New legislation aimed at NYC real estate could hurt agents

Real estate professionals could be caught in legal crossfire through higher taxes and commission caps

BYELIZABETH ANN STRIBLING-KIVLAN

There are two pieces of legislation up for consideration in New York City that have the potential to significantly impact the entire real estate industry – and real estate agents in particular.

The first piece of legislation would effectively cap broker fees and security deposit requirements for rentals of any kind throughout the city of New York. The second bill is a proposed "pied-à-terre" tax, introduced in the wake of billionaire Ken Griffin's record-breaking $238 million penthouse purchase at 220 Central Park South. This tax would put an annual surcharge on homes in the city that are not primary residences that cost $5 million or more.

Although the rental market and super luxury sales market cater to different price points and client bases, the one constant in all of this is that New York real estate will likely suffer – and so too will the agents.

The real deal on the rental cap

This latest package of rental bills, introduced by Councilman Keith Powers and Councilwoman Carlina Rivera, aims to cap security deposits to one month's rent on apartments and offer the ability to pay the security deposit in installments over six months.

Another portion of the bill would limit broker fees to no more than one month's rent. Typically, rental brokers charge 8 percent to 15 percent of the annual rent as commission, and these terms are always negotiable and sometimes covered by the landlords.

The fact that City Council is trying to limit the value of an agent's work is, in my mind, government overreach – no matter what side of the political aisle you're on. This type of bill, if passed, sends the absolute wrong message about real estate agents: It claims that their work is somehow less valuable than it ought to be, and not taking into account the amount of hours spent on paperwork, showings and landlord-tenant negotiations.

Agents, especially those who specialize in rentals, are not compensated whatsoever when a client backs out, doesn't show up or simply switches brokers halfway through their search.

What's worse is that I believe this legislation would only increase rental rates across the city. Landlords will want to make back some of the money they are foregoing by simply tacking it on to the standard rate. Accordingly, landlords generally raise security deposit rates only when applicants have poor credit or a bad documented history with previous landlords. The agents don't set the security deposit policies, but they are still the ones being punished in this proposed scenario.

Contrary to what many think, the majority of real estate agents don't rake in hundreds of thousands of dollars a year in commissions. In fact, the average take home pay in 2017 for NYC real estate agents was $80,699, according to the New York Department of Labor. By comparison, the average salary in NYC, according to PayScale, is currently $69,229.

Pied-à-terre" tax: more problem than solution

According to recent data from the U.S. Census Bureau, New York is losing more people than any other state. Between July 2017 and July 2018, New York lost 180,306 people and gained 131,746 new residents. That means there is a 48,560-person gap in the Empire State. NYC has higher taxes than most other areas of the state, and many people and businesses have relocated to states like Florida where there is little or no income tax.

With people leaving NYC in droves, it strikes me as counterproductive to impose a pied-à-terre tax which would likely discourage people from buying real estate and bolstering NYC's economy. The resolution introduced by City Councilmembers Margaret Chin and Mark Levine would apply a tax between .5 percent and 4 percent of the property's value on any home worth more than $5 million that is not the purchaser's primary residence.

If you do the math, Ken Griffin would have to pay an additional $8.9 million in annual taxes on his $238 million penthouse. This kind of punitive legislation sends the message that NYC is not a welcoming place to buy a second homeor build a business – and it comes at a time when New Yorkers are actually abandoning the city as their home base.

Some lawmakers argue that for someone like Griffin, these millions of dollars are a drop in the bucket, but would yield hundreds of millions in tax dollars to benefit New York. On the other hand, why discourage people from buying here when more New Yorkers are leaving than staying? In 2017, some 131 people left NYC each day, compared with 43 in 2014, reports the New York Post.

In the end, whether an agent is renting out a studio or selling a luxury penthouse, these proposed legislative measures could adversely affect their livelihoods. Real estate agents already have to contend with listing aggregators and discount brokerages threatening the value of their work; they don't need more attacks on their bottom line from legislators.

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