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**Good Intentions Are Not Enough: The Reasons Why
the 'Rents Are Too Damn High'**

**The Transposability of Brokerage Principles:
Real Estate, Securities, and Financing**

**Crossing the (Property) Line, Part Three: Implications
of the December 2025 Amendments to RPAPL § 881
and New § 882**

Good Intentions Are Not Good Enough: The Reasons Why the ‘Rents Are Too Damn High’

By Stuart M. Saft

We regularly hear from protestors that the “rents are too damn high” and complaints that developers and landlords are the cause of the problem. The rents are too high, but the problem is not caused by the landlords and developers, but rather changes in the law that were intended to solve New York’s perennial housing crisis but have had the opposite effect and act made it worse. The reality is that New York State enacted its first legislation to “solve” the housing problems over 100 years ago and it worked, but the lessons learned in the 1920s have been forgotten or ignored.

The simple fact is that landlords and developers are in the business of developing properties and everyone benefits from their success. The problem is that the individuals who write the laws – not necessarily the legislators who enact them – blame the very people with who they should be working to solve the problem while ignoring the law of supply and demand. Yes, the rents are too damn high, but that is not the fault of the real estate developers who build and the landlords who own property, but the staff of city and state legislatures who blame the real estate industry for the lack of development, the unavailability of housing, and the high rents. Meanwhile, many New York developers have gotten tired of dealing with New York policies and are now happily developing housing in Florida, Texas and many other states that have welcomed them. The rents are high because there is no supply, with the city and state legislatures continuing to add to the problem by enacting laws, rules and regulations which make housing development and operation more expensive.

It seems that the last politician who understood the economics of housing was Governor Al Smith in 1920, when he signed a law that exempted new housing construction from property taxes until the end of 1931. The result was a housing boom in New York City which created 729,000 new houses and apartments in a decade. This was more than all the housing built in New York City in the 50 years from 1970 to 2020 and supported a growth in New York’s population from 5,620,048 people in 1920 to 6,930,444 in 1930, as opposed to a decline in population from 8,804,190 in 2020 to 8,097,282 in 2024 (up 23.3% in the 1920s versus down 8% in the 2020s).



Unlike today, the state did not care what was built, how much profit the developer made, or whether the construction workers belonged to a union in 1920. Governor Smith just wanted housing built, and the Legislature supported this goal. The supply eased the housing shortage, lowered rents, and led to new residents who flocked to New York. In fact, my grandparents told me that in the 1930s they moved every two years because there were so many apartments that, when they moved, they received two months free rent and a freshly painted apartment. Obviously, developers were not the enemy in 1920. They were the solution. It’s obvious developers only developed so they could make a profit, but this rings true of everyone who provides a service or product. Nobody works for free. Just because developers build housing to make a profit does not mean they are the “enemy.” Part of the reason developers are so focused on making a profit is the risk associated with what they do. These people will commit to buy a property before they are even sure they can build on it, go through the process of obtaining government approval and a building permit, arrange for financing, navigate a maze of regulatory laws that are constantly in flux, worry about litigation and economic changes, and deal with unions and community groups which may oppose development at times. Only after all this may they actually look for tenants and/or buyers and finally worry about breaking even, much less make a profit. It is a miracle that anything gets built or renovated in New York.

Good Intentions Are Not Good Enough

Building housing is only part of the problem; the other part of the problem is rent regulation that benefits a few but hurts many more – and not just the landlords. In 1920 Governor Smith acted to stop housing riots after World War I by supporting the development of housing. In 1947,

after World War II, New York State enacted rent control laws covering buildings built prior to 1947. This limited rent increases regardless of the actual cost to operate the building. The law intended to protect returning soldiers from price-gouging landlords because so few apartments had been built during the war. Almost all of the Greatest Generation have died, but the law meant to protect them lives on. The 1947 law was supposed to be temporary, yet it was followed in 1974 by the Emergency Tenant Protection Act, which regulated rent increases and limited landlords' ability to evict difficult tenants. Now, over 80 years after the end of World War II, the 1947 and 1974 laws remain on the books. Throughout the years, New York State and New York City have passed many more laws to "end the housing crisis" such as the Rent Control Law, the Rent Stabilization Law, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), the Good Cause Eviction Law (GCE) and many more. Each of these have been marketed as the magic "cure all" to end the housing crises, yet each has failed. Insanity is doing the same thing over and over again and expecting different results, and it seems like New York has gone crazy. With the direction the state and city legislatures have gone, it seems unlikely this shortage will ever end and things will only get worse before they get better. .

New York City needs housing, and such housing will not be built as a result of social engineering experiments that have failed for over eight decades. Prior to the HSTPA, the laws were "temporary," but landlords and developers hoped (and expected) that the World War II emergency laws would expire. In 2019 reality arrived and the laws became permanent, leading to developers leaving New York. Now the full impact of the HSTPA has become apparent, so the state Legislature has doubled down, enacting the GCE, which was the final nail in the coffin. The GCE was never about making certain that there would not be a good cause for an eviction – Housing Court judges and an endless array of statutes and decisions make certain that even squatters are protected – the GCE was another name for statewide Rent Control.

If anything, the advent of laws attempting to limit or prevent rent increases, like all attempts to control prices, only creates distortions in the market and ultimately shortages, a black market of housing at higher rents and increased costs, all of which is the very opposite of what it is meant to do. Rent-Control Laws – regardless of what they are called – reduce the construction of new housing units and create an incentive among tenants to game the system. The simple answer to the absence of affordable housing is to build more housing, which will force the rents to go down. This is opposed to Rent Control Laws that disincentivize developers to develop housing, puts pressure on the Legislature to cre-

ate even more draconian laws, and prevents tenants from moving to housing that better fits their needs. Frankly, the tenants are hurt more by the Rent Control Laws than anyone because it interferes with the supply.

There have been discussions in academic circles over the years about the state taking over housing development and operation and treating it like a utility. However, developing, operating, maintaining, repairing and replacing housing is so complex, time intensive and expensive that no one other than academics seriously consider state control of housing to be an option. Ask anyone living in housing owned by the New York City Housing Authority (NYCHA) how they feel about living in such housing and you will get an earful. The housing was so dangerous that the Department of Housing and Urban Development (HUD) had to step in and force much needed repairs to be made.

A Subsidy That Is Not Based on Necessity

Another part of the problem is that all the limitations on rent increases are really a subsidy paid by everyone who does not receive a subsidy caused by those tenants who are protected by the Rent Control and Rent Stabilization Laws paying below market rent. Every tenant living in a rent-regulated apartment (under rent control, rent stabilization, Mitchell-Lama as well as other city and state programs) is receiving a subsidy from every New York resident who did not win the apartment lottery by getting a lifetime right to a below market rental apartment regardless of whether they needed the subsidy.

The housing situation is exacerbated by the fact that rarely does anyone give up their subsidy by moving out of their subsidized apartment, even when they no longer need a family sized apartment. This is because the rent on a smaller apartment could be higher than the rent they are paying on the existing larger apartment as a result of the controls. Not even death separates a tenant from their subsidized apartment, as tenants have the right to pass on the apartment to future generations – regardless of the successors' financial need, income or wealth. Moreover, many people in rent regulated apartments are no longer full-time tax paying residents of New York but retain their apartments and sublease all or part of their apartment at a profit. The only thing that changes are the laws that make owning the buildings more onerous and less profitable. The situation keeps getting worse.

Yes, the rents are too high for those who do not have a rent-regulated apartment, but that is the fault of those holding on to their rent regulated apartments, and not the owner of the building. Think about the fact that the government keeps increasing the cost of living in New York: the taxes increase, the tolls increase, there is congestion pricing,

merchants raise prices, the unions keep costs increasing with the support of the city and state officials, and there are new unfunded mandates every day, but only rents are controlled.

Moreover, there is no rationale as to why the tenants living in 960,600 apartments subject to rent regulation, 160,000 Mitchell-Lama apartments, and thousands of other apartments for which rent increases have been limited are not required to regularly show a need for the rent limitations rather than it being a permanent entitlement. The question that is ignored is, “Why should tenants pay a below market rent if they can afford to pay a market rent?” Those New Yorkers won the apartment lottery because they (or their grandparents) got to the apartments first and now believe they own the apartment; tenants try to earn more money at their jobs but resist any attempt to pay more rent. The Legislature never considers whether someone earning several hundred thousand dollars a year or having a large stock portfolio, a second home elsewhere, or who no longer lives full time in New York or pays New York taxes, should have their rent subsidized, which forces young families to move out of New York City and out of New York State. One of the primary reasons there is no supply is due to the 1.2 million apartments that are never available to new or young

residents because of the disincentive for existing tenants to vacate an apartment. It is a mystery why the landlords are blamed, when they have no control over the availability and cost of housing.

Until 2019 there was a luxury de-control procedure, where tenants with high rents and earning over \$200,000 a year would lose their controlled or stabilized status and be required to pay market rent to remain in a regulated apartment, but it was eliminated by the Housing and Security Tenant Protection Act of 2019 for no apparent reason – other than to either punish landlords or to reward high income constituents. High income tenants did not need that protection. Now we have young New Yorkers looking at socialism for the solution, but socialism will not create more housing, regardless of claims that a candidate will borrow billions of dollars to build union-made housing. Who is going to make that loan while the tax base shrinks?

It should be noted that there was no transparency when the HSTPA was enacted because no one in the industry saw the HSTPA bill until it was enacted, and there were no hearings. The HSTPA passed in the form in which it was introduced without any public review or comment. There is





little doubt that the HSTPA was the worst piece of legislation that could have been enacted if anyone was concerned about the absence of housing. For it to have been enacted without hearings, or an attempt to negotiate some of its more perverse elements, was the functional equivalent of political malpractice. The reason landlords and developers are blamed for the housing crisis is because they are an easy target. People hate their landlords because they think the laws are saving them from the evil landlord, but the opposite is true. If there was excess supply, the tenants would control the market.

Just because a bill can be enacted does not mean it should be. Among one of the strangest provisions of the HSTPA was one that prevented landlords from recapturing the cost of renovating apartments that had the same occupant for decades, and the landlord wound up with a vacant apartment that did not meet current construction codes or the endless array of government mandates. Tenants cheer the sagacity of their representatives without realizing they are trapped in

decaying infrastructure and the ultimate doom loop. Albert Einstein is reported as saying “the definition of insanity is doing the same thing over and over and expecting a different result.” Perhaps a true definition of insanity is having a city and state that are mired in intractable problems, including rising costs, crime, children who are not being educated, the absence of housing and opportunity, and continuing to listen to platitudes rather than new policies or fresh ideas to deal with long-term issues. Every candidate for public office has run on a platform of building more housing, but they never do. Imagine if employees were treated as badly as the landlords are treated but employees were not allowed to change jobs. Yes, the rents are too damn high, but only for some. To paraphrase George Orwell, “all people are equal, but some are more equal than others.”

Of course, people who need help should receive it, but how can we ensure that happens when there is no means test for more than a million rent-regulated apartments and those subject to the Good Cause Eviction Law?

How We All Suffer From the Rental Law Housing Subsidy

The housing subsidy is one that everyone else pays for. It arises from the fact that real property taxes, the only tax over which the city government has control, is based on the income produced by rental buildings. Even co-op and condo taxes are based on the taxes paid by rental buildings, so limiting the rent paid on almost half of the residences in New York City means that the occupants of the other half apartments must pay higher taxes to make up the difference. Notwithstanding what former city officials claimed, raising taxes on co-ops and condos will not lower the rent paid by rental tenants; it will only make co-ops and condos less affordable.

Accordingly, if rents went up, real estate taxes would also go up, and the city would have the money to rebuild its schools and provide essential services. However, at some point several decades ago, a decision was made to subsidize rent, so voters got cheap rent, but a city income tax had to be introduced as well as other fees and charges to increase the revenue and not cut the budget. This raises an interesting question that is also never asked: Why is Florida’s budget half of New York’s budget when Florida has a larger population that continues to grow? I would love to hear a candidate say that he, she or they will study the low tax,

full-service states and find out why New York is no longer competitive.

Housing subsidies that allow someone earning hundreds of thousands of dollars a year to have their rent limited may not seem significant, but it is at the very heart of the housing shortage because everyone who receives it believes they deserve it and even demand zero rent increases. Does a system that allows a college student to move into a three bedroom, rent-stabilized apartment prior to his or her grandmother's death (or at least claim to have done so) while a family with two children has to move to New Jersey because they cannot find adequate housing in New York logical or equitable? Does it make sense for couples to structure their six or seven figure incomes, particularly if they are self-employed, so they can keep their "subsidized" apartment in New York City, receive this "subsidy" while they have a second home in the Hamptons or Palm Beach, and avoid paying New York income taxes? Anyone watching "Friends" was taught how to "own" a rent-controlled apartment that a 25-year-old inherited from her grandmother and allowed her and a friend to live in with a below market rent regardless of their income. What is the justification for this? What is the public policy supporting it?

An Alternative Form of Rent Control

If the Legislature does not want to eliminate rent regulation, then the simple solution to these problems is to change the formula for calculating the rent for over 1 million rent-regulated apartments to the *lesser* of a) 30% of the income produced by all the residents of the apartment or b) the fair market rental of the apartment. In that case, someone wanting to remain in a three-bedroom apartment can do so as long as he, she or they are prepared to pay the appropriate rent, i.e., the lower of the fair market rent or 30% of each residents' income. This would also incentivize people to move into smaller apartments and put an end to the illegal subletting of apartments.

What about enforcing the tax laws and treating the income the tenant receives from other residences in the apartment as taxable income to reduce the ability to game the system? A portion of the additional rent the landlords collect could be allocated to upgrading the buildings and developing more housing. That would be a novel approach – work with the landlords.

Three decades ago, one of my clients purchased an 800-unit rent-stabilized apartment building and, for security reasons, we required the tenants to show identification as part of the condo conversion process when we distributed the offering plans. As a result, we learned that one-third of the tenants were not New York residents, even though they

rented a below market apartment, and did not pay New York taxes. A decade ago, one of my clients purchased a luxury rent stabilized building and when we checked on the tenants, we found that several tenants had one spouse on the lease and the other owned a second home in another state. We surmised that the couple filed separate tax returns and this kept the higher income of one spouse away from the New York tax collector. Sure, blame the landlords for not making repairs caused in many cases by angry tenants who cannot be evicted or tenants causing disturbances, but simultaneously ignoring landlords' complaints that GCE prevents them from having the money to solve these problems does nothing to resolve them. The politicians listen to the tenants and not the landlords, especially when the problem-causing tenants complain to their elected representatives, which is followed by a visit from the Department of Buildings and a pile of building code violations that are then used as the basis for claiming that good landlords are slumlords.

Understanding that people have made different economic decisions based on their low rent, I would phase this new law into effect over 10 years, with the rent transitioning to market by 20% every two years. In addition, the following should also occur: (1) Tenants in larger apartments should be required to downsize to appropriate-sized apartments in the same building (i.e. a single person should not have a subsidy on an apartment that has more than one bedroom). Tenants of larger apartments who do not want to right-size their apartment can voluntarily surrender their subsidy and pay market rent. (2) No one should have the right to succeed to an apartment. Grandma's larger apartment should go back into the system for people that need housing. (3) Tenants wanting the benefit of the rent subsidy must use the apartment as their primary residence for at least nine months a year and all of the occupants of the apartment must file and pay New York City and New York State income taxes on the aggregate income of all the occupants of the apartment. Interestingly, co-op and condo owners lose their tax abatement if their New York City apartment is not their primary residence. Should not renters have the same requirement for the rent subsidy?

My question is: how has this scam continued for 80 years and no one investigated it? My clients are law abiding developers and landlords who get investigated and charged large fines for minor violations of an endless array of constantly changing laws, rules and regulations. This harassment of landlords does not produce more affordable housing, but it makes it appear as if the officials are solving the problem they created. Many of the fines are paid as the cost of doing business even though the fines are not justified.

HSTPA Closed the Door to Home Ownership

Here is another reality to consider. Why is New York State opposed to home ownership? In 2019, when the Legislature enacted the HSTPA, the law made it next to impossible for landlords to convert rental buildings to cooperatives and condominiums. The same people who supported the HSTPA complain about the absence of home ownership opportunities for poor and middle-income people, which is odd because the HSTPA closed the door to home ownership. Hundreds of thousands of rental apartments were converted to co-op ownership through the 1970s and 1980s, improving entire neighborhoods, but the HSTPA made that impossible for no apparent reason other than to punish landlords. It certainly was not for the stated reason of preserving housing, because those apartments never became available to rent by new tenants. In a city with 2.2 million apartments, home ownership is impossible if rental buildings cannot be converted to co-ops and condominiums. With the threshold for a conversion raised from 15% to 51%, few if any landlords want to go through the time and expense of doing a conversion. In every state, housing conversions are considered part of the state's economic development, particularly since it also generates huge fees and taxes for the city and state. Ironically, many public officials live in co-op apartments that were once rental apartments, so why is it okay for them to live in a co-op but not for younger people who came of age later?

Supporters of the HSTPA claimed that rental tenants needed to be protected from eviction if they wanted to remain as tenants but, before it was eliminated by the HSTPA, no sponsor had done an eviction plan in 50 years; nevertheless, the authors of the HSTPA did not think the tenants should have the right to make that choice. Do rental tenants want to become homeowners? I believe so, based on my experience converting buildings, especially Mitchell-Lama buildings. When we converted Ruppert-Yorkville Towers, a 1,400 unit, two building, middle income complex on the Upper East Side, 85% of the tenants contracted to purchase their apartments. When I represented Southbridge Towers, a 1,650 unit complex on the Lower East Side, virtually all of the tenants opted to privatize the building. In the middle of privatizing East Midtown Plaza, where a vast majority of the tenants voted in favor of privatization, the Legislature retroactively increased the requirement to privatize to 80% in order to stop it. Apparently, members of the Legislature believe the voters who elected them were not competent to decide how to manage their own lives. What if the election laws were changed to require that a candidate get 80% of the vote to win? Making it more difficult to convert buildings did not benefit the rental tenants. In fact, conversions benefit the tenants because the sponsor has to create a reserve fund for building-wide capital improvements and within a

maximum of five years, the shareholders or unit owners take control of the buildings. This change in the law served no public policy other than punishing landlords.

What was the public policy reason for making it impossible to convert rental buildings to co-ops and condominiums? Simple, it kept landlords from being able to liquidate their investment after the HSTPA made it impossible for landlords to make a profit on the rental housing they owned. Meanwhile, if rental tenants were allowed to purchase their apartments, they could use the equity in their apartments to move into the middle class.

Why Isn't More Housing Built?

Why is there not more housing built and why is it so expensive? First, there is (a) a limited availability of land, making it expensive to buy, (b) existing buildings that could be demolished contain residential tenants, who cannot be evicted, (c) too many buildings have already been landmarked, even when there was not much reason to landmark them other than to prevent development, (d) the cost to develop or redevelop the land would be too expensive to produce profitable housing, (e) laws, policies and procedures make it too expensive and time consuming to profitably develop, and there is significant interference in the process by government officials, and (f) no one wants their neighborhood to change, which is ironic because every neighborhood had to change for the existing housing to be built.

Another reason is interference by legislators with no expertise in housing and development. The 421-a program was a popular program that provided developers with tax abatements to build affordable apartments in larger buildings, but it was eliminated because the Legislature thought there were not enough affordable apartments being produced, so now very little affordable housing is being produced. However, 20% of the apartments in a building being affordable is more than zero. Governor Hochul spent years trying to get 485-x enacted, which was the 421-a replacement program, but it contains a Legislature-mandated requirement to use union labor on buildings larger than 99 apartments, which significantly increases the development costs in a city where it is already tremendously expensive to develop anything. As a result, it is unlikely that any significant housing will be built under 485-x, and what will be built will have less than 100 units, even though the landlord and the zoning law could otherwise accommodate more apartments, because the construction union insisted on their involvement.

Speaking of government actions that defeat the ability to build housing: one third of the hotels in New York City were permanently closed during the COVID-19 pandemic, and developers sought to convert those abandoned hotels to housing. However, the City Council required that such conversions could not proceed without the consent of the

hotel union that represented the former employees of the closed hotel, who had already received hefty severance payments when they they were laid off. Moreover, under current law, hotels cannot be built without a special permit from the City Council, which requires the approval of the union as well.

Furthermore, it frequently takes more than 10 years for someone acquiring property in New York City to be able to obtain the approvals needed to construct, finance, and build a building, even if there is no litigation by community groups or a remaining occupant of the building. The developer needs to obtain approvals to commence improving the land, obtain financing, and obtain a building permit. Then, of course, there may be a holdover tenant or occupant refusing to move out without a multi-million-dollar payment, even if the occupant does not have a lease or actually live full time in the building. Since it could take a decade to vacate a building, the Legislature could address this issue with a law that allows a developer to vacate and build a new building, giving tenants six months to move and providing the tenant with an amount set by law tied to how long they have lived in the building. Do the remaining tenants in a building deserve a six- or seven-figure payment to enable a building to be demolished and a new building built? What is the public policy behind preventing development because of one or a handful of tenants? If the Legislature seeks to increase the supply of housing, then it must recognize that space is needed to do so, and development must not be based on extortion.

Earlier in my career, I focused on representing tenants in affordable housing, which changed when I realized that the tenants were gaming the system. How did I realize that? At several Mitchell-Lama buildings, I was told that we could not have tenant meetings on the weekend because many of the tenants were at their weekend houses, and when I checked the buildings' garages, I found many of the cars were late-model luxury cars. In fact, one of my first assignments as a young associate was to help a bank vice president who was a rent-controlled tenant fight a rent increase from \$106 a month to \$120 a month for a three-bedroom apartment with river views. At the time, my wife and I were living in a small one-bedroom apartment facing a brick wall in Rego Park, Queens, and our rent was \$195 a month. I thought it was an aberration that the bank vice president was a rent-controlled tenant, but it turned out it was not an aberration, but a high-income individual gaming the system.

I know this is anathema to those who disdain capitalism, but if a great deal more housing were built, rents would go down because landlords do not control the rents; the rents are set by the market, except in New York, where the mar-

ket has been disrupted by the government. In fact, if the rent is too high, a landlord cannot rent the apartment without reducing the rent, because the absence of supply causes more demand and higher costs. This concept was proven true during the pandemic, when several hundred thousand tenants gave up their leases and moved into their second homes or relocated to the southern and western United States. Before the suddenly vacant apartments were filled, the rents fell by almost 30% and when the pandemic ended, the excess was gone, and now the tenants are complaining about their rent. Conversely, imagine where the rents would be if 500,000 new units were built. Prior mayors claimed that they "saved" several hundred thousand apartments because the apartments were not demolished, but that is not the same as building more housing. Every candidate talks about building hundreds of thousands of units of housing, but none do because their expertise is getting elected and not real estate development or real estate maintenance and repair. Even candidates whose families built wealth from real estate ignore reality when they run for public office, because the truth might cost them the election. The answer, of course, is for the political leaders to call in the developers and ask them for a plan, give them the tools to build the housing, and get out of the way. Also, in order to build affordable housing, unless a union is financing the construction, it should not be involved.

When I was growing up in Brooklyn and Queens, New York State had the largest population and biggest congressional delegation, and now we are behind California, Florida and Texas. These eight decades have not been good for New York, and this has to change before we fall behind Pennsylvania. Yes, the rent is too damn high, but if one looks at the entire situation, they will see that the developers and landlords are often victims and not villains, which is why they are increasingly leaving New York City.

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