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Proposed **Rent** Regulatory **Amendments** Seek to Shift **Balance** of Power **Toward Tenants**

BY JEFFREY TURKEL

Tenant advocates in the New York State Legislature have proposed a series of bills designed to dramatically increase tenant protections and decrease property rights.

These proposals, and others to come, will be debated in Albany next year when the rent laws come up for renewal. This article will discuss three of those proposals, concerning the Urstadt Law, limits on MCI rent increases, and the elimination of high rent vacancy deregulation.

Repeal of the Urstadt Law

The Urstadt Law, originally enacted pursuant to L. 1971, ch 372, gives the New York State Legislature virtually exclusive authority to amend New York City rent regulatory laws, rendering the New York City Council largely powerless. A proposed bill (S.3179/A.5557) seeks to repeal the Urstadt Law.

The relevant history is as follows: In 1969, the City Council bypassed Albany and enacted the Rent Stabilization Law (RSL). Albany responded in 1971 by enacting three statutes that curbed rent regulation: Chapter 371 (vacancy decontrol of rent-controlled apartments), Chapter 372 (the Urstadt Law), and Chapter 373 (denying rent regulatory protection to non-primary residents).

The Urstadt Law was premised on the Legislature's belief that wresting control of rent regulation from the City Council would encourage new construction and limit incursions on Albany's power. The Urstadt Law disenabled New York City from (1) enacting any law that would make regulated apartments subject to "more stringent or restrictive provisions of regulation and control than those presently in effect," and (2) extending regulation to housing accommodations presently exempt from control.

The scope of the Urstadt Law was addressed in *City of N.Y. v New York*

JEFFREY TURKEL *is a member of Rosenberg & Estis and was the prevailing attorney in 'Altman v. 285 West Fourth LLC,' discussed in the article.*

State Div. of Hous. & Community Renewal, 97 NY2d 260 (2001). There, the New York State Court of Appeals held that the city's adjustment to the MBR formula under rent control, designed to measure property value with greater accuracy, did not violate the Urstadt Law. In response, the Legislature amended the Urstadt Law pursuant to L. 2003, ch 82, §1. The amendment stripped the City Council of all power except the authority to (1) extend or decline to extend rent regulation; and (2) amend rent regulatory statutes to *deregulate* particular classes of housing accommodations.

The First Department addressed the interpretation of the amended Urstadt Law as recently as April 5, 2018 in *Alston v Starrett City*, 161 AD3d 37 (1st Dept. 2018). The court unanimously held that city legislation designed to ban discrimination against tenants based on "lawful source of income," including Section 8 federal housing vouchers, violated the Urstadt Law. The court held that the city statute unlawfully compelled "a landlord to renew a lease for up to five years at a minimum increase tied to other city rent regulatory programs to which the housing unit is not presently subject."

The proposed bill repeals the Urstadt Law in its entirety, thus permitting the City Council to amend the rent laws at will. This is the most far-reaching proposal of the bills under consideration. It may also be the least likely to pass.

Irrespective of its merits, which are not addressed here, the bill is essentially about transferring political power from the Legislature to the City Council. It is not clear why New York State legislators (other than those who are tenant advocates and whose districts are in New York City) would give away such power. When legislators control the levers of power on a particular issue, advocacy groups fighting for influence will shower those legislators with campaign contributions. Those same legislators can seek votes and endorsements based on the need to protect tenants, or, conversely, the need to strengthen property rights. If the Urstadt Law disappears, so too would that money and power.

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End of Permanent Increases

Section 26-511(c)(6)(b) of the RSL authorizes rent increases where a building owner performs work that qualifies as a major capital improvement (MCI). The increase is amortized over eight years if the building has 35 or fewer units; otherwise the amortization period is nine years. The statute also limits the amount of an MCI rent increase to 6 percent per year, which could lead to an even longer amortization period.

DHCR and its predecessor, the New York City Conciliation and Appeals Board, had always construed the MCI provision as warranting a *permanent* increase in the stabilized rent. Tenant advocates took the opposite position. In *Ansonia Residents Ass'n v New York State Div. of Hous. & Community Renewal*, 75 NY2d 206 (1989), the Court of Appeals held that DHCR's interpretation of the statute was not inconsistent with its language. Turning to the legislative history and public policy, the court wrote:

As we have recognized, the dual purposes of the Rent Stabilization Law were to protect tenants from eviction as a result of rapidly spiraling rent increases and to encourage future housing construction by allowing landlords reasonable rent increases so that they could profit from the operation of their properties. Thus an interpretation of section 26-511(c) to allow permanent rather than only temporary rent increases for major capital improvements serves the purposes of the Rent Stabilization Law by providing

owners with an incentive to make improvements which benefit owners and tenants alike. Under the construction of the statute urged by the tenants, owners would have little incentive to invest in major capital improvements if they can only recover the cost of their investment, and in fact might incur additional expenses in maintaining such an improvement after its initial cost had been recovered. (Internal citation omitted).

The proposed legislation (S.4312) would, among other things (1) make MCI rent increases a separate charge that would not be compounded by annual rent adjustments; and (2) eliminate the charge once the cost of the improvement is fully amortized.

Again, the wisdom of the proposed legislation will not be discussed here. It should be noted, however, that the fundamental economic reality that the Court of Appeals recognized in 1989 still stands: If owners are not economically incentivized to improve their buildings, they will not do so. Instead, they will patch and repair building systems, delaying upgrades for as long as possible. Although the proposal would result in lower rents—the obvious goal of the legislation—it would concomitantly encourage disinvestment and accelerate the physical decline of New York City's aging housing stock, much of which is pre-war.

Another inevitable outcome is that the bill would injure businesses that manufacture and/or install roofs, boilers, elevators, windows, plumbing systems, electrical systems, and other common MCIs. The union and non-union employees of such businesses would also be injured.

Repeal of Luxury Deregulation Based on Vacancy

RSL § 26-504.2, the subject of the Court of Appeals' recent decision in *Altman v. 285 West Fourth LLC*, deregulates "high rent" apartments that become vacant. Over the years, the threshold rent for deregulation has increased from $2,000 to $2,500 to $2,700, as thereafter increased each year by the annual one-year guideline percentage authorized by the Rent Guidelines Board.

Luxury vacancy deregulation was added to the rent laws by the Rent Regulation Reform Act of 1993 (L. 1993, ch 253). The New York State Senate Introducer's Memorandum in Support described the Legislature's intent as follows:

With regard to the high rent vacancy decontrol provisions of this bill, current rent regulation statutes define a 'housing emergency' as a vacancy rate of less than 5%. The vacancy rate for apartments renting at $2,000 or more, however, exceeds 12.5% (2.5 times the statutory standard). Thus, there is clearly no 'housing emergency' for apartments renting for more than $2000.

The proposed legislation (S.3482/A.433) makes no finding as to the vacancy rate of apartments renting above the current ($2,733.75) threshold. If the vacancy rate exceeds 5 percent, it is difficult to understand why rent regulation, rather than the free market, should control. Notably, the Legislature has *not* proposed to eliminate high-income deregulation, whereby tenants earning more than $200,000 per year in apartments at or above the deregulation threshold will lose their right to continued stabilization protection. There are two obvious reasons for this inaction. First, media stories about millionaires and movie stars paying regulated rents do not help the cause of rent regulation. Second, the number of apartments deregulated based on high income, as opposed to vacancy, is quite small.

It remains to be seen which, if any, of these proposals will become law.