

Legal Viewpoints

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What you need to know about NYC's new rent regulations

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The Housing Stability and Tenant Protection Act of 2019 (HSTPA) was signed by the Governor on June 14, 2019.

Hailed by tenant advocates and the bill's sponsors and simultaneously decried by the real estate industry, there is no dispute that HSTPA makes dramatic changes to the landscape of rental housing in New York City and throughout New York State.

This article will discuss some of the most important changes. This article is not intended to be a complete recitation of every change in the law, in fact it cannot

be that. HSTPA is made up of 15 different parts, each addressing a different subject, and is over 74 pages long.

Rent Laws are made Permanent. HSTPA makes the rent regulation statutes permanent by removing reference to any "sunset" date. However, the laws still require that New York City periodically declare a housing emergency following a vacancy study.



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Vacancy and Longevity rent increases are repealed. Automatic one- and two-year vacancy increases, longevity increases and low rent increases have been repealed. Further, "rent guidelines boards shall no longer promulgate adjustments for vacancy increases." Because there is no rent increase, the incentive to obtain a vacant apartment is gone.

The unintended consequence is that landlords have no incentive to remove tenants who don't reside in their apartments or who illegally sublet them - so those units will not be freed up for tenants who need housing.

Luxury Deregulation is repealed. The repeal applies to both High Income/High Rent and High Rent Vacancy Deregulation.

An amendment to the HSTPA (signed just a week later) clarifies that apartments previously deregulated are not re-regulated.

The amendment also clarifies that market apartments in the new Affordable New York Housing Program are still eligible for deregulation as it existed prior to the HSTPA.

Preferential Rents. Upon renewal of a lease, only the applicable renewal guideline above the previously collected preferential rent may be charged. Preferential rents may no longer be eliminated upon lease renewal or increased to any amount below the legal rent.

Owners may continue to charge up to the full legal rent upon vacancy. An exception exists for buildings subject to stabilization by virtue of a regulatory agreement with a local government agency and which receive federal project based rental assistance.

Rent Overcharges. The amendments relating to rent overcharges apply to all claims pending on the effective date of HSTPA. Among other things, the overcharge recovery period is extended to six years and the treble damage penalty applies to the entire six years.

The base date for determining legal rent is extended to six years but the look back period could be longer if the registration from six years ago is not "reliable." Review of rent records and other information, even prior to the six-year look back, can be reviewed if "reasonably necessary" to determine regulated status or legal rent.

This is much broader than mere reliability of the base date registration and could allow a complete review of all records. The voluntary refund of an overcharge after a complaint is filed will no longer be considered evidence that the overcharge was not willful (*i.e.*, such a refund no longer prevents treble damages from being assessed).

In a nod to the tenant bar, HSTPA requires that DHCR shall (rather than may) impose attorney's fees where an overcharge is found. HSTPA also provides that DHCR and the courts have concurrent jurisdiction "subject to the tenant's choice of forum."

In reality tenants always had the choice of forum. The question is whether this

language prevents a court from referring the matter to DHCR.

ETPA Extended Statewide. HSTPA declares a housing emergency statewide and extends the provisions of the ETPA to "all counties within the state of New York outside of the City of New York." Municipalities in all New York counties may thus adopt the provisions of the ETPA.

Owner Occupancy. Amendments to owner occupancy proceedings are effective immediately and apply to any tenant in possession on the effective date of HSTPA, regardless of whether the owner's proceeding commenced prior to the effective date.

The amendments preclude an owner from recovering possession of more than one apartment for owner use.

The rent control law now limits recovery to those instances where the owner intends to use the apartment as his primary residence.

A tenant in occupancy for 15 years cannot be evicted. The stabilization law requires that recovery must be based upon "immediate and compelling necessity." A new restriction precludes recovery of an apartment where a tenant has been in occupancy for 15 years or more.

Both statutes now provide that where a tenant is required to surrender possession, the tenant shall have a cause of action for damages against a landlord who made a fraudulent statement regarding proposed use.

Individual Apartment Improvements (IAIs). This was a hot button issue in the days leading up to passage of HSTPA. Owners complained about low rents and predicted deteriorating apartment conditions, conjuring up images of NYCHA housing. Contractors and workers marched on Albany to save their livelihoods which rely on apartment renovations.

Tenants opposed the provisions which allow for rent increases in vacant apartments. In the end, a compromise was reached which is not satisfying to any of the affected groups.

Now the monthly rent increase for buildings with 35 or fewer apartments is **1/168th** and for buildings with 36 or more apartments is **1/180th** of the IAI cost. Moreover, although the increase becomes part of the rent for purposes of RGB compounding it must be removed after **30 years** "inclusive of any increases granted by the applicable rent guidelines board."

Finally, the IAI cannot be based on more than **\$15,000** spent in a **15-year** period beginning with the first IAI installed after the effective date of HSTPA. The maximum rent increase every 15 years is therefore less than \$90 per month. The \$15,000 limit is not enough for even a standard bathroom renovation.

DHCR, the agency which oversees all the rent laws, is required to issue rules requiring IAI work be done by a licensed contractor with no common ownership with the landlord, require that the owner "resolve" all outstanding hazardous and immediately hazardous violations in the "dwelling space," and include a schedule of reasonable costs for IAIs.

Gone are the days of Sub-Zero refrigerators and Wolf ranges. Beginning June 14, 2020 DHCR must provide for the electronic retention of IAI documentation inclusive of photographic evidence documenting the conditions before and after the work.

Major Capital Improvements (MCIs). MCI costs will be amortized over a **12-year** period for buildings with 35 or fewer units and over **12.5 years** for buildings with 36 or more units and must be removed from the legal rent after **30 years**.

DHCR is required to issue a notice 60 days prior to the end of the 30 years stating the total amount to be removed.

DHCR must also issue rules which establish a schedule of reasonable costs for MCIs setting a ceiling for allowable costs, prohibit MCIs for buildings with outstanding hazardous or immediately hazardous violations and prohibit MCIs for buildings with 35 percent or fewer rent regulated units.

The market tenants will subsidize the regulated tenants. MCIs are prospective only. Collection is limited to two percent (rather than six percent) per year.

In addition, DHCR must establish an annual inspection and audit process to review 25 percent of MCI applications that have been approved in the prior year.

Adding insult to injury HSTPA also raises the registration fee for RS apartments in NYC from \$10 per unit to \$20 per unit. The additional \$10 is to be shared equally between ORA and TPU.

C&W collaborates with Saltmine on virtual office space platform



Cushman & Wakefield announced a collaboration with Saltmine, a San Francisco-based SaaS startup that provides design data technology for the commercial real estate industry.

Through the use of cutting-edge A.I. planning and 3-D space visualization technol-

ogy, the Saltmine platform enables Cushman & Wakefield professionals to quickly create space plans, test fits and virtual tours of potential workspaces, providing clients with a new way to visualize and plan their current or future workspace.

The collaboration is the latest example of Cushman & Wakefield's client-centric technology strategy, which leverages strategic partnerships to deliver value and momentum, said Melanie Kirkwood Ruiz, Cushman & Wakefield's Chief Information Officer for the Americas.

"This collaboration with Saltmine puts our clients in the driver's seat, allowing them to make faster, better-informed decisions about their workspace," Kirkwood Ruiz said.

"That's a key part of our technology strategy: putting more power and knowledge into our clients' hands. Now, with Saltmine, we're combining our firm's deep expertise and experience in commercial real estate with a progressive

tech company, new tools and cutting-edge technology."

Using property data and core and shell plans, the Saltmine platform integrates clients' workplace strategy, programming and design all in one place.

Cushman & Wakefield advisors can digitize fully fitted properties in a matter of days, creating interactive renderings that allow clients to experience the potential of their workspace.

"With our cloud-based platform, Cushman & Wakefield is able to offer clients a transformative way to evaluate and choose real estate," said Saltmine founder and CEO Shagufta Anurag.

"The ability to see in real time what a workspace could look like allows clients to proactively shape their workplace strategy like never before."

"By virtually taking clients through a space and laying out their costs, we can make their site selection process predictable, experiential and flexible," said Ruiz.

Altus acquires One11, positions company to react to CRE demand for new tech

Altus Group Limited, a software and data solutions advisor, has acquired One11 Advisors, a real estate software consulting services firm.

"One11 brings solid CRE domain expertise and skills that are required to address the complexities our larger clients are having to deal with today," said Carl Farrell, president of Altus Group.

One11's primary offerings include technology imple-

mentation services, as well as strategic advisory related to software solutions, IT and process change strategies, system selection, managed services and support for software solutions.

The One11 team, including co-founders Jim Carr and Scott Morey, will be integrated into the Altus Analytics business unit expanding the company's current software consulting services.

Scott Morey, co-Found-

er of One11, commented, "Joining Altus Group will strengthen our ability to deliver high-quality consulting services to clients globally while also being in a position to leverage Altus Group's expanded geographic reach, complementary real estate services and innovative technology solutions."

As the industry requests more managed services, the Altus will now be able to scale much faster.



The new rent laws will have
drastic effects on the
New York real estate market.

Rosenberg & Estis is poised to help
owners and other affected players
navigate the new reality.

It's more important than ever to
have the right team behind you.



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