



2024 Upstate New York Apartment Market - by Brian Heine

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Two recent high profile court cases illustrate the difficulties facing the real estate business in New York State. Robert Morgan of Rochester settled his long running mortgage fraud case for \$16.3 million and a single guilty plea while also admitting to no guilt or wrongdoing. The FBI had filed 100+ charges and sought hundreds of millions of dollars in damages and a hundred years in jail in penalties. Prosecutors had alleged that Morgan used inaccurate rent rolls, referred to as phony rent rolls, to obtain larger mortgages than justified for his apartment complex portfolio. The prosecution never produced a phony rent roll or revealed what they thought made the rent rolls Morgan used phony, and after five years they gave up and agreed to a plea deal with Morgan. A rent roll is a created document, it consists of a list of existing tenants on leases and rents for those apartments vacant or turning over in the coming year at current market rents. At times of rapidly increasing rents, as experienced the last few years, the current market rent for an apartment can be considerably higher than the in-place rent and considerable income increases can be anticipated. There is no exact calculation for determining a market rent, it's subjective, everyone will come up with a different value. Left unanswered for the real estate industry was in the eyes of the prosecution how much subjectivity is good business practice and how much subjectivity deserves a prison sentence. Bankers, appraisers, and brokers all use rent rolls as the starting point for calculating real estate income property value, a vacancy factor based on local market conditions is added to the analysis to compensate for the uncertainty in the calculation. Over the course of the case Morgan was forced to sell 94 apartment complexes.

Donald Trump was fined \$355 million for consumer fraud for inflating property values to secure better loan terms from lenders. Consumer fraud laws have never been used before in real estate prosecutions and Governor Hochul was forced to announce that no new precedent had been established, even though that appears to be the case, and only Trump would be targeted. There are multiple methods for determining investment real estate value, different property values have long been used in the industry for different situations with a unique set of variables for each, and it's unrealistic to claim that each valuation is measuring the same thing. This is problematic for anyone in the real estate business in New York State. Appraisal reports, widely used as the basis for real estate valuations, all spell out a set of assumptions that the report is based on and variations in these will produce distinctive values and different appraisers will produce different results for the same property. Nothing presented at the trial indicated as to what would have been the correct measure of property value to use.

Real estate developers and investors are a large part of the New York economy and these prosecutions are a reflection on all of them. Former Gov. David Patterson was quoted in the New York Post stating that "Albany politicians have no understanding of real estate development or business, have a total resentment against people who do it and that is causing them to make their lives more miserable." In both cases none of the banks or lenders that were named as targets of the fraud claimed they had lost any money, that they had loans that were in default, or were any victims of the fraud identified. Judgement calls are a part of any real estate deal in New York and the courts have been relied upon to offer impartial assessments, not selective enforcement that creates doubt and uncertainty. None of this benefits the upstate New York apartment market.

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