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The Intended Consequences Of the HSTPA

The Real Estate Industry's public relations campaign against the Housing Stability and Protection Act (HSTPA) of 2019 is well under way. In article after article, industry representatives, including landlord attorneys, are making the same predictions they have made after every strengthening of the rent laws since the 1920s: repairs and improvements will not be made, developers will stop building, young people will not be able to find apartments, etc … See for example, "HSTPA—2019: Some Observations," Estis and Turkel, NYLJ July 2, 2019 (predicting "cheap, shabby apartments"); "How the New Rent Laws will slam NYC's Housing Market," New York Post, July 24, 2019 (predicting less development of affordable housing); "Fed Up: Major Landlords Consider Leaving New York," Crains NY Business Aug. 20, 2019 (predicting that developers will flee to Florida).

By **David Hershey-Webb**

As if the New York State Legislature and the governor had stumbled into far-reaching rent reforms without any thought, real estate industry representatives like to call their predictions "unintended consequences." In "The Law of Unintended Consequences" (Commercial Observer, October 2019), Robert Knakal, Chairman of JLL Investment Sales not only predicts a lack of repairs and improvements but says that there will be fewer flowers in lobbies. However, given that none of these predictions have proven to be reliable in the past, at least as a direct consequence of stronger rent regulations, the real estate industry is starting to sound like the proverbial boy who cried wolf.

Decades of Deregulation And Rent Increases

Past dire predictions did not come to pass. Construction booms in New York City coexisted with rent regulations in the 1920s and 1960s. What did come to pass in the last several decades, as rent protections were weakened, was the displacement of hundreds of thousands of tenants due to the loss of rent-regulated apartments, and the year-after-year increase in rents, both regulated and market. Affordable rents were replaced with increasingly unaffordable rents. While much of the housing crisis was the result of lawful actions by landlords relying on laws that favored them, much of it was also the result of widespread lawlessness, particularly in the form of rent overcharges and unlawful deregulations. The Division of Housing and Community Renewal (DHCR) was complicit in this by permitting landlords to unlawfully deregulate tens of thousands of apartments, and collect millions of dollars in rent overcharges between 1996 and 2010, while they were receiving J-51 tax benefits. When that practice was stopped by the Court of Appeals in *Roberts v. Tishman-Speyer*, landlords predicted "dire

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financial consequences for the New York City real estate industry."

Intended Consequences Of the HSTPA of 2019

Having seen landlords get away with too much for too long, tenants finally said enough is enough and helped take back the New York State Senate which, along with the State Assembly and the governor, passed the HSTPA of 2019, the strongest rent regulations in decades, and a first step in bringing balance back to the rental real estate market.

The HSTPA of 2019 does a number of things. Most importantly it repeals "high rent vacancy deregulation." The ability of landlords to deregulate vacant rent regulated apartments created an incentive to evict tenants who had resided in apartments for decades. Landlords brought housing court cases with little merit in order to force tenants to give up their apartments. One or two missed rent payments would result in an eviction proceeding. A few months out of the apartment to care for an elderly parent would mean a "non-primary residence" proceeding. Landlords refused to provide needed repairs (one of the predictions the real estate industry is making now that was already happening) or undertook third-rate repair jobs. Landlords illegally raised rents. Since few tenants had the resources to fight these actions, most landlords who undertook them got away with it. Under the HSTPA of 2019, the incentive to evict has been removed, unless there is a valid basis.

The HSTPA of 2019 also substantially limits rent increases and improves the process to determine the validity of such increases. Landlords can no longer take an automatic "vacancy increase" when a tenant vacates. Landlords can now only get rent increases for $15,000 in renovations over a three-year period. Rent increases for major capital Improvements are also limited, phased in at 2% of a tenant's rent, rather than 6%. While the limits on rent increases are significant, they were a response to decades of landlords evading the law by obtaining unlawfully inflated rent increases.

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There are many other provisions that were signed into law that will protect tenants in the years ahead, including limits on "owner's use" proceedings, reform of "preferential rents," increased damages awards for overcharges. All of them were adopted to address abuses that had occurred for decades which led to a crisis of affordable housing.

Conclusion

As in the past, much litigation will ensue. The courts have only begun grappling with the law. Key decisions have affirmed that the new law applies to pending rent overcharge cases, including those on appeal. The real estate industry, along with its PR counteroffensive, has filed a federal court case arguing that the law violates due process and is an unconstitutional "taking." Issues regarding the retroactive applicability of different provisions in the law, the ability and willingness of the DHCR to adopt effective regulations and polices reflecting the overall purpose of the law, the ability of the DHCR and the courts to effectively enforce the new law and the practical effects on landlords and tenants, are yet to be seen.

Because legislators are not gods, all new laws have "unintended effects." If what the real estate industry calls adverse "unintended effects" undermine the beneficial intended effects of the HSTPA, some revisions may have to be made. Policy makers and stakeholders should consider the facts and look skeptically at PR campaigns.