law already and owners have a responsibility to make sure the closers are in proper working order. SPONY strongly suggests that owners inspect the doors in their buildings and make any necessary repairs. It is highly likely that with renewed emphasis on this important safety feature, HPD inspectors will be looking for non-working self-closers and writing the associated violations. Other bills include replacing ionization type smoke detectors in cooking areas with photoelectric smoke detectors, and requiring owners to provide tenants with childproof knobs on stoves where children under 10 years of age are present.

### **ALBANY UPDATE**

The state legislature has been fairly quiet as it relates to building owners' issues this year. However, that could change quickly based on the politics and political makeup of the NYS Senate. The Assembly passes dozens of anti-owner bills every year are typically destined to die in a Republican-controlled Senate. Ominously, the Republicans maintain only a one-vote edge because Simcha Felder, a Brooklyn Democrat, chooses to caucus with the Republicans. This has been the case for several years, but because the Governor is running for re-election, he has decided to try and push Senator Felder back to the Democratic conference, which would create a Democratic major and remove protection against anti-landlord legislation. This would have been a non-issue if the Republicans had won a special election in Westchester in April. Since they did not succeed, the political theater continues in Albany. Property owners in NY State and NY City will lose all protections from the annual flood of frivolous, pro-tenant legislation if Democrats win one more State Senate seat, thereby allowing Democrats to dominate all three branches of NY State government: Executive, State Senate, State Assembly.

# **PROPERTY OWNERS' STUMP**

*[ This article was contributed by Enterprise Community Partners, Inc., [www.enterprisecommunity.org](http://www.enterprisecommunity.org) ]*

## **FLOOD HELP FOR HOMEOWNERS**

Like many people, Gerald Fils-Aime didn't realize that his homeowners insurance did not cover damage caused by flooding. But now he understands the need to purchase a separate flood insurance policy. "Having information is half the battle," he said.

Fils-Aime gained this knowledge as a participant in the Center for NYC Neighborhood's Home Resiliency Audit Program, accessible through [FloodHelpNY.org](http://FloodHelpNY.org) and funded by the Governor's Office of Storm Recovery.

Through the Home Resiliency Audit Program, homeowners receive a full assessment of their properties by a qualified engineer and one-on-one counseling with a housing professional. Homeowners also receive a free elevation certificate worth hundreds of dollars. That [elevation] certificate can be taken to an [insurance] broker to try to negotiate a lower flood insurance rate. Eligible homeowners may also qualify for a free backflow prevention valve installation to prevent sewage backups into their homes – which can mitigate damage that can pose health hazards and cost thousands of dollars in cleanup costs.

The program currently accepts properties with 1-4 units in several coastal communities, including Bensonhurst, Bergen Beach, Brighton Beach, Canarsie, Coney Island, Gravesend, Georgetown, Gerritsen Beach, Howard Beach, Lower Manhattan, Manhattan Beach, Marine Park, Mill Basin, Mill Island, Red Hook, Rockaway East, Seagate, and Sheepshead Bay.

The program has been featured by various publications, including The New York Times. "People have to understand the technical specifics of their property in relation to the flood plain," Christie Peale, Executive Director and CEO of the Center, told the Times. "Are you above it? Do you have livable spaces below it? Where is the lowest part of your property that intersects with the flood plain? We really don't want folks to put their heads in the sand and pretend this isn't an issue."

Since October 2013, when Hurricane Sandy flooded his home, Fils-Aime has been working to rebuild and to learn how to make his house more resilient. Up to five feet of water poured into his basement where tenants had been living during the hurricane. He found the refrigerator floating upside down; belongings were ruined by the water.

"Everything was completely gutted," he said. He turned to his insurance broker and learned that he didn't have any flood insurance coverage for the damage. So he invested \$50,000 of his own money into rebuilding his basement, tapping into his savings and taking a loan out from his 401K. Gerald had addressed the immediate problem. But he knew that another storm could come at any time, so he sought help to make his home less vulnerable to future flooding. In 2017, he enrolled in the Home Resiliency Audit through the Center's [FloodHelpNY.org](http://FloodHelpNY.org) platform.

Fils-Aime's house is one of nine connected in a row on a quiet residential street, which meant that the Center's advisors could not recommend that he elevate his house to avoid future problems. Instead, they advised filling in the basement, adding wet floodproofing, and installing flood vents. The boiler and other mechanical equipment in the basement could be moved to the first floor. They also recommended replacing the landscaping with a rain garden or bioswale to absorb rain and storm water.

To learn more about your flood risk and to apply for the program, visit [www.enterprisecommunity.org](http://www.enterprisecommunity.org)

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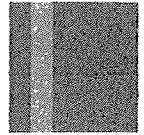
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TOWN GRAMERCY PARK LLC  
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TOWNRESIDENTIAL.COM

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FGM Property Management



44 Gerhard Road, Plainview, NY 11803

TEL | 516-476-0452  
EMAIL | fgmarc@aol.com  
FGMpropertymanagement.com



emasci@halstead.com  
t: 212.521.5708  
c: 917.400.1465  
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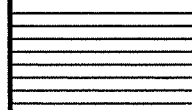
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New York, NY 10016  
212.271.0321

**Florida**  
1815 Griffin Road, Suite 101  
Dania Beach, FL 33004  
954.843.2526

mrogoff@akam.com  
www.akam.com



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Vice President

47 Nepperhan Ave. Ste. 8 • Elmsford, NY 10583  
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www.kepplertitle.com



**JEFFREY DWORKIN**  
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NEW YORK, NY 10271

PHONE 212-825-0365  
ALB@ALBLAWFIRM.COM  
ALBLAWFIRM.COM


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30 Wall Street, 8th Fl. New York, NY  
159 20th Street, 1B, Brooklyn, NY

212-709-8112  
ksverdlov@sverdlovlaw.com  
www.sverdlovlaw.com


**BORAH GOLDSTEIN**  
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377 Broadway  
New York, NY 10013-3993  
T: 212.431.1300 Ext. 640  
C: 917.572.7828

**ANDREW I. BART**  
ATTORNEY AT LAW

abart@borahgoldstein.com  
andrewibart@gmail.com  
www.borahgoldstein.com



TEL (718) 858-4250


**MICHAEL P. GOLDBERG**

*Attorney at Law*

188 MONTAGUE STREET - SUITE 500  
BROOKLYN, NEW YORK 11201-3601  
FAX (718) 522-2645  
www.goldberglustig.com


GOLDBERG & LUSTIG, PLLC E-mail: goldberg@goldberglustig.com

**Steven Jaffee**  
Chief of Operations



**SAMATT RESEARCH SERVICES, INC.**

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