

INTRODUCTION

The latent causes of faction are ... sown in the nature of man... A zeal for different opinions concerning religion, concerning government, and many other points ... have ... divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. ...[T]he most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide themselves into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principle task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government.

James Madison, 1787¹

The work of the New York City Rent Guidelines Board falls squarely within the mediating traditions of democratic government described above by Madison. The Board was established midway through a legislatively recognized housing shortage which has persisted for over half a century. It operates under emergency laws regulating matters otherwise governed by the private contractual arrangements of owners and tenants. The Board’s essential mission might best be described as an attempt to construct or simulate “normal” or “fair” rent levels in a market driven by chronic scarcity and instability. The housing emergency hinges on the statutory recognition that a vacancy rate of less than 5% creates abnormal market conditions. The City Council and State legislature have recognized that such conditions cause “severe hardship to tenants” and force the “uprooting [of] long-time city residents from their communities.”² According to the 2008 Housing and Vacancy Survey, the citywide vacancy rate is currently 2.91%.³

¹ Quoting the Federalist No. 10. The Federalist Papers were written by James Madison, Alexander Hamilton and John Jay in the months following the Constitutional Convention of 1787. They were published in the New York press under the pseudonym “Publius” urging voters to ratify the new Constitution. The papers remain classics of political philosophy and influential sources of American constitutional law.

² Quoting Rent Stabilization Law of 1969 (N.Y.C. Admin. Code 26-501) Findings and Declaration of Emergency. All of the provisions of local law governing rent stabilization are contained in chapter 4 of Title 26 of the New York City Administrative Code (referred to as the Rent Stabilization Law of 1969 - “RSL”). The provisions of State law governing rent stabilization are contained in sections 8601-8617 of the Unconsolidated Laws of New York (also referred to as the Local Emergency Housing Rent Control Act of 1962 – the enabling legislation for local rent control and stabilization) and sections 8621 through 8634 of the Unconsolidated Laws of New York (referred to as the Emergency Tenant Protection Act of 1974 - “ETPA”). The State regulations governing rent stabilization in New York City are contained in the Rent Stabilization Code (subchapter B of the Rent Stabilization Regulations, Parts 2520-2530; Also cited as 9 NYCRR Parts 2520-2530).

³ See Selected Findings of the 2008 Housing and Vacancy Survey in Appendix Y.

In the late 1960's tenants residing in buildings constructed after World War II faced rising rents and a lack of affordable alternatives which threatened the balance in their bargaining relations with owners. It was this perceived imbalance that led to the development of the present *rent stabilization* system. In 1969, the Board's first year of operation, rent stabilization covered about 400,000 rental units. At the time, the vast majority of apartments were located in older (pre-'47) buildings and fell under the long established *rent control* system. Due to a series of legislative changes, rent control now covers only about 40,000 apartments, while the rent stabilization system has expanded to over one million apartments which house over two million people – or about one in three City residents. This is the universe of apartments presently covered by the Board's rent orders.

The housing shortage has persisted unevenly over the years,⁴ resulting in a continuation of rent regulations and prompting some of the most contentious legislative battles in modern times. The echoes of these larger debates have reverberated through the annual deliberations of the Rent Guidelines Board. A broad public consensus over the fairness and efficacy of rent regulation has never emerged and may well be unattainable.

Members of the rental housing industry and others have frequently charged that the rent adjustments authorized by the Board have been unfair to owners and harmful to the housing stock. The Rent Stabilization Association, representing some 25,000 rental properties, has claimed that “the Rent Guidelines Board has increasingly viewed New York City's stabilized housing stock as a specimen in isolation, minutely examining year to year economic variations but losing sight of the long term effects of 30 years of regulation...”⁵ Owners have asserted that low rent guidelines lead to deferred maintenance, abandonment, a loss of tax revenues, and widely disparate rents for similar apartments.

Among tenant advocates and their supporters, a market (or quasi-market) solution to the housing shortage through increased rents has been viewed as an antidote that carries an unacceptably high mortality rate - by way of evictions, homelessness, gentrification or severe economic hardship. Moreover, they argue that the forces controlling housing quantity and quality are far more complex than the rent setting policies of the Rent Guidelines Board. Tenant representatives have charged that recent legislative changes and “unwarranted rent increases” have “pushed owners' profits to record levels, while operating costs are steady and financing costs are

⁴ For a table of vacancy rates since 1960 in New York City, see New York City's Housing Emergency table on page 4.

⁵ Submission by the Rent Stabilization Association - Relative to Rent Guidelines Board Order 31, May 1999.

down.”⁶ These developments, they argue, “have a devastating impact on the city’s housing affordability crisis and contribute to homelessness.”⁷

The Rent Guidelines Board has never been able to resolve this housing dilemma to the satisfaction of both sides. Even a “normal” rental market will produce hardships for some owners and some tenants. The Rent Guidelines Board is mandated to establish fair rents but is not obligated to make every apartment affordable for tenants or every building profitable for owners. As the Board’s Chairman observed in 1994:

[T]he RGB was meant to counteract the effects of what the state legislature determined was and is a continuing acute housing shortage. Such regulations, however, were never meant to either guarantee an owner a profit (i.e. thereby saving an incompetent owner from his own folly) or to serve as an adjunct to social welfare programs (i.e. protecting poor tenants from the economic forces that would be in effect, even if the housing shortage did not exist).

Notwithstanding the volatility of these issues, experience has demonstrated that a guideline setting process with credibility, integrity and a measure of public respect is an attainable objective. Achievement of this objective requires sincere efforts to develop a full and accurate base of information on which to evaluate industry and tenant conditions, and fair hearings for the various individuals and groups who participate in the deliberative process.

In the years to come, the Rent Guidelines Board is likely to remain a key participant in the ongoing public conversation about the fairness and effectiveness of the rent stabilization system. Over the past decade the Board has made significant contributions to public understanding of housing issues by producing a wide range of empirical studies. We now know a good deal about the effects of New York’s system of rent regulation on housing quantity, quality, profitability and affordability. While rent regulation will, no doubt, remain a contentious subject, speculation about its impact has gradually given way to carefully documented experience and analysis. In this briefing manual, we hope to share some of that experience, along with general information about the structure, function and history of the Board and the rent stabilization system.

⁶ Quoting Testimony Before the New York City Rent Guidelines Board Hearing on Rents for Rent Stabilized Apartments, June 22, 1999, Legal Services for NYC and The Legal Aid Society.

⁷ Id

Table I.

NEW YORK CITY'S HOUSING EMERGENCY

NET RENTAL VACANCY RATES IN NEW YORK CITY, 1960-2008

Year	Net Rental Vacancy Rate
2008	2.91%
2005	3.09%
2002	2.94%
1999	3.19%
1996	4.01%
1993	3.44%
1991	3.78%
1987	2.46%
1984	2.04%
1981	2.13%
1978	2.95%
1975	2.77%
1970	1.50%
1968	1.23%
1965	3.19%
1960	1.81%

The City's vacancy rate is determined by dividing the number of vacant and available units by the sum of all occupied and vacant units. Thus in 2008, 62,499 vacant and available units are 2.91% of the sum of occupied and vacant units (2,144,452). The City's vacancy rate is calculated triennially in the Housing and Vacancy Survey (HVS) to determine if a housing emergency continues to exist. According to state law, a housing emergency may be declared when the citywide vacancy rate falls below 5%. According to the latest survey (2008), the vacancy rate (2.91%) still falls below the benchmark level of 5%, which if surpassed would result in an end to both the housing crisis and rent regulation, following appropriate legal process.

The HVS is performed in New York City by the U.S. Census Bureau. It contains comprehensive data on housing, neighborhoods and tenant demographics. Selected findings from the 2008 HVS are contained in Appendix Y.