A look inside SRO properties in New York City - by Josh Lipton and Andrew Levine

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The byzantine rules pertaining to single room occupancy properties (SROs) have befuddled owners, investors and tenants alike. Shame on the relevant city agencies for botching the noble goal of housing the less financially fortunate and society's most marginalized, only to create deep confusion as to the rights and obligations of SRO tenants and landlords. The rules surrounding SRO properties often incentivize ownership to keep existing apartments vacant in the hopes of vacating the remaining units as part of the multi-step process of re-purposing the SRO to an alternative use.

In a city with a chronic affordable housing shortage, simplifying the SRO rules and maximizing tenant occupancy should be a top priority. For over half a century, SROs have been a form of affordable housing for New York's low-income residents and most of these dwellings contain single rooms without a bathroom, kitchen or shower; all of which are

typically located elsewhere on the floor and shared with other tenants. This property classification was largely introduced following World War II to balance inequalities, combat homelessness, and welcome veterans back home through a social safety net and, at one point in time, constituted hundreds of thousands of units spread throughout New York City. Today, the number of SRO units is estimated at somewhere between 15,000 to 35,000.

Largely codified in New York's Multiple Dwelling Law, an SRO is defined as, "The occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling." SRO buildings can fall under class A (permanent residence) and class B (transient housing) types and, in both instances, will be deemed rent stabilized (RS) if erected on or before July 1, 1969, contain six or more units, charged no more than $350 a month as of May 31, 1968 and are occupied by a permanent resident, an individual who has continuously resided in the same building for a period of at least six months (but bear in mind that an individual who has resided in an SRO unit for 30 consecutive days may not be evicted) and has, for all practical purposes, locked in a pathway to permanent resident status.

Not having a written lease doesn't mitigate an SRO tenant's rights; in fact, such individuals are typically statutory tenants under oral rental agreements and do not have written leases. Because SRO tenants' rights attach to the building and not an individual unit, rotating tenants into different units within the same building does not re-start the six-month clock. Moreover, SRO tenants' family members have succession rights and will enjoy permanent resident status if they too have resided continuously in the building for six months.

SRO tenants that fall under the protections of RS rules will enjoy the benefits of rent freezes or, in certain years, nominal measured rent increases and obligatory lease renewals governed by the Rent Guidelines Board. Tenant restrictions under the RS regulations obligate tenants to use the premises as his/her primary residence, refrain from subletting, and pay their rent on time.

Conversion to Alternate Use/Deregulation: Obtaining the Certificate of No Harassment

SRO owners often struggle with below market rents–a situation further exacerbated by tenants

who often fail to pay these nominal amounts. Accordingly, it is little surprise that these owners have sought ways to convert their properties into an alternative use and de-regulate the RS tenants. The process isn't easy and requires the receipt of a Certificate of No Harassment (CNH)–a requirement put in place in response to unsavory owners who sometimes engaged in threats or acts of physical violence against tenants, the withholding of essential services like heat and hot water or attempts to unlawfully evict tenants.

To protect such tenants, the city enacted the law in 1983 which obligates owners to receive a CNH from the Department of Housing Preservation and Development (HPD) prior to obtaining permits to demolish or re-configure an SRO building (such as changing the number of rooms in the building or adding/removing bathrooms or kitchens).

HPD will, once receiving a CNH application, investigate to determine whether any tenants were "harassed" during the preceding three years. Harassment can take many forms but is generally viewed as conduct undertaken by ownership that causes or is intended to cause a person to waive or surrender their occupancy right. The receipt of a CNH (often taking six months or longer assuming no harassment is found to have occurred) often allows owners to convert an SRO property into a free market property.

Even after receiving the CNH, any current tenants still in place retain their RS status while vacant apartments are no longer rent regulated and can be rented as free market apartments once construction into class A apartments has been completed. Converting a multi-unit SRO property into, say, a 1-2 family townhouse, requires both a CNH and the legal surrender of all existing apartments. The denial of a CNH results in the owner being prohibited from acting to convert, or demolish the building for 36 months, at which point the owner can re-apply for the CNH. Those SRO properties that hit the market with a CNH in place and are fully vacant trade at a substantial premium to those SROs that do not. Separately, purchasers typically find financing these properties difficult as few lenders are willing to take on the regulatory risk. Lenders that have financed this niche product typically do so at higher rates than a traditional multifamily loan and the debt is recourse.

Vacating an SRO Property: Owner Occupancy Destabilization

As the current owner of an SRO property (or prospective purchaser), what steps can be taken to vacate an SRO property? Like rent regulated units, the same laws apply to evict SRO

tenants using their apartments or occupancy illegally. This includes eviction through non-primary residence, illegal sublet, demolition, chronic nonpayment, nuisance, and all other laws listed in the rent stabilization code.

Similarly, tenants in an SRO property, like RS tenants, may be forced to surrender their apartments if ownership would like to recover the units for their private or family use but only after a CNH has been obtained. The rules surrounding owner occupancy destabilization are complex but generally include the following three requirements:

1. Only one of the individual owners of any building may recover possession for personal use;

2. The owner must establish that he or a member of his immediate family intends to live in the unit(s) identified for at least three years; and

3. The owner must prove he is acting in good faith.

Upon meeting these requirements, the owner establishes his right not to renew the RS tenant's lease and, accordingly, that tenant may be evicted and the owner (or his family member) may move in or takeover the additional space.

It is clear that New York City must revamp legislation pertaining to SRO properties to make use of housing stock often left unused. In many instances, investors "land bank" SRO assets by purchasing them at a basis well below market, writing off the nominal tax burden before pushing aggressively for tenant turnover. Thousands of units sit vacant in a bureaucratic abyss, while the city and Albany quarrel over tax credits to developers over potential but still unbuilt affordable housing stock. Instead of integrating the homeless into the communities from which they come, current and past NYC

administrations use hotels in prime locations such as: Long Island City, Williamsburg, Sunnyside, Gowanus and Kew Gardens to combat homelessness. This approach mirrors the failed policies of 1945-1965 when the city constructed "tower-in-park" housing projects throughout New York.

To make matters worse, City Hall is paying developers a premium to construct homeless shelters or to opt into service contracts that would allow their buildings to be used as

“transitional housing” for homeless families. By enrolling in these lucrative programs, owners—who are often politically connected—make more (management free) by renting them to agencies than they would by leasing them out to ordinary people at market rates. What is clear: No one knows what to do about New York’s homeless problem, but, as often is the case, the city has failed to reform SRO rules and regulations that could largely be used to:

• Benefit landlords of these riddled investment opportunities; and

• Combat a low-income and homeless housing crisis that lacks the supply of vacant rooms SROs have to offer.

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