New York Law Journal
Real Estate Trends
WWW.NYLJ.COM
An ALM Publication
VOLUME 262—NO. 3
WEDNESDAY, JULY 3, 2019

RENT REGULATIONS

HSTPA-2019: Some Observations


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Rather than add to the flood of articles summarizing the many changes wrought by the Housing Stability and Tenant Protection Act of 2019, some perspective is in order. What the Legislature did is fairly obvious, but there are less apparent and more profound issues at play that bear examination.

The End of Luxury Deregulation

The HSTPA-2019 eliminated luxury deregulation outright. Although this was a major victory for tenants, landlords ultimately won the luxury deregulation war.

Luxury deregulation did not exist until it was added to the rent laws pursuant to the Rent Regulation Reform Act of 1993. Before luxury deregulation, apartments in pre-1974 buildings with six or more units were more or less sentenced to perpetual rent regulation. Landlords reacted by converting their buildings to cooperatives and condominiums; once a rent-regulated tenant vacated post-conversion, the unit could be sold. Luxury deregulation revolutionized the system by allowing landlords to deregulate apartments without having to convert buildings and sell off inventory.

The purpose of luxury deregulation, despite initial talk of high vacancy rates for high- rent apartments, was to diminish the number of rent regulated units over time. In this sense, luxury deregulation worked phenomenally well. No one is sure of the exact figure, but it is estimated that approximately 170,000 rent regulated apartments were luxury deregulated.

Even though the Assembly in 2019 had sought to re-regulate tens if not hundreds of thousands of apartments that had been luxury deregulated over the years, this provision did not find its way into the HSTPA-2019. So although the luxury deregulation escape hatch has now been sealed, countless apartments left the system between 1993 and 2019, a net gain for landlords. These units will be used to subsidize the very low rents that can be expected under the HSTPA-2019.

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In concert with the end of luxury deregulation, the HSTPA-2019 also made it virtually impossible

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for landlords to convert their buildings to cooperative or condominium ownership. By doing so, the Legislature did far more than seal another deregulation escape hatch. In Section 1 of L. 1982, ch 555, which added GBL § 352-eeee to the statute, the Legislature declared that "the conversion of residential real estate from rental status to cooperative or condominium ownership is an effective method of preserving, stabilizing and improving neighborhoods and the supply of sound housing accommodations."

It further declared "it is sound public policy to encourage such conversions." Pursuant to the HSTPA-2019, that policy has changed. The Legislature apparently realized that each successful conversion diminished the number of rental apartments—whether regulated or deregulated—in New York City.

Vacancy Increases

The HSTPA-2019 eliminated the 20 percent vacancy bonus, along with longevity bonuses. These had been added to the statute pursuant to the Rent Regulation Reform Act of 1997. The intent of these increases was to increase rents in vacant apartments, but the real purpose was to speed apartments toward the luxury deregulation threshold without the need for investment in, for example, individual apartment improvements.

But there is more to the repeal than meets the eye. The HSTPA-2019 also barred the Rent Guidelines Board (RGB) from authorizing increases upon the signing of a vacancy lease. The latest RGB Order, No. 51, calls for a 1.5% increase for one-year renewals, and a 2.5% increase for two-year renewals. Vacancy leases, however, are not renewals, such that it would appear that when a vacancy lease is signed, the stabilized rent (absent individual apartment improvements) will remain exactly the same.

> The Legislature knew all of this, but decided that cheap but shabby apartments are politically more palatable than well-kept, high-rent apartments.

The Legislature's objective was to incentivize owners to keep existing tenants in place; absent an RGB rent freeze, renewal leases will always have higher rents than vacancy leases. With this system in place, there is, theoretically, no benefit to evicting tenants, harassing tenants, or doing anything other than keeping these tenants happy. The elimination of vacancy increases is in fact an anti-eviction measure. This is a great benefit to existing tenants, and a real problem for tenants looking for rent stabilized apartments.

The HSTPA-2009 also barred the Rent Guidelines Board from establishing special guidelines for rent adjustments based on "the current rental cost of the unit or on the amount of time that has elapsed since another rent increase was authorized pursuant to this title." This was done to undo the effect of *Casado v. Markus*, 16 NY3d 329 (2011), where the Court of Appeals upheld Rent Guidelines Board Orders Nos. 40 and 41, which authorized special increase for low-rent apartments (the so-called "poor tax") and for apartments that had been vacant for six or more years prior to the date of the renewal lease.

The Legislature recognized that the RGB is the only governmental body that can raise rents on a city-wide basis. The Legislature thus made sure to close off existing avenues for RGB rent increases other than annual percentages for one-and two-year renewal leases.

Bad behavior? No Problem

With the last point in mind, there is no longer any upside, for example, to evict tenants for non-primary residence, or even profiteering. All the landlord will get from a vacancy is a new stabilized tenant paying the same rent. One can thus expect some very bad behavior from tenants, safe in the knowledge that landlords have no incentive to recover their apartments. It is not clear how protecting tenants who primarily live elsewhere will abate the housing shortage.

Bye-Bye Buyouts

If there is no incentive to evict tenants, then there is little incentive, short of a demolition scenario, to pay them to vacate. Tenants who had someday hoped to monetize their apartments will no longer be able to do so. Tenant attorneys, who occasionally receive a percentage of a lucrative buyout as a fee, can no longer count on this income.

Urstadt Lives

The Urstadt Law, enacted in 1971, prohibits New York City from regulating apartments that are not currently regulated, and from subjecting apartments to more stringent regulation than currently exists. This greatly frustrated the New York City Council, which believed that the City, rather than Albany, should determine what the rent laws say.

Tenant advocates had been demanding the repeal of Urstadt for decades, but the HSTPA-2019 did not do so. Nor was there any serious legislative push in 2019 to repeal the statute. In fact, while "repeal Urstadt" was a popular rallying cry, it was never going to happen. Political power is, in part, the ability to control legislation, and campaign contributions always follow political power. The Urstadt Law lives because no legislative body is going to voluntarily give away power and campaign contributions.

MCIs and IAIs

Although the Legislature can change the rent regulatory laws, it cannot change fundamental laws of economics. If there is little economic gain return from performing major capital improvements (MCIs), or from improving apartments upon vacancy, then landlords will not do so. Why replace a roof if you can patch and re-patch it? And while the kitchen cabinets in an apartment may be relics from the 1970s, a landlord would be foolish to replace them if they still function. Similarly, old, non-functioning refrigerators will now be replaced by functioning used refrigerators. With the housing crisis showing no signs of abating, vacant stabilized apartments will always be in demand, irrespective of how dated they become. So why make them nice?

The Legislature knew all of this, but decided that cheap but shabby apartments are politically more palatable than well-kept, high-rent apartments. One can expect that 10 or so years following the HSTPA-2019, most stabilized apartments will look like something out of the Kramden apartment in *The Honeymooners*.