

MEMORANDUM

TO: City of Beacon City Council

FROM: Nicholas M. Ward-Willis

RE: Housing Stability & Tenant Protection Act of 2019

DATE: June 21, 2019

On June 14, 2019, the Governor signed into law the Housing Stability & Tenant Protection Act of 2019. The very basic summary is that the law amended the Emergency Tenant Protection Act (“ETPA”) and amended the Real Property Law (“RPL”) and Real Property Actions and Proceedings Law (“RPAPL”), the laws regulating landlord/tenant relationships in New York (this memo does not discuss in detail changes to the RPL or RPAPL, but highlights some significant amendments). One of the significant provisions was to amend the ETPA so that it applies statewide as opposed to just applying to New York City, Westchester, Rockland and Nassau Counties. As the Council wishes to discuss the ETPA and the 2019 Act at its workshop on Monday, June 24th, we are providing some background information to help frame the Council’s discussion. This law pertains to Rent Stabilization and not Rent Control (view this link to read about the differences between the two: [HERE](#).)

Amendments to the ETPA

The City Administration has been reviewing the law and having discussions with Anne Saylor, Community Development Administrator, Dutchess County Planning and Development, to discuss implementation of the law. The ETPA is overseen by the New York State Department of Housing and Community Renewal (“DHCR”) and Ms. Saylor has been having discussions with that Department, which advises that municipalities should wait until the DHCR has had an opportunity to review the law and prepare guidance as to its implementation. Therefore, while the City waits for guidance from DHCR, we suggest the Council discuss the scope of the law and the process to enact the ETPA provisions.

As regards the scope of the law, the ETPA does not apply to buildings containing less than six (6) units; rent controlled apartments; motor courts; tourist homes; nonprofit units; housing supervised by the government; and housing within buildings completed after 1973. There is also an exception that provides the ETPA does not apply to housing accommodations in buildings substantially rehabilitated as family units on or after January 1, 1974. In essence, the ETPA only applies to buildings built before January 1, 1974 which contain six or more dwelling units and have not been substantially rehabilitated as family units after January 1, 1974. It does not apply to buildings built after 1974 and, as an example, it does not apply to the recent buildings that have been constructed within the City.

The Administration has requested the Building Department provide an estimated inventory of the number of units that would be subject to ETPA if it were enacted within the City.

Prior to adopting ETPA within a municipality, the municipality must conduct a survey of the class of rentals it seeks to regulate to determine if there exists a vacancy of less than 5%. The Administration understands that this survey could cost in the range of \$10,000. For example, some municipalities determine to increase the unit count of units regulated, such as a number greater than 6 units (Mt. Kisco regulates buildings containing 16 or more units; Croton – 50, Mt. Vernon - 6). If there is a vacancy of 5% or more, then ETPA may not be enacted. Note that ETPA ends once the vacancy rate exceeds five (5%) percent. The municipality pays the cost of administering ETPA within its community, but can charge regulated units an annual fee of \$10 per unit.

The last municipality to adopt the ETPA within its community was the Village of Ossining in September 2018. The Village's housing study can be viewed [HERE](#). Additionally, view this link to the DHCR webpage containing information pertaining to the adopted ETPA in Ossining [HERE](#). However, in February, 2019, the Village voted to repeal and replace ETPA within Ossining and modified ETPA to apply to buildings with 20 or more units and excluding buildings with 20 or more units that have agreements with the Village to set aside at a minimum 20% of their units as affordable units (as defined in the resolution adopted on February 25, 2019, a copy of which is included in the agenda packet). Landlords in Ossining sued the Village in October, 2018 and on May 8, 2019, the Court granted the Village's motion to dismiss the lawsuit. A Notice of Appeal was filed.

If a municipality finds that its rental vacancy is less than 5%, then it can introduce a local law and hold a public hearing. While the law requires municipalities conduct a formal vacancy survey, it can be informative to look at existing rental vacancy rate data. The most recent census rental vacancy rate for the City of Beacon is 6.8% (2017 ACS 5YR). As a comparison, Ossining's most recent census vacancy rate is 3.0% and their survey, which covered a smaller subset of units than the census, found a comparable rate of 3.06%.

Once the municipality has adopted ETPA, if another municipality within the county has not yet adopted ETPA, the DHCR Commissioner will create a County Guidelines Board consisting of nine (9) members, upon the recommendations of the local legislative body of each municipality which has determined the existence of an emergency, to promulgate the applicable limitations on rental increases based upon its findings. The recommendation must be made within thirty (30) days of the first local declaration of an emergency within the county. The Board shall consist of two representatives of tenants, two representatives of owners, and five public members with at least five years' experience in finance, economics or housing. Members, officers, and employees of municipal rent regulation agencies, the state division of housing and community renewal, persons who own or manage real estate covered by the law and officers of any owner or tenant organization are not permitted to serve on the rent guidelines board. Subsequent to any local declaration of emergency within the county, the Commissioner shall reconstitute the existing rent guidelines board to ensure representation of all municipalities within the county. The County Guidelines Board sets

guidelines for rent adjustments annually based upon several factors including economic condition of the market; prevailing and projected taxes and other costs; supply of housing accommodations versus vacancy rates; living indices etc.

It should be noted that ETPA does not change the amount of rent presently charged to a tenant. Rather, ETPA, through the County Guidelines, regulates the increases in rent offered on a renewal to a tenant or the rent offered to a new tenant should a unit become vacant. It is not the purpose of this memo to go into detail explaining how rents are regulated, how vacancy and renewal rents are determined and the various restrictions attendant thereto. There are sufficient resources on the internet that adequately explain how ETPA operates.

Amendments to the RPL and RPAPL

Although we are still reviewing the seventy-four (74) page law, the following highlights some of the amendments to the RPL and RPAPL that may be of interest and is offered for informational purposes only and not as legal advice:

- Landlords cannot require more than one (1) months' rent as security deposit.
- Warranty of habitability is amended to include a duty to repair.
- Limits application fees
- Bans the use of "tenant blacklists."
- Requires notice of rent increase upon renewal or notice of non-renewal of lease to be provided anywhere between 30 – 90 days based upon tenure of Tenant's occupancy of unit.
- Opportunity to cure for non-payment of rent (Rent demands) increased from 3 days to 14 days.
- Warrant of Eviction stayed fourteen (14) days after service of Warrant (was previously 72 hours).
- Establishes a stay of eviction based on hardship. Courts may stay an eviction for up to one year if the tenant can demonstrate that they cannot find similar housing in the neighborhood and that the eviction would produce some kind of hardship like limiting their access to healthcare or requiring children to change school districts in the middle of the school year. The hardship provision applies to eviction for any purpose, including nonpayment of rent. This provision used to apply to NYC only and was for 6 months. Tenant required to pay rent into Court.

- Time frames for service of Summary Proceeding and Answering Petition increased.

ecc: Anthony Ruggiero, M.P.A., City Administrator
John Clarke, City Planner