MITCHELL-LAMA RESIDENTS COALITION

Vol. 15, Issue 3
September 2010

WEBSITE: www.mitchell-lama.org

Stuy-town, IPN tenants win huge victories on J-51 violations

Tenants in two large rental complexes won major victories this summer, after long legal battles involving tax abatements under a New York City law known as J-51. Both groups stand to recover significant monetary damages after years of rent overcharges.

On July 30, 2010, State Supreme Court Justice Richard B. Lowe III ruled in the Stuyvesant Town case that a previous decision by the state's highest court, precluding luxury decontrol in some 4,400 Stuyvesant Town and Peter Cooper Village apartments, applied retroactively. Nine months earlier, the New York Court of Appeals ruled in *Roberts v. Tishman Speyer Properties, L.P.,* that rent stabilized apartments in the two complexes had been improperly deregulated because the owners were receiving a J-51 tax abatement which precludes luxury decontrol.

Lowe's decision came three years after Stuy-Town and PCV tenants learned of the J-51 tax benefits and brought a $215 million class action against both the current and former owners.

Across town in Tribeca, tenants at Independence Plaza cheered upon learning that State Supreme Court Justice Marcy S. Friedman had ruled on August 30, 2010, that the 1,331-unit development is rent stabilized because the current and former owners of the rental property received J-51 tax benefits both before and after exiting from the Mitchell Lama program in 2004.

According to Judge Friedman, J-51 benefits began in 1998," and continued to be granted . . . through tax year 2005/2006."

Prior to her recent decision, Judge Friedman had remanded the case to the state's Division of Housing and Community Renewal, to determine the rent stabilization status of the complex. The agency had decreed that stabilization

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In Memoriam: Bernice Lorde

Bernice Lorde, long-time financial secretary for the Mitchell-Lama Residents Coaltion, died on July 3rd, after a three-week hospital stay. A wake was held at Riverside Memorial Chapel, and the mass was held on Friday at Holy Name Church.

In a message to the MLRC, Joan Paylo, district leader, wrote:

"The loss of this spirited, dignified, lovely and dependable lifelong New Yorker, who cared for her community and her neighbors while sometimes neglecting herself, is a loss for the entire organization, according to Carmen Ithier, MLRC Treasurer. Carmen said that Bernice always stressed the importance of finding a role for all MLRC volunteers to maintain the strength of the organization.

"Bernice also was a devoted poll worker at PS 163 on West 97th Street. She was dedicated to the issue of livable, affordable housing, and of electing public officials who supported her beliefs."

Strengthen MLRC
Join today (use form on page 2)

GENERAL MEMBERSHIP MEETING
SATURDAY, October 30, 2010

Time: 10:00 a.m. – 12:00 p.m.

(*Refreshments at 10:00 a.m.*)

PLACE: Musicians Union Local 802
322 West 48th Street (near 8th Avenue) Ground Floor, "Club Room"

TRAINS: No. 1, train to 50th St. and 7th Ave.; Q,W trains to 49th St. and Broadway; E train to 50th St. and 8th Ave.

Mitchell-Lama Residents Coalition
P.O. Box 20414
Park West Station
New York, New York 10025

Court: HUD can prevent removal of Castleton park from M-L program

The U.S. Court of Appeals for the D.C. Circuit ruled on June 25th that the federal department of Housing and Urban Development can prevent an owner from taking a building out of the Mitchell-Lama program where the result would be a loss of affordable housing.

Castleton Park, on Staten Island, is a post-1973 Mitchell-Lama. That means that under New York State law, it would not be rent stabilized upon leaving the program.

The tenants, with the help of Legal Aid lawyer Ellen Davidson, argued before HUD that allowing Stellar Management (headed by developer Larry Gluck) to take the building out of the program would result in a net loss of affordable housing.

Gluck lost a challenge to this decree. His only recourse now is to appeal before the U.S. Supreme Court.

Owners here must disclose history of bedbug infestation to new tenants

Landlords in New York City are now required to disclose any history, during the past year, of bedbug infestation to prospective tenants before the issuance of a lease.

Signed by Governor David Patterson at the end of August, the new law takes effect immediately.

Under the law, landlords must make the disclosure in a form to be developed y the state's division of housing and community renewal.

Introduced by Assemblywoman Linda A. Rosenthal, representing the upper west side of Manhattan, the bill was co-sponsored in the Assembly by Michelle Titus, Nelson A. Castro, Marcos A. Crespo, Deborah Glick, Richard Gottfried, Hakim Jeffries, Nettie Mayersohn, and Catherine Nolan.

In the senate, the bill was introduced by Jose Peralta.

Stuy-town, IPN tenants win

Continued from page 1

did not apply, because the city's HPD had retroactively "terminated" the J-51 tax benefits as of the date the buildings exited the Mitchell-Lama program. But Judge Friedman ruled that the HPD's action did not change the rent stabilization status when it permitted the landlord to pay back the post-exit tax benefits.

(In one paragraph of her ruling, the judge noted that "the record demonstrates that HPD made the determination [to retroactively terminate j-51 benefits after holding "closed door meetings" with the defendant-owners' representatives).

The landlord, Laurence Gluck, is appealing Friedman's decision.

UPCOMING EVENTS

GENERAL MEMBERSHIP

Saturday
October 30, 2010
10:00 a.m. - Noon

Musicians Union Local 802
322 West 48th Street
New York, NY

EXECUTIVE BOARD Meetings, 2010

October 16

10:00 a.m. - Noon

All dates are subject to revision. Please call the voice mail to confirm (212) 465-2619.

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INDIVIDUAL $15.00 per year and DEVELOPMENT 25 cents per apartment
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Former ML: Co-op_____ **Rental** _____

Development_____ **Renewal**____**New Member**____

President's Name: _____

Donations *in addition to dues* are welcome.

NOTE: Checks are deposited once a month.
Mail to: MLRC, PO Box 20414, Park West Finance Station, New York, N.Y. 10025

MLRC fights for you and your right to affordable housing!

Mitchell-Lama Residents Coalition, Inc.

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Fax (212) 864-8165
Voice mail: (212) 465-2619

Rent regulations: why they are crucial to New York City

The Citizens Budget Commission recently urged the New York State legislature to dismantle rent regulations. Following are two rejoinders, one by Tom Waters of the Community Service Society, and the other by Timothy L. Collins of Collins, Dobkin & Miller.

The Importance of Rent Regulation

By Tom Waters
CSS Housing Policy Analyst

The Community Service Society of New York (CSS) is a 160-year-old organization dedicated to promoting the economic security of low-income New Yorkers. Recent challenges have raised questions about the degree to which New York's system of rent regulation serves that objective. This memorandum affirms the important role of rent regulation in enabling low-income New Yorkers to negotiate the city's demanding rental market.

Rent regulation, comprising rent stabilization and rent control, is an effective and appropriate legislative response to the extreme power imbalance between landlords and tenants, caused by the chronic housing shortage, and resulting high rents in New York City and the suburban counties. Its primary purposes are to ensure fairness and to promote stability in a wrenchingly tight housing market. These objectives also result in important benefits for renters at low income levels:

Affordability: Although a growing number of rent-stabilized tenants pay unaffordable rents over 30 percent of income, rent-stabilized tenants continue to have a significantly lower likelihood of excessive rents.

Freedom to advocate for better conditions: The New York City Department of Housing Preservation and Development and other government agencies are limited in staff capacity. They rely on tenant initiative to guide enforcement of the Housing and Maintenance Code and other laws. Rent regulation is the best protection against arbitrary eviction in retaliation against tenants who advocate for better conditions in their apartments and buildings. It is essential to the maintenance of safe and decent housing.

Neighborhood stability: Rent regulation prevents displacement, strengthening social ties in neighborhoods and ensuring that tenants can share in the benefits when their neighborhoods improve.

Affordability, freedom to advocate for better conditions, and neighborhood stability are important to tenants at many income levels.

Rent regulation produces significant benefits for low-income New Yorkers, who are most vulnerable to unaffordable rent, poor conditions, and displacement. Well over a million people with incomes below twice the poverty line live in rent-regulated housing. Regulated apartments constitute their largest source of housing, far more than public and subsidized housing combined.

The Citizens Budget Commission has criticized the rent regulation system because the benefits reach tenants with incomes that are, according to the CBC, too high. This argument is flawed both because rent regulation is not a subsidy program that should be evaluated in terms of its targeting and because rent regulation is not in fact poorly "targeted" by the standards of subsidy programs.

CBC does not raise similar objections to Mayor Bloomberg's New Housing Marketplace plan, which is expected to create about 91,000 new affordable apartments by 2013. Of these apartments, fifty-five percent will be for households with incomes up to eighty percent of the New York metro area's Area Median Income (which is currently defined by the federal government as $77,400) and eleven percent will be for households from eighty to one hundred twenty percent of AMI.

The Census Bureau's New York City Housing and Vacancy Survey shows that in 2008, fifty-six percent of rent stabilized households had incomes up to eighty percent of AMI and seventeen percent had incomes from eighty to one hundred twenty percent of AMI. Here is an actual, widely praised subsidy program with targeting similar to that of rent regulation.

The Citizens Budget Commission has also criticized the rent regulation system because it allows many tenants to pay rents above thirty percent of income.

Although rent regulation was never designed to guarantee an affordable rent, the increasing rate of excessive rents among regulated tenants is cause for concern. It can be best addressed by amending the rent laws to reduce excessive rent increases during vacancies and excessive increases based on major capital improvements.

Rent Regulation: Buying Into the Rhetoric

By Timothy L. Collins
Collins, Dobkin & Miller

The Citizens Budget Commission has issued a strategically timed report to persuade state legislators to continue the dismantling of New York's rent protection laws over the long term. Despite its title, "Rent Regulation: Beyond the Rhetoric," the CBC report peddles the same discredited "subsidy" rhetoric the real estate industry cooked up over two decades ago – the notion that rent regulation is a flawed system of tenant subsidies.

In fact the history of rent regulation in New York City and State makes clear that it is not properly seen as a subsidy program at all. Rent and eviction regulation is a system of protections designed to preserve economic fairness, and to prevent disruption and dislocation, in a market where chronic shortages allow landlords to exert excessive bargaining power.

Because this market failure affects all tenants, rent regulation should not be targeted by income. Stable housing markets are needed for all income groups, particularly when one considers the probable consequences of allowing landlords to fully exploit the ongoing shortage: the displacement of families rooted in neighborhoods, schools, civic and religious organizations, and the gradual balkanization of the city into homogeneous class enclaves.

Rent regulation cannot guarantee an affordable home for everyone, but it has certainly limited the kind of disruption that the shortage would otherwise inflict.

The CBC report does not advocate a complete end to rent regulation. Rather, it recommends accelerated deregulation through the removal of high rent/high income units from coverage – removal that the CBC acknowledges has already resulted in the loss of over 117,000 regulated units since 1994. This would take rent regulation in the wrong direction. It would exacerbate, not reduce, the general problem of rent profiteering in the face of an ongoing housing shortage.

Until about 20 years ago it was widely understood that the purpose of New York's rent regulation system was to eliminate the ability of landlords to exploit the ongoing housing shortage by charging excessive rents – regardless of tenant income.

Since then, a growing number of elected officials, editorial writers and policy analysts quietly discarded this "fair

(Continued on page 8)

Another 2-front victory: vouchers & rent increases

In addition to the recent Stuyvesant Town and IPN victories (see page 1), tenants celebrated two major wins in July. One dealt with the restoration of Section 8 housing vouchers, and the other pertained to a supplemental rent increase for rent stabilized apartments.

In July, the City and State announced a major plan to save or restore Section 8 vouchers for more than six thousand families across the five boroughs.

Last December, the NYC Housing Authority (NYCHA) was forced to withdraw its offer of Section 8 vouchers for roughly 2,500 approved families as a result of a major shortfall in its Section 8 budget. Vouchers for an additional four thousand families were also at risk of being terminated.

Upon learning of this problem, the NYC Council held two hearings, entered into discussions with NYCHA and the NYC Department of Housing Preservation & Development (HPD), and has now committed to providing $7 million so that these low-income New Yorkers won't end up on the street.

The full plan includes: using $23 million in HPD Section 8 reserves; transferring 750 vouchers from the NYS Division of Housing & Community Renewal (DHCR) to HPD; using federal HOME program funding to fund additional vouchers; and allocating Council capital funding to replace the shifted HOME funds.

This plan will restore or save all 6,500 vouchers.

In the other victory, the NYS Supreme Court's Appellate Division upheld Justice Emily Jane Goodman's decision earlier this year striking down the Rent Guidelines (RGB) 2008 supplemental increase.

In June 2008, the RGB approved rent increases of 4.5 and 8.5 percent for one- and two-year renewal increases respectively. The board also approved a $45 to $85 supplemental increase on tenants who've lived in their apartment for six years or more and pay less than $1,000 in rent. As a result, these tenants were forced to pay a higher increase than what's legally allowed under current RGB guidelines.

The NYC Council has long denounced this supplemental increase as a "poor tax" on working and middle-class New Yorkers. The Council is proud to have worked with the Legal Aid Society and Legal Services of New York to help take this unjust burden off of tenants.

The above information was provided by Council Speaker Christine Quinn. More information about these two victories, and how they will benefit tenants, is available on the links below:

1) *http://www.nytimes.com/2010/07/01/nyregion/01vouchers.html?scp=1&sq=section%208&st=cse*

2) *http://www.nydailynews.com/ny_local/2010/06/23/2010-06-23_court_rules_rent_hikes_illegal_refunds_possible.html*

Major repairs expected for famed Bronx hip-hop building

The giant brick building at 1520 Sedgwick Avenue in the Bronx, widely known as the birthplace of hip hop, may get a renewed lease on life following the sale of its mortgage to new owners.

Workforce Housing Advisors, a group comprising the owners, has reportedly pledged to repair the deteriorating conditions.

As reported in the New York Times, the city provided a loan of $5.6 million to the owners, all of whom had previously worked in various city agencies. The mortgage of $6.2 million had been held by Sovereign Bank.

The city's contribution derived from a new program to help multi-family buildings under get out from under "unsupportable debt," according to the Times. Funds in the program are distributed to "buyers deemed responsible by the city."

Since its last sale in 2008, the building had become subject to numerous housing violations, including rats and roach infestations. It was widely believed that the former owners had intended to transform the structure, which for decades had housing working class families, into luxury accomodations. The burst of the hosuing bubble, however, effectively put a stop to those plans.

The building has played a central role in the rise of hip hop. According to the Times, Clive Campbell, popularly known as D.J. Kool Herc, had conducted popular parties in the building's community room during the 1970s, where he began developing what became known as rap, or hip-hop. That form of rhyming music-talk has since spread around the globe.

Dues-Paid Developments

MLRC strength comes from you, the membership. Support the Coalition's educational, advocacy and outreach programs with your membership dollars.

Individual Membership: $25
Development - 15 cents per apt. ($30 minimum; $125 maximum)
Donations above the membership dues are welcome.

These developments are dues-paid members of the Mitchell-Lama Residents Coalition as of Dec. 31, 2009

Bethune Towers
Castleton Park
Central Park Gardens
Clayton Apartments.
Coalition to Save Affordable Housing of Co-op City
Dennis Lane Apartments
1199 Housing
Esplanade Gardens
Jefferson Towers
Lincoln Amsterdam House
Masaryk Towers Tenant Association
Meadow Manor
Michangelo Apartments
109th St. Senior Citizen Plaza
Parkside Development
Pratt Towers
Promenade Apartments
RNA House
Riverbend Housing
River Terrace
River View Towers
Ryerson Towers
Concerned Tenants of Sea Park East
Starrett City Tenants Association
St. James Towers
Tivoli Towers
Tower West
Village East Towers
Washington Park SE Apartments
West View Neighbors Association
West Village Houses
Woodstock Terrance Mutual Housing

If your development has not received an invoice, please call the MLRC Voice Mail: (212) 465-2619. Leave the name and address of the President of your Tenants Association, Board of Directors, or Treasurer and an invoice will be mailed.

Confused over new voting system? Lawyer's group has hotline to help

The Lawyer's Committee for Civil Rights Under Law, a voter rights group, has a new hotline to help voters who may be confused over the new voting system, as New York transitions to new machines.

The toll-free hotline number is 1-866-687-8683.

During the primary elections on Tuesday, volunteers from the group attended polling sites in all five boroughs to directly answer voters' questions.

According to a statement issued by the Committee, the project, dubbed Election Protection, is an outgrowth of concern about "the inadequate overvote protection on the machines used in New York City. An overvote occurs when the machine reads that a voter selected too many candidates for a particular office. Instead of automatically rejecting the ballot, a voter receives a confusing message and is allowed to still cast his or her ballot. As a result of this configuration, in 2008, 13 Florida counties produced overvote rates almost 14 times higher than was expected, according to the Brennan Center for Justice at New York University School of Law. "

The hotline is available in English and Spanish. While available to all voters, it "targets historically disenfranchised communities, including: African Americans, Asian Pacific Americans, Latinos, Native Americans, and other racially and ethnically diverse communities; seniors; young people; low-income voters; and individuals with disabilities."

More information about Election Protection and the hotline (1-866-687-8683) is available at *http://www.lawyerscommittee.org/projects/voting_rights*.

Poll worker responds to IRS rule changes

The following item was fowarded to MLRC by Dave Robinson of Legal Services.

Sheila Boyd, a veteran poll worker, speaks out against the new IRS rule that states Board of Election poll workers are considered employees and must now report their earnings to IRS

The IRS waited until the workers finished the training to inform them that the rules have changed. The IRS letter was dated August 2, 2010, but it was postmarked (for everyone) August 31, 2010 and was received by the poll workers in the mail on September 1st
and 2nd. This may bring a lot of onfusion and miscounts this election day.

Ms. Sheila Boyd wrote a letter in response to an article in the NY Post. The article was written by John Crudele, who writes on personal finance.

"Dear Mr. Crudele:

"I read your article 'Bad Jobs kicks of Labor Day Weekend.' I have been a poll worker many years working the polls on Primary Day and Election Day. Many people who work the polls are seniors and others who are on fixed incomes. They do this because the little over $500 they make on both days is not taxed or counted as income--thus insuring them that their rent would not go up.

"However, after all these years, on August 31, we received a letter in the mail from the Board of Elections stating the IRS has determined that if we work the polls, we are now considered employees of the Board of Elections.

"Attached to the letter were W4 and IT tax papers that we must fill out if we want to work this Primary day and Election day. If we do not fill out the tax forms, we will not be able to work.

"I wish they would have told us this before we took that crazy full day training for the new voting machines they are bringing in.

"If we work as employees for the board of elections, the employment figures for September (Primary day) and November (Election day) will go up. (I think that's what your article meant.) If I'm wrong, please forgive me. Also, it will enable those unemployed managers to jump on board and make $500 - $600 during election season. They would be more than happy to fill out the tax forms (but they never took the training).

"Confusion, confusion."

Pro-tenant Rivera ousts pro-landlord Espada in Bronx district

Landlords are crying. One of their key legislators, Pedro Espada, Jr., fell victim to democracy. "Espada, an ally of the real estate industry, mourned in defeat," cried a headline in a recent issue of *The Real Deal*, a real estate trade and news journals. "In the city's Democratic primary Tuesday, Espada "lost by more than a 2-1 margin to Gustavo Rivera, a political science professor [at Pace University]," who now will run in November for the seat.

The seat is the 33rd district in the Bronx.

Tenants, meanwhile, are jubilant.

"FINALLY!" shouted a report issued by Metropolitan Council on Housing, a tenant advocacy group. "Goodbye to Tenant Foe Pedro Espada!" The report noted, incidentally, that the senator resides in a rent-stabilized apartment in the Bronx. It also went on to say that Rivera "is expected to win in the general election in the overwhelmingly Democratic district."

Landlords' sorrow, such as it is, appears to derive from more reasons than the loss of a district. As the article noted, Espada is facing legal charges that he misappropriated $14 million from a non-profit health clinic, the Comprehensive Community Development Corporation, more widely known as Soudview. The allegations, from Attorney General Andrew Cuomo, encompass nineteen other executives.

Espada also sullied his reputation last summer when he bolted the Democratic Party and joined the Republicans. While that defection was temporary, it hardly enhanced his reputation for loyalty. (In equally positive news for tenants, Met Council noted, Espada's "brief accomplice in the 2009 Senate coup, Hiram Monserrate of Queens, also lost his bid to fill a vacant State Assembly seat.")

Senator Espada was known among realtors for his pro-landlord positions, according to Robert Knakal, chairman of Massey Knakal Realty Services, The Real Deal wrote.

For example, in a move that tenants said would enable landlords avoid the bulk of legal charges steming from violations of J-51 (a New York tax exemption law), Espada called for landlords to "freeze rents for struggling tenants and have landlords cover the difference through a complicated process in which they would return rents they had illegally charged over the years."

Tenants saw this as a sham. According to a report in the *Norwood News*, a Bronx community paper, "Tenant advocates argue that if he's for affordable housing, he should back . . . the repeal of vacancy decontrol. . . protection for former Mitchell Lama and Section 8 tenants and restoring home rule powers to the city."

Storm safety tips

Be informed, have a plan

Judy Montanez
Executive Board Member, MLRC

The New York City, Staten Island, Brooklyn and New Jersey tornado was a surprise to us all.

Knowledge is your strongest tool. It is important to know if you live in a hurricane evacuation zone, and what special procedures you need follow. Call 311 or search "hurricane evacuation" on the internet to find out more.

It is my hope that we learned a few things from this unexpected tornado.

Whenever possible, check in with television news and/or radio broadcasts on a regular basis to keep up to date on the weather as it changes. I saw many residents go on their terraces to take a look at whether or not they can see the tornado. This is a mistake. Every minute counts and you need to use them wisely. Do not put yourself at risk!

Google www.nyc.gov on the internet and go to all of the sites indicated that speak about emergencies, hazards, storms, disasters. Learn as much as you can to prepare yourself. The following excerpt is an example of what you will find on the website.

If time permits:

Tape up windows (to prevent flying glass).

Remove all outside objects such as furniture, toys, plants, grills etc. Bring them inside.

Turn off propane tanks.

Close windows securely.

Place valuables in waterproof containers or plastic bags.

Prepare to be self-sufficient for at least three days without help or emergency services. Prepare a "Go Bag" and an emergency supply kit. (You can find out what these are at www.nyc.gov.)

Assume that many of the streets and stores in your neighborhood will be closed. A watch may be followed by disruptions to electricity, gas, water or telephone service.

If you own a vehicle, fill your gas tank.

Take out extra cash

Help Others Prepare

Check on friends, relatives and neighbors, especially those with disabilities or special needs and assist them with their preparation, if possible.

Contact family members outside your household to coordinate and inform each other about preparations. Avoid separating your immediate family. Consider developing a disaster plan (find out how at nyc.gov)

Prepare for Water and Sewer Disruptions

To keep perishable food cold, freeze water in plastic jugs and use in freezer or coolers.

Fill up other emergency water containers.

Clean jugs, bottles and other containers.

Scrub bathtubs thoroughly, sponge and swab with regular, unscented liquid chlorine bleach, then rinse. Let the tub and other containers dry. Fill with water.

Keep five-gallon buckets with tight-fitting lids for use as emergency toilets. Line each bucket with a heavy-duty plastic trash bag.

Learn more about food supply preparation at www.nyc.gov

Prepare for Power Disruptions

Do not use candles or kerosene lamps as light sources, as they can pose a fire hazard. Instead, keep a supply of flashlights and extra batteries on hand.

New executive board: members elect ten in June

Ten members of the Mitchell-Lama Residents Coalition were elected to the executive board in June.

They are:

Iceamae Downes, Josie Barnes, Sonia Maxwell, Alice Mitchell, Alexis Morton, Hattie Overman, Ed Rosner, Rachel Taylore, Margo Tunstall, and **Natalie Williams**.

* * *

Sale of 5 West 91 Street.

Stellar Management, a real estate firm owned by mega-landlord Laurence Gluck, sold 5 West 91st Street, a 48-unit building still in the Mitchell-Lama program, for a reported $16 million. The new owners are Gaia Real Estate. The sale, according to a report in *The Real Deal*, took place September 7.

Gaia's principals include Amir Yerushelmi, Danny Fishman and Ken Woolley, who invest "in distressed properties." Gaia also owns property management firm Vision Property Management and sales company Park River Properties. Most of 5 West 91st Street remains rent-regulated, although there are market-rate units, the article said.

* * *

East side condo tenants not protected

The New York State Appeals Court unanimously ruled recently that market rate tenants at Manhattan House, an upper east side condominium, were not protected from eviction by the Martin Act when their leases expired in 2007. The Act, conferring strong powers on New York's Attorney General, dates to 1921, and was passed to deal with financial irregularities.

The tenants' leases expired before the development was converted to a condo, and so they were not protected.

Turning rent protection on its head: how DHCR rules upended the law

*Following are two of numerous critiques and recommendations made by **Seth Miller** of Collins, Dobkin & Miller LLP regarding procedures of the NYS Department of Housing and Community Renewal. They were originally prepared in 2006, but retain relevance today.*

The Four Year Rule

In 1997, in reaction to pro-tenant developments in the courts, the legislature amended the Rent Stabilization Law to "clarify" that there is a four year statute of limitations for challenging the rent registered by the landlord in DHCR's registration data base. The intent of the legislation was clear: if a registration statement is not challenged timely, the registration becomes the means by which a tenant's rent is established.

DHCR immediately turned this clear legislative intent on its head. For all rent stabilized apartments, DHCR changed the rules so that the base rent would no longer be the rent registered by the landlord if unchallenged for four years. Instead, regardless of the registered rent, DHCR set the rent at whatever the landlord was charging four years ago. If the apartment was vacant, DHCR permitted the landlord to charge a market rent.

Thus, what was the intended to be a system whereby rents are based on the contents of the public record became an open invitation for fraud. In large numbers, landlords no longer registered.

Those that did register were encouraged to register an unlawfully high rent as the "legal rent" and register any lower rent actually paid by the tenant as a "preferential rent," correctly betting that, after our years, the registration could be used as a way of impeaching the actual rent history. DHCR has permitted and even encouraged landlords to commit fraud in this manner, holding that tenants have no ability to use registration statements to challenge a landlord's claim as to what rent was actually paid four years prior to a complaint while, at the same time, holding that landlords can use registration statements that say "preferential rent" as a way of impeaching the actual rent paid. In fact, DHCR's implementation of the four year rule is so extreme that it has even ruled that its own orders are not enforceable after four years.

The Rent Stabilization Code should be amended to restore the original intention of the statute, as amended in 1997: that the rent be determined in accordance with the registration documents that are a matter of public record, so long as those records remain unchallenged for four years.

DHCR's orders, no matter how long ago they were issued, should be given effect in every case involving the rent, since they are part of the public record. A landlord's failure to register should, as intended by the statute, extend the period of time when the last valid registration can be used as the basis for establishing the tenant's rent.

MCI Rent Increases

The other significant way for landlords to increase rents is by making "major capital improvements." The system whereby DHCR evaluates Major Capital Improvement applications has been dysfunctional for a long time, and recent changes to the Rent Stabilization Code have only made matters worse.

The Rent Stabilization Law prohibits a rent increase where services are not being maintained, and requires rent increase applications contain a sworn statement that all services are being maintained.

DHCR has interpreted this broad and clear requirement in a way that renders itmeaningless. According to DHCR, the lack of services in a the building only bars an MCI rent increase if (a) the City of New York has issued a category "C" violation (classified as "immediately hazardous"– the most severe category of Housing Maintenance Code violation) or (b) there is a rent reduction order in place at the time of the application concerning building wide services and no restoration application has been made and the order is not on appeal. Even these requirements have been relaxed so that landlords get repeated second and third chances at removing violations or restoring previously-denied services, even while the rent increase application is pending.

The statute is clear and DHCR's practice undermines it. *In the course of processing any rent increase application, whenever the tenants raise the issue of services, whether to their apartments or uilding wide, DHCR should investigate, conducting a prompt inspection if requested, and, if it finds that services were lacking at the time of the application, regardless of any later attempt at repair, the application should be denied in accordance with the statute.*

DHCR no longer meaningfully requires that the work that is the subject of the application be complete and functional at the time of the application. For example, we have seen many cases where a landlord has been given rent increases for waterproofing work even though the building was full of leaks at the time of the application, holding repeatedly that the landlord has a right to repair the defective work for years after the application is filed.

DHCR's practice should be changed. No rent increase should be allowed for incomplete or defective work, measured at the time of the application. Subsequent repair attempts are irrelevant, except as an admission by the landlord that the work was defective.

DHCR no longer conducts routine inspections to determine whether certain kinds of work is or is not defective. Instead, it rejects, out of hand, any claim that work is defective if the work was "approved" by any municipal agency.

The problem with that method of resolving disputes is that the landlord's contractor's self certification is usually enough to obtain a "sign-off" from the Department of Buildings or other municipal agency, so that DHCR's policy comes down to taking the landlord's word over that of the tenant whenever the landlord's contractor certifies the work. That kind of unfair presumption should be replaced by a system of impartial fact-finding.

As with rent increases for improvements to vacant apartments, DHCR has no effective mechanism for detecting fraudulent MCI rent increases. Practitioners in the area are often flabbergasted at what seems to be a rubber stamp standard of review. DHCR has no way to tell if the landlord is paying an inflated price for alleged improvements and receiving a kickback. DHCR conducts no independent investigation.

The tenants are limited to the issues they can detect from the documents the landlord submits. Regardless of the huge amounts of money at stake, the huge incentive to commit fraud, and regardless whether the landlord has a track record of making false statements in the past, DHCR simply never uses its subpoena power to find out whether the documents submitted to the agency square with the actual books and records in the possession of the landlord, its bank, and its contractors.

The improvements for which landlords seek rent increases benefit both the commercial tenants, the rent stabilized and rent-controlled tenants, and the market rate tenants of the building. Up until 2005 the amount of increase was allocated between commercial and residential tenants in accordance with their proportionate share of the rent roll, so that if 50% of the buildings rent roll is commercial, the tenants only have to pay a rent increase based on 50% of the cost of the improvement.

In 2005, DHCR changed the rules: now the increase is divided on the basis of number of square feet of residential space versus the number of square feet of commercial space. This change was blatantly designed to make for larger rent increases, especially in high-rise buildings with high commercial rents.

The Rent Stabilization Code should be changed to reflect the economic reality that prevails in buildings where there are regulated tenants, market rate tenants, and commercial tenants. The rent regulated tenants' share of any rent increase for improvements should be proportional to their share of the rent roll, consistent with what the practice was before there was such a thing as "free market" residential tenants in a rent regulated building.

Rent regulations: why they are crucial to New York City

(Continued from page 3)

rent" objective of the system and bought into the notion that tenants in rent regulated apartments are the beneficiaries of subsidies paid for by their landlords.

The CBC participated in this paradigm shift in its 1991 report describing rent regulation as a subsidy system. This study, along with an earlier one commissioned by the Rent Stabilization Association (the city's largest landlord group), influenced Albany lawmakers who, in 1993, adopted a means test for a narrow slice of rent regulated tenants who earn over $250,000 per year (later lowered to $175,000) and reside in apartments renting for more than $2,000 per month.

Following the enactment of the 1993 law, John Gilbert, then head of the RSA, was quoted as saying "[t]he biggest victory here is that people have finally acknowledged that rent regulation is a subsidy." Daniel Margulies, the head of another landlord group, the Community Housing Improvement Program, was equally explicit: "they have applied a means test and exposed the system for what it is, a subsidy system." But the idea that rent regulations were designed to secure "fair" rents and to control profiteering is evident from the history of New York's responses to its chronic housing problems.

New Yorkers struggled with rent gouging and dangerous housing conditions throughout the 19th and early 20th centuries. In the 1920s rents were regulated for the first time even as tenant incomes grew and new construction hit record levels, eventually lifting vacancy rates to unprecedented levels which allowed a phasing out of controls by 1929.

Why did the state see fit to regulate rents and evictions as we entered the Roaring Twenties? The answer is simple. Vacancy rates fell below 1 percent from 1920 to 1924. With such strong demand for apartments, landlords exerted abnormal and excessive bargaining leverage and thousands of tenants were evicted when they protested. Tenants – at all income levels – demanded protections against rent gougers.

During World War II, the Roosevelt administration implemented federal rent controls as part of a larger effort to curb wartime profiteering, to eliminate unfair market advantages bestowed upon landlords by the decline of new housing starts during the war – not to subsidize the poor. Similarly, in the late 1960s when the production of new apartments stalled due to a zoning change and rents shot up in newer post-war buildings, rent stabilization was adopted to counter the new-found market power of landlords who owned those buildings. This expansion of regulation protected the newest and previously uncontrolled class of housing in the city – occupied by its more affluent tenants.

Beyond asking us to buy into the "failed subsidy" rhetoric, the new CBC report makes several myopic and unfounded assumptions about the impact of rent regulation. We are told, for example, that an end to rent regulation would result in an increase of $283 million in property tax revenues for the City. Nowhere is there an explanation of what will happen to the local economy when the rent increases needed to cause this jump in tax revenues are imposed on tenants.

The CBC proposals project that an expansion of current deregulation provisions will actually lift rents among deregulated units by over $2.5 billion. This will cause a massive shift in local consumption patterns. As rents go up tenants will have less to spend in local restaurants and shops, but landlords are more likely to invest their windfalls in T-Bills or hedge funds.

Under the CBC recommendation, local economic activity is likely to decline and sales tax revenues will suffer. This impact is neglected in the report. CBC further informs us that with deregulation, rents in unregulated apartments will actually fall by an aggregate of some $1,872 million (thus partially reversing the transfer to landlords). This assumption lacks credibility.

According to the 2008 Housing and Vacancy Survey there is a 4.7 percent vacancy rate among unregulated apartments – more than twice the 2.14 percent vacancy rate among rent stabilized units. With a relatively large vacancy rate, unregulated apartments are already at or close to market rents. Deregulation is likely to send formerly regulated tenants displaced by large rent hikes shopping in the broader market of unregulated apartments and inflate rents there. There is no good reason to assume, as the CBC does, that rents in the current unregulated sector will fall if rents are deregulated elsewhere.

Further, we are warned by the CBC that rent regulation causes distortions in the allocation of apartments. This echoes the old criticism that rent regulation promotes underutilization of units – with countless individuals rattling around huge empty dwellings. But the report quietly admits that the one million rent stabilized tenants use their units most efficiently with a lower average number of rooms per tenant (1.49) than their unregulated neighbors (1.67).

The CBC report draws attention to rent controlled apartments where underutilization is clearly present – no surprise, given that the median age of these tenants is 70, and that elderly people often live alone. But a 1999 report by the City's Rent Guidelines Board found that single elderly tenants in non-regulated units underutilize their housing in greater numbers (43.5 percent) than those in rent controlled (34 percent) or rent stabilized (24 percent) units. So even in the dwindling rent controlled sector – there are fewer than 40,000 left in the city – our rent laws result in favorable patterns of housing utilization.

The main problem with the CBC analysis rests upon the notion that rent regulation produces subsidies for tenants – subsidies that, they argue, should be targeted through universal income tests. If New York lawmakers want fair, stable rents for tenants in an overheated rental market, it is well within our history and traditions to use regulation for that purpose.

As a strategy to control profiteering and to stabilize our neighborhoods – by protecting tenants from all economic backgrounds – rent regulation has proven to be effective and worthwhile. Economic data on building profitability has repeatedly demonstrated that it is also fair to owners.

The carefully engineered rhetorical transformation of New York's "fair rent" system to a "subsidy" system by the real estate industry should not mislead lawmakers into further dismantling the last protections tenants – of all incomes – have against unwarranted profiteering. To the contrary, a correct policy analysis should lead to repeal of the various decontrol mechanisms that have been enacted in recent years, and re-regulation of the units that have been removed from affordable rent-regulated status.

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Timothy L. Collins served as Executive Director of the New York City Rent Guidelines Board from 1987 through 1994. He is the author of Fair Rents or Forced Subsidies, Finding a Regulatory Taking Where Legal Fictions Collide, 59 Albany Law Review 1293-1319 (1996).