New York State Legislature

March 15, 2011

The Honorable Andrew M. Cuomo
Governor
New York State
NY State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

On June 15, 2011, the Emergency Tenant Protection Act (ETPA) expires. If the State does not act, millions of working and middle class New Yorkers will be at immediate risk of losing their homes. Even if the ETPA is renewed in its current form, the loss of rent-regulated units through vacancy decontrol and the reduction in the number of affordable units in Mitchell-Lama and project-based Section 8 developments will continue unabated. The abuse of the Individual Apartment Improvement (IAI), Major Capital Improvement (MCI), "vacancy bonus" and preferential rent systems, which enable landlords to levy illegitimate rent increases, will persist. If current laws are not extended and strengthened, New York City and surrounding counties will become even more economically stratified and long-time tenants will be priced out of their own neighborhoods. The younger generations of people who have historically given New York City's five boroughs their dynamism, creativity and continuous sense of reinvention will not be able to afford to move here. The City will become a place for the very wealthy and the very poor and no longer within the grasp of those of moderate means.

While we were disappointed that the 30-day Executive Budget amendments released on March 3 did not include language extending and strengthening the ETPA, we believe that with your leadership it is still possible to accomplish this objective through the budget process. The repeal of vacancy decontrol and other reforms offered in Assembly and Senate bills A. 2674-A / S. 2783-A are essential to safeguard our stock of affordable housing. These reforms will allow the residents of rent-stabilized apartments, whose median household income is $36,000 per year, to remain in the city, and will preserve the diversity of this city—where more than half of all rent-stabilized tenants are members of communities of color. We ask that you act boldly on tenants' behalf by requiring these reforms to be a part of any budget agreement. In a difficult economic time, this issue has no fiscal implications for the State. Under your leadership, the solutions that have eluded tenants in previous years are within reach.

The primary purpose of rent regulation in New York City and the three suburban counties of Nassau, Rockland and Westchester, has been to ensure fairness and affordability in an overheated market when vacancy rates are so low that landlords are no longer subject to competitive pressure to keep rents affordable or to renew the leases of tenants who assert their contractual or legal rights during their tenancy. Rent stabilization can exist only during a housing emergency, which is defined by law as a market where the vacancy rate has fallen below 5%. Today the vacancy rate is 3%. New York City first declared an emergency in 1974. This emergency has endured throughout the years, but the crisis, which had been chronic, has become acute. Because the vacancy rate is so low, tenants have nowhere to move and no affordable apartments to rent, and landlords are in a position to engage in price gouging and other practices that are unacceptable even in a free market economy.

Repealing vacancy decontrol must be the first step toward protecting our shrinking stock of affordable housing. The system of vacancy decontrol has served as an incentive to some landlords to harass tenants out of their apartments, has become rife with fraud and has been plagued by a complete lack of enforcement. For the 15+ years that vacancy decontrol has been in effect, many landlords have simply treated vacant apartments as deregulated, without spending the necessary funds to reach the $2000 decontrol threshold, thereby achieving de facto decontrol. New tenants are not offered rent-regulated leases and are not given histories of apartment rents. Since the State's rent regulation system is entirely complaint-driven, there is no enforcement unless the tenant files a complaint (and within the four-year look back period). As your representatives recently testified at a hearing of the Assembly Housing Committee, landlords are basically on an "honor system" when they choose to deregulate apartments, and that system, quite frankly, has been a boon for those landlords that choose to violate the law.

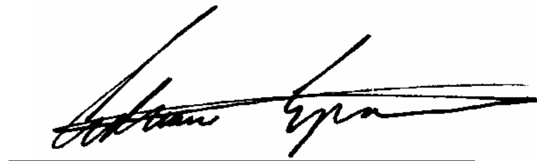
No one knows how many apartments have been illegally deregulated by dishonest landlords, but the best estimates are that more than 300,000 apartments have been lost since 1994. The ability of landlords to include MCI costs as well as unverified IAIs in the permanent base rent has enabled vacancy decontrol to proceed unchecked. Most landlords simply do not report to New York State Homes and Community Renewal (HCR) when they remove apartments from the system. While some have suggested "indexing" the $2,000 decontrol threshold to the rate of inflation or other economic indicators, it is immaterial to the concern of illegal deregulation whether the number is $2,000 per month or higher. Dishonest landlords will continue to remove apartments from regulation through the back door, knowing the odds of getting caught are about the same as winning the lottery. If we believe in the basic premises of the rent-regulation system, there is simply no reason to permit apartments to be deregulated on a piecemeal basis.

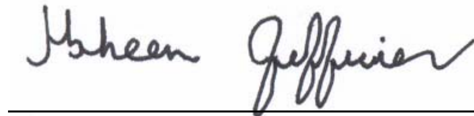
For the foregoing reasons, repealing vacancy decontrol is the central element of any bill that would genuinely strengthen the law. However, as mentioned above, there are other objectives that are also essential. We must reduce the monthly increases permitted under the MCI and IAI systems, and ensure that they are subject to proper HCR oversight and approval and only endure as long as is necessary to cover the costs of bona fide improvements. We must reduce or eliminate "vacancy bonuses" and ensure that any such bonuses are not available for the same apartment multiple times over a short period. We must ensure that any of the 70,000 units currently in the Mitchell-Lama and Project-Based Section 8 programs will be subject to rent regulation if they are removed from these programs. We must ensure that landlords who offer a

"preferential rent" that they claim is below the legal limit cannot later raise the rent beyond the percentages permitted by the Rent Guidelines Board for the duration of a tenancy. And, finally, we must not offset the benefits of the above measures by meaningfully weakening the law in other areas; this includes refraining from creating new loopholes for landlords or overriding well-reasoned judicial decisions like *Roberts*, *Cintron*, *Grimm* and *Thornton*.

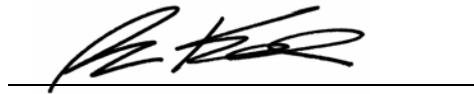
In prior years, the renewal of the Emergency Tenant Protection Act has been addressed on the precipice of or immediately after these protections had been allowed to lapse. This has resulted in chaos, panic and the adoption of amendments to our housing laws that have not served the public interest. Allowing a similar outcome to occur is unacceptable and an inappropriate method of legislating an initiative that affects 2.5 million New Yorkers. As we work together to restore our constituents' trust in State government, the inclusion of long-sought tenant protections in an on-time budget would dramatically further this objective.

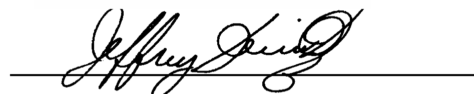
Sincerely,





Liz Krueger





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