New York Law Journal
Real Estate Trends
WWW.NYLJ.COM
An ALM Publication
VOLUME 254—NO. 44
WEDNESDAY, SEPTEMBER 2, 2015

RENT REGULATION

New Legislation on Tenant Buy-Out Offers


By **Warren A. Estis**
And **Jeffrey Turkel**

Any New York City attorney practicing rent regulatory law has negotiated the buy-out of a rent regulated tenant. Among other things, tenant buy-outs allow landlords to obtain vacancies, deregulate apartments, and raise rents. Sometimes the purpose of the buy-out is to allow the landlord to move into the apartment himself; in other instances, buy-outs enable a landlord to vacate the entire building and develop the property.

Buy-out offers, at least those that are accepted, can benefit tenants enormously. These payments, ranging from a few thousand dollars to over one million dollars, allow tenants to convert their rent regulatory status into cash, enabling them to buy an apartment, move out of the city, or even retire. Tenant attorneys often represent such tenants on a percentage basis, taking a portion of the buy-out payment should the deal reach fruition.

Buy-outs thus add fluidity to New York City's housing and development markets by redistributing income to tenants and allowing landlords to free themselves of rent regulatory restrictions. A problem arises, however, when a landlord makes repeated buy-out offers to a tenant, and refuses to take no for an answer. Three bills passed by the New York City Council, which are expected to be signed by Mayor Bill de Blasio, are intended to address this problem.

Time and Place Restrictions

Intro No. 682-A purports to "place reasonable time, place and manner restrictions on the making of…buy-out offers in order to protect tenants from harassment while still allowing owners and tenants to engage in negotiations over such offers." The bill seeks to accomplish this by adding new subparagraph 27-2004(a)(48)(f-3) to the Administrative Code of the City of New York, such that the term "harassment" now includes:

> offering money or other valuable consideration to a person lawfully entitled to occupancy of such dwelling unit to induce such person to vacate such dwelling unit or to surrender or waive any rights in relation to occupancy while engaging in any of the following types of conduct:
> (1) threatening, intimidating, or using obscene language;
> (2) initiating communication with such frequency, at such unusual hours or in such a manner as can be reasonably expected to abuse or harass such person;
> (3) initiating communication at the place of employment of such person without the prior written consent of such person; or
> (4) knowingly falsifying or misrepresenting any information provided to such person.

By defining the intended beneficiary of the law as a "person lawfully entitled to occupancy," the legislation presumably does not apply to communications made to a tenant's attorney. However, the requirement that the communication shall not be "at such unusual hours or in such a manner as can be reasonably expected to abuse or harass such person" is completely undefined. A call to a tenant during regular business hours would seem permissible, although most tenants are not home during such hours, and some tenants who work nights might claim that a daytime call constitutes harassment. Tenants are more likely to be home during evenings, but the later the call, the more "unusual" the hour might be.

> As written, the legislation should have the desired effect of curbing landlords from using unscrupulous tactics to pressure unknowing tenants to vacate their apartments.

Most frightening, at least for landlords, is the prohibition against "falsifying or misrepresenting any information" provided to the tenant. Obviously, a landlord cannot falsely claim that a rent stabilized apartment is not, in fact, rent

WARREN A. ESTIS *is a founding member at Rosenberg & Estis.* JEFFREY TURKEL *is a member at the firm.*

stabilized. But a buy-out is a negotiation and negotiations usually involve posturing. Thus, a landlord seeking to buy out a tenant may casually mention that he or she is contemplating an owner occupancy proceeding, just as a tenant, who is seeking to get the highest price, may casually mention that the tenant's grandchild may be moving into the apartment, such that succession will prevent the owner from recovering the unit for decades absent a buy-out. Both the landlord and the tenant may be posturing, but the legislation, as written, criminalizes negotiation tactics on the landlord's side only.

As a practical matter, landlords who elect to make such calls should do so by enlisting an associate to take part in the call. This way, if a tenant claims that the landlord engaged in "threatening, intimidating, or ….obscene language," the landlord at least has a witness to support his or her side of the story.

Disclosure

Whereas Intro No. 682-A is concerned with time-and-place restrictions, Intro No. 700-A deals with disclosure. In Section 1 of the legislation, the City Council finds that:

> …some tenants do not understand their rights with respect to buyout offers, including their right to reject such an offer and remain in their apartment or to seek guidance from an attorney, and some tenants do not understand what a buyout offer is, or that such offer is being made on behalf of the owner of the building in which they reside.

To address this situation, Intro No. 700-A adds new subparagraph (f-2) to Section 27-2004(a)(48) of the Administrative Code to define "harassment" as including a buy-out offer, unless:

> …such owner discloses to such person in writing (i) at the time of the initial contact, and (ii) in the event that contacts continue more than 180 days after the prior written disclosure, at the time of the first contact occurring more than 180 days after the prior written disclosure:
>
> (1) the purpose of such contact,
>
> (2) that such person may reject any such offer and may continue to occupy such dwelling unit,
>
> (3) that such person may seek the guidance of an attorney regarding any such offer and may, for information on accessing any legal services, refer to The ABC's of Housing guide on the department's website,
>
> (4) that such contact is made by or on behalf of such owner, and
>
> (5) that such person may, in writing, refuse any such contact and such refusal would bar such contact for 180 days, except that the owner may contact such person regarding such an offer if given express permission by a court of competent jurisdiction or if notified in writing by such person of an interest in receiving such an offer.

Thus, it would appear that the first communication from an owner to a tenant is governed by Intro No. 700-A, which requires the landlord to disclose the tenant's rights "in writing…at the time of the initial contact." Intro No. 682-A would seem to primarily govern subsequent and telephonic communications, as it would be highly unusual that a written communication would involve "threatening, intimidating or using obscene language," or would be made at "unusual hours." However, the restrictions in Intro No. 682-A against overly frequent communications, and communications at a tenant's "place of employment," would seem to apply to the initial written communication made under Intro No. 700-A.

Intro No. 757-A adds new subparagraph (f-1) to Section 27-2004(a)(48) to include within the definition of "harassment" the following conduct:

> contacting any person lawfully entitled to occupancy at such dwelling unit, or any relative of such person, to offer money, or other valuable consideration to induce such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, for 180 days after the owner has been notified, in writing, that such person does not wish to receive any such offers, except that the owner may contact such person regarding such an offer if given express permission by a court of competent jurisdiction or if notified in writing by such person of an interest in receiving such an offer.

As written, the legislation should have the desired effect of curbing landlords from using unscrupulous tactics to pressure unknowing tenants to vacate their apartments. But the unintended consequence of the legislation is that tenants who do want to be bought out now have additional ammunition during these negotiations. It is easy to envision a tenant claiming that the landlord, in the process of making its offer, somehow violated the requirements of the new law. It is equally easy to envision a situation where a tenant would be willing to waive his or her "harassment" claim in exchange for additional consideration. Notably, the legislation imposes all of its requirements on the landlord; tenants are free, for example, to make misrepresentations during negotiations, and to initiate communications with undue frequency.

It may be that the City Councils' true purpose was to make it more difficult to buy out tenants, thereby preserving rent-regulated housing in the face of tenants who are willing to give up their rent-regulated apartments in exchange for cash. Unscrupulous landlords should be frightened by the new legislation; honest landlords, perhaps, should be frightened even more.