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A Comparison Between Artichoke Hearts And Residential Rental Real Estate



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Real Estate

I write about commercial real estate negotiations, deals and legal issues.



What's the difference between artichoke hearts and rental apartments? RANJAN SAMARAKONE

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If I take some artichoke hearts from the store without paying for them and get caught, I could be prosecuted for shoplifting. Even though I buy artichoke hearts every week, I don't have a continuing automatic right to receive artichoke hearts – or artichoke hearts at a particular low price – just because I continue to need to eat.

The money I pay for artichoke hearts covers a lot of costs incurred by a lot of people. That starts with the store and its personnel but continues all the way to whoever grows the artichoke hearts in California, Peru, Spain, or wherever, and then whoever packs them and brings them to the store.

My purchase price for artichoke hearts does not just create free money for the supermarket owner. Some of it should end up in the supermarket owner's pocket, I hope. The store is convenient for me and I would like it to stay in business. But most of the money I pay for artichoke hearts goes to the rest of the economic system that brings me artichoke hearts from around the world at a price I'm willing to pay.

If the government passed a law saying the store could charge me only a certain amount for artichoke hearts, and that price didn't cover the store's costs, the store would stop selling artichoke hearts. They would become permanently out of stock. Unavailable. No one could force the store to sell artichoke hearts.

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Now let's compare all of that to residential rental real estate, especially in New York City. Housing is about as important as food. Unlike artichoke hearts, real estate occupancy is a product where the buyer, the tenant, already has possession of the product for an extended time, whether or not they pay for it. The seller, the property owner, is supposed to get paid for that occupancy – a product that costs money to provide, just like the artichoke hearts I buy every week.

When the owner signed a lease with a particular tenant, the owner made a judgment that the tenant was likely to pay the rent and, if the tenant didn't, the judicial system would help the owner regain possession of the apartment so it could be rented to someone who would pay.

The owner needs to be able to rely on the judicial system to do that. The owner needs a reliable revenue stream with which to pay the owner's myriad

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artichoke growers, packers, and shippers stay in business. Rental income isn't just free money for the owner of real estate.

Unlike a shoplifter who might get prosecuted, though, an occupant of real estate who decides not to pay for it simply stays there until the government decides to do something about it through the judicial system. If the government decides to do nothing – for example because of today's eviction moratoriums – that's just too bad for the property owner. The tenant is already in possession. The owner will need to find some other way to pay the building's expenses, which don't go away.

Similarly, if the government decides to limit how much the property owner can charge, the owner can't decide to stop providing occupancy to its tenants, the way my local store could immediately stop providing artichoke hearts if the government decided to reduce the price to a point where the store could not make money.

Instead, tenants simply stay where they are. They just pay less. Owners cannot move their buildings to some other location, the way an artichoke heart wholesaler could if a particular locale made the artichoke heart business impossible.

In today's residential rental markets with rent regulation and eviction moratoriums, the suckers who own residential real estate made the great mistake of believing that a free economy that respected private property rights would protect them. They thought the system would work for them the way it works for the supermarket selling artichoke hearts.

In 20 years, the supermarket will probably still sell artichoke hearts. I'm not so sure about rental apartments, at least in the rent-regulated segment of

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I help buyers, sellers, borrowers, lenders, tenants, property owners, and other commercial real estate market participants identify and achieve their business goals. To do that, I need to understand risk, security, numbers, value, financeability, flexibility, and exit strategy. Some legal issues matter a lot and many don't. It's important to know the difference. I write extensively on commercial real estate law and practice – over 300 articles and five books on leasing, lending, and other areas, with some emphasis on ground leases. I occasionally serve as an arbitrator or expert witness in complex real estate disputes. That lets me see how transactions go wrong. Often, the problems could have been avoided by keeping it simple and following the money, but everyone got sidetracked. As a Forbes contributor, I try to tell stories that teach worthwhile lessons for real estate deals. **Read Less**

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