

MID-YEAR REVIEW

New rent guidelines won't dim demand for multifamily

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Demand for rent stabilized multifamily buildings in New York City has generally been unaffected by the new rules issued by the Rent Guidelines Board.

The great majority of stabilized properties are in parts of town where market rents and average household incomes are historically far below the parameters set by the Board for deregulation.

Thus, investor and owner interest in adding to their portfolios of stabilized apartment buildings continues to grow for the same reasons they have always been appealing.

Last year, the Board voted rent increases of 2.25% for one-year leases and 4.5% for two-year leases. This year, landlords will be allowed to raise rates by 3.75% for one-year leases and 7.25% for two-year leases.

The new rules also make it more



difficult to convert vacant apartments to market rates. It used to be that when rents reached \$2,000 per month under stabilization, landlords could put them on the market at prevailing rates. The threshold has been upped to \$2,500. And, under the old rules tenants earning more than \$200,000 a year could have their apartments removed from stabilization. That limit has been increased to \$250,000 a year.

Landlords wanted more favorable treatment, but the tenant lobby prevailed. Not that the folks who live in stabilized apartments were all that pleased, because they objected to the rent increases. So, at the end of the day, no one was terribly happy, which is one definition of a successful negotiation.

However, a quick study of the demographics affecting stabilized apartments shows just how insignificant the guidelines are when it comes to the value of multi-family buildings to those who specialize in that segment of the commercial real estate market.

For example, average household incomes do not even come close to reaching the high-water mark of de-stabilization. At approximately \$33,000 per annum, earnings per family in the Bronx, a borough with one of the biggest concentrations of rent stabilized housing in New York, remain well below the threshold.

Manhattan, of course, has its fair share of stabilized apartments. Yet even in the heart of the Big Apple average incomes, at about \$68,000 a year, fall far short of the mark.

In the Bronx, tenants pay about \$850 per month, on average, for their

market rate apartments. The median in Manhattan might approach twice that amount, but it has always been well below the threshold for market rate conversion.

But, most of the people who buy stabilized buildings are not looking

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for quick conversions. They are attracted by the virtual guarantee of stable and steady incomes due to the exceedingly low vacancy rates in these properties. In good times and in bad, vacancies in New York’s stabilized buildings have consistently remained at the 2% to 3% levels and that’s the kind of statistic bankers like.

Having said that, the right building in the right location at the right time can sometimes offer the potential of a big pay day.

Not long ago, a stabilized five-story, elevator building in the Meatpacking District with eight studio apartments and 11 one bedroom

units sold for \$3.75 million. The average rent in the building was \$1,425. The transformation of the neighborhood into one of the City’s trendiest locations was just gaining traction. It’s now one of the most desirable destinations in town. And so, with a little patience, the new owners of that property can look forward to substantial rent increases as those apartments begin converting to market rates

There has always been a sometimes insatiable need for apartments of all types and in all five boroughs of New York City. That has historically made the multi-family sector of the commercial real estate market here one of the most resilient investments one can make. The dependable returns associated with stabilized properties offers important added appeal.

Meanwhile, population growth and new employment opportunities are forecast throughout the region and that signals an ever increasing need for more rental units. It also expands the gentrification process and the emergence of new trend-setting neighborhoods in such parts of town as Washington Heights, Hamilton Heights, Inwood and the Bronx.

It wasn’t long ago that Brooklyn and Long Island City, for example, had the reputation of being undesirable places to live. That’s changed drastically over the years. The Meatpacking District, after all, did not earn its name because it offered luxurious living opportunities.

Risks and rewards of electronic signatures

BY HOWARD M. RUBIN AND
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Our brokerage clients are familiar with our mantra to paper every transaction with an email trail.

This is necessary to establish, when a dispute arises, the intent of the parties. An addendum to that rule is to be aware of the risks and rewards of electronic signatures. Generally, brokers are looking to lock in commissions.

Electronic signatures can go a long way to reaching that goal where the other party is reticent or delinquent in acknowledging a commission agreement in writing.

This area of the law has evolved with such velocity that professionals’ expectations as to what constitutes a contract may already be outdated. Any contractual relationship can now be created simply by replying to an email. You risk inadvertently entering into a contract unless your email contains an unambiguous statement such as “The sender of this email disclaims any intent to be bound hereby, except where the

alleged breach of contract to purchase two buildings in Manhattan. The prospective purchaser’s broker emailed a \$50 million offer. The seller’s broker responded by email with a counteroffer for \$52 million and a 30-day diligence period during which the prospective purchaser would have a right of first refusal on any higher offer.

While the prospective purchaser was conducting diligence, the owner sold the properties to another buyer without giving effect to the right of first refusal, and a lawsuit ensued. The seller moved to dismiss the action based on several theories, including that no contract existed because the deal was only set forth in an email.

New York’s appellate court agreed that the case should be thrown out, but not because the agreement was memorialized electronically. In fact, the court explained at length that pursuant to New York’s Electronic Records and Signatures Act, electronic communications can bind parties to a contract. Instead, the court found that the parties had never agreed in the first place.

Like any other real estate negotiation, a counteroffer is not just a request for different terms. It also serves as a rejection of the original offer. So when the building’s owner responded to the prospective purchaser’s email offer for \$50 million with an email counteroffer for \$52 million and a right of first refusal, the onus was on the prospective purchaser to reply that he accepted the counteroffer. Because he failed to do so, there was never the “meeting of the minds” necessary for the parties to be bound.

Essentially, then, parties wishing to contract over email should be sure that the acceptance complies with the terms of the offer. An email that specifies the precise terms of the offer that one is accepting is the best bet to ensure a meeting of the

minds.

Many real estate professionals eschew contracts, whether executed on paper or over email. These brokers rely on the exemption from the Statue of Frauds that allows oral brokerage agreements to be enforced. Even if one is not a Realtor – whose organizational code of ethics requires written agreements – signing a formal contract for commissions is the best practice.

This is because brokers who agree to represent a party without entering into an agreement do so at their peril. Not only have these brokers agreed to take on fiduciary responsibilities, but the potential for the client to renege on the commitment places the receipt of compensation in jeopardy. Oral agreements of any kind are difficult to prove. Without witnesses to the discussion giving rise to the contract, or a prior course of dealing between the parties, brokers may be unable to prove what they believe to be a firm contract.

But brokers need not insist that their clients execute lengthy agreements or have a notary witness a contract’s execution: Email is a perfectly legitimate way to memorialize a real estate deal.

Of course, deeds and mortgages still require handwritten and notarized signature pages to be enforceable. Moreover, the law does not require parties to use electronic signatures. Companies can set up outgoing email message footers with a statement disclaiming any intent to be contractually bound by electronic signatures.

In light of these developments, companies should ensure that they have an email policy and that policy is designed to facilitate the company’s goals as to e-signatures. It is good practice to have a real estate attorney review those practices to ensure compliance with current law.

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sender clearly and explicitly provides otherwise.”

Cases interpreting the federal E-SIGN Act and the Uniform Electronic Transactions Act, which has been enacted by 47 states and the District of Columbia, affirm that electronic communications can form the basis for a valid and enforceable contract. And while New York State’s legislature is one of the three not to have passed the UETA, a state appellate court recently concluded that electronically executed agreements have the same effect as those signed on paper.

The law defines “electronic signature” far more broadly than the term implies. We’re not talking about a scan of your paper signature that you consciously paste into a computer document. Instead, you can be bound by any “electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” This language is intentionally broad and permits email to constitute an acceptable record of a deal.

What constitutes offer and acceptance over email? Courts will analyze the same principles that apply to any other contract.

The recent New York case that declared email contracts enforceable concerned an