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## Landlords are exploiting a key loophole to raise rents on thousands of apartments

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TWEET



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## COST OF LIVING

**\$2,775** Rent threshold at which units are removed from regulation

**167,000** Number of units estimated to have been deregulated since 1993 due to rent increases prompted by IAs

In the fall of 2013, when apartment 1E at 171 W. 81st St. was vacated, the owner did what landlords have done with tens of thousands of other [rent-regulated units](#) in the city. Stellar Management claimed it had spent a bundle on renovations, which—combined with the 20% rent increase permitted when a tenant leaves—allowed it to push the \$647 regulated monthly rent above \$2,500—to the threshold at the time to make it a market-rate unit. A few months later Stellar rented the Upper West Side pad to massage therapist Jonathan Saballos for \$3,300 a month.

It seemed like a routine example of the steady exodus of such units from the [city's pool of about 900,000 rent-regulated apartments](#). Except that in January, after Saballos lost his roommate and then his job and was taken to housing court by Stellar for failing to pay rent, a judge ruled that apartment 1E shouldn't have been deregulated at all.

In the written ruling, Judge Sabrina Kraus of Manhattan Civil Court determined that Stellar had inflated its renovation costs of more than \$71,600 by almost \$45,000—including \$3,500 for a bathtub that was never installed—and had overcharged Saballos at least \$41,193. The judge ordered the owner of the 20-unit building to pay triple damages—\$123,578—and place the apartment back into regulation with a monthly rent of \$1,524.

Housing advocates say such episodes are common in a system where loopholes and lax oversight practically invite owners to pull units out of regulation. A review of several lawsuits against Stellar reveals how expensive or dubious renovations enabled the owner to convert rents to market-rate.

"The city or the state doesn't even know how many illegally deregulated apartments are out there, because they're only really examined when cases like this come up in court," said Mark Hess, an attorney who represented Saballos in the

eviction proceeding. "Stellar thought it was going to be business as usual and they were going to throw my client out of his apartment. Instead we called them out."

Stellar is appealing and will not comment on ongoing litigation, said a spokeswoman for the company, which owns roughly 100 buildings, most of which are in the city.

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Allegations of abuses by landlords are not new. In one high-profile case last year, the Associated Press [reported](#), the family business of White House adviser Jared Kushner failed to disclose rent-regulated units in buildings it owned, then began disruptive renovations that some of those tenants saw as an effort to push them out. Kushner Cos. blamed a third-party document preparer for the erroneous filing and said its renovations were proper, but the episode led to a fine, a lawsuit by tenants and City Council legislation to deter harassment by construction.

Less focus, however, has been given to the method used in Saballos' case, which may have allowed landlords to improperly deregulate tens of thousands of city apartments—and even more of them legally.

## Big fix

After neglect brought affordable-housing stock in some neighborhoods to the point of dilapidation, laws were passed in the 1970s permitting owners to raise regulated rents if they spent money on upgrades. A vacant, rent-stabilized apartment's monthly rent can be lifted by one-sixtieth of the cost of renovating the unit, or one-fortieth in buildings with 35 or fewer units. Such upgrades are called individual apartment improvements, or IAI's.

According to the state's Division of Homes and Community Renewal (HCR), the agency responsible for monitoring rent-regulated apartments, some 167,000 units have been pulled out of regulation in the past 26 years using IAI's, often in combination with buildingwide major capital improvements and other programs that allow for rent increases. That's roughly 50,000 units more than Mayor Bill de Blasio's signature affordable-housing initiative aims to create over 12 years. But many housing advocates and lawyers suspect the volume of apartments deregulated via IAI's is far greater than state records show.

"Many people believe HCR's numbers are low," said Ronald Languedoc, a tenant attorney at Himmelstein, McConnell, Gribben, Donoghue & Joseph. "They're based on the number of exit registrations, but not all landlords file those registrations, because the law doesn't penalize them if they don't. In my practice, I would have to say that only about half the apartments taken out of regulation have histories that show they exited."

IAI's have been a potent tool for landlords because they allow as much spending as is necessary to boost an apartment's rent past a threshold known as high-rent deregulation, which permits a unit to become market-rate. That tipping point was \$2,000 before 2011, when state lawmakers raised it to \$2,500 and then \$2,700. Built-in annual escalations have since lifted it to \$2,775.

But housing experts say deep flaws in the IAI program allow it to be not only the most common way to bring a unit out of regulation but also the most prone to manipulation. One big reason is that a landlord need not prove up front that the work it claims to have done was actually completed. Instead, the state relies on tenants to sniff out impropriety and initiate a challenge. That rarely happens, because a renter who leases a newly market-rate unit may not be aware it was previously rent-stabilized let alone whether any supposed upgrades match up with what the owner reported to the state.

"A landlord can replace kitchen cabinets, a stove and fridge for a few thousand dollars or \$20,000 and who's to know?" said James Fishman, a tenant attorney. "Landlords have long known they can do whatever they want, and even if they get

caught one out of 50 times, it's still worth it. You have to be nuts not to be breaking the law, because the chances of getting caught are so slim."

A tenant who suspects fraud faces a tedious, unfamiliar and potentially costly process to expose it. The first step is inquiring whether an apartment has a regulated rental history with HCR and whether rent increases might be justified by renovations—a difficult evaluation for any tenant. Pressing a case can involve legal fees of thousands of dollars and may sully a renter's relationship with the landlord, who might choose not to renew their lease. Tenants also fear ending up on a blacklist of problematic renters.

"Putting the burden on the tenant isn't a fair or effective way of having a watchdog for the system," said Oksana Mironova, a housing policy analyst with the Community Service Society of New York. "I do this work every single day, and there are times where this system doesn't make any sense even to me."

Privacy rules further hinder policing of the system. Per state law, HCR can release an apartment's rental history only to its current occupant. The lack of a public database of regulated units and their rents means there is usually no way to know when, where or how an apartment was pulled from regulation. Tenant advocates say the lack of transparency prevents them from proactively ferreting out abuses and helping more renters.

Landlords say that's how it should be.

"This is proprietary information, and owners don't necessarily want the whole world knowing their business—and that's understandable," said Mitch Posilkin, an attorney with the Rent Stabilization Association, a trade group that represents landlords, including many who own regulated units. "We don't believe the system is fundamentally flawed. We lived through a time that predates many people's memory, in the 1970s and '80s, when there was widespread abandonment of housing. You need to encourage owners to invest."

Posilkin said scaling back or doing away with IAs would sour landlords on investing in rent-regulated buildings. The result, he said, would be that thousands of properties could slip into the kind of disrepair common in the city's public housing system, which is tens of billions of dollars behind on maintenance and capital investment.



Buck Ennis

Installing a new toilet in one apartment at 1795 Riverside Drive cost \$4,000, according to the landlord. New doorknobs were \$1,350.

## Doorknobs and countertops

The opacity of individual apartment improvements, however, makes them ripe for exploitation. Tenants, advocates and attorneys say it can take a court battle to unearth the details of a purported improvement. In the case of Stellar, which owns 12,000 units, some of that information has come to light during recent litigation and appears to demonstrate how ordinary upgrades can boost rents by extraordinary amounts.

At 1795 Riverside Drive, a 70-unit building in Upper Manhattan, Stellar reported renovating apartments 1A in 2012 and 5H in 2013, raising their rents to \$2,700 a month each, according to listings. Mayra Mahmood, who lived in 1A, and P.G. Lyne of 5H sued Stellar in 2017 as part of an ongoing class-action suit by 59 renters in 18 Stellar-owned buildings.

According to invoices provided by Stellar during the discovery process of the suit, in apartment 1A the landlord paid \$2,200 to install a kitchen sink, \$4,500 for a granite countertop, \$1,500 for a toilet and \$500 for doorknobs. In 5H the kitchen sink cost \$2,500; the granite countertop, \$7,500; the toilet, \$4,000; and the doorknobs, \$1,350.

In total, the invoices show Stellar spent \$52,000 upgrading apartment 1A and \$98,500 on 5H, vastly more than its own architects estimated the renovations would cost, according to filings with the city's Department of Buildings. WAW Architects pegged the work in 1A at about \$35,000, and Atelier New York Architecture estimated that upgrading 5H together with similar work in another apartment in the building would cost \$78,870.

Saballos' unit on West 81st Street, where Stellar reported installing a bathtub for \$3,500, only had a shower, said his attorney, who visited the apartment. Stellar's architect for that job estimated in a DoB filing that the work would cost \$26,000, a bit more than a third of what Stellar said it ultimately spent.

Some tenant advocates say IAI regulations are counterproductive to the goal of preserving affordable housing because they allow even legitimate renovations to raise rents far more than necessary to ensure units are adequately maintained.



"I always had to meet a target renovation budget, and so, yeah, I would get the better stove and things like that to add to the cost of the work," a landlord who used to own a portfolio of rent-regulated apartment buildings in the city told Crain's. "Our business plan was, spend enough to achieve fair-market rents. But we were following the rules, and the tenants got a better unit."





## Inside jobs

Another point of contention is that in several Stellar apartments where IAs have been challenged, the contractors who did the work appear to be owned the company.

CMS Renovation, listed in records as based in Fresh Meadows, Queens, was used to renovate apartment 5H at 1795 Riverside Drive and 1E at 171 W. 81st St. In the lawsuit involving the latter unit, the judge noted in her ruling that a Stellar employee acknowledged the contractor was owned and controlled by Stellar.

"These landlords are inflating costs and creating sham contracting companies so they can do it," said Hess, who is a supervising attorney for tenants' rights at the New York Legal Assistance Group. "When the contractor and the landlord [are] essentially one entity, they're not driving down costs. The incentive is to inflate the costs."

Apartment 1A at 1795 Riverside Drive was renovated by Wurtsboro Construction Corp. of Wurtsboro, New York, about 70 miles north of the city. The firm has done several jobs for Stellar, according to filings with the Department of Buildings. A search of agency records for Wurtsboro found only work it did for Stellar. Wurtsboro Construction's director is Selim Srdanovic, according to his [LinkedIn page](#). He shares a surname with Smajlje Srdanovic, a director of facilities management at Stellar. A call to Smajlje was referred to Amanda Gluck, the daughter of Stellar co-founder Larry Gluck, but she did not return calls or emails.

Another contractor used by the company for several renovations, MJA Services, has the same Manhattan address as Stellar's corporate offices: 156 Williams St. And, according to Department of Buildings filings, it is controlled by Stacey Ruggeri, a vice president of construction and development at Stellar. City records show Smajlje Srdanovic also has [applied for permits](#) on behalf of MJA. Stellar declined to comment.

Other landlords accused in separate litigations of exploiting IAs also appear to use in-house contractors. Large residential landlord A&E Real Estate, for instance, seems to exclusively use JW Development Group Holdings for renovation work, according to a Crain's review of Department of Buildings permit applications. City [records](#) show JW Development is controlled by Mark Ericksen, whose [LinkedIn profile](#) identifies him as a senior construction project

manager at A&E Real Estate. The firm is being sued by tenants in another class-action case that accuses it of faking or inflating IAIs to push up regulated rents.

According to an HCR audit, the company inflated IAI costs in six of eight apartments reviewed. In one case, the landlord could substantiate only \$24,710 of an improvement on which it had claimed to have spent \$37,053. It was forced to reimburse the tenant \$21,522. A spokeswoman for A&E declined to comment.

Using an in-house contractor is not illegal, but the practice affords landlords an opportunity to report higher renovation costs than were actually incurred. For example, an in-house contractor could use salaried employees on a project but claim labor costs in excess of what they were actually paid. HCR warns against this, stating on its website that if renovations are found or alleged to have been performed by an employee of the landlord or managing agent, "the owner will be required to prove that the employee was paid for the work separately from and in addition to his/her normal salary."

But it's unclear how often or thoroughly authorities check if a contractor is in-house, and perhaps harder if the company's name changes, as it did twice in the case of the apartment Saballos rented.

HCR maintains that it has stepped up enforcement. In 2012 the agency created a tenant-protection unit that has completed more than 4,000 targeted reviews, helped tenants recover \$4.8 million in overcharges and led to 76,000 illegally deregulated apartments being returned to rent regulation. But those cases did not involve renovations, a spokesman for the agency said; landlords had simply deregulated the units without justification.

To better regulate IAIs, HCR says it has increased audits and now does an average of 600 annually. On the list of those audits were units held by A&E Real Estate, Stellar and Bronstein Properties, another large landlord that has been accused in a class-action suit of using IAIs to improperly increase regulated rents. The state agency said 74 audits found 10 instances of Bronstein inflating IAI costs that raised rents by as much as \$162.28 a month more than permitted. It's unclear if those increases were sufficient to push any units out of regulation, but the class-action suit against the company claims it said it spent six figures on renovations to convert other units in its portfolio to market rents. Crain's wasn't able to find a single permit filed with the Department of Buildings for a renovation in the Bronstein apartments cited in that lawsuit.

"If the landlord really did \$100,000 improvements on some of these apartments, there should be permits," said Lucas Ferrara, who is representing the tenants with his colleague Roger Sachar. "Does that mean the work wasn't really done? Now we're going to find out."

Ferrara and Sachar also are pressing the class-action cases against Stellar and A&E Real Estate.

HCR audits of seven Stellar units found no wrongdoing by the company, but watchdogs say the breadth of those examinations was insufficient.

"Instead of auditing a few apartments, why not audit the whole portfolio of a landlord like Stellar?" asked Aaron Carr, the founder and executive director of Housing Rights Initiative, a nonprofit. "If the government investigates a bank, do they confine it to just one cubicle? HCR treats these cases of fraud as if it's not a systemic problem. But it is."

*Correction: An earlier version of this story misspelled Oksana Mironova's last name. It is Mironova, not Miranova.*

## Letter — to the — Editor

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