The Rent Stabilization Laws of 2015 Explained

High Rent Vacancy Deregulation and Tenant Buyouts in a New World

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High Rent Vacancy Deregulation and Tenant Buyouts in a New World

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Contents

THE RENT STABILIZATION LAWS OF 2015 EXPLAINED
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It was a tough Summer of 2015 for New York City landlords. Two of the most powerful implements in the toolbox of an owner seeking to eliminate Rent Stabilized tenancies and "add value" to a multi-family building, the **Tenant Buyout** and **High Rent Vacancy Deregulation,** were very much dulled.

I. BACKGROUND -- THE REAL THREAT TO RENT STABILIZED HOUSING IN NEW YORK CITY

A. How Things Used To Be

Before the changes in the law discussed in this article, by exerting pressure on a tenant, offering incentives to a tenant, or both, a landlord could often get a Rent Stabilized tenant to take a "buyout", a sum of money paid to the tenant for leaving. Once a vacancy was secured, the landlord would take certain steps, called "High Rent Vacancy Deregulation" (explained in detail below), to raise the rent past a certain legal threshold, which would render the apartment no longer subject to Rent Stabilization. Forever after, the apartment would be free-market, not subject to Rent Stabilization.

Indeed, according to the Wall Street Journal, since 1993, more than 139,000 rent-regulated apartments have converted to market rate apartments via vacancy deregulation.[1] According to the New York Business Journal, 50,000 of those losses occurred between 2007 and 2014, and they cite to a map created using tax bills created by John Krauss, a tech fellow at the GivLab at NYU.[2] Gothamist cites to an Alliance for Tenant Power statistic that says that 100,000 apartments would have been lost to High Rent Vacancy Deregulation in the next four-years, if things remained the way they were.[3]

The one-two punch of Buyouts and High Rent Vacancy Deregulation is now severely circumscribed.

In July 2015, Albany renewed and updated the Rent Stabilization Law. The wording in the High Rent Vacancy Deregulation section has led to confusion about how that part of the law is supposed to work going forward. Then in August 2015, the New York City Counsel amended the Housing Maintenance Code to amend the definition of "harassment" to

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[1] *New York Rent Act Draws Conflicting Interpretations*, Wall Street Journal, July 16, 2015, http://www.wsj.com/articles/new-york-rent-act-draws-conflicting-interpretations-1437095234.

[2] *With new rent regulation law, a single word's meaning could change the entire discussion*, New York Business Journal, July 17, 2015, http://www.bizjournals.com/newyork/news/2015/07/17/with-new-rent-regulation-law-a-single-words.html; https://docker4data.cartodb.com/viz/766a0f32-1ea1-11e5-b267-0e49835281d6/public_map.

[3] *New Rent Law Includes Tenant-Friendly Tweaks*, Gothamist, July 23, 2015, http://gothamist.com/2015/07/23/surprise_rent_regulations_tenant_fr.php.

include certain buyout offers. Below, I explore both new laws and their implications in detail. This article, like all my articles, is neither pro-landlord, nor pro-tenant.

B. A Realistic (But Boring) Story of the Death of Rent Stabilized Apartment

The media loves stories about evil landlords who get indicted for destroying Rent Stabilized apartments while the tenants are away at doctor's appointments.[4] Landlords who do such things are terrible people, fully deserve to be prosecuted, and their heinous actions make for a shocking, readable story. But they are also rare. The vast majority of landlords do not take a crowbar to apartments while the tenants are out for the morning at the podiatrist.

The real, pernicious threat to Rent Stabilized housing in New York City has long been *High Rent Vacancy Deregulation*. But you do not read as many stories on this topic. Why? Because this topic is complicated and requires a good deal of explaining, and makes for long, technical, boring articles.

Allow me to write a pretend story on the topic, and you will see how un-sexy (yet how bad for Rent Stabilization) the situation that I describe is.

Michelle's Pretend News Story on a Typical High Rent Vacancy Deregulation Tale, Prior to July 2015

> It was 2005. There was a Rent Stabilized tenant in an up-and-coming neighborhood in Brooklyn, paying $1,086.23 per month. The tenant moved out.
>
> The landlord wanted to deregulate the apartment. Therefore, he needed to get the legal rent, as per Rent Guidelines Board increases and the Rent Stabilization Law, to $2,000.00 per month before installing the next tenant.[5] How would the landlord legally do that? (Keep paying attention, don't fall asleep…)
>
> A landlord may secure a rent increase based on a substantial modification or enlargement of dwelling space and/or upon provision of additional services, improvements, equipment, furniture, or furnishings to a Rent

[4] *2 Brooklyn Landlords, Accused of Making Units Unlivable, Are Charged With Fraud*, New York Times, April 16, 2015, http://www.nytimes.com/2015/04/17/nyregion/brooklyn-landlords-joel-and-aaron-israel-arrested.html?_r=0; *Brooklyn landlord is first property owner charged with unlawful eviction under New York campaign protecting rent-stabilized tenants*, Daily News, http://www.nydailynews.com/new-york/brooklyn/brooklyn-landlord-charged-unlawful-eviction-article-1.2260966.

[5] Former (N.Y.C. Rent & Rehab. L) New York City Administrative Code § 26-403(e)(2)(k), as amended N.Y.C. Local L. 1997, No. 13; former (RSL) New York City Administrative Code § 26-504.2(a), as amended Local L.1997, No. 13. After 2011 the magic number went up to $2,500.00.

Stabilized unit.[6] This is referred to as an Individual Apartment Improvement ("IAI"). No tenant consent is required when the IAI is made during a vacancy.[7] The New York State Division of Housing and Community Renewal ("DHCR") distinguishes between "improvements" and "repairs" or "maintenance" in determining whether the work qualifies for the increase.[8]

In a building with 35 or fewer apartments, a landlord may add to a Rent Stabilized tenant's rent the equivalent of one-fortieth of the cost of the new service or equipment, including installation costs, but not finance charges.[9] For example, if a new refrigerator is installed in an apartment and the landlord's expense is $400.00, then the tenant's monthly rent may be increased by $10.00 (1/40 x $400).

Prior to 2011 in New York City, if a Rent Stabilized apartment was vacated with a legal regulated rent of $2,000.00 or more per month, such apartment qualified for permanent deregulation.[10]

So back to our Rent Stabilized apartment in Brooklyn. Here's where we need to do some math. See below.

Rent	$	1,086.23
20%	$	217.25
Rent After Vacancy Increase	$	1,303.48
High Rent Vacancy Deregulation Threshold	$	2,000.00
Difference Between High Rent Vacancy Deregulation Threshold and Rent After Vacancy Increase	$	696.52
1/40X = 696.52; So X =	$	27,860.96

[11]

In other words, in 2005, the landlord in our story needed to spend $27,860.96 on improvements (not repairs) in order to deregulate the apartment, and keep proper records of such improvements.

[6] (RSL) New York City Administrative Code § 26-511(c)(13); (RSC) 9 NYCRR § 2522.4(a)(1).

[7] (RSC) 9 NYCRR § 2522.4(a)(1).

[8] Rockaway One Co., LLC v. Wiggins, 9 Misc. 3d 12 (App. Term 2004), order rev'd on other grounds, 35 A.D.3d 36 (2d Dep't 2006).

[9] (RSL) New York City Administrative Code § 26-511(c)(13); (RSC) 9 NYCRR § 2522.4(a)(4); *see* L. 2011, ch. 97.

[10] New York City Administrative Code § 26-504.2(a).

[11] The math is actually more complicated, this is the simple version.

> Did landlord in this story really spend $27,860.96 on improvements? We will never know. And here's why.
>
> The landlord properly registered the deregulation with the DHCR. The landlord re-rented the apartment for $2,100.00 to a young, professional couple who had just moved to Brooklyn. The landlord told them that the apartment was not subject to Rent Stabilization. The couple never even thought to question the assertion that the apartment was not subject to Rent Stabilization. For one thing, they did not grow up in New York City and never knew anything about Rent Stabilization. For another thing, they were young, busy with their careers and each other, and the rent, although steep, was affordable enough.
>
> At a party two years later, a well-informed friend mentioned to the couple that they were probably Rent Stabilized, and they should look into their rights. But they were thinking of moving anyway. They were not litigious people. The managing agent was, generally, nice.
>
> Six years went by (then it was 2011) and the couple moved out. Another tenant moved in. The new rent was $2,400.00 per month. The new tenant was also told that the apartment was not Rent Stabilized. He, however, was a little more curious about his rights than the last tenants. A lawyer told him that in 2005 the landlord needed to spend about $28k on the apartment in order to deregulate it. The new tenant believed that this was unlikely, and sought to assert his legal rights. There, was, however, a problem.
>
> The law normally does not let a tenant look back though an apartment's rental history for more than four years. This is so that the owner is not burdened by having to maintain decades of records.[12] In other words, it was too late. Maybe the landlord did spend $28k in 2005, maybe it didn't, maybe it spent some but not all of that sum. It does not matter, it is too late to discuss it, the four-year statute of limitations ran four years ago.
>
> [END OF PRETEND BORING ARTICLE ON HIGH RENT VACANCY DEREGULATION AND THE FOUR YEAR STATUTE OF LIMITATIONS]

Ironically, my observation has been that many of the young, professional, newcomers to New York City, who complain about the price of housing, are the very people who, through their inaction, doom apartments to be taken forever out of Rent Stabilization. I get calls from these kids all the time. They are mad that their landlord will not fix a closet door. They google "Rent Stabilization", they find me. I look at their situation and point out that they

[12] Rent Stabilization Code § 2526.1(a)(2)(ii); *See also East W. Renovating Co. v. DHCR, 16 AD3d 166* (1st dept. 2005).

very well might be Rent Stabilized and I explain to them, in detail, the basis for my opinion. Yet they decline to enforce their rights. They are busy, moving anyway, not litigious, the rent is not that bad, they are on the quest to find the perfect artisanal mayonnaise, whatever. They do not enforce their rights within the statute of limitations, and thus the window to do so closes for that apartment forever. Indeed, landlords have counted on such people not seeking to enforce their rights. And this, in my opinion, has been the most pernicious threat to Rent Stabilization. Not landlords with crowbars, but tenants that neither know nor care about their rights, and landlords who prey upon that ignorance and apathy.

Nevertheless, you can see why the above pretend story is less interesting (and harder to follow) then a story condemning a landlord destroying an apartment while the tenant is out at her doctor.

II. ONE MORE BIT OF NECESSARY BACKSTORY BEFORE WE GET TO THE NEW LAW – *ALTMAN V. WEST FOURTH*

There is one more important piece to the backstory before we get to the Rent Laws of 2015, so bear with me. That happened in April of 2015, when the Appellate Division decided *Atlman v. West Fourth,* 127 AD3d 654 (1st Dept. 2015).

Altman was a convoluted landlord and tenant case in New York County where the landlord had sued to evict the tenant in Housing Court and the tenant sued landlord in Supreme Court, then the whole thing ended up being consolidated into Supreme Court.

Tenant argued that in order for High Rent Vacancy Deregulation to happen, the tenant who was vacating had to have been paying a rent of $2,000.00 (the applicable threshold in that case).

Landlord argued that in order for High Rent Vacancy Deregulation to happen, the rent that was being paid by the vacating tenant, plus legal vacancy increases, would only need to *compute to* $2,000.00; in other words it was not necessary that any tenant *actually paid* $2,000.00 or more.

The Supreme Court in *Altman* then rolled up its sleeves and engaged in extensive statutory analysis. It compared the differing phraseology of the Rent Regulation Reform Acts of 1997 and 2011 concerning High Rent Vacancy Deregulation. You can skip the case quote below if it is too much detail for you. The Supreme Court in *Altman* notes that:

> The RSC makes the distinction between pre- and post-June 19, 1997 vacancies even clearer. Section 2520.11(r) of the Rent Stabilization Code excludes housing accommodations which:
>
> "(3) became vacant on or after April 1, 1997 but before June 19, 1997, **where the legal regulated rent at the time the tenant vacated was $2,000 or more per month**; or

> (4) became or become vacant on or after June 19, 1997 but before June 24, 2011, **with a legal regulated rent of $2,000 or more per month.**"
>
> In this case, there is no dispute that, at the time [the previous tenant] surrendered his rights to the apartment, his rent was $1,829.49…Plaintiff also admits that [landlord] "was entitled to increase the last rent paid by Rider by 20% when it entered into a new lease with plaintiff…Accordingly, [previous tenant's]'s rent of $1,829.49 plus a 20% statutory vacancy increase, exempted the apartment from the RSL.
>
> [EMPHASIS SUPPLIED].

The Supreme Court in *Altman* looked closely at the law and held that the rent *paid* did not have to actually be at $2,000.00 per month when the previous tenant left, it only had to be *going there* for the next potential tenant.

Then, on April 28, 2015, the Appellate Division First Department, upon reviewing the Supreme Court's decision in *Altman*, did something surprising. It rejected the Supreme Court's analysis and held:

> The motion court erred in dismissing plaintiff's [tenant's] complaint, and declaring that the apartment is not subject to the Rent Stabilization Law (*see* Administrative Code of City of N.Y. § 26–504.2[a]). Although defendant [landlord] was entitled to a vacancy increase of 20% following the departure of the tenant of record, **the increase could not effectuate a deregulation of the apartment since the rent at the time of the tenant's vacatur did not exceed $2,000** (*see* Rent Stabilization Code [9 NYCRR] §§ 26–504.2, 26–511[c][5–a]; *Roberts v. Tishman Speyer Props., L.P.*, 62 A.D.3d 71, 77, 874 N.Y.S.2d 97 [1st Dept.2009], *affd.* 13 N.Y.3d 270, 280, 890 N.Y.S.2d 388, 918 N.E.2d 900 [2009]).
>
> [Emphasis supplied.]

The Appellate Division did not explain its reasoning. Interestingly, there does not seem to be a dissent. On September 8, 2015 the Appellate Division denied the motion of the landlord in *Altman* to reargue or to appeal to the Court of Appeals[13]. *Altman* is the law of the land.

To be perfectly honest, I guess there is a decent argument that "*with a legal regulated rent of $2,000 or more per month,*" can mean "*at the time of the tenant's vacatur*". The Appellate Division either did not see the distinction between the pre and the post June 19, 1997 wording, or felt that it was a distinction without a difference.

[13] http://www.courts.state.ny.us/courts/AD1/calendar/appsmots/2015/September/2015_09_08_mot.pdf.

It is against *this* backdrop that tenant advocates and landlord advocates went to war this year in Albany over the expiring Rent Laws. The landlord advocates lost the battle.

III. THE PROBLEM NOW FACING HIGH RENT VACANCY DEREGULATION

This is what is what the Rent Stabilization Law says as of June 15, 2015 at the Emergency Tenant Protection Laws of 1974 (the breaks and highlights are added by me):

> §5. Housing accommodations subject to regulation.
>
> a. A declaration of emergency may be made pursuant to section three as to all or any class or classes of housing accommodations in a municipality, except:
>
> (13) any housing accommodation **with a legal regulated rent of** two thousand dollars or more per month at any time between the effective date of this paragraph and October first, nineteen hundred ninety-three which is or becomes vacant on or after the effective date of this paragraph;
>
> or, for any housing accommodation **with a legal regulated rent of** two thousand dollars or more per month at any time on or after the effective date of the rent regulation reform act of 1997 and before the effective date of the rent act of 2011, which is or becomes vacant on or after the effective date of the rent regulation reform act of 1997 and before the effective date of the rent act of 2011. This exclusion shall apply regardless of whether the next tenant in occupancy or any subsequent tenant in occupancy is charged or pays less than two thousand dollars a month;
>
> or, for any housing accommodation **with a legal regulated rent of** two thousand five hundred dollars or more per month at any time on or after the effective date of the rent act of 2011, which is or becomes vacant on or after such effective date, but prior to the effective date of the rent act of 2015;
>
> or, any housing accommodation **with a legal regulated rent that was** two thousand seven hundred dollars or more per month at any time on or after the effective date of the rent act of 2015, which becomes vacant after the effective date of the rent act of 2015, ***provided, however, that starting on January 1, 2016, and annually thereafter, the maximum legal regulated rent for this deregulation threshold, shall also be increased by the same percentage as the most recent one year renewal adjustment, adopted by the applicable rent guidelines board.*** An exclusion pursuant to this paragraph shall apply regardless of whether the next tenant in occupancy

> or any subsequent tenant in occupancy actually is charged or pays less than two thousand seven hundred dollars a month.

The statute says that excluded from Rent Stabilization is any housing accommodation "with a legal regulated rent that *was* $2,700.00…"

Courts do not like to second-guess the legislature. For the most part, courts seek to follow the plain meaning of a statute.[14]

The plain meaning of this statue seems to be that in order for High Rent Vacancy Deregulation to happen, the tenant who was vacating had to have been actually paying a rent of $2,700.00.

The language of the new section of the statue did, indeed, depart from the old. The new part of the statute regarding the $2,700.00 threshold could have simply aped earlier language in the statute and said "with a legal regulated rent of $2,700.00." Instead, the drafters used "was".

That last argument assumes, however, that "with a legal regulated rent of…" even means that the vacancy rent merely needed to hit a certain number, as opposed to it meaning that the last tenant needed to be charged that amount. The Appellate Division in *Altman* thought that, "with a legal regulated rent of…" meant, "at the time of tenant's vacatur," not after it.

In my opinion, *Altman*, combined with the addition of the "was" to the 2015 Rent Laws, will curtail High Rent Vacancy Deregulation. I give it a Eighty-Five Percent (85%) chance that the courts will ultimately interpret that a landlord cannot deregulate until after the $2,700.00-plus per month tenant vacates. Every landlord who de-regulates before they have a vacating tenant who ACTUALLY WAS PAYING $2,700.00-plus will be taking a risk.

IV. WAYS AROUND THE NEW LAW?

It has been three months since the Rent Stabilization Laws of 2015 have been enacted and I heard a bunch of reactions and "solutions". I do not believe that any of them are meaningful.

Some people suggest that the new law gives more incentives to landlords to raise the rent via Major Capital Improvements. But MCI's are not nearly as simply as IAI's (because they are building-wide, require the approval of DHCR, and involve tenant input) and MCI's have been made harder to come by under the new law.

[14] *Buchbinder Tunick & Co. v. Tax Appeals Tribunal of City of New York*, 219 AD2d 463 (1995); *Rosner v. Metropolitan Property and Liability Ins. Co.*,96 N.Y.2d 475 [2001].

Some suggest that landlords should only rent apartments with rents above the threshold to families making more than $200,000.00, so they can be High Rent Deregulated. Just as with the MCI suggestion, that is easier said than done. That is a two-year process and, again, requires DHCR.

People have suggested that a tenant paying $2,700.00 per month or more is not the type of tenant who is inclined to stay long-term anyway. I am unsure why that would be true or if there is any empirical data to sustain the theory. But hoping that your tenant decides to move is not a deregulation strategy.

I do not think there are any solutions, if what a landlord ardently desires is a return to the way things used to be. It is better to look forward, and carefully consider the implications, both bad and good, of the Rent Stabilization laws of 2015.

V. MORE IMPLICATIONS: CAN YOU HIGH-RENT-VACANCY DEREGULATE ANYMORE WHEN A RENT CONTROL TENANT LEAVES AND THE RENT WOULD BE OVER THE THRESHOLD?

When a tenant moves out of a Rent Controlled apartment, the apartment becomes decontrolled. If that apartment is in a building built before January 1, 1974, containing six or more units at any time, it becomes Rent Stabilized.[15]

The owner then must register the unit with the DHCR by completing the Initial Apartment Registration (DHCR Form RR-1), and must provide the tenant with a copy by certified mail. The owner may charge the first Stabilized tenant a rent negotiated between them, which is subject to the tenant's right to file a "Fair Market Rent Appeal" (FMRA).

Up until July 2015, when a previously Rent Controlled apartment was vacated and the rent charged to the next tenant was $2,500.00 or more, the apartment was exempt from rent regulation pursuant to High Rent Vacancy Deregulation.[16] DHCR Fact Sheet #6 (admittedly updated 4/14/2014) still says:

> However, when a previously rent controlled apartment is vacated and the rent charged to the next tenant is $2,500 or more, the apartment is exempt from rent regulation pursuant to High-Rent Vacancy Deregulation. This first deregulated tenant must be served with a DHCR **High-Rent Vacancy Deregulation** notice (HRVD-N) and an "exit" apartment registration form, as per the Rent Code Amendments of 2014. Owners are required to use the DHCR annual apartment registration form for this purpose. The tenant may challenge the deregulation by filing a Fair Market Rent Appeal with DHCR within 90 days of service of this notice or service of a copy of

[15] DHCR Fact Sheet # 6; http://www.nyshcr.org/Rent/FactSheets/orafac6.pdf; (RSC) 9 NYCRR § 2522.3(a).

[16] DHCR Fact Sheet # 6; http://www.nyshcr.org/Rent/FactSheets/orafac6.pdf.

> the registration statement, whichever occurs first. DHCR reserves the right to convert an overcharge complaint to a Fair Market Rent Appeal, based on the previous regulatory status of the apartment.
>
> [Emphasis supplied.]

Fact Sheet #6's assertion that an apartment leaving Rent Control can be immediately deregulated is tied to High Rent Vacancy Deregulation. High Rent Vacancy Deregulation has changed. In light of the 2015 Rent Laws, is it probably not still the case that when a previously Rent Controlled apartment is vacated and the rent charged to the next tenant is above the relevant High-Rent-Vacancy Deregulation threshold that the apartment is exempt from rent regulation. Beware of Fact Sheet # 6, until it is updated at least. And even then, as we all know from *Roberts v. Tishman Speyer Properties, L.P.*, DHCR can get it wrong.[17]

VI. MORE (AND MAYBE NOT SO BAD) IMPLICATIONS – "THE 2700'S"

If I am correct here, then think about this. Every Rent Stabilized tenant with a rent over $2,700.00 is going to *know* that they are all that stands between landlord and deregulation.

Under the old system, many vacating tenants simply did not know that the landlord was going to do math and take increases and make IAI's and deregulate. Under this new system, any Rent Stabilized tenant with a rent over $2,700.00 is going to *know* that they are all that stands between landlord and deregulation. When tenants understand their rights and their power better, they can and will negotiate for higher buyouts. Tenants will not be guessing anymore about whether or not deregulation lies just beyond their vacatur.

The implications for landlords, however, are not terrible here either when you really think about it. Under the new law, landlords can be more secure that they are deregulating properly. When the first Free-Market tenant comes in after deregulation, after the 90 day Fair Market Rent Appeal period, a landlord no longer has to worry about a tenant challenging the deregulation. In the past, such challenges could happen for years into the future because an allegation of landlord fraud could defeat the four-year statute of limitations on an overcharge claim.

There are probably dozens of implications that we have yet to see. Speaking of buyouts…

[17] Roberts v. Tishman Speyer Properties, L.P., 89 A.D.3d 444 (AD 1st 2011).

VII. THE CHANGING LAW REGARDING TENANT BUYOUTS

On August 13, 2015, the City Council passed three bills to expand the definition of tenant harassment to include unwanted buyout offers[18]:

Repeated Buyout Offers

This law expands the definition of "harassment" to include repeatedly contacting tenants with buyout offers within 180 days after the tenant expresses in writing that he or she does not wish to be contacted regarding buyout offers in the future. During this period tenants can only be contacted about buyout offers if the offer is authorized by the court or if the tenant has expressed written interest in receiving them.

Required Disclosures by Persons Making Buyout Offers

This law ensures that tenants are aware of their rights when offered a buyout, namely the right to refuse the buyout offer and to remain in their apartment, the right to seek an attorney for legal assistance, the right to be informed by the person making the offer (if that person is not the landlord) that he or she is working on behalf of the landlord, and the right to refuse being contacted regarding future buyout offers for 180 days following a written statement expressing this interest. The bill also expands the Housing Maintenance Code's definition of harassment to include not informing tenants of these rights.

Conduct in Connection with Buyout Offers

This law prohibits building owners from using intimidating or abusive language to buy tenants out of their apartments. This includes contacting tenants at odd hours, or contacting tenants at their place of employment without prior written consent, and falsifying information provided to the tenant. In addition, this law requires potential "tenant relocation specialists" to be licensed, and it requires the Commissioner of the Department of Consumer Affairs to provide an annual report to the Mayor and the Council on the implementation of this law.

The buyout laws will go into effect in December 2015.

The legislative findings behind this legislation declared that:

> 1. While there are legitimate reasons for building owners to make buyout offers to tenants by offering money or other valuable consideration to vacate their apartments, 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;

[18] http://helenrosenthal.com/tenant-buyouts.

> 2. Tenants cannot meaningfully accept, reject or negotiate such offers without such an understanding; and
>
> 3. The city has a substantial interest in balancing the rights of building owners to make these buyout offers with the rights of tenants to meaningfully accept, reject or negotiate such offers or to refuse contact regarding such offers.

This change in the law regarding Buyouts is not as bad for landlords as the change regarding High Rent Vacancy Reregulation. A landlord can still buyout a tenant. Frankly, if a landlord is approaching a buyout discussion correctly, they should not run afoul of these new laws. I am re-writing my materials on seeking tenant buyouts to conform with these new laws and to add a few new tips I gleaned recently.[19]

VIII. ANSWERS?

I have been scouring the internet for the three months since this controversy arose, waiting to see what people-in-the-know were going to say about it. I expected a great deal of colloquy. Instead, I am hearing crickets as industry leaders say that the answer is uncertain, at best, or nothing, at worst. One commentator said:

> What was not addressed [by the new statute] was the issues created by the Altman case in which the court, for the first time and in direct opposition to the Division of Housing and Community Renewal opinion and operating procedures, determined that in order to qualify for luxury decontrol, the rent above the threshold had to be actually paid by the last tenant in possession, not simply a legal rent attained by adding the vacancy bonus and the Individual Apartment Improvement (IAI) pass-through to the prior legal rent. Why policy makers avoided clarifying this important point is a head-scratcher.[20]

I simply disagree. I think the "was" in the new law addresses *Altman* squarely – by adopting its approach.

Other Landlord's rights advocates are either saying that conclusions such as mine in this article are incorrect, without explaining why, or saying that there was a drafting mistake. A mistake?! *Really?!*

[19] Email me if you want a copy mmaratto@itkowitz.com.

[20] Commercial Observer, Rent Regs renewed, July 15, 2015.

I am guessing that there are not many articles on this topic because either no one wants to give landlords the bad news, and/or no one wants to state an opinion and risk being wrong. I'm ok with taking on those risks.

IX. CONCLUSION

My ultimate conclusion, particularly with respect to High Rent Vacancy Deregulation is that this mess did not need to be. The law is too complicated. Rent Stabilization has become like the Tax Code. Tenants are not educated enough about their rights. The newcomers to the City, the Millennials, have not cared enough to push back, and have let landlords use their ignorance to deregulate apartments. Landlords took too much advantage for too long of that ignorance. Thus, the problem was created, and an inartful solution was arrived at by the people in Albany.

The cycle continues – landlords look for loopholes and will find them, tenants take advantage of the system, a few crazy landlords and a few crazy tenants define the whole discussion in the press, and Albany mashes something together every few years and the law gets harder and harder to understand. Until landlords and tenants can come to the table and discuss housing as the truly mutual interest that it is, rather than always facing each other as adversaries, this cycle will continue for decades.

ABOUT THE AUTHOR

Michelle Maratto Itkowitz is the owner of Itkowitz PLLC. She practices real estate litigation. Michelle has over twenty years of experience, and is best known for her work in the area of commercial and complex-residential landlord and tenant law in the City of New York. Michelle's core competencies include: Rent Stabilization and Rent Control, the Loft Law, SRO Law, Yellowstone injunctions, tenant buyouts, clearing buildings so that construction projects can go forward, and Rent Stabilization Due Diligence. She also is very experienced in general commercial litigation. See our Accomplishments section of Itkowitz.com to get an idea of the breadth of Michelle's work.

Michelle publishes and speaks frequently on legal issues in real estate. The groups that Michelle has written for and/or presented to include: Lawline.com; The Columbia Society of Real Estate Appraisers; LandlordsNY; Lorman Education Services; The Association of the Bar of the City of New York; The New York State Bar Association, Real Property Section, Commercial Leasing Committee; Thompson Reuters; The Cooperator; The New York State Bar Association CLE Publications; The TerraCRG Brooklyn Real Estate Summits; The Association of the Bar of the City of New York; and BisNow

Michelle regularly creates and shares original and useful content on real estate and law, including booklets, videos, and articles. She is frequently quoted in the press on a variety of real estate and legal issues. As the "Legal Expert" for LandlordsNY.com, the first social platform exclusively for landlords and property managers, Michelle answers member's questions, guest blogs, and teaches. Michelle recently developed a seven-part, eight-hour continuing legal education curriculum for Lawline.com entitled "New York Landlord and Tenant Litigation". Over 16,000 lawyers have purchased Michelle and Jay Itkowitz's earlier CLE classes from Lawline.com, and the programs have met with the highest reviews. Jay and Michelle are currently co-authoring a chapter on lease remedy clauses and guaranties for the New York State Bar Association, Real Property Section, Commercial Leasing Committee.

Michelle is admitted to practice in New York State and the United States District Court for the Southern District of New York. She received a Bachelor of Arts in Political Science in 1989 from Union College and a Juris Doctor in 1992 from Brooklyn Law School. She began her legal career at Cullen & Dykman.

There are many ways to keep up with Michelle. When Michelle tweets, which is not an obnoxious amount, she does so in an easy to understand manner about useful stuff regarding real estate, business, the legal industry, and organic herb gardening. Feel free to contact Michelle; she would be happy to speak to you.

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See good tweets, right?