Landlords Fail To List 50,000 N.Y.C. Apartments for Rent Limits

Owners are getting $100 million in property tax breaks while violating the law requiring them to officially register, and city and state officials are unable to explain why.

by Cezary Podkul and Marcelo Rochabrun, ProPublica
Nov. 5, 2015, 2:14 p.m.

Thousands of apartments like these in Brooklyn's Fort Greene neighborhood qualify for rent stabilization but do not show up on the state's list of rent-stabilized buildings. (Bryan Anselm for ProPublica)

In late August, Gov. Andrew Cuomo and other top New York officials announced an unusual crackdown on landlords. Nearly 200 building owners were collecting big tax breaks under a program to spur housing, officials said, but hadn't registered their apartments for rent stabilization as the law requires.

"We will not tolerate landlords who break the law and deny their tenants rent-regulated leases, plain and simple," Cuomo said in a statement at the time. With Attorney General Eric Schneiderman, the governor announced a new enforcement effort to clean up such abuses.

But an investigation by ProPublica found that in reality, state and New York City officials have tolerated the problem for years — and ignored pleas to investigate. Nor is it limited to the building owners Cuomo and Schneiderman found — landlords have failed to register thousands of buildings for rent regulation, casting doubt on the legality of leases for about 50,000 apartments across the city.

That is the finding of an extensive analysis of government data covering nearly 15,000 rental buildings receiving the tax subsidies as of 2013. About 40 percent — or 5,500 buildings — weren't listed as rent- stabilized, yet records show the owners are receiving more than $100 million in property tax reductions.

Stephen Werner, an analyst at the city's Housing Preservation and Development Department (HPD), has been complaining to higher-ups about the missing registrations for decades. Werner said he first told his bosses 20 years ago they were "perpetrating a fraud" by counting too many apartments as rent-stabilized in the triennial surveys prepared for the City Council and the public.

Briefed on ProPublica's analysis, Jumaane Williams, a city council member from Brooklyn who chairs the council's housing and buildings committee, called for a "severe and swift response" to ensure that tenants are getting the rent protections they deserve.

"We have to fight and scrape for every last piece of affordable housing," Williams said, "and here we are with thousands of units with people we've given money to and tax breaks to, and who've agreed to keep these units in rent stabilization, blatantly not doing it."

ProPublica reported yesterday on a related abuse, where landlords do register for rent stabilization then collect bigger rent increases than allowed by the city's Rent Guidelines Board. They do so in part by exploiting confusion about "preferential" rents and whether newer buildings are rent-stabilized.

Landlords who register properly for rent stabilization must do so annually with the state. Lists of buildings that have done so are published by the Rent Guidelines Board. To determine if a tax-advantaged building was registered, ProPublica cross-checked that data against a listing of properties receiving the tax breaks, known as 421-a and J51, published by the city's Department of Finance.

Exactly what's happening to tenants in the buildings is unclear. In some cases, tenants did have rent-stabilized leases because landlords skipped a year but had registered in others. In other cases, buildings had multiple addresses but registered only one. Others had opened only recently.

Despite that, three tenants reached by ProPublica said they had not been given rent-stabilized leases. "I knew that rent stabilization was something that existed, and I looked out for it and it definitely wasn't present," said Mark Ellison, a Crown Heights resident who lives in one unregistered building.

In 2013, Ellison said, his landlord proposed raising the rent $800 a month, or 40 percent. The landlord backed down when Ellison said it was unacceptable.

The implications go beyond rent. Tenants can only properly claim legal rights provided under a rent-stabilized lease — such as eviction protection and the right to timely repairs — if they are not in the dark about their building's status and if the state has a record of it.

City officials acknowledged there is a problem with registrations but were unable to explain how such a large number of landlords could be out of compliance. They did not respond to a detailed accounting of ProPublica's findings and methods or questions about why Werner's complaints hadn't been addressed.

A spokesperson for Mayor Bill de Blasio's administration said in emails that officials "became cognizant" of the problem after de Blasio took office last year and "took action promptly to address it." The matter is now the subject of a "multi-stage, multi-agency" enforcement effort, the spokesperson said.

"While we cannot disclose details on an ongoing investigation, we will not stop until every property is brought into compliance," the de Blasio spokesperson said.

Announcing their August crackdown, Cuomo and Schneiderman said building owners who don't register as rent-stabilized face serious legal consequences, including loss of their tax breaks, a rent freeze and paying triple the amount of overcharges any tenant might have received.

Instead of taking those steps, they sent owners of the 194 unregistered buildings a "one-time" opportunity to comply and informed tenants that they should expect their landlords to get into compliance sometime soon.

In the past three years, only two landlords have lost their tax breaks for not following the rent-stabilization rules, city officials have said.

***

The two tax-incentive programs at issue together provide almost $1.4 billion in property tax savings to New York City real estate owners, with most of the money flowing to multifamily apartment buildings.

Landlords who receive the 421-a and J51 tax benefits are supposed to submit all the units in their properties to rent stabilization for the duration of their tax breaks, which can span up to 34 years and significantly lower property tax burdens, in some instances by more than 90 percent.

The rent stabilization requirements are intended to help preserve affordability in places like Manhattan's Stuyvesant Town and Peter Cooper Village, which receive a J51 tax break that subjects all of their 11,000 units to rent stabilization. A 2009 court decision involving Stuyvesant Town confirmed that, as long as such tax breaks are in place, landlords must provide tenants with rent-stabilized leases.

To make sure they are doing so, the state requires landlords to register their rent-stabilized apartments annually and report each unit's rent. Tenant advocates say registration also creates an important protection for tenants, who are entitled to the rent history and can use it to prove overcharges.

"It's incredibly important for tenants to be able to know that they're rent-stabilized and also have the legal record of what the rent increases are," said Katie Goldstein, executive director of Tenants & Neighbors, a statewide tenants' rights group.

Landlords who didn't register used to be ineligible for rent increases. But that changed in 1993, when the New York Legislature eliminated penalties for failing to register. "If they don't do it, there are no repercussions,"

Goldstein said.

Most of the buildings identified by ProPublica were repeat offenders: About 80 percent that didn't register units in 2013 also didn't do so from 2009 to 2012. Some appear to have never registered, according to searches against the state's master directory of rent-stabilized buildings.

The noncompliant properties were mostly smaller buildings receiving 421-a benefits, including many three-family homes and four-to–10 unit apartment complexes. Among the five boroughs, Brooklyn and Queens had largest numbers of unregistered buildings.

***

In some corners of city government, the gap in registrations has been an open secret. Werner, the housing department analyst, first took notice in 1995.

Werner, 69 and still working at HPD, helps put together the city's triennial housing survey. He collects data from the state showing all the apartments that have been registered for rent stabilization. The number never exceeded 800,000, he said, while the housing surveys routinely reported a higher number, now more than 1 million.

"The numbers never matched," Werner said. He estimated the total shortage — beyond just properties receiving the tax breaks — at 200,000 apartments.

Werner said he raised the issue repeatedly with his superiors, but nothing was ever done about it besides occasional meetings and memos that went nowhere. In 2006, he emailed state regulators to inquire about the tax breaks, but no one there answered him, either.

The city denied ProPublica's public records request for emails and memos about the registration gap.

Earlier this year, Werner took things into his own hands. Using publicly available data, he spent nights and weekends creating his own website where tenants can type in their address and see their building's registration status and tax breaks. Then, out of frustration, he contacted ProPublica.

A reporter accompanied Werner one day in September, when he traipsed through a Brooklyn neighborhood stuffing mailboxes in unregistered buildings with fliers that said they were entitled to rent-stabilized leases.

Last month, Werner met with City Council Member Ben Kallos to discuss enforcement and administration of the law, which is shared by HPD, the city's Department of Finance and the state Division of Housing and Community Renewal (DHCR). A reporter also attended.

"We have a bureaucratic quagmire between DHCR, HPD and DOF and we as a city and a state must get to the bottom of it," Kallos said at the meeting. He called Werner "a hero" for raising the issue.

***

Now, regulators are playing catch-up, distributing fliers of their own.

"YOU ARE ENTITLED TO A RENT-STABILIZED APARTMENT" reads a notice recently distributed to tenants in the 194 buildings targeted by Cuomo and Schneiderman's enforcement action in August.

Authorities did not identify the owners in August, but ProPublica found one of the buildings in its data. The seven-story, 18-unit complex was built in 2009 at 572 Fifth Ave. in Brooklyn, city records show.

"I had no idea we were supposed to be in a rent-stabilized building," said Sarah Temech, a mother of two who has been a tenant with her husband, Peter Grossman, for four years.

Among the many rights afforded to rent-stabilized tenants is protection against arbitrary eviction. Temech and Grossman found out how important it could be on their honeymoon in August 2013. Before leaving, they slipped the rent check under the building management's door and sent a text saying it was there.

But a few days later, Grossman was checking his email on his birthday. "Amongst all the happy birthday texts," he recalled, was an email from his landlord informing him eviction proceedings had begun because he'd failed to pay his $3,675 rent.

Grossman responded that he'd left the check with management, and by the time the couple returned, it had been cashed. "But sure enough, there's an eviction notice on our door," he said.

In an email, the building's owner, property investor Abe Mendel said: "We NEVER tried to evict any tenant [in] the situation you outline." Mendel did not answer questions about whether he provided rent-stabilized leases to his tenants.

ProPublica also reviewed the lease for another tenant in Mendel's building; it was not rent-stabilized.

Grossman and his wife were able to straighten out their issues, but the episode unsettled them.

"I felt uncomfortable in my own home, like I could be kicked out at any moment," Temech said as her daughter listened in. "I didn't feel secure here. I haven't, actually."

Tenants Take the Hit as New York Fails to Police Huge Housing Tax Break

Top developer Two Trees Management overcharged renters for years – but still cashed in on $10 million in tax cuts the city never officially approved.

by Marcelo Rochabrun and Cezary Podkul, ProPublica
Dec. 4, 2015, 10:51 a.m.

Nancy Sher has lived at 125 Court Street in Brooklyn since the luxury building opened in 2005. After twice raising Sher's rent beyond city limits, landlord Two Trees Management refunded her overcharges in 2013. (Bryan Anselm for ProPublica)

When prominent New York developer Jed Walentas asked the city to approve a set of sleek towers on Brooklyn's industrial waterfront last year, he pitched his company as a player that always abides by the rules.

The project, remaking the old Domino Sugar factory into a 2,300-unit apartment and office complex, would be the biggest ever for his firm, Two Trees Management. As with earlier projects, Two Trees would get millions in tax breaks in return for capping rents and reserving some units for low-income tenants.

"We've done everything we always said we were going to do in every one of these projects," Walentas assured the City Council at a public hearing last year.

City lawmakers signed off on the deal, and Mayor Bill de Blasio touted the use of public subsidies to create more affordable housing as a model for the future.

Another signature Two Trees project, however, stands as a model of something else: The failure of city and state regulators to effectively police the tax break at the heart of such deals and hold developers to their word.

An investigation by ProPublica into one of Two Trees' major developments in downtown Brooklyn shows that regulators stood by as the company flouted laws requiring rent stabilization in exchange for a large property tax break it received.

Despite that requirement, the firm promptly told regulators that most of the apartments were exempt from rent stabilization when the complex at 125 Court Street opened in 2005. Then, over the next eight years, Two Trees repeatedly exceeded city limits on rent increases in the 321-unit luxury building, even overcharging the majority of its low-income renters.

Regulators took no action until 2011. Although they eventually informed Two Trees that it was out of compliance, they never moved to revoke the tax benefit.

In fact, they had never approved it in the first place.

In response to questions by ProPublica, city officials confirmed that 125 Court Street has yet to officially qualify for the tax break program, known as 421-a, even though Two Trees has received more than $10 million in tax savings that continue to this day.

ProPublica's analysis of rent histories, meanwhile, shows that the building's original tenants were charged at least $368,000 in excess rents. Two Trees confirmed that it had imposed "accidental" overcharges in the building's early years, but said it later repaid tenants almost $300,000 plus interest.

Together, the overcharges and Two Trees' lack of final approval show a city that is eager to give out tax breaks but loathe to police them, enabling developers to easily

sidestep tenant protections under its single-biggest housing subsidy.

Long controversial, the 421-a program is now on the brink of an historic expansion. Under a deal brokered in Albany last summer, the $1.1 billion-a-year program would allow developers to claim longer tax breaks in exchange for providing more low-income apartments.

For the first time, the revamped law also would exempt most new apartments built with 421-a subsidies from rent stabilization.

Critics of the reforms have called them a giveaway that will ultimately push up rents, but there's been little attention paid to the program's regulatory shortcomings.

The city maintains that it is the state's job to make sure tenants in 421-a buildings aren't charged higher rents than the law allows. The state says it's up to the city to administer and enforce the program. The result: A regulatory dead zone.

"Tenants are the only ones expected to do anything to enforce the law," said Ellen Davidson, a tenant lawyer with the Legal Aid Society.

ProPublica began investigating 421-a this year after discovering that some landlords getting the tax break had overcharged tenants who didn't realize their apartments in high-end buildings like 125 Court Street were rent-stabilized.

Subsequently, an analysis of city and state data showed that landlords had failed to register 50,000 apartments for rent stabilization, as required by law, yet continued to receive more than $100 million in 421-a and other tax benefits.

Regulators have recently busted some smaller landlords for ducking rent stabilization. But the history of 125 Court Street raises further questions, including why a landlord that violated rent limits for so long didn't lose the tax benefits, and whether developers with compliance problems should qualify for new 421-a deals.

Neither Two Trees nor city officials were able to explain why the building still had no final certificate of 421-a eligibility a decade after tenants began moving in.

A spokesman at BerlinRosen, the public relations firm representing Two Trees, called it an "administrative oversight" that is being corrected.

Officials at the city's Department of Housing Preservation and Development (HPD), which decides eligibility for 421-a, said they are "confident that the building will complete the necessary paperwork or the city will begin the revocation process."

This account relies on rent records, leases and hundreds of pages of documents Two Trees has produced in court, as well as materials longtime tenants obtained via public records requests.

ProPublica also interviewed tenants, housing advocates and attorneys who are expert in rent-stabilization law. All five lawyers who reviewed leases and other documents agreed that Two Trees had violated the law. Based on the records, three described the city's enforcement as "toothless."

"Who's watching the store?" said Phil DePaolo, a housing activist who opposed the Domino Sugar deal. "Nobody."

***

Nine years after her husband died from cancer, Nancy Sher decided it was time to move. Sher, mother to twin girls, wanted something smaller than the family's old townhouse in Brooklyn's Prospect-Lefferts Gardens neighborhood.

A brand new building was coming to market on the edge of downtown Brooklyn not far away. "My children picked it," Sher said of 125 Court Street. "We drove by it every time we drove to school."

The 11-story complex had stores at the street level and housed a YMCA with membership deals for residents. One-fifth of the units in 125 Court Street were reserved for low-income tenants. The rest could be leased at market rates, but all of the building's apartments were supposed to be subject to limits on rent increases set each year by the city's Rent Guidelines Board.

By the time Sher moved, in May 2005, Two Trees was established as one of the city's most successful developers. Under Jed Walentas' father, David, the company was best known for transforming blocks of factories and warehouses near the Manhattan and Brooklyn bridges into the upscale Dumbo neighborhood.

Tax subsidies similar to 421-a helped the company redevelop those properties. As Two Trees planned 125 Court Street, David and Jed Walentas applied for more tax benefits that explicitly obligated their firm to abide

by rent-stabilization rules.

After buying the land from the city for $16.5 million in 2003, David Walentas signed papers with the city's Housing Development Corporation agreeing that "all units in the Project are subject to Rent Stabilization" as a result of its expected 421-a tax break.

The agency sold $92.7 million in tax-exempt bonds to fund a loan to Two Trees in December 2003, enough to cover more than 90 percent of the project's costs. The bonds' tax-exempt status made the loan more affordable.

A year later, in December 2004, Two Trees applied for 421-a benefits. In the two-stage process, developers get up to three years of tax breaks during construction. They then have to apply again to get final, post-construction benefits for up to 25 years.

Jed Walentas signed the first application, including an affidavit stating in capital letters that if owners failed to comply with 421-a rules, the city "SHALL REVOKE THE CERTIFICATION OF ELIGIBILITY AND TERMINATE THE TAX EXEMPTION."

As part of the process, HPD uses a formula to calculate a maximum monthly rent that can be charged for the building — in this case, $1.15 million. The formula, written into the law, affords developers wide leeway to propose initial rents that are far in excess of what the market will bear.

In March of 2005, HPD approved a rent schedule listing $6,698 per month as the maximum initial rent for Sher's two-bedroom unit. When Sher leased the apartment two months later, however, Two Trees listed a "legal" rent of $9,175, along with a $3,540 "preferential" rent — the amount she would actually pay.

A "temporary rent concession" rider in her lease stipulated that Two Trees reserved the right to someday withdraw the discount and charge the maximum.

Sher didn't pay close attention at the time. But city officials and housing lawyers have said such leases are improper: Under rent stabilization rules, the amount actually "charged and paid" becomes the legal rent for an original tenant.

That figure, $3,540 in Sher's case, sets the starting rent for future increases. "They had no legal basis for reporting the 'legal' rent as $9,175," said Nicholas Moccia, a Staten Island lawyer who represents tenants and landlords and who reviewed Sher's lease for ProPublica. "That's a number they pulled out of thin air."

Landlords are required by law to register all their units with the state Department of Housing and Community Renewal (DHCR) each year, reporting how much rent is paid and whether they are rent stabilized. Yet when Two Trees first filed for 125 Court Street, it listed Sher's and 255 other units as "exempt," records show.

As their leases came up for renewal, Sher and other tenants began seeing steep increases. Two Trees imposed a 10 percent increase in a new two-year lease for Sher's apartment in 2007. The most then allowed by the city's Rent Guidelines Board was 6.75 percent over two years.

When the lease for Yolande Nicholson, another original tenant, came up for renewal the same year, Two Trees imposed a 22 percent increase, or more than triple the 6.75 percent limit. Her rent went up by $643 a month.

Nicholson, a securities lawyer, hadn't looked closely at her lease. "I did not know in any way that it was rent-stabilized," she said.

Two years later, Two Trees raised her rent another 20 percent — more than double the city limit of 8 percent at the time. Nicholson tried to negotiate for something less, then refused to sign a lease. She said she wrote to David Walentas asking for a rent reduction but never received a response.

Sher and Nicholson were in high-end apartments. But records show that Two Trees also overcharged tenants in most of the building's 64 low-income units. These units have reduced rents and are for people earning less than 50 percent of the median income for New York City, or $43,150 for a family of four.

Katrece Small won a lottery for one of these units and leased a studio for $398 per month beginning in 2005. Records show that Two Trees raised her rent by 8.2 percent and 10.7 percent in 2007 and 2009, respectively, when the limits were 6.75 percent and 8 percent for two-year leases.

From 2005 through 2013, records show, Small was charged more than $1,000 in rent she shouldn't have owed. Like others, Small, a single mom who is out of work, said she didn't really pay close attention to the terms of her lease.

"I didn't know what it meant," Small said. "It's still not even clear. I don't even know if I'm paying the legal

amount of rent."

***

In all, ProPublica estimated that at least 43 of the 64 original low-income tenants at 125 Court Street were overcharged a total of $80,000. Additionally, 47 original tenants in market-rate units were charged about $288,000 more than what city limits allowed.

ProPublica calculated the figures by comparing changes in annual rents for the building's initial tenants against applicable Rent Guidelines Board caps. In nearly 200 lease renewals, Two Trees charged more than was allowed by the board.

Two Trees said it discovered overcharges in a 2013 audit. A spokesman said in a statement that the firm ultimately issued rent refunds or credits totaling $299,148, plus $90,805 in interest, to 80 tenants covering all overcharges since the building opened.

Sher provided a document confirming that she was among those reimbursed, but Nicholson said she was never compensated. Two Trees said it had credited both Small and Nicholson.

Nicholson said she became convinced something was awry with rents in 2010. She eventually spent a full day scrutinizing rent-stabilization statutes, which proved daunting even compared to the labyrinthine securities laws she dealt with in finance.

She shared her suspicions with Sher; now the two are among a handful of tenants involved in a tangle of lawsuits with Two Trees over rent increases and other complaints, including mold, water damage and dislocated floorboards.

Nicholson refused to pay rent increases she felt were excessive and was evicted last year. Sher went on a rent strike; she narrowly avoided eviction last month after a judge required her to set aside $95,000 in back rent to keep her legal case alive. The judge did allow her a discount for mold.

***

As overcharges mounted at 125 Court Street, regulators were slow to check up on the building.

Six years after it opened, the city asked why Two Trees claimed the apartments were exempt from rent stabilization. "All units must be registered as rent-stabilized," HPD said in a June 14, 2011 notice to the company's lawyer. "256 units are currently listed as 'exempt,' " it said. "This is not allowed."

HPD also said the rents reported by Two Trees were too high and urged it to get into compliance — without listing any consequences if the firm didn't.

Almost a full year later, on June 4, 2012, HPD wrote again with the same complaint: "Please revise your DHCR registration so the rents are within HPD guidelines & all units are rent stabilized."

This time, the agency warned that unless Two Trees fixed the problems, it would stop processing its final application for the 421-a tax break. Two Trees by that point had already benefited from five years of a 25-year exemption.

Sher began her rent strike that year. Soon after, Two Trees sent a renewal lease raising her rent to $5,000 per month — a 35 percent increase when the city allowed only 7.25.

She and nine other tenants then sued Two Trees in April 2012. One of those tenants was Jeff Goodman. In 2013, Two Trees boosted the rent on his one-bedroom by 47 percent to what it claimed was a legal maximum of $6,599.40.

"I remember that the first words that came out of my mouth were, 'This must be in retaliation,' " Goodman said.

Asked about retaliation, Two Trees said it believed all its rent increases were legal at the time. In September 2013, however, it filed corrected rents with the state, reducing some that were too high, including Sher's.

The city's HPD said it did not investigate rents at 125 Court Street or other 421-a buildings because it's the state's job to enforce rent-stabilization laws.

DHCR, the state regulator, said it has received four complaints of overcharges at the building. Records obtained by ProPublica show that in one instance — over Two Trees' protests — the agency awarded triple damages to an elderly low-income tenant who had complained.

It is unclear whether the complaints triggered a broader review of rents at 125 Court Street; DHCR would not say. In an email, the agency described its role as that of a "regulatory agency — not an enforcement entity." The 421-a program, it said, "is administered and enforced" by

the city's HPD.

By the time Two Trees corrected its rents, the initial construction-period tax exemption for 125 Court Street had long expired. When ProPublica asked for the final eligibility certificate, HPD officials divulged that they never issued one.

Blaine Schwadel, a lawyer at Rosenberg & Estis who frequently represents landlords on 421-a issues, said that obtaining a final certificate is not simply a formality. "That is when HPD has its chance to review things" before greenlighting final tax benefits, he said.

This year, 125 Court Street's property tax break amounts to $1.4 million, a nearly 90 percent reduction. It may not be the only 421-a building that is benefiting without final approval.

Officials at HPD said that under a "flawed system," the city has long allowed construction-period tax benefits to automatically continue even if final eligibility isn't confirmed. That will change under the new 421-a law, which says projects can't start getting the tax break until construction is over and they have qualified.

Ed King, a lawyer representing Nicholson and Goodman, called state and city oversight of the 421-a program a "colossal failure."

***

By spring 2014, Sher and Nicholson were busy writing to de Blasio, Attorney General Eric Schneiderman and senior officials at city and state housing agencies, asking them to investigate Two Trees. Only Schneiderman's office responded, though merely by acknowledging receipt of Sher's letter.

Jed Walentas, meanwhile, was busy making his final pitch to city officials for the Domino Sugar redevelopment, including an integral 421-a tax break.

Sher and Walentas crossed paths at the marathon City Council hearing on April Fool's Day 2014, at which Walentas said Two Trees had kept all its promises.

"I can tell you that without 421-a, there won't be any affordable housing built here," Walentas said as council members peppered him with questions about the number of low-income units he planned at the Domino site.

Waiting for their turn to testify near the end of the six-hour meeting were Sher, Nicholson, Goodman and Small.

"I'm here today to request that the City Council suspend any further concessions or taxpayer subsidies to Two Trees because they have proven unworthy of the public trust," said Sher.

The Two Trees plan sailed through the City Council on a 47–0 vote the following month. Council members even sweetened the Domino deal by agreeing to provide access to tax-exempt financing, as the city had done for 125 Court Street.

The deal allowed de Blasio to claim a win because Two Trees agreed to include 40 more lower-income units than the 660 originally planned for the complex.

Achieving the goals in de Blasio's housing plan — which include building 80,000 new lower-income units over a decade — will require cutting many similar 421-a deals. The legislature's expansion of the program, expected to be finalized in January, contains many provisions proposed directly by the mayor's office.

Under the revised program, developers could collect 421-a benefits for up to 35 years instead of the current 25, but new 421-a buildings would have to include more lower-income apartments than are now required, up to 30 percent. Income limits also would be lifted, opening these rent-stabilized units to wealthier tenants.

Perhaps the biggest change is that new units renting for more than $2,700 a month would no longer have to be rent-stabilized — freeing 421-a landlords from Rent Guidelines Board limits for the first time since the program began in 1971.

That shift effectively sets a floor for market-rate apartments, tenant advocates say, and undermines a major court victory tenants won in 2009. In the case, Roberts v. Tishman Speyer, judges ruled that apartments getting similar tax breaks can't be removed from rent stabilization because the rent gets too high.

With rents rapidly rising above $2,700 in many neighborhoods, the new law "categorizes thousands of middle-class tenants as undeserving of rent stabilization," said Seth Miller, a tenant lawyer with Collins, Dobkin & Miller in Manhattan.

"Why should developers get to charge any rent they want for most of the apartments the taxpayers pay for?" he said.

Buildings that are already getting 421-a benefits, like 125 Court Street, would remain rent-stabilized. The new law doesn't address whether a developer's past compliance should be evaluated when awarding future benefits.

"If enforcement were automatic and prompt, you wouldn't need to blacklist developers from getting future benefits," Miller said.

De Blasio spokesman Wiley Norvell said problems with the 421-a program are "a decades-old issue" and that reforms the mayor proposed, including changes in the application process, would "ensure owners meet requirements before any benefits are issued."

Real estate interests have made clear they are fans of the mayor's plan.

Both developers and labor unions with a stake in construction jobs have given generously to Campaign for One New York, a nonprofit formed to advocate for de Blasio's political priorities, including affordable housing.

In April, a $100,000 gift came in to the mayor's fund, which is also represented by BerlinRosen, the Two Trees PR firm.

The source? A Two Trees subsidiary named for a Domino Sugar address: 316 Kent Ave.

This story resulted from a reader tip. To share your stories about rents in New York City, fill out our confidential survey.

NYC Lets Luxury Building Owners Stiff Workers and Still Get a Tax Break

City regulators haven't enforced a 2007 law that requires doormen, janitors and other service workers at taxpayer-subsidized apartment buildings to be paid wages comparable to union rates.

by Cezary Podkul and Marcelo Rochabrun, ProPublica
Dec. 30, 2015, 11:03 a.m.

Doorman Jereme Herring, who earns $12 an hour with no benefits, helped organize the workers to join a union after learning they had been paid less than they should under a law that gives the luxury building a $451,000 property tax break. (Bryan Anselm for ProPublica)

When Isaac Bowman got a concierge job at a luxury Queens apartment building last year, he hoped it would be his ticket out of a homeless shelter and into New York City's middle class.

The pay was low at only $10 an hour. But at least it was a start toward getting his partner and three stepchildren into an apartment of their own, Bowman reasoned.

Bowman took the job — and became a victim of wage theft.

Under terms of a large city tax subsidy, owners of the 117-unit building, The Exo, were legally bound to pay Bowman $16.88 an hour — almost 70 percent more than he got — plus benefits now worth $10.13 per hour.

The higher pay is required at bigger buildings that benefit from the city's 421-a housing program, which grants about $1.1 billion in tax breaks each year to owners. In return, they must pay service employees the "prevailing wage" — a rate set by the city comptroller that is benchmarked to union contracts so that non-union workers get comparable pay for similar work.

Paying less than the law requires can subject employers to losing their tax break. But city officials haven't enforced the rules on compensation at 421-a buildings, leaving workers like Bowman vulnerable to abuse.

"They're stealing from people like me," said Bowman, who only learned of the requirement from union organizers this year. "I don't think it's fair."

Forest Properties, which owns The Exo, did not respond to requests for comment. Neither did the building manger. Tax bills show The Exo has been receiving an annual 421-a property tax break worth about $900,000 since 2011.

The failure to police the prevailing wage mandate is one more in a series of oversight lapses by city and state officials who regulate the 421-a program, which is New York City's biggest housing subsidy.

As ProPublica has reported, thousands of building owners have failed to register their apartments for rent limits, as required by law. Landlords also have banked the 421-a tax breaks unabated while overcharging tenants with bogus "preferential" rents and abusing other rules meant to protect tenants.

When it comes to prevailing wages, there's little debate that enforcement has been lacking. The city agency that administers 421-a — the Department of Housing Preservation and Development (HPD) — says that it has no authority pursue employers and readily concedes that it hasn't done so.

Oversight of the wage requirement was transferred to city comptroller's office under a reauthorization of the 421-a program that lawmakers approved last summer in Albany.

Comptroller Scott Stringer told ProPublica he will use the "full weight and resources" of his office to hold building owners accountable, but how far his reach will extend remains to be seen.

That's because lawmakers, as part of the reauthorization, required the city's real estate lobby and building trades unions to agree on an expansion of prevailing wages to construction jobs on new 421-a buildings. Without a deal by Jan. 15, the city will lose authority to approve new 421-a projects.

The two sides aren't discussing details of the talks. But Gary LaBarbera, the lead union negotiator, said regulators need to act because wage theft is already "an epidemic problem" for nonunion construction workers.

As is, it's up to workers to bring wage-theft allegations to the attention of authorities. But employees are caught in a Catch–22: They often have no idea that they're entitled to the prevailing wage, and finding out if they are isn't easy.

Smaller 421-a buildings are exempt from the requirement, and while HPD keeps a list of the buildings that are covered, the agency doesn't disclose it. HPD turned down ProPublica's requests to release the list, and officials in Stringer's office also declined to provide it, saying the list is not yet finalized.

To fill the gap, 32BJ Service Employees International Union has launched a push to identify buildings that are covered and to educate workers about their rights. The Real Estate Board of New York, which represents large developers and building owners, said it is working with the union "to put in place clear procedures to ensure the effective enforcement" of prevailing wages for service workers.

"We have to be like your neighborhood police," said 32BJ President Hector Figueroa, because prevailing wage laws "have very little meaning if they're not enforced."

***

For most of the 44 years the 421-a tax break has been around, there were no wage requirements. That changed in 2007, when lawmakers also expanded the areas in the city where developers getting the tax break had to include reduced-rent apartments for lower-income tenants.

Sponsors of the change estimated that up to half of large 421-a buildings did not pay prevailing wages and benefits. By comparison, about 4 in 5 building workers citywide earned those amounts.

The 2007 law explicitly stated that "no benefits" would be granted to 421-a buildings that didn't offer prevailing wages, whether workers were employed directly or by outside contractors. The requirement was limited to buildings with 50 or more units that started construction after December 2007.

The measure was a big win for labor unions like 32BJ, but it contained one big flaw: enforcement.

HPD, which determines eligibility for the 421-a tax break, was given authority to sanction building owners who didn't comply. But according to HPD, that didn't include the power to investigate building owners or to act on complaints. Typically, those duties have fallen to the comptroller's office.

It is unclear if the missing enforcement authority was an oversight or an intentional omission. "The original statute as it was drafted had a lot of holes in it," said James Murphy, a labor lawyer at the firm of Virginia & Ambinder in New York.

Regardless, HPD continued to approve 421-a tax breaks with little attention to the prevailing wage provision. Since the 2007 law came into effect, up to 400 buildings have come under the 421-a wage requirement, according to a preliminary estimate by the city.

The number of workers affected is uncertain, although in 2013, the 32BJ union found that nearly half the 421-a buildings it surveyed had underpaid employees.

"New York taxpayers are subsidizing low quality jobs with little or no benefits, which further widens the income gap in the city," the union said then. It organized protests to bring attention to the issue and criticized HPD for "refusing" to enforce the law, but the agency maintained it had no authority to do so.

***

This year, as the 421-a program again came up for renewal in Albany, New York City Mayor Bill de Blasio said he would support extending the prevailing wage for

service workers to cover buildings with just 30 units or more rather than 50.

"Folks who are making $10 to $12 an hour as porters, as security guards, et cetera, will now be making good wages," de Blasio's deputy, Alicia Glen, told lawmakers during a June 1 hearing on 421-a.

As Glen spoke, one person waited his turn to testify but didn't get a chance: Isaac Bowman had to leave to report for his concierge job at The Exo, where his pay had been increased to $10.50 an hour.

Bowman was living with his partner in a Bronx homeless shelter for three months when he applied for the position in June 2014. The Astoria building features a fitness center and landscaped rooftop deck overlooking Manhattan and advertises "a 24-hour concierge service to fit your hectic schedule."

Bowman said he was told that meant opening doors, greeting tenants, helping with luggage and packages and doing light cleaning. Instead, it's evolved into mopping floors, vacuuming elevators, and cleaning bathrooms, among other duties, all for the same pay.

He said he was asked to join a union — the Special and Superior Officers Benevolent Association — as a condition of keeping the job. The association's contract shows he is entitled to $2,500 in life insurance, but little else in benefits. The Long Island labor group did not respond to questions.

Murphy, the labor lawyer, said such arrangements are one way employers try to skirt the prevailing wage law. Some employers "mistakenly believe that they can get around their legal obligations by paying benefits to unions with rates below those required by the comptroller," he said.

Bowman lives in East New York, a far-away corner of Brooklyn where rents are relatively affordable, though not affordable enough at his pay. Bowman relies on a federal Section 8 housing subsidy to cover three-fourths of his family's $1,880 monthly rent. They also receive $220 a month in food stamps.

"We basically just get by," he said.

Bowman's direct employer, Defender Security Services, which staffs The Exo under a contract with the owners, declined to answer questions about employee wages.

While some employers flat-out ignore prevailing wage rules, others use work-arounds to pay less.

Domenick Penteck is a doorman at 220 N. 10th Street in Brooklyn, a 64-unit red-brick building that was advertised in one $6,700-per-month apartment listing as "the pinnacle of Williamsburg luxury" with "a 24 hour doorman." The building is owned by The Rabsky Group, one of Brooklyn's biggest developers, and gets a 421-a tax break worth about $317,000 a year.

Penteck's pay stub shows he earns the prevailing wage for a doorman, $16.88 per hour, during the day. When he clocks in for his night shift, however, his rate drops to $13.35 per hour, the prevailing wage for an unarmed guard.

"It's just unfair," said Penteck, who lives in a public housing project.

The leasing manager for 220 N. 10th said that as far as she was aware, workers were paid prevailing wages and referred questions to Platinum Amenity Services, which staffs the building.

Joel Berkovic, one of the company's co-owners, said he was "extremely" aware of the 421-a program's prevailing wage provisions. He said it was OK to pay doormen the security guard wage at night because they're not allowed to pick up packages then. "They are paid prevailing wages," Berkovic said.

Officials with the 32BJ union, which the building's workers are trying to join, said Penteck should be paid a doorman's prevailing rate even at night. Stringer's office declined to comment.

To make ends meet, Penteck works a second job on weekdays as a prep cook. He wishes that regulators would pay more attention to prevailing wage laws. "They don't care about a guy like me busting his ass, going to work and leaving one job and going to another job and not sleeping," he said.

***

Like other workers interviewed by ProPublica, Penteck learned about the prevailing wage requirements through 32BJ. Workers have been turning to the union for help in the absence of regulators, hoping they can get higher pay.

"This is the way to go about it," says Jereme Herring, a doorman at 341 Eastern Parkway, a luxury building in Brooklyn's Crown Heights. Workers there voted 5–0 in

November to join 32BJ.

When he was hired last year, Herring was offered $12 an hour with no benefits. He and his co-workers were thinking about unionizing when he found out from 32BJ organizers that the 63-unit building was covered by the prevailing wage law, thanks to its annual 421-a tax break of $451,000.

“It was very unsettling,” said Herring, who has trouble keeping up with rent while taking care of his grandmother. A weekend job helps him get by, he said.

Herring told co-workers, who were equally surprised. When they decided to unionize, they reached out to tenants for support and were gratified by the response.

“We were horrified to learn that they only made $12 bucks an hour with no benefits,” said Matthew Marolla, a management consultant who informally leads a small tenants’ group. He fired off an email in support of the workers, saying it’s only “proper and decent” for them to have health insurance.

32BJ officials said they will soon sit down with the building’s representatives to negotiate a contract. Red Group Management, which runs the building for the owners, did not respond to a request for comment.

For Francis Alphonse, the building superintendent, the 421-a wage requirement means his pay should be $24.83 per hour, plus benefits worth $10.38. He’s been earning about $15.63 per hour with no benefits, based on his pay stub and hours worked.

“When you know the government is giving out these big tax breaks and they do nothing for the workers,” Alphonse said, “it’s like you want to cry.”