

# WELCOME TO THE JUNGLE, WHERE THE RENT IS TOO DAMN HIGH: USING RENT REGULATION IN NEW YORK CITY TO MAINTAIN AN AFFORDABLE HOUSING STOCK

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## I. INTRODUCTION

In New York City, there is a general consensus that “the rent is too damn high!”<sup>1</sup> Along with this sentiment, there is an overall fear of gentrification<sup>2</sup> throughout the City, which may cause the diversity, culture, and “starving artist” appeal that defines Manhattan to disappear. According to writer and actress Lena Dunham, the price of rent will cause “our generation’s Patti Smith to move to Tampa.”<sup>3</sup> With the City becoming increasingly difficult to afford, and the possibility of citywide gentrification becoming more and more plausible, discussions regarding the longevity of rent control and rent stabilization laws are becoming increasingly important. This has given rise to a vast disparity between the beliefs of the proponents and critics of rent regulation. With each side taking an extreme opposing stance, the controversy has become especially heated. This Note will examine the conflicting sides of rent regulation and propose a change in the system that may help to reconcile the vehement proponents and critics.

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<sup>1</sup> See THE RENT IS TOO DAMN HIGH PARTY, <http://www.rentistoodamhigh.org/> (last visited Nov. 6, 2013).

<sup>2</sup> *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 HARV. L. REV. 1835, 1835 n.2 (1988) (“gentrification occurs when the movement of more affluent classes into older, central neighborhoods transforms them, through privately funded rehabilitation, into higher-priced, residential areas.”).

<sup>3</sup> Josh Barro, *Lena Dunham is Right About Rents Driving Artists Out of New York*, BUS. INSIDER, Aug. 9 2013, available at [http://www.slate.com/blogs/business\\_insider/2013/08/09/lena\\_dunham\\_gentrification\\_new\\_york\\_rent\\_is\\_bad\\_for\\_artists.html](http://www.slate.com/blogs/business_insider/2013/08/09/lena_dunham_gentrification_new_york_rent_is_bad_for_artists.html).

This Note introduces a forum for binding arbitration that would occur between landlords and tenants of rent stabilized and rent controlled buildings in New York City. This forum would be utilized as a means to reach a solution to one of the most prevalent issues related to gentrification within rent regulated buildings: when a tenant who occupies one of these units does not financially require the reduced amount of rent.<sup>4</sup> This issue prevents rent regulation laws from effectively combating gentrification. The primary goal of rent regulation is to maintain an affordable housing stock after World War II.<sup>5</sup> In present times, with the threat of gentrification looming, rent regulation should be modified to provide special protection to individuals of lower economic classes.

This Note suggests an arbitration forum in order to accomplish this. With an arbitration forum available, landlords of rent controlled and rent stabilized units would be able to confront a tenant that they believe is financially undeserving of the reduced rental fee. This “undeserving” tenant is one who benefits from the reduced price, when his or her net worth and financial position does not support a need for it. With the supervision and guidance of an arbitrator, both parties would have the opportunity to prove whether the rent charged is or is not an equitable price considering the tenant’s finances, and, whether the occupancy is an effective use of rent regulation as a combatant against gentrification. After each side has the opportunity to explain and advocate its position, the arbitrator will make the ultimate decision as to whether or not the reduced rental fee is truly necessary and a good public use of regulation. If rent regulation is found to be financially unnecessary, or not preventing the furtherance of gentrification, the arbitrator will help adjust the rent price based on the actual net worth of the tenant and the average market value of the unit. However, this adjusted figure will only be binding upon the particular tenant, and, should the tenant decide to move, any new tenant that takes over the unit will be entitled to the rent stabilized price, so long as that tenant fits the criteria.

First, this Note describes and explains the difference between rent control and rent stabilization in New York City. Then, the

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<sup>4</sup> See, e.g., Hana R. Alberts, *Why Rent Regulation Laws Cause All Sorts of Terrible Problems*, CURBED, July 24, 2013, available at [http://ny.curbed.com/archives/2013/07/24/why\\_rent\\_regulation\\_laws\\_cause\\_all\\_sorts\\_of\\_terrible\\_problems.php#more](http://ny.curbed.com/archives/2013/07/24/why_rent_regulation_laws_cause_all_sorts_of_terrible_problems.php#more); *The Courage to Reform Rent Controls*, N.Y. TIMES, June 22, 1993, at A22 (“[m]any wealthy New Yorkers enjoy artificially depressed rents”).

<sup>5</sup> *History of Rent Regulation*, NEW YORK STATE DIVISION OF HOUSING & CITY RENEWAL (1993), available at <http://www.tenant.net/Oversight/50yrRentReg/history.html>.

history of rent control and rent stabilization laws is discussed, followed by an analysis of the arguments of those both for and against the preservation of rent regulation. Further, this Note discusses the issue of gentrification. Finally, this Note proposes an idea for an arbitration forum, and explains the logistics of how it would work and how it could benefit the system overall.

## II. BACKGROUND

### A. *What are Rent Control and Rent Stabilization in New York City?*

The difference between rent control and rent stabilization in New York City is that rent control occurs when a tenant (or lawful successor) has been living continuously in an apartment unit since 1971.<sup>6</sup> Rent control is essentially a modern day extension of the post World War II housing emergency regulation.<sup>7</sup> A rent-controlled tenant may have his or her rent increased in proportion to an amount correlated with how much a landlord spends on improvements within the apartment unit, or within a common area that directly affects the tenant.<sup>8</sup> Under rent control, the maximum rent is determined by statute, through the Maximum Base Rent Formula.<sup>9</sup> Under this system, a maximum base rent is determined for each apartment unit. This number is subject to adjustment every two years; taking into consideration a landlord's increased operating costs due to building maintenance and improvement.<sup>10</sup> Further, there are specific cases where a rent-controlled tenant

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<sup>6</sup> E.g., *Frequently Asked Questions*, NEW YORK CITY RENT GUIDELINES BOARD, <http://www.housingnyc.com/html/resources/faq/rentstab.html> (last visited Nov. 6, 2013); ANDREW SCHERER & HON. FERN FISHER, *RESIDENTIAL LANDLORD-TENANT LAW IN NEW YORK* § 4:26 (2013).

<sup>7</sup> See Guy McPherson, *It's the End of the World As We Know It (And I Feel Fine): Rent Regulation in New York City and the Unanswered Questions of Market and Society*, 72 *FORDHAM L. REV.* 1125, 1133 (2004); Gregory Stohr & Henry Goldman, *New York City Rent Limits Left Intact by Supreme Court*, *BLOOMBERG.COM*, (Apr. 23, 2012), available at <http://www.bloomberg.com/news/2012-04-22/new-york-landlord-moves-to-upend-rent-control-at-court.html>.

<sup>8</sup> E.g., *Fact Sheet #1: Rent Stabilization and Rent Control*, NEW YORK STATE HOMES AND COMMUNITY RENEWAL, <http://www.nyshcr.org/Rent/FactSheets/orafac1.htm> (last updated May 31, 2008); SCHERER & FISHER, *supra* note 6, § 4:140.

<sup>9</sup> *Fact Sheet #1: Rent Stabilization and Rent Control*, NEW YORK STATE HOMES AND COMMUNITY RENEWAL, <http://www.nyshcr.org/Rent/FactSheets/orafac1.htm> (last updated May 31, 2008).

<sup>10</sup> E.g., *Fact Sheet #1*, *supra* note 8; Stohr & Goldman, *supra* note 7.

may be evicted. These situations include when a tenant willfully violates an obligation of tenancy, commits or allows nuisance, uses the unit for illegal or immoral purposes, or refuses to renew the lease.<sup>11</sup> Subject to succession provisions, when a rent-controlled apartment becomes vacant, it is subject to rent stabilization.<sup>12</sup> If it does not meet the requirements of rent stabilization, it is deregulated entirely.<sup>13</sup> Finally, if the Division of Housing and Community Renewal determine that a class of housing has a vacancy rate of five percent or more, it is required by statute to schedule for the orderly decontrol of housing.<sup>14</sup>

On the other hand, rent stabilization applies to buildings built between February 1, 1947 and January 1, 1974 (not including co-ops and condos) that have six or more units.<sup>15</sup> The rent-stabilized system was enacted in 1969 and protects tenants from sharp increases in rent, while also affording the tenant the absolute right to renew the lease each year.<sup>16</sup> As with rent control, high rent vacancy deregulation, often called “luxury decontrol,” applies.<sup>17</sup> Luxury decontrol, under the Rent Act of 2011,<sup>18</sup> occurs when either the legal rent of the regulated unit reaches \$2,500, or the combined adjusted gross income of the household living in the regulated unit meets or exceeds \$200,000.<sup>19</sup> Further, New York State law provides tax abatements as incentives for rehabilitation and construction of rental housing.<sup>20</sup> Rent increases under rent stabilization are initially based upon a statutory based rent. Once the base is set, the Rent Guidelines Board of New York City determines additional rent adjustments.<sup>21</sup> Under the rent stabilization law, tenants have a choice of either a one or two year renewal

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<sup>11</sup> McPherson, *supra* note 7, at 1147.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* (“[I]f a rent controlled apartment becomes vacant, and the maximum legal rent exceeds \$2,000, instead of remaining regulated under rent stabilization, the unit is deregulated.”).

<sup>14</sup> *E.g.*, N.Y. UNCONSOL. LAW § 26-414 (McKinney 2015); Dave Hogarty, *Housing “Emergency” Enters Fifth Decade, Bloomberg Acts*, CURBED, Mar. 27, 2012, [http://ny.curbed.com/archives/2012/03/27/housing\\_emergency\\_enters\\_fifth\\_decade\\_bloomberg\\_acts.php](http://ny.curbed.com/archives/2012/03/27/housing_emergency_enters_fifth_decade_bloomberg_acts.php).

<sup>15</sup> *E.g.*, McPherson, *supra* note 7, at 1148; *The New York Rent Stabilization Law of 1969*, 70 COLUM. L. REV. 156 (1970); SCHERER & FISHER, *supra* note 6, § 4:20.

<sup>16</sup> McPherson, *supra* note 7, at 1136.

<sup>17</sup> *Frequently Asked Questions*, NEW YORK CITY RENT GUIDELINES BOARD, <http://www.nycrgb.org/html/resources/faq/decontrol.html> (last visited Nov. 6, 2013).

<sup>18</sup> 2011 N.Y. Laws 97.

<sup>19</sup> *E.g.*, *id.*; *Frequently Asked Questions*, *supra* note 17.

<sup>20</sup> *Frequently Asked Questions*, *supra* note 17.

<sup>21</sup> *E.g.*, *Fact Sheet #1*, *supra* note 8; Stohr, *supra* note 7; *New York Rent Stabilization Law*, *supra* note 15.

lease.<sup>22</sup> In addition, rent stabilization allows for increases in rent to recoup expenses for capital improvements, called Major Capital Improvement increases.<sup>23</sup> These improvements, however, must benefit all tenants, and the total amount spent on the improvement is divided among the housing accommodations based on size.<sup>24</sup> The landlord may also petition for rent increases when improvements are made to individual apartments, subject to the consent of the tenant while the unit is occupied.<sup>25</sup>

### B. *History of Rent Control and Rent Stabilization*

This historical discussion begins with the Emergency Price Control Act (“EPCA”) of 1942.<sup>26</sup> The EPCA was an initiative of the Office of Price Administration (“OPA”), because of World War II, to prevent wartime inflation by setting a ceiling on the prices of most commodities.<sup>27</sup> The price ceiling was necessary to protect consumers because the prices of many products skyrocketed during this time.<sup>28</sup> Included in these commodities was residential rent. Initially, there was not a rent ceiling instituted in New York City, but due to civil pressures, in 1943 the OPA applied the Act retroactively to New York City rents.<sup>29</sup>

In 1946, Congress amended the EPCA to enable it to expire in 1947. Upon its expiration, the Housing and Rent Act of 1947<sup>30</sup> was enacted.<sup>31</sup> This Act, among other things, lifted rent controls on all housing built after February 1, 1947 and extended the controls on existing housing.<sup>32</sup> Congress passed legislation in 1949,<sup>33</sup> which was extended until 1953, allowing local governments to pass their own

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<sup>22</sup> *New York Rent Stabilization Law*, *supra* note 15.

<sup>23</sup> *E.g.*, N.Y. COMP. CODES R. & REGS. 9, § 2522.4 (2014); SCHERER & FISHER, *supra* note 6, § 4:138.

<sup>24</sup> McPherson, *supra* note 7, at 1149.

<sup>25</sup> *Id.*

<sup>26</sup> Emergency Price Control Act of 1942, Pub. L. No. 77-421, 56 Stat. 23 (repealed 1947).

<sup>27</sup> *See, e.g.*, McPherson, *supra* note 7, at 1133; Timothy L. Collins, *Fair Rents or Forced Subsidies Under Rent Regulation: Finding A Regulatory Taking Where Legal Fictions Collide*, 59 ALB. L. REV. 1293, 1312 (1996).

<sup>28</sup> *History of Rent Regulation*, N.Y. STATE DIVISION OF HOUSING & CITY. RENEWAL (1993), available at <http://www.tenant.net/Oversight/50yrRentReg/history.html>.

<sup>29</sup> McPherson, *supra* note 7, at 1134.

<sup>30</sup> Housing and Rent Act of 1947, Pub. L. 80-hh129, 61 Stat. 193.

<sup>31</sup> McPherson, *supra* note 7, at 1134.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

laws regarding rent control.<sup>34</sup> At this time, New York passed the Emergency Housing Rent Law,<sup>35</sup> which created a State Housing Commission to administer rent controls within the state.<sup>36</sup>

In 1962, the New York State legislature ended statewide rent controls, while granting New York City the ability to maintain and enact a local rent control system.<sup>37</sup> In response, New York City passed the Local Emergency Housing Rent Control Act,<sup>38</sup> continuing the regime of rent control.<sup>39</sup> In 1969, the city enacted the Rent Stabilization Law,<sup>40</sup> which included buildings built after February 1, 1947 and gave rise to the rent stabilization system.<sup>41</sup>

Vacancy decontrol occurred in 1971, and effectuated a decontrol of all units under rent control or rent stabilization.<sup>42</sup> However, this did not last long. Inflationary pressures caused rents in New York City to increase dramatically in the years following the vacancy decontrol.<sup>43</sup> In response to this, the state legislature enacted The Emergency Tenant Protection Act of 1974.<sup>44</sup> This Act allowed municipalities to adopt a stabilization system based upon the existence of a “housing emergency,” which is defined by vacancy rates dropping below five percent.<sup>45</sup>

The next important landmark in rent regulation history was the Rent Regulation Reform Act of 1993.<sup>46</sup> This Act instituted luxury decontrol.<sup>47</sup> Luxury decontrol, at this time, had two components. First, if a unit has a legal rent of more than \$2,000 per month, when that unit becomes vacant, the landlord may deregulate it upon application. Second, if the unit is not vacant and the rent reaches \$2,000 per month, and the combined household income exceeded \$250,000 in each of the two immediately preceding years, the apartment may be deregulated upon a landlord’s appli-

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<sup>34</sup> *Id.* at 1135.

<sup>35</sup> N.Y. UNCONSOL. LAW § 8583 (McKinney 2004).

<sup>36</sup> *See, e.g.,* McPherson, *supra* note 7, at 1134; *History of Rent Regulation, supra* note 28.

<sup>37</sup> *History of Rent Regulation, supra* note 28.

<sup>38</sup> N.Y. UNCONSOL. LAW §§ 8601–17 (McKinney 2004).

<sup>39</sup> *History of Rent Regulation, supra* note 28.

<sup>40</sup> N.Y. UNCONSOL. LAW §26–504.1 (McKinney 1969).

<sup>41</sup> *E.g., id.; History of Rent Regulation, supra* note 28.

<sup>42</sup> McPherson, *supra* note 7, at 1138.

<sup>43</sup> *Id.*

<sup>44</sup> N.Y. UNCONSOL. LAW §§ 8621–34 (McKinney 2004); *History of Rent Regulation, supra* note 27.

<sup>45</sup> *History of Rent Regulation, supra* note 27.

<sup>46</sup> 1993 N.Y. Sess. Laws 253 (McKinney).

<sup>47</sup> *E.g.,* McPherson, *supra* note 7, at 1141; *Frequently Asked Questions*, NEW YORK CITY RENT GUIDELINES BOARD, <http://www.housingnyc.com/html/resources/faq/rentstab.html> (last visited Nov. 6, 2013).

cation.<sup>48</sup> This legislation was then adjusted through the Rent Regulation Reform Act of 1997.<sup>49</sup> This Act reduced the income vacancy threshold from \$250,000 to \$175,000, and reduced the class of immediate family eligible for succession rights.<sup>50</sup> This amendment to the existing rent control laws reflected an initiative to keep rent controlled units in the hands of those that were truly deserving of the decreased rent, instead of in the hands of the wealthy.<sup>51</sup> The efficacy of this initiative, however, is not clear.<sup>52</sup>

The most recent development in rent regulation laws is the Rent Act of 2011.<sup>53</sup> This act modified the luxury decontrol standards to a legal rent of \$2,500 and the resident of the households has an adjusted gross income of \$200,000.<sup>54</sup> An additional significant modification made under the Rent Act of 2011 involves improvements made to individual apartments. Effective September 2011, individual apartment improvements completed in buildings with more than thirty-five apartments allow the landlord to permanently increase the legal regulated rent by 1/60th of the cost of improvements.<sup>55</sup> For buildings containing thirty-five or fewer apartments, 1/40th of the cost of improvements may be passed along to the tenants.<sup>56</sup>

Despite a Supreme Court challenge in the works,<sup>57</sup> in March 2012 former New York City Mayor Michael Bloomberg declared a formal state of emergency with regards to housing; allowing him to extend rent regulations for another three years.<sup>58</sup> The mayor cited a citywide residential vacancy rate of three and a half percent as the reason for the extension,<sup>59</sup> which is clearly below the five percent mark that would abolish regulations.<sup>60</sup> The continuation of rent regulations comes up for renewal every three years, which

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<sup>48</sup> McPherson, *supra* note 7, at 1141.

<sup>49</sup> 1997 N.Y. Sess. Laws 116 (McKinney).

<sup>50</sup> *Id.*

<sup>51</sup> See Collins, *supra* note 27, at 1317.

<sup>52</sup> *Id.*

<sup>53</sup> 2011 N.Y. Sess. Laws 97 (McKinney).

<sup>54</sup> *Rent Act of 2011*, NEW YORK CITY RENT GUIDELINES BOARD, <http://www.nycrgb.org/html/resources/rent2011.html> (last visited Nov. 6, 2013).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Harmon v. Markus*, 412 Fed. Appx. 420 (2011) (“The Harmons argue that the district court erred in dismissing their claims that the New York City Rent Stabilization Law is unconstitutional under the Takings Clause, the Contracts Clause, the Due Process Clause, and the Equal Protection Clause of the United States Constitution.”).

<sup>58</sup> Hogarty, *supra* note 14.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

means that the regulations, absent any Supreme Court interference, will be in effect until 2015.

### III. DISCUSSION

Both proponents and critics of rent regulation feverishly cling to their relative positions on the actions that New York City should take regarding these controls. Outlined below are the central arguments and core themes that each side steadfastly represents. This Note begins with the critics' arguments, because many of the proponents' arguments are counters to what the critics claim.

#### A. *Critics of Rent Control and Rent Stabilization*

A major argument advanced by critics of rent regulation laws is that the laws are essentially a "taking" by the Government without just compensation, as barred by the Fifth Amendment of the United States Constitution.<sup>61</sup> Professor Richard Epstein has championed this position, bluntly and mercilessly calling for an end to rental regulation.<sup>62</sup> The law of regulatory takings deals with the government's ability to restrict the power of property owners to use, develop, or alienate their land.<sup>63</sup> The notion supporting this argument is that rent stabilization laws effectively amount to a permanent invasion of property without just compensation.<sup>64</sup> This was one of the main arguments in a case that recently made it up to the Supreme Court regarding the constitutionality of rent regulation in *Harmon v. Kimmel*.<sup>65</sup>

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<sup>61</sup> See, e.g., Brief for Pacific Legal Foundation, CATO Institute, and Small Property Owners of San Francisco Institute as Amici Curiae in Support of Petitioners James D. Harmon, Jr., and Jeanne Harmon at 5, *Harmon v. Kimmel*, 132 S.Ct. (1991), (No. 11-496) [hereinafter Amici Brief for Petitioner]; R.S. Radford, *Regulatory Takings Law in the 1990's: The Death of Rent Control?*, 21 Sw. U. L. REV. 1019 (1992).

<sup>62</sup> Richard Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 741 (1988).

<sup>63</sup> See, e.g., U.S. CONST. amend. V ("[p]rivate property [shall not] be taken for public use without just compensation."); Amici Brief for Petitioner, *supra* note 61, at 5.

<sup>64</sup> Amici Brief for Petitioner, *supra* note 61, at 5. See generally *Regulatory Takings Law*, *supra* note 25.

<sup>65</sup> See, e.g., Amici Brief for Petitioner, *supra* note 61, at 5; U.S. CONST. amend. XIV, § 1 ("No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property



A second argument, also advanced in the *Harmon v. Kimmel* brief, is that rent regulation is a violation of the Fourteenth Amendment's Due Process Clause.<sup>66</sup> The thrust of this argument is that the regulation "fails to substantially advance a legitimate governmental interest, since the regulations cover only a fraction of the City's rental housing stock, are not targeted on those in need of affordable housing, and are justified by a nonexistent state of emergency."<sup>67</sup> Further, the non-existent state of emergency is an aspect of this argument that actually is considered an argument on its own.<sup>68</sup> Critics claim that by definition, an "emergency" cannot last as long as the rent regulations have in New York City.<sup>69</sup> For this reason, claiming that the New York City housing market is in a state of emergency is neither logical, nor accurate.<sup>70</sup>

A third argument is that rent regulation discourages new construction and investment in residential real estate.<sup>71</sup> The rationale behind this claim is that, because landlords are unable to make as large of a profit as they would be able to without regulations, they are hesitant and unwilling to invest in new housing.<sup>72</sup> This argument is also rooted in the belief that a free market system is in the best interest of both landlords and tenants.<sup>73</sup> Many critics believe that an "artificial interference with basic market forces in turn lowers the supply of rental housing stock, which in turn results in increased prices for all rental housing."<sup>74</sup> The idea that rent control, by impairing the function of free markets, causes housing shortages that hurt tenants in the long run has gained much popularity amongst economists.<sup>75</sup> The great majority of economists agree that a ceiling on rent reduces both the quality and quantity of housing. Many articles on the subject have reported that "[a]lmost every

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without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

<sup>66</sup> Amici Brief for Petitioner, *supra* note 61, at 5.

<sup>67</sup> *Id.*

<sup>68</sup> *Bloomberg Extends Rent Control for Three More Years*, THE REAL DEAL, Mar. 27, 2012, <http://therealdeal.com/blog/2012/03/27/bloomberg-extends-rent-control-for-three-more-years/>.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> See, e.g., McPherson, *supra* note 7, at 1157; *New York Rent Stabilization Law*, *supra* note 15.

<sup>72</sup> *New York Rent Stabilization Law*, *supra* note 15.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> See, e.g., Epstein, *supra* note 62; Michael J. Mandel, *Does Rent Control Hurt Tenants?: A Reply To Epstein*, 54 Brook. L. Rev. 1267 (1989); Paul Krugman, *Reckonings: A Rent Affair*, N.Y. TIMES, June 7, 2012, available at <http://www.nytimes.com/2000/06/07/opinion/reckonings-a-rent-affair.html>.

freshman level textbook contains a case study on rent control, using its known adverse side effects to illustrate the principles between supply and demand.”<sup>76</sup> Two consequences of rent control laws that economists claim are due to the lack of a free market system are: 1) an increase in rent on uncontrolled apartments due to desperation to secure a dwelling; and 2) the absence of new apartment construction because of a fear that rent controls will be extended.<sup>77</sup>

Another central argument against rent regulation is that it is a classic example of public policy that achieves the near opposite of its goal.<sup>78</sup> This is the argument that is targeted by the arbitration proposal in this Note. Critics emphatically point to the circumstances where individuals who are not financially in need of a reduced amount of rent are living in rent-regulated units.<sup>79</sup> One of the most well known examples is actress Faye Dunaway.<sup>80</sup> Ms. Dunaway was summoned to housing court in August 2011, as her landlord alleged that the actress was not using the apartment as her primary residence, as required under the statutes.<sup>81</sup> At the time she was summoned, Ms. Dunaway apparently also owned a home in California.<sup>82</sup> Although the technical reason she was evicted centered on the fact that she was not using the unit as her primary residence, it is troubling to learn about a situation where a rent regulated beneficiary has the means to finance more than one residence. Dunaway was ordered to vacate the apartment. Since this occurred, Ms. Dunaway has become the picture perfect example of a financially undeserving tenant occupying a rent-regulated apartment.<sup>83</sup> The recent Supreme Court case *Harmon v. Kimmel* also involves accusations of an “undeserving” tenant taking advantage

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<sup>76</sup> Krugman, *supra* note 75.

<sup>77</sup> *Id.*

<sup>78</sup> *New York Rent Stabilization Law*, *supra* note 15 (“Rent control has been criticized by housing experts for creating an essentially irrational system where rent paid depends not on what one can afford but on whether one happens to live in controlled or uncontrolled housing.”); *The High Cost of Rent Control*, NATIONAL MULTI HOUSING COUNCIL, <https://www.nmhc.org/Content.aspx?id=7244> (“[r]ent control is an ineffective and often counterproductive housing policy. . . .”).

<sup>79</sup> *The High Cost of Rent Control*, *supra* note 78 (“there is strong evidence that higher income households-not the poor- are the principal beneficiaries of most rent control laws.”).

<sup>80</sup> Christine Haughney, *For Faye Dunaway Real-Life Role in Housing Court*, N.Y. TIMES, Aug. 2, 2011, available at [http://www.nytimes.com/2011/08/03/nyregion/faye-dunaway-subject-of-suit-by-manchattan-landlord.html?\\_r=1&](http://www.nytimes.com/2011/08/03/nyregion/faye-dunaway-subject-of-suit-by-manchattan-landlord.html?_r=1&).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

of a reduced rental fee.<sup>84</sup> James and Jeanne Harmon, the landlords and plaintiffs in the case, have claimed that one of the building tenants owns a home in the Hamptons.<sup>85</sup> According to the Harmons, this tenant currently pays a rent of \$950 per month, approximately fifty-nine percent below the market rate for a similarly situated apartment.<sup>86</sup> The Harmons argue that by providing the tenant with the regulated rent, they are basically financing their tenant's Hamptons home.<sup>87</sup>

### B. *Proponents of Rent Control and Rent Stabilization*

One of the major arguments for the continuation of rent regulation is that, despite instances where the goals of rent control and rent stabilization are not being effectuated, at least for the most part, the goals are effectuated.<sup>88</sup> Proponents believe that the individuals who are truly in need of the reduced fee are, indeed, the ones receiving it.<sup>89</sup> According to the 2011 Federal Housing and Vacancy Survey instituted by the Census, most rent-stabilized tenants today are not affluent.<sup>90</sup> In that report, the median income was approximately \$37,000, with approximately fifty percent of the regulated tenants spending more than one-third of their income on rent.<sup>91</sup> New York State Senator Liz Krueger wholeheartedly believes this sentiment, and has stated "the bottom line for New York City is, absent the continuation of over a million units of affordable housing, we would have a homeless crisis beyond any of our comprehension."<sup>92</sup> This would occur, in part, because of citywide gentrification.<sup>93</sup> Gentrification occurs when affluent classes move

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<sup>84</sup> Amanda Fung, *US Supreme Court Rejects Rent Control Challenge*, RENT STABILIZATION ASSOC., Apr. 23, 2012, available at [http://www.craigslist.com/article/20120423/REAL\\_ES\\_TATE/120429970/us-supreme-court-rejects-rent-control-challenge#](http://www.craigslist.com/article/20120423/REAL_ES_TATE/120429970/us-supreme-court-rejects-rent-control-challenge#).

<sup>85</sup> *Id.*

<sup>86</sup> Adam Cohen, *Rent Control Isn't Unconstitutional, It's Necessary*, TIME MAG., Mar. 19, 2012, available at <http://ideas.time.com/2012/03/19/what-if-the-supreme-court-kills-rent-control/>.

<sup>87</sup> *Id.*

<sup>88</sup> Steven Wishnia, *Why The Push To Abolish Rent Regulation Is Stupid And Irresponsible*, THE GOTHAMIST, July 31, 2013, [http://gothamist.com/2013/07/31/abolishing\\_rent\\_regulation\\_is\\_stupi.php](http://gothamist.com/2013/07/31/abolishing_rent_regulation_is_stupi.php).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Jeffrey James Minton, *Rent Control: Can and Should It Be Used To Combat Gentrification?*, 23 OHIO N. U. L. REV. 823, 823 (1997).

from high-end neighborhoods and residential areas to lower-income areas.<sup>94</sup> This movement converts the previously low-income area into a high-income area.<sup>95</sup> This happens because, as the more affluent classes move in, there is an increase in the demand for housing.<sup>96</sup> This increase in demand causes landlords to raise rents due to the limited supply of apartments, thereby attracting more high-income residents and displacing the low-income residents.<sup>97</sup> This displacement and conversion of neighborhoods “is seen as an inequitable social externality that should be controlled.”<sup>98</sup> Rent regulation tries to control the demand of upper class “gentrifiers” into a neighborhood, while protecting existing residents already living in the community.<sup>99</sup> If gentrification infects New York City neighborhoods, the island once accessible to all will only be obtainable by the rich. If this were to occur, New York City would essentially lose its appeal as a genuine metropolitan area, especially one that has been known for its diversity.

A second argument that gets a lot of attention surrounds the rejection of the idea that rent regulation deters new construction and promotes abandonment. Proponents, in response, cite studies “evidenc[ing] that abandonment of buildings is concentrated in poor neighborhoods . . . and other cities that never had rent control.”<sup>100</sup> Further, it is proposed that post-1969 buildings were left without regulations for the purpose of encouraging future construction.<sup>101</sup> The basic premise of this critique of rent control is that the housing system is better off as a “free market,” without the meddling hand of the government.<sup>102</sup> Proponents directly counter this assertion, holding that a free market system would not be better for landlords and tenants. Proponents fear what would come of the housing market if the government were to maintain a *laissez-faire* approach and repeal all regulation. Because rent regulation would not be continued if the vacancy rate throughout New York City were above five percent, this fear of a free market system is

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<sup>94</sup> *E.g., id.* at 823–24; Ray Telles, *Forgotten Voices: Gentrification and Its Victims*, 3 SCHOLAR 115, 144 (2000).

<sup>95</sup> Minton, *supra* note 93, at 823–24.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> McPherson, *supra* note 7, at 1162.

<sup>101</sup> *E.g., id.* at 1157; *New York Rent Stabilization Law*, *supra* note 15; Timothy L. Collins, *Fair Rents or Forced Subsidies Under Rent Regulation: Finding A Regulatory Taking Where Legal Fictions Collide*, 59 ALB. L. REV. 1293, 1312 (1996).

<sup>102</sup> McPherson, *supra* note 7, at 1157.

based on the fact that an uncontrolled system of supply and demand in the City would inevitably lead to price gouging.<sup>103</sup> According to proponents, “without the regulations, renting an apartment here would be like trying to buy batteries during Hurricane Sandy.”<sup>104</sup>

A third argument advanced by proponents is that rent regulation statutes are neither due process nor regulatory takings violations. This claim is based upon the repeated rulings of the Supreme Court that establish the opposite of what critics claim. In *Federal Home Loan Mortgage Corp. v. New York State Division of Housing and Community Renewal*,<sup>105</sup> *Rent Stabilization Association of New York City v. Higgins*,<sup>106</sup> and *Yee v. City of Escondido*,<sup>107</sup> the Court unanimously rejected a claim that rent-control ordinances were an unconstitutional taking of property.<sup>108</sup> This is the exact contention raised in the *Harmon v. Kimmel* case, and it was rejected there as well.<sup>109</sup> The Harmons argued that the rent stabilization law effects a permanent physical occupation of their property on the “ground that it affords their tenants rights and protections having attributes of fee ownership.”<sup>110</sup> The court rejected this assertion, in part because of the long line of decisions holding that “governmental regulation of the rental relationship does not constitute a physical taking,” and because the Harmons “concede[d] that they acquired their property in 2005 with full knowledge that it was subject to the Rent Stabilization Law.”<sup>111</sup> The Court considered this to be acquiescence in the property’s continued use as rental housing.<sup>112</sup> Further, the courts in *Block v. Hirsch*,<sup>113</sup> *Pennell v. City of San Jose*,<sup>114</sup> and *Dawson v. Higgins*<sup>115</sup> established that the due process clause is not violated through rent

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<sup>103</sup> Wishnia, *supra* note 88 (“The combination of inflation, the housing shortage, and fraud has led to the deregulation of almost every vacant apartment in the lower half of Manhattan, and pushed up rents all over the city.”).

<sup>104</sup> *Id.*

<sup>105</sup> *Fed. Home Loan Mortg. Corp. v. New York State Div. of Hous. and Cmty. Renewal*, 83 F.3d 45 (2d Cir. 1996).

<sup>106</sup> *Yee v. City of Escondido*, 503 U.S. 519 (1992).

<sup>107</sup> *Rent Stabilization Ass’n of New York City, Inc. v. Higgins*, 630 N.E.2d 626 (N.Y. 1993).

<sup>108</sup> SCHERER & FISHER, *supra* note 6, § 4:1.

<sup>109</sup> *Harmon v. Markus*, 412 Fed. Appx. 420 (2d Cir. 2011).

<sup>110</sup> *Id.* at 422.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *See Block v. Hirsh*, 256 U.S. 135 (1921).

<sup>114</sup> *See Pennell v. City of San Jose*, 468 U.S. 1 (1988).

<sup>115</sup> *See Dawson v. Higgins*, 154 Misc. 2d 811 (N.Y. Sup. Ct. 1994).

regulation, as the regulations are a permissible use of police power.<sup>116</sup> Aside from the clear and repeated decisions of the courts on this matter, another point raised describing why the constitutional takings and due process clause arguments hold no merit is that rent regulations are just one of various ways the government regulates property that could reduce the value that the owners are able to extract.<sup>117</sup> If rent regulations are unconstitutional, then are zoning laws as well?<sup>118</sup>

### C. *Gentrification and Rent Regulation*

In present times, New York City is facing a real threat of city-wide gentrification. Gentrification is often referred to as “an upward spiral [of a neighborhood] with deleterious side effects.”<sup>119</sup> As previously discussed, gentrification begins with a small sprinkling of more affluent individuals into a low-income neighborhood.<sup>120</sup> These individuals, appropriately coined “pioneers,” increase the reputation of the neighborhood.<sup>121</sup> As the reputation of the community increases, more “gentrifying pioneers” are attracted to the area. The influx of higher income individuals often occurs seamlessly, as this new class of residents “can easily outbid the previous low income tenants for the space that they want.”<sup>122</sup> Gentrifiers provide landlords an incentive to upgrade their units and, accordingly, raise rent prices. With this upward trend in the community and rents, “anticipation of even greater capital gains can generate explosive price increases.”<sup>123</sup>

One of the main problems gentrification brings to a city is displacement of those who once were able to not only live in certain neighborhoods, but thrive there as well.<sup>124</sup> For example, East Harlem has seen a large decrease in the population of African Americans.<sup>125</sup> Census data from 2000 to 2010 evidence significant drops

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<sup>116</sup> SCHERER & FISHER, *supra* note 6, § 4:3.

<sup>117</sup> Cohen, *supra* note 86.

<sup>118</sup> *Id.*

<sup>119</sup> Minton, *supra* note 93, at 823.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 831.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 832.

<sup>124</sup> *See*, Minton, *supra* note 93, at 831–33.

<sup>125</sup> *Bill Thompson on New York City Gentrification: ‘People Are Being Priced Out’*, THE HUFFINGTON POST, August 21, 2013, [http://www.huffingtonpost.com/2013/08/21/bill-thompson-new-york-city\\_n\\_3791717.html?](http://www.huffingtonpost.com/2013/08/21/bill-thompson-new-york-city_n_3791717.html?) [hereinafter *Bill Thompson*].

in the African American population in not only Harlem, but also Central Brooklyn as well, which were once “traditional strongholds.”<sup>126</sup> Not surprisingly, the median housing prices over this time in Harlem have jumped at least eighteen percent.<sup>127</sup> Andrew Padilla, a Harlem native, documented the realities of gentrification in East Harlem in his film *El Barrio Tours: Gentrification in East Harlem*. In the film, Padilla chronicles different residents throughout the area and his or her struggles with gentrification. Padilla commented:

I started seeing a lot of the friends, family, small businesses I’d known, grown up with my whole life, leaving the area, and I wanted to know why. Why was a neighborhood that was completely disinvested from the public and private sector for decades all of the sudden valuable and of interest to people who never would have otherwise imagined coming here?<sup>128</sup>

His answer: gentrification.<sup>129</sup> It is not only natives to the area that are recognizing the effects of gentrification. Commenting on the changes occurring throughout the city, former Governor David Paterson stated “[i]t’s very sad because the people who stayed here during the midst of poor housing, drugs, crime, unemployment, poor and inadequate healthcare facilities, and often a failed educational system, now that the community is pulling itself together, they can’t afford to live here.”<sup>130</sup>

Some individuals who are displaced may suffer psychological harm due to the displacement. These detrimental psychological effects are felt most severely when the poor and elderly are uprooted from their homes, a disproportionate number of which are displaced.<sup>131</sup> Aside from physical displacement, gentrification can also result in indirect displacement. This occurs because as the rents increase, so do the prices of food and other services located within the community.<sup>132</sup> Very quickly, services that signal an

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Jessica Blank, *Gentrification in East Harlem is Ongoing*, ABC NEWS, July 23, 2013, available at [http://abcnews.go.com/ABC\\_Univision/News/gentrification-east-harlem-ongoing/story?id=19712224](http://abcnews.go.com/ABC_Univision/News/gentrification-east-harlem-ongoing/story?id=19712224).

<sup>129</sup> *Id.*

<sup>130</sup> Bill Thompson, *supra* note 125.

<sup>131</sup> Minton, *supra* note 93, at 833.

<sup>132</sup> *Id.*

older and lower income area, like laundromats, disappear<sup>133</sup> and cheap corner bodegas are transformed into expensive gourmet food shops.<sup>134</sup> These increases in not only rent prices, but also commodity prices, can quickly drain the income of low-income tenants.<sup>135</sup> This can result in an inadequate supply of food, clothing, and other necessities.<sup>136</sup>

Rent regulation statutes are frequently cited as a way to maintain the affordability of apartments and prevent the adverse effects of gentrification, and for obvious reasons. If a community has multiple buildings and units that are rent regulated, the threat of gentrification is diminished because that tenant can no longer be “outbid” and displaced from the unit (assuming the unit stays regulated and the tenant does not move out willingly). The luxury de-control adjusted gross income amount of \$200,000 is one way the statute attempts to ensure that lower to middle income tenants occupy the regulated unit, therefore keeping these individuals in their neighborhoods and homes. Rent regulation laws should remain intact to maintain a restriction upon landlords, preventing large and overbearing rent increases for the tenants that would be most vulnerable.

#### D. *Connection to Alternative Dispute Resolution*

The main focus of this Note is on the creation of an alternative dispute resolution forum to handle landlord-tenant disputes regarding whether or not, when considering the threat of gentrification, the tenant is an appropriate candidate for a rent controlled or stabilized unit. This is just one example of the problems that landlords claim are associated with rent regulation laws. In spite of this, it is a problem that, if solved or addressed, would alleviate the other issues landlords base claims to fight rent regulation upon. This is because another one of the main reasons landlords dislike rent regulation is that the laws can seriously curtail their profit potential. Because of this, landlords are more willing to fight the regulations in their entirety, and have a strong incentive to remove the

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<sup>133</sup> Jake Dobkin, *Ask a Native New Yorker: How Guilty Should I Feel About Being a Horrible Gentrifier?*, THE GOTHAMIST, Sept. 23, 2013, available at [http://gothamist.com/2013/09/23/ask\\_a\\_native\\_new\\_yorker\\_how\\_guilty.php](http://gothamist.com/2013/09/23/ask_a_native_new_yorker_how_guilty.php).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, *supra* note 2, at 1840.



regulations. If landlords had a means of increasing their profits in certain situations, without having to broadly challenge rent regulations, this incentive to challenge and eventually end rent regulations would likely diminish. It may also help landlords to become more open-minded and cooperative participants in rent regulations.

The debate over rent regulation laws and their longevity within New York City is not going to be solved in the courts, which is evidenced through the recent denial of the Supreme Court to hear the *Harmon v. Kimmel* case.<sup>137</sup> Wide scale adjustments and broad-reaching litigation is not the best way to handle the fight between landlords and tenants anyway, because each dispute is truly unique. Within rent control and rent stabilization disputes, there are situations where tenants who financially need the stabilized apartments are occupying them, and also situations where the tenants seem to be financially undeserving of the reduced rental price. Because of the variance in each circumstance, any conflict that may arise with regard to the amount of rent charged should be addressed on a case-by-case basis with the benefit of private attention. It is without a doubt that something within rental regulations needs to be adjusted. The laws and administration of rent regulations should not remain as they are. Even though there are mechanisms in place to raise rent in some cases (such as the major capital improvements increase and luxury decontrol) these do not seem to be effective enough for landlords to embrace the rent regulation system as evidenced by landlords continued efforts to defeat the statutes.

The rent regulation statutes should be modified to reflect the interests of modern society. Further, low income tenants who rely on rent regulation to be able to afford and stay in their homes should not have to worry each time a motion is submitted into court challenging the constitutionality of the program upon which they rely. With the renewal of rent regulation laws reoccurring every three years, even if the arguments lay low for a year or two, this problem will be a resurrected issue once the time comes again to vote upon it. If landlords are able to adjust their situations privately and fairly, then there will be no need to waste so much energy and resources by attempting to challenge the issue through litigation.

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<sup>137</sup> *Harmon v. Kimmel*, 132 S.Ct. 1991 (2012) (“Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.”).

The best method to resolve these disputes is arbitration. Arbitration is a method of dispute resolution that involves a binding decision made by a neutral arbitrator or board of arbitrators.<sup>138</sup> The role of the arbitrator who presides is similar to that of a judge in a non-jury court trial, he decides both issues of law and issues of fact.<sup>139</sup> Arbitrators have broad discretion to decide cases without strict application of legal principles and are able to fashion remedies that are broader or more flexible than those available in court.<sup>140</sup> The case is decided after an arbitration “hearing,” where the arbitrator receives evidence from the parties.<sup>141</sup> Arbitration hearings are different than trials in many important ways. First, there is a more informal approach taken through the hearings than that taken through trial. This is evidenced through the relatively lax evidence rules for a hearing, especially in comparison to those involved in a trial.<sup>142</sup> Second, the decision or outcome of the arbitration hearing, unlike that in a trial, is binding and therefore not subject to appeal.<sup>143</sup> Some well recognized benefits of arbitration are the relatively low cost in comparison to litigation, and the finality of decision making that occurs at the conclusion of the hearings.<sup>144</sup> These benefits are all imperative to the issue at hand. Since the dispute involves a landlord and tenant, the forum utilized in settling the legal matters must be cost efficient and not overly burdensome. The forum should be available, not only for the wealthy landlords who may fund the arbitration process, but to all landlords regardless of their relative social economic status. Further, the less formal setting, especially with regard to more relaxed standards of evidence, is important. Since the parties may be unable to seek advice and assistance of counsel, it is important that lack of counsel does not prove to be an insurmountable impediment. Both the landlord and tenant should be able to adjudicate properly without the need of assistance from an attorney.

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<sup>138</sup> Stuart H. Bompey, Michael Delikat & Lisa K. McClelland, *The Attack on Arbitration and Mediation of Employment Disputes*, 13 *LAB. LAW.* 21, 27 (1997).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 28.

<sup>143</sup> *Id.* at 36.

<sup>144</sup> See Christopher Baum, *The Benefits of Alternative Dispute Resolution in Common Interest Development Disputes*, 84 *ST. JOHN'S L. REV.* 907 (2010).

IV. WHY IT WILL WORK: A DISCUSSION AND COMPARISON OF  
ARBITRATION USED IN OTHER LANDLORD  
AND TENANT DISPUTES

Arbitration is gaining popularity in many different fields of law, and landlord-tenant law is no exception. One area in particular where arbitration has been utilized in New York is within condominiums (condos) and cooperatives (co-ops) disputes.<sup>145</sup> In the context of co-ops and condos, the “landlord” is represented as “board members.” As the amount of condos and co-ops in the City has increased, so has the number of disputes between residents and the board members.<sup>146</sup> Given the special interest, beyond that of a regular tenant, which a condo and co-op tenant has in their home due to their ownership interest, disputes amongst these parties tend to spark deep resentment and strife.<sup>147</sup> The relationship between a landlord and tenant in a rent-regulated unit is more similar to this type of relationship than the traditional. This is because tenants have a special interest in remaining in the unit for a lifetime, maybe even keeping the unit in the family for longer than that, and landlords have limited options in dealing with these tenants. For example, a landlord of an unregulated unit has more options and opportunities available to evict a tenant, and can easily get a tenant to move out by increasing the rent to an undesirable number. Landlords of rent regulated units and board of directors, however, face more obstacles when it comes to eviction, and cannot simply raise the rent charged. The tenants’ interests are more protected, making the relationship seem more complex.

Alternative Dispute Resolution methods, specifically arbitration, are effective ways to handle disputes between condo or co-op boards and tenants.<sup>148</sup> Five main advantages that make arbitration an effective means for these types of disputes are: 1) cost-effectiveness; 2) privacy; 3) streamlined process and increased accessibility; 4) the ability to select an arbitrator with expertise and specialized knowledge; and 5) the potential for greater flexibility in results.<sup>149</sup>

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<sup>145</sup> *E.g.*, Baum, *supra* note 145, at 907; Gerald Lebovits & Lucero Ramirez Hidalgo, *Alternative Dispute Resolution in Real Estate Matters: The New York Experience*, 11 *CARDOZO J. CONFLICT RESOL.* 437, 451 (2010).

<sup>146</sup> Baum, *supra* note 145, at 907.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 923.

<sup>149</sup> *See, e.g.*, Baum, *supra* note 145, at 923–30; Lebovits & Hidalgo, *supra* note 146, at 442–48.

These same reasons are what make arbitration the best choice to handle the type of dispute proposed in this Note.

First, a widely accepted advantage of arbitration is cost-effectiveness, especially in comparison to litigation.<sup>150</sup> The money saving nature of arbitration is crucial in common interest communities, because often times the feud does not involve a large amount of money, and typically reflects quality of life rather than financial issues.<sup>151</sup> The relationship at the center of the dispute proposed in this Note, between a landlord and tenant of a rent regulated apartment, involves a monetary value that will likely be greater than the one that is at issue in common interest community disputes. Regardless of this fact, it is always beneficial to have a means for dispute settlement that is not cost prohibitive. This is especially important for rent regulation disputes, as the tenant and the landlord may be impoverished.

Second, another major advantage of arbitration that is suitable for both rent regulated tenant disputes and common interest community disputes is privacy. Arbitration hearings are not open to the public or the media.<sup>152</sup> Even more significant is that an arbitrator's final determination is typically not published or made public.<sup>153</sup> This confidentiality is valuable to common interest communities and to the dispute central to the proposal of this Note. It is vital that other tenants in the building do not involve themselves if a dispute arises and a landlord decides to take a particular rent regulated tenant to arbitration in an effort to increase the rent. The financial documents and other personal information will be a part of arbitration, and it is imperative that this information remains private and outside of the reach of nosy neighbors. Further, keeping the discussions private helps foster agreeability between the parties, as they do not need to be preoccupied with appearing weak in their positions to the public or their neighbors.<sup>154</sup> Both parties will have more incentive and an easier time focusing on themselves and the issue at hand. In this regard, landlord tenant rent regulation disputes would be similar to common interest community disputes.

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<sup>150</sup> Baum, *supra* note 145, at 923–30.

<sup>151</sup> *Id.* at 924.

<sup>152</sup> *Id.* at 926.

<sup>153</sup> *Id.*

<sup>154</sup> *E.g.*, Baum, *supra* note 145, at 927; Lebovits & Hidalgo, *supra* note 146, at 448.

Third, streamlined decision-making and increased accessibility are both key benefits of choosing arbitration over litigation.<sup>155</sup> Because of the decrease in procedural requirements and formalistic rules, the decision making process is much shorter, and the adversarial process is easier to navigate for all parties.<sup>156</sup> This is advantageous because it saves the parties from the burden of a long and draining litigation battle. It also helps promote peace in the living environment, by keeping the dispute time to a minimum. Lastly, it helps ensure that the result is a decision based on the merits of the case, and not because of a procedural issue or technicality.<sup>157</sup> This is vital because the landlord and tenant may not be able to afford private counsel and will thereby be more susceptible to making procedural and technical errors. The possibility of making a mistake should not be such a huge detriment to either party in the pursuit of their case.

Fourth, the ability to select an arbitrator with expertise and specialized knowledge is a valuable benefit.<sup>158</sup> Just as in common interest development communities, it would be useful to have an arbitrator for the rent regulation disputes proposed in this Note. Having an arbitrator that is already well versed in the area that is at issue is favorable for many reasons; not only does it help ensure a better, more legitimate result, but it also saves extra time and money because the arbitrator will not have to be educated by the parties.<sup>159</sup> Through regular litigation, the only specialized knowledge you are guaranteed to have is whatever the Judge has experience in and will therefore bring to the bench. The extra assurance that the decision maker will be intellectually and experientially ready for the dispute is a key benefit.

Lastly, and arguably most importantly, is that arbitration allows for more flexible results than litigation.<sup>160</sup> Arbitrators have much more discretion and leeway in deciding the relief that can be afforded to an individual.<sup>161</sup> In the area of rent regulation, this will be valuable because no two cases will be the same; hard fast rules or relief formulas would not resolve the disputes effectively. According to the Federal Guidelines for Arbitration, “the remedy must ‘draw its essence’ from the underlying agreement that autho-

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<sup>155</sup> Baum, *supra* note 145, at 924–25.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 925.

<sup>158</sup> *E.g.*, Baum, *supra* note 145, at 928; Lebovits & Hidalgo, *supra* note 146, at 448.

<sup>159</sup> Baum, *supra* note 145, at 928.

<sup>160</sup> *Id.* at 929–30.

<sup>161</sup> *Id.*

rizes the arbitration.”<sup>162</sup> In this case, the underlying agreement would be that the arbitrator has the ability to examine financial records and determine an appropriate rent payment. Allowing the arbitrator to do this will make for an effective system of arbitration in this context.

## V. PROPOSAL

This Note proposes a forum where landlords are able to bring tenants of rent regulated apartments to arbitration proceedings in order to determine if the tenants truly represents the type of individual who should be receiving a reduced rental fee and reaping the benefits of a rent regulated apartment. Handling rent regulations in this way will best help effectuate the goal of rent regulation, which is to help housing remain affordable to all different economic classes in New York City. Further, it will help combat gentrification, as reduced rental prices will be geared towards lower income individuals who represent a true necessity for it. It would also help the plight of the landlords who often are faced with catering to tenants who are taking advantage of the reduced rental fee because the tenants are not genuinely in need of the discounted price. An arbitration forum would save resources, especially time, of both the landlord and the court, and the proposed system will also prevent landlords from making fruitless claims in a desperate attempt to remove tenants from their regulated units.

In order to effectuate this system, every tenant under a rent regulated lease agreement would be mandated to partake in an arbitration hearing and be bound by the decision if the landlord elects to take advantage of the opportunity to attempt to adjust the tenant's rent price. This would involve inserting a mandatory arbitration clause into every rent regulated lease, allowing tenants to only be eligible for a rent regulated apartment if they agree to sign the lease and manifestly consent to the clause. Once this clause is inserted into the lease, it would be within the discretion of the landlord to decide whether or not to initiate the proceeding. The cost of the arbitration hearing would be on the landlord. There would also be a limit imposed so that a landlord is only allowed to challenge a tenant's rent regulated status once every five years. The imposition of the cost burden upon the landlord and the limit

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<sup>162</sup> *Id.*

of the number of times that a landlord can instigate a hearing against a particular tenant would help to prevent frivolous claims. The system must have these disincentives in place, otherwise landlords will feel as if they have nothing to lose and they would take advantage of the system and possibly subject tenants to an onslaught of proceedings in order to coerce them into moving out. It also makes sense that the burden of payment is on the landlord because a landlord will be inclined to pay for these services, as it can be merely an initial investment in order for the landlord to be entitled to collect a larger amount of rent.

To initiate the proceedings, the landlord would submit an initial statement explaining the reasoning he or she has for challenging the tenant's rent regulated status, and if it seems worthy, the arbitrator will accept the case. Acceptance of a case will be in the full discretion of the arbitrator. The arbitrator will be encouraged to handle each application on a case-by-case basis, and to decide solely on the allegations and facts of each case when deciding whether or not to accept the landlord's case for a hearing. The presumption will be in favor of the landlord, as there are already measures in place to prevent frivolous claims.

After accepting a case for a hearing, the landlord will notify the tenant, and each side will have a certain amount of time to collect relevant evidence to help prove why or why they are not eligible for the rent regulation and reduced rental price. In the true form of arbitration, the evidence rules will be relaxed. For example, hearsay will be permitted if in the form of a sworn statement. In cases where high profile individuals are occupying the units, like with Faye Dunaway, the landlord will have an easier time proving that the unit is not being utilized as intended and is essentially being wasted on an individual who is not in need of it. In some cases, the regulated unit is being used as an office, or it is one of the multiple homes occupied by the tenant. It seems that it will be easy to prove this situation, possibly with affidavits of clients who have visited the tenant in the office or by public records showing that the individual owns title to another property. In cases where the landlord knows little about the tenant and tenant's financial history and occupation, it seems like it will be more difficult. Regardless, even if the landlord does not have much information to base his or her suspicions on, the burden will be on the tenants to persuade the arbitrator that they are in need of the regulated unit. This information will be relevant when calculating a better price for the tenant to pay, if this becomes necessary.

There will also be a burden upon the landlords. The landlord's burden will be to show the amount of return and profit the landlord is making under the current rental scheme and price. This information will be relevant when calculating a better price for the tenant to pay, if this becomes necessary. This is because it is much easier for the tenants to prove that they are in need of the apartment as they are the ones privy to the information regarding their finances. Further, they are benefitting from a government subsidy, and it is equitable to require those benefitting from the government to bear the burden of maintaining that subsidy. Examples of the information the tenant will be required to bring to the meeting are bank account statements (both checking and savings), W2 forms, taxes filed within the last three years, and an inventory of other real property the individual rents or owns. This will be important because luxury decontrol allows an individual to take advantage of regulated rent when their income is under \$200,000. But, income as calculated under luxury decontrol does not take into account other means of acquired wealth, like inheritance or savings. It also does not take into account the expenses and lifestyle of the individual; a \$200,000 adjusted gross income results in drastically different lifestyles depending upon whether or not the individual is married with a family to support or living alone without many additional financial obligations. A person's net worth is more relevant than income alone in determining the appropriate amount of rent that should be paid.

After the evidence is presented to the arbitrator, the arbitrator will determine whether the regulated amount is truly necessary or if a higher rent payment would be more appropriate. Again, the presumption will be in favor of the landlord, and the tenant will bear the burden of asserting the need for rent-regulated status. If a higher rent payment is more appropriate, the parties will engage in negotiations regarding a fair rent amount. This "fair rent amount" may be less than the market standard, but must be higher than the regulated amount. This is because even if the tenant does not need to pay a drastically reduced rental fee, it doesn't mean that the rent should skyrocket to the average market rate. The unit is still technically regulated, and should not become drastically unregulated. It would be a win-win situation if the new rent amount may be lower than the market rate, but higher than the regulated amount. This helps the tenant, because he or she will presumably be getting a good deal on the apartment that accurately reflects their net worth. Further, it also helps the landlord, because even though he



or she will not be making the market average he or she will still be collecting more than they were before. Allowing the rental agreement to be below the market value still affords the tenants some protection, they will not have to pay an astronomical amount more, but a realistic number based on what they can be expected to afford. One way to determine this may be by using the standard that an individual should not be paying more than thirty percent of their yearly income on rent. The higher the income, even if it is below the high amount of \$200,000, the higher the rent payment may be.

After engaging in negotiations regarding the proper rent amount, the arbitrator will make the binding and final decision. If the tenant is found to truly need the regulated amount, the landlord will be unable to bring the tenant back to arbitration within five years, regardless of an obvious change in circumstances. As previously mentioned, this will help combat frivolous claims, and provide some peace of mind to tenants as they will have protection against being hauled through this process year after year. The decision reached at the end of arbitration is binding. However, the tenant is able to refuse the new rent amount and terminate the lease. The tenant will not be penalized for terminating the lease because the initial lease agreed upon was for a different rent amount than what is now being requested. This helps with the problem that tenants often do not have an incentive to move when they are occupying a rent-regulated unit, and take advantage of the system for this reason. The newer rent amount will give the undeserving tenant an incentive to live elsewhere, and will open up the regulated unit to another individual who is more worthy of the controlled rent. It is important to note that this unit, when the tenant moves out, will remain regulated (assuming that the luxury decontrol grounds are not at issue) for the next tenant who moves in (whether it be a successor of the previous tenant or a new tenant all together). This tenant, however, will be subject to the same process of arbitration for determining a proper rent amount.

## VI. CONCLUSION

Residents of New York City have reason to be concerned over the longevity of rent regulation. Even for individuals who are not a landlord or tenant of a regulated building, the regulations may have broad-reaching effects on different aspects of the City, partic-

ularly, gentrification. The fight against gentrification and the ever-increasing rental costs in New York City should be confronted by changes that will help accommodate the largest number of New York City residents as is possible. Keeping the best interests of both landlords and tenants in mind, adjustments to the rent regulation scheme may help City residents deal with the current issues they are facing. This Note proposes a beneficial way to effectively utilize the rent regulation scheme. It is important to afford both landlords and tenants with a solution to some of the grievances that have developed and loom large over the City. By making necessary adjustments to the rent regulation scheme of New York City, the diversity that contributes to the appeal of Manhattan may be preserved, along with a reasonable rental market that caters to multiple economic classes.

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