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The End Of New York Rent Regulation? We'll See.

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Might today's pandemic help end New York City's rent regulation nightmare? RANJAN SAMARAKONE

In response to today's virus pandemic, unusually high numbers of apartments have been listed for sale as their owners have fled the city. In the rental market, owners of apartment buildings have significantly reduced their asking rents, yet have often not been able to rent apartments.

In ordinary times, available apartments get rented quickly. Today, however, apartment rental websites indicate that, in many cases, vacant apartments – reasonably priced based on historic norms – have been sitting on the market for months. If any seller, including a property owner trying to rent an apartment, is "having trouble selling," that just means they should lower their asking price. We can reasonably expect that to happen over time in the New York City rental apartment market as demand has collapsed, especially for higher priced units.

According to press reports, vacancy rates in the New York rental apartment market are higher than they have ever been in recent history, and rising. My conversations with property owners indicate that apartments listed for rental are very far from all the available vacant apartments. Property owners feel no pressure to list multiple vacant apartments. They often wait until they have leased whatever apartments they've already listed.

Some owners have found it makes more sense to keep a recently vacated but rent regulated apartment off the market than to deal with upgrading it to make it reasonably habitable, preparing it for rental and then renting it at regulated rents that don't cover the property owner's costs. And if, in a soft market, an owner agrees to a rent below the regulated rent, then that becomes the regulated rent. It's a one-way downward ratchet or downward spiral. In any event, the actual vacancy rate probably exceeds whatever has been reported based on listings.

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How does the rising residential vacancy rate interact with New York City's rent regulation? The law says a 5% vacancy rate means New York's "housing emergency" has ended, and therefore rent regulation — which was premised on a housing emergency that started 75 years ago — will end. But the law also says vacancy rates get tested every three years. The next test isn't until 2022, after it was pushed back a year. The politicians are already talking about pushing that date further into the future.

The city's Mayor De Blasio announced that, even with rising vacancy, "it's literally inconceivable to me that there would be any diminution of rent stabilization or rent control." Instead, he predicted, "the Legislature will immediately create continuity with our current approach." So much for tying rent regulation to any form of temporary emergency, housing crisis or absence of a genuine functioning market in rental apartments. It's just a political issue. More tenants than owners vote. This is an example of why the Constitution requires government, representing the blind will of the majority, to compensate victims of any taking of private property. Rent regulation surely qualifies as such, although the Supreme Court does not yet agree.

In any sane and logic-based legislative system, today's rental market, soft and getting softer, would give the state and city governments a great opportunity to get rid of rent regulation. Present market conditions mean an elimination of rent regulation would cause much less pain and disruption for its beneficiaries than would have been the case at any other time in the last few decades.

Today's market creates exactly the right occasion to wean some lucky New York tenants from their artificially low rents and lifetime occupancy rights. It also creates exactly the right occasion to restore a functioning residential rental market, and eliminate the massive and massively expensive government agencies necessary to administer the rent regulation system. Rent-regulated property owners pay some of that expense, so to that extent it becomes another burden for them rather than for the government. But many of those property owners are almost out of business thanks to the 2019 "rent reform" combined with the pandemic and the resulting eviction moratoria. Those moratoria effectively give many tenants rent-free occupancy for many months, while the owner's expenses continue unabated.

New York's politicians may also wake up to the fact that rent regulation artificially depresses property tax revenues, whereas New York needs all the property tax revenues it can get. Wealthier residents, the ones who pay the lion's share of the city's income tax, are already leaving. The city can try to plug the gap by increasing real estate transfer taxes and other taxes, but that creates its own unintended consequences. The property tax provides a huge percentage of the city's revenues. One might reasonably hope that New York's worsening fiscal emergency will itself drive a rethinking of rent regulation.

But one would probably be wrong.

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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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