Real estate broker fees remain in place in New York City after judge issues restraining order

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24 February 2020

Headlines in New York City a few weeks ago proclaimed the end of expensive broker fees paid by renters to real estate agents representing landlords in the city. The New York Department of State issued a guidance on new rent laws that had been passed last summer by the state legislature, which had come under Democratic Party control after the 2018 elections. This guidance contained language reversing the "tenant-pays" policy for broker fees, instead requiring landlords to absorb these fees.

The media depicted this a major win for tenants in New York. Such fees are often 15 percent of the annual rent, or $2,700 for monthly rent of $1,500—a figure which renters looking for affordable housing can attest almost impossible to find. New York is unlike most US cities in that landlords generally hire real estate agents to manage apartment listings, make viewing appointments, and control leases. The greater role of brokers is due partly to the sheer size of the city, and the fact that a higher percentage of its population than elsewhere rent instead of owning their homes. Broker fees are otherwise uncommon in the US.

The celebration of the supposed win for tenants was short-lived. Predictably, the real estate industry howled in outrage. In an interview with the *Real Deal*, Reggie Thomas, senior vice president of government affairs at the Real Estate Board of New York (REBNY), called the Department of State's guidance "a body blow to thousands of hard-working New Yorkers." He signaled the industry's categorical rejection of the new interpretation and vowed a relentless fight against it. "We're looking at every single option available to us," he said. "There will be no stone unturned." Thomas also promised that any additional costs to the landlords "[would get] amortized over the course of the entire year," in the form of rent increases.

Days later, REBNY filed a lawsuit charging that the guidance "created widespread disruption for property owners, rental agents, and prospective tenants." Justice L. Michael Mackey of the New York State Supreme Court quickly issued a temporary restraining order, which stayed the new rule, and scheduled a hearing on the matter for March. When or whether the new interpretation will take effect is uncertain. Meanwhile, tenants are continuing to pay huge amounts upfront before they can move into an apartment, even if they find apartments on their own via online listings.

The new rent laws are the latest in a series of modest reforms that the Democrats have passed since gaining control of the state legislature, as they seek to claim the mantle of fighters against inequality. Another measure along these lines was last year's abolition of bail for minor crimes for nonviolent offenses.

The bail reform is also under vitriolic attack, and has split the Democrats in Albany, with Governor Andrew Cuomo and other leading figures indicating that they are prepared to "compromise" in the face of criticism by police unions and right-wing law-and-order proponents who seek to whip up a frenzy over a handful of recent crimes they blame on the lack of punitive bail, which is in fact a form of preventive detention.

Of course, some workers could benefit if the broker fees were genuinely abolished or made the landlords' responsibility. There are two factors to keep in mind, however. First, as a real estate spokesperson noted in Crain's New York Business, if the "reform" is approved—a big "if"—"Instead of paying the fee directly to the broker, landlords will simply roll these costs into rents…The math is simple. In a market-rate unit renting for $3,000 per month, a broker might expect a 15 percent annual fee, or $5,400. If the landlord is

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responsible for this fee, then those costs will be spread out into the monthly rent. That fee, broken down by month, then means that the cost of the apartment will be $3,450 per month. Add in annual rent increases and it becomes clear that rental costs would have been far less with a one-time up-front commission."

Second, and more significant, the change in broker fees is small comfort for the majority of tenants for whom even a $1,500 or $2,000-a-month rent is a financial challenge. Even if the fees were abolished and not passed on to tenants, the underlying problem of the lack of affordable housing would remain. As of January 2020, the average monthly rent for a one-bedroom apartment in the city was $2,891, and the average monthly rent for a two-bedroom apartment was $3,674. A family of two wage earners each making the mandatory minimum wage of $15 per hour, a wage hailed by New York City Mayor Bill de Blasio and fellow "progressives" as a turning point for the working poor, would have to pay 56 percent of their annual earnings to rent a one-bedroom apartment and 71 percent to rent a two-bedroom apartment. This would leave little for food, medical care, childcare, education, transportation and entertainment. Saving would practically be out of the question.

What is the real significance of the "reforms" offered by the Democrats? The legislative maneuvers have been in direct response to the growing anger and outrage over the record inequality and what it means in the lack of affordable housing and other attacks on the working class. The Democrats are trying to burnish the image of progressivism that has been ripped to shreds by decades of bipartisan austerity. The landlords' lawsuit and the favorable initial response it received in the State Supreme Court exposes the impossibility of making even a modest challenge to the prerogatives of the ruling class when both major parties represent its interests.

The rent laws have also exposed the rift between two wings of the Democratic Party. One wing, embodied most prominently but by no means only by former New York City mayor and current presidential candidate Mike Bloomberg, openly represents the interests of Wall Street. The other, associated with presidential candidates Bernie Sanders and Elizabeth Warren in particular, seeks to improve the Democrats' appearance through the use of left-sounding rhetoric and promises. It should be kept in mind that Mayor de Blasio, who recently endorsed Sanders for president, was hailed only six short years ago as the standard-bearer of this new "progressivism." His years in office have thoroughly exposed him as a servant of Wall Street and the billionaire real estate developers, however.

Now new claimants to the role of "left" Democrats are trying to gain attention in Albany and on the national stage. It is necessary to draw the lessons of decades of bipartisan attacks and growing inequality, and fight for the political independence of the working class behind a genuine socialist program.

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