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In 'Holistic' Approach to Crime, DA Hopeful Wants to Prosecute Landlords

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Diana Florence says landlords who game the rent-regulation system ought to face criminal sanctions.



Florence for DA

Diana Florence, a nearly 25-year veteran of the Manhattan DA's office, resigned earlier this year and has joined the crowded field challenging incumbent Cyrus Vance.

An alleged child sex trafficker. An admitted embezzler. An accused terrorist. Such are the people whom the Manhattan district attorney has charged or convicted in recent weeks.

At least one DA candidate wants to add "fraudulent landlord" to that list.

Diana Florence is one of nine candidates challenging incumbent DA Cyrus Vance in a primary race that will culminate next June 2021. She entered the race this summer after 25 years in the DA's office, including a stint as head of its Construction Fraud Task Force and a high-profile win against a construction firm for falsifying strength tests on concrete used to rebuild the World Trade Center.

With that experience at the top of her resume, Florence is focusing heavily on her desire to prosecute law-breaking developers and property owners. She wrote in an [AMNewYork op-ed](#) in July that rent-regulated landlords who falsify the costs used to justify rent hikes ought to be prosecuted. In a [Gotham Gazette column](#) last month, she said the same about developers who abuse the self-certification system and construct buildings out of step with zoning laws.

In an interview with City Limits, Florence said her focus on real estate is part of a broader view about the nature of crime.

“The old, traditional way of thinking about crime is a robbery or a shop-lift or a murder or rape,” she says. Those are real crimes. When it comes to taking property, however, the conventional definition of crime is too narrow. “If I steal your iPhone, that’s ‘a crime.’ If I steal your wages, that’s ‘civil.’” A more holistic concept of crime, Florence argues, would treat both acts as theft.

Rent laws, apartment improvements, and fraud

In the city’s nearly 1 million rent-regulated apartments, rent usually can rise each year only by the percentage approved by the city’s Rent Guidelines Board. However, a landlords can get an extra increase if he performs a major capital improvement (MCI) that affects an entire building, like replacing a boiler or roof, or does an individual apartment improvement (IAI), which involves investment in a particular unit between tenants.

While tenant advocates have long blamed MCIs for driving up rents, and faulted state regulators for rubber-stamping them, at least MCIs are subject to a form of review. Landlords don’t need any approval to impose IAIs, which has made that mechanism susceptible to fraud.

In her AMNewYork op-ed, Florence argued that IAI fraud deserves to be treated as a crime. “In New York, it is a felony to file a false statement with a public agency. It is also a felony to use false pretenses to steal thousands of dollars from a person. Each false document carries a term of imprisonment of up to four years,” she wrote. “The fact is, housing fraud is a systematic crime of power that has ripple effects on every part of society, and law enforcement needs to start treating it as such.”

Florence’s argument is that a single instance of IAI fraud has long-term consequences and broad impact. Once a hike in the legal rent occurs, it affects everyone who rents the apartment in later years. What’s more, an illegal hike in rent squeezes what a tenant might purchase from other businesses. And a landlord who games the system makes it tougher for law-abiding landlords to compete. “It’s tricking down to everything else,” Florence says.

The 2019 reforms to the state’s rent-regulation law scaled back the amount of rent increase a landlord can get from an individual apartment improvement and limited the lifespan of those increases, likely curtailing the potential for fraud. A state court later tossed out part of the 2019 law, ruling that its tighter cost caps could not be applied retroactively, and limiting to four years the “lookback period” to prove that the landlord had improperly calculated the legal rent.

Neither development dissuades Florence. “[The ruling didn’t] impact the underlying fraud that happened before June of 2019. The lookback period has never been affected by fraud – if you prove fraud, you can go back to 1864,” she said. The fact that current rents could reflect fraud committed decades ago “can keep a whole prosecutor’s office busy for years to come.”

An active hunt

Investigations dating back to before Lee’s surrender at Appomattox are unlikely – the rent regulation law didn’t exist before 1969. And while she says a major reorganization of the DA’s staff is overdue, Florence says she doesn’t plan to build the entire office around chasing rental fraud.

She does, however, plan to actively hunt for fraud cases, by partnering with community organizations to uncover cases, setting up an app for people to report it and scrutinizing civil filings to detect disputes over legal rent. Florence believes a few, high-profile cases will create a deterrent effect.

“When you target a practice, you just have to bring the biggest cases and the industry will take notice,” she says. Then the office might declare a period of amnesty, where landlords can come forward, cop to having cheated in the past, agree on some sort of make-good, and avoid criminal prosecution.

Mapping the Future



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It is not unheard of for landlords to face criminal prosecution: An investigation by the city-state Tenant Harassment Task Force led to landlord Steve Croman doing a stint in jail from 2017 to 2018 for mortgage and tax fraud.

However, according to a spokesman, DA Vance has never prosecuted anyone for IAI fraud.

In the resignation letter she sent to Vance in January, Florence alleged that the DA had prevented her from pursuing landlord fraud.

Florence also complained that she had been subjected to a “hostile work environment” and “bullying” while on Vance’s staff.

Asked about those claims, a spokeswoman for the DA told City Limits: “This is false. Because the office cannot comment on personnel matters or investigations, we will have to decline to comment further.”

Prior to her leaving the DA’s office, Florence faced allegations of prosecutorial conduct for withholding key evidence about a cooperating witness in a bribery case. She has denied that she knowingly withheld the information.

Incarceration as leverage

The reaction to Florence’s proposal from key players in New York City’s housing policy world was, no surprise, split.. “I think that it’s a very good idea,” says Michael McKee, the treasurer of TenantsPAC. “Obviously strengthening the law is of paramount importance, but more proactive enforcement of the tenant protection laws would be highly useful.”

“If forced to choose between stronger laws and stronger enforcement, I would come down emphatically in favor of strengthening the laws,” McKee adds. “That gives tenants a tool we can use to force government to move – for example, we can sue to force the particular agency to enforce the law.”

Frank Ricci, the vice president for government affairs at the Rent Stabilization Association, a trade association for rent-regulated landlords, believes the law enforcement role must be strictly limited.

“I agree that an unscrupulous owner like the owners in Brooklyn several years ago that removed a bathroom and kitchen and then took months to replace them should be prosecuted. They give all owners a bad reputation,” Ricci said. Overall, however, “Prosecuting owners for overcharge complaints is a waste of taxpayer money.”

Florence (who says she is not accepting real-estate donations to her campaign) argues that treating landlord fraud as a civil matter does not create enough of a deterrent, because businesses know they will rarely be caught and can treat the payment of an occasional civil fine as merely part of the cost of doing business.

However, the chief punitive value of criminal prosecution – that it could lead to incarceration – is also its biggest potential problem. Today’s mainstream discussion around criminal justice policy is moving away from arrest, prosecution and incarceration for a range of offenses.

Florence stresses that “prosecution doesn’t mean incarceration, it means consequences,” in particular, an arrest can prevent a firm from receiving government contracts and could obstruct a landowner’s financing. Financial restitution is another potential result. However, achieving those punishments, especially when a plea deal is struck to avoid the risk and expense of a trial, often depends on prosecutors wielding the threat of incarceration.