

Emily Myers ([00:00](#)):

This is the brick underground podcast. I'm Emily Myers bringing you everything you need to know about New York city, real estate, co-ops condos, renting, buying, selling. We aim to cover it all. And if you're not familiar with our website, head to Brick Underground.com, we provide lots of advice, explainers and analysis on the New York city real estate landscape. This is our first episode after a hiatus, as a result of the pandemic. And there is so much to talk about when it comes to New York real estate. We've obviously had the shutdown. We've had the exodus from the city to the suburbs, and now of course, the rise in rental concessions to pull renters back. But one of the most pressing issues in New York, a city primarily of renters has been tenants trying to make their rent and stable eviction amid this public health crisis. So I'm joined by Andrew Scherer, policy director of the Impact Center for Public Interest Law and a visiting associate professor at New York law school, who's here to help me get into some of this.

Andrew Scherer ([00:59](#)):

Hi, Hey there.

Emily Myers ([01:02](#)):

So Andrew there have been several eviction bands, some of which have expired and some have been extended. Perhaps you can outline who is currently protected from eviction.

Andrew Scherer ([01:14](#)):

Well, it is inordinately confusing because there have been a series of state orders from the executive branch there have been court orders. There have been federal orders. There is another eviction moratorium from the CDC. The bottom line though, is that come January 1st, nobody's really protected from eviction. So everything had, that was put in place that halted evictions formerly has expired or is about to expire, but in New York city, at least as a result of the slowdown of the courts, the backlog that's been created by the inability of landlords to even file cases for a long period of time, the extensions that have been given things are moving really very slowly. So while there's no formal protection for eviction anymore, I think the relevant bottom line fact is that things are slowly going back to the way they were before the pandemic for not for better or worse for worse, as far as I'm concerned.

Emily Myers ([02:22](#)):

The stimulus seems to have stalled. So we're not seeing federal dollars to back up landlords who can't evict tenants. And there's certainly no rent cancellation, which, you know, many have been calling for. Now we have schools closed to in-person learning, making it increasingly difficult for parents who need to work outside the home. I think it was Barika Williams, the executive director of the Association for Neighborhood and Housing Development who called it an "eviction tsunami". I mean, is that what the New Year is going to bring for, for New Yorkers?

Andrew Scherer ([02:55](#)):

Yeah. People have used the term tsunami. They've used the term an avalanche there's an extraordinary number of tenants who have been unable to pay the rent. A study done by a firm called Stout showed that something like 1.4 million households in the state of New York are unable to pay the rent right now and have not been since early in the pandemic, there's something between a 600 million and \$800 million in rent owed per month over the last number of months during the pandemic. So if we were to

return to the business as usual as it was before the pandemic and all of these people would be potentially subject to eviction proceedings. Now the courts, I think recognize that, in fact there was just recently a real spike in infections of COVID-19 in the courts. They, they had started jury trials. I think now they've basically canceled any jury trials going forward for the time being. So the courts recognize that there's a real danger in demanding that people show up in court. So I think it's gonna, it's gonna take a while. And I don't think we're not going to see an immediate avalanche, but hanging out there, and if we were ever to be treated the way these matters were treated prior to the pandemic it would be just utterly devastating for the economy. Certainly for the households we would see you know, it would make the current numbers of homeless look like a scouting party for some huge army, right? This, whether they're 50,000 families homeless right now, the city is spending a billion and a half dollars a year on services and shelter for people who are homeless. There's a right to shelter in New York state. If we make all these people homeless, because they're going to get evicted because they can't pay the rent, we're going to see it in the streets in a way that we've, you know, it hasn't been seen since the depression. So I don't think that's going to happen. There's a, there are a lot of different proposals out there. None in any very meaningful way have been adopted yet, but something's going to have to happen, you know, and you had said, you know, there are landlords that are hurting as well, right? This stalling of any further stimulus bills at the federal level has really been a problem. Let me just correct. One thing that I said a minute ago, I just went and looked at my notes. So the, that the, that the Safe Harbor prohibition on evictions due to inability to pay rent is through January 21st, not through January 1st,

Emily Myers ([05:35](#)):

Perhaps it's a good point to outline some of the resources that are available then to tenants. I know that there are programs like the City Family Homelessness and Eviction Prevention Supplement that can help qualifying new Yorkers who are struggling to pay rent and facing eviction. And you might also have the right to counsel, meaning an attorney can represent you in housing court, free of charge. I know that was being rolled out by zip code.

Andrew Scherer ([06:03](#)):

Yes, no longer by zip code, what has happened. And this is an area that I've been very deeply involved in from the very beginning. If anyone of your listeners is served with a petition, commencing an eviction proceeding, counsel is very likely to be available. What the courts have done is they've along with the city's Human Resources Administration and the Office of Civil Justice has tried to take the existing programs to provide counsel and shift them away from the zip code has shifted them away from the zip code model to basically trying to match anyone who shows up and housing court right now with counsel. So the availability of counsel's great can do a lot, but it can't do everything. If if we don't have sort of more robust measures to actually address, people's inability to pay the rent. There's only so much that council can do. And, and frankly, if the courts were to open up and start processing and taking cases in the volume that they did before, there just aren't enough lawyers in New York city to handle that volume. And the court itself can't handle the volume. I mean, there would be no due process whatsoever. We only have 50 housing court judges. And that's for, you know, somewhere between 200 in, in normal years, it's been going down, but somewhere, let's say 240 to 250,000 cases a year handled by those 50 judges. If we move up into, you know, a million plus cases, I mean, what are they going to do? So it's, it's a big, hot mess.

Emily Myers ([07:39](#)):

Wow. Overwhelmed is the, is an understatement.

Andrew Scherer (07:43):

It's definitely an understatement. So you had asked what else tenants can do. The city's human resources administration does make available what are referred to as one shot deals for low-income people to pay, to pay rent arrears. And, and the other thing that the tenants can do is that they can, they can join the movement for tenants rights. You know, this is, this is certainly an economic issue, but it's going to be resolved politically. And I think the more that people are outspoken and get involved and advocate for the kinds of remedial policies that are needed to address this crisis, the more likely we're going to get the crisis addressed.

Emily Myers (08:23):

A call to activism?

Andrew Scherer (08:25):

Yeah.

Emily Myers (08:29):

Another aspect of New York city's housing market this year has been actually this exodus to the suburbs, hundreds of thousands of people in the city by some estimates early on in the pandemic, tens of thousands of households. So two things here that, that relate to New York city renters. We're now seeing landlords try to attract renters back with low rents and concessions - leasing activity jumped in Manhattan by over 30% and in Brooklyn, over 20% as a result. So the problem, but the point, one of the problems with concessions is that they go away after a year, you can be offered an attractive net effective rent, which includes those concessions only to find that you're paying the gross in 12 months time, and not only the gross, but you could have an increase on top of that gross. So are we going to see large numbers of renters in trouble this time, next year, if the market comes back and landlords ramp up rents?

Andrew Scherer (09:22):

You know, I'm no economist. But my sense is that if the market comes back, it will mean that incomes are coming back as well. So I think those things work in tandem. I don't envision that a robust real estate market, a revived real estate market is going to happen without also an economic revival that puts people in a better position to pay rent. So I don't think that's really something that we have to worry about.

Emily Myers (09:55):

Okay. So on this idea of this, the exodus that happened, I wonder if I wonder what having so much turnover in our buildings and neighborhoods does to the fabric of our city. There are certainly small apartment buildings in say, Park Slope with four apartments where all the tenants have left, what are the implications?

Andrew Scherer (10:12):

Yeah, I, you know, it's interesting. My sense is that it's certainly playing out in, in middle to upper middle class to wealthy neighborhoods where people have the wherewithal to move and to you know, sit out the pandemic elsewhere, either by giving up their home or by just simply, you know, finding an alternative place to be that they feel safer in. I don't think that's happening to any great extent in, you

know, in, in lower income communities in the city or with lower income households who are unable to pay the rent people with marginal incomes who have been really suffering terribly disparate impact of all of this on people of color in the city. My sense is not that that's, who's moving elsewhere. I also think, and this is basically, you know, sort of my, my gut instinct about this. I think economists would back me up on this once the city opens up again and we are all, you know, inoculated with a vaccine and we go back to some form of life as usual. I don't really see any long-term, you know, I think hopefully there will be some sort of long-term consequences in how we look at the relationship between the courts and landlords and tenants and have long-term measures in place. But I don't think they're going to be, you know significant long-term impacts on the real estate market. I think that's going to revive, I think the city's gonna revive. And I was thinking, you know, the explosion of jubilation when we learned that the election had been won by president-elect Biden, I think was a reflection of the energy in this city. That's been tamped down and kind of ready to explode. So, you know, I have great faith in the future of the city.

Emily Myers ([12:02](#)):

That's great. I mean, interestingly though the vacancy rate in Manhattan went above 5% in August. And I understood that was a benchmark for preserving rent stabilized apartments. So if vacancy rates went above 5% in theory market forces, which you've mentioned would be such that New York city wouldn't need to have an affordable rent program, but is rent stabilization going anywhere? And I guess that that's interesting to both renters and landlords and particularly landlords who were affected by the rent reforms last year, that affected whether they could cycle out their apartments out of the program.

Andrew Scherer ([12:38](#)):

Yeah. the figure that's looked at is not the borough of Manhattan. It's a city-wide figure. You know, I wouldn't get tenants who are in rent-stabilization worried about the loss of rent regulation. And I wouldn't, you know, tell them what's to get their hopes up that they're gonna be able to do away with rent regulation. I think is really here to stay. And the Housing Stability and Tenant Protection Act really strengthened the protections in many ways in 2019. So I, I think it's pretty solidly there. I also think that the political will is there. I don't think, you know, if anything, even in the last couple of years the kind of th the politics of the state government, which is really where the ultimate decisions lie have been more tenant friendly.

Emily Myers ([13:29](#)):

Okay. So actually you mentioned last year's rent reforms, and one specific change for last year was that a landlord had a duty to mitigate if a tenant broke the lease. And we have addressed a lot of questions about breaking your lease. And this duty to mitigate is basically where the landlord has to do all they can to get in a new tenant. But of course, with a higher vacancy rates it's harder for landlords to, to bring in a new tenant. So does that reform feel timely or was it in the end a little bit meaningless?

Andrew Scherer ([14:05](#)):

Well, it certainly wasn't meaningless in, you know, in the end, we know, you know, whenever the end is, this is not the end. This is a, this is this is a moment in time. New York has on the most part, better landlord tenant, protective legislation than most parts of the country. This was an area in which we actually really lagged behind most of the country. Landlords are required to take reasonable and customary steps to re-rent if a tenant leaves in the middle of a lease, it may very well be harder for them to find a new tenant, but they would have to go through some, you know, make or make a reasonable

effort to find a new tenant. And they can't try to find a new tenant at a,ua higher rent than they were renting to the old tenant. In fact, they have to ask for either the prior rent or the current fair market rent, whichever is lower. So in a time of lots of vacancies, the market rent also goes down and that landlords are limited to the market rent. So the dynamics of it all, you know, are, they're not simple, but, you know, landlords can't simply say I was renting this place for \$4,000 a month and too bad, I can't find somebody to pay \$4,000 a month. They may have to rent it for \$3000 a month or \$3,500. Right. Use

Speaker 1 ([15:26](#)):

And is the departing tenant liable at all for the gap?

Speaker 2 ([15:30](#)):

For the remainder of the lease of the departing - yes, but the, but the difference would be a whole lot better than having to pay for the \$4,000 a month for the, for the remainder of the lease. Uand then the other thing is that,uthe liability doesn't kick in until the lease expires. So the landlord would have to wait until the term of the lease expires to go after the tenants for the rent so you know, my final thought on that too, but it's also the tenant at that point could raise whatever defenses they might have to the payment of the rent, including, you know, possibly breach of warranty of habitability, the requirement to keep the place in good repair, which is,uwhich is a claim that can go back six years. So,uyou know, if landlords are going to go after tenants for rent due on the remainder of a lease, you know, they better have been,utaking care of their obligations as well, because all of the defenses that could have been raised would be able to be raised at that point at which they sue, you know, not a pretty picture. It is a threat out there, but it's not an imminent threat. And it's a, it's a threat that can be dealt with. And there are, you know, there are resources for people to get legal, help and advice on,uissues like that . One that I'd suggest that for just general questions about landlord tenant matters. People can look at lawhelp.Org, which will refer them to the different legal services providers, free legal services,uand, and, and other just,usort of know your rights type literatures. It's a good resource for, for tenants.

Speaker 1 ([17:09](#)):

And thats a good opportunity for me to plug brick underground and say that we also cover lots of advice and explainers on, on all these rental issues.

Speaker 2 ([17:19](#)):

And you've got some Great people writing for you. Some friends of mine.

Speaker 1 ([17:23](#)):

Cool. but actually in this sort of push and pull of landlord and tenant power obviously that vacancy rate does indicate that renters do have more power at the moment. What do you suggest they do with it? I mean, you talked about activism, but can they, can they also negotiate their rent down at this point?

Andrew Scherer ([17:44](#)):

That is such a case by case situation, you know, it really it'll really depend. I mean, the, the overall market dynamics would say that, yeah, you, you know, you may be able to go to a landlord just like when you're negotiating a purchase of a house, you know, it's to the extent that it's more of a buyer's or a renter's market, then they do have more bargaining power and can make, you know, bids. If you find that a place has been empty and been for rent for a while, then you certainly offer less rent than what's being asked for. And I, you know, certainly there are cases in which that happens. I think, as you pointed

out, there is a waiver of certain number of months rent to entice people to come to enter into a rental agreement. You know, the dynamic is somewhat different than it has been at other times in our history. I don't think, as I've been saying, I don't think it's going to let you know it's going to last for a while, but it's certainly not going to last forever. So if you're in the market for renting, this would be a good time to try to get some concessions.

Speaker 1 ([18:51](#)):

Yeah. Actually we've been featuring on our site, some renters who've upgraded their rental situation in the past few months just because they can, you know, suddenly apartments that they thought were attainable are within their reach, of course, with that caveat that those concessions do expire. So what's your, what's your sense of how long this apparent window of well, let's call it qualified affordability will last?

Speaker 2 ([19:13](#)):

I, I, my sense is that it's directly tied to the economic consequences of the pandemic. I would say the repercussions of all of this at the very least are going to be with us throughout all of 2021.

Emily Myers ([19:26](#)):

So is there any advice for people sort of entering a lease at the moment, should there be a sort of clause or something to - some kind of release or and what perhaps what about you know, going month to month that's another issue - a sort of some way to kind of protect yourself a little bit from these long leases that you, where can't be sure. Yeah,

Andrew Scherer ([19:47](#)):

Sure. I mean, if you're, if you're month to month, you're more vulnerable, the Housing Stability and Tenant Protection Act of 2019 added some additional protections for month to month tenants. So it's not quite as quick and easy for a landlord to evict at the end of the, of the term. The lengthier notice requirements, depending on how long your tenure has been. So, but most of them, if you also have, you know, you have fewer protections, you don't, you know, you don't have that protection of the lease in the land that could in theory, ask you to leave a clause in the lease that would allow you to get out of your obligations under certain circumstances. I say, go for it. I, you know, I, I, I don't know how how amenable, you know, most landlords would be to that, but depending on how desperate they are. And I think these are factors that affect different sectors of the real estate market very, very differently. So I think that the real problem right now is all sort of overbuilt high-end luxury housing that they're having a hard time filling. So those, you know, because of their desperation to fill units, I think there, there might really be the possibility of significant concessions, including escape valves in the you know, lease clauses that provide escape valves, because landlords may just need to fill, you know, as many units as they can so that they can bring in income. But I don't think that's really true in more stable communities and more stable sectors of the, of the housing market, you know, more middle-class or working class, or, you know, housing, low-income housing or low-income communities just, you know the dynamic hasn't changed all that much. So it really depends on the sector, but go for it.

Speaker 1 ([21:40](#)):

One thing, and this might be a little bit of granular, and we haven't covered this on our, on our site, but we've had landlords employing collection agencies. So typically in circumstances where, you know, the tenant has left the apartment, but didn't meet the rent obligations. So, and then, and then are now

chasing for that money through a collections agency. Is that something you're hearing about? And do you have advice for anyone facing that problem?

Speaker 2 ([22:10](#)):

Yeah. You know, that's something that has been, you know, it's been going on forever. I've actually been hearing about it more in recent years, even before the pandemic that there's just a more aggressive treatment of rent arrears for people who have moved on for one reason or another. And it's an area again, I would say people need legal help. There's no right to counsel in this area, but if it's a substantial sum that you're facing that a landlord is seeking, you know, there are some resources, again, I would refer people to lawhelp.com it'll direct them to potential areas of assistance. The New York city Bar Association has both a referral service and a hotline that takes questions. There are resources available and if it's at the collection agency stage, that may, there may be a lot of, kind of legal judgments and all that need to be undone. So and, and the practices of collection agencies have been resoundly criticized over the years, too. And there may be sort of, you know, political measures that could be taken to address at least some of the most problematic practices.

Speaker 1 ([23:30](#)):

Actually I know that when I was speaking to one renter, she was waiting for, to find out whether she could get relief through the Emergency Rent Relief Act, which I think promised help to those who couldn't pay. But by all accounts only, I think 16% of those who applied got help. Does that surprise you?

Speaker 2 ([23:50](#)):

No, not in the least, you know, the the money that was put into that act was a hundred million dollars out of the Cares Act funds. So, and this was, I guess, June the legislation passed and the data that has been gathered about rental arrears is showing, as I said before, \$600 to \$800 million per month, right? This was a hundred million all total. So the numbers of both people and the amount of rent in arrears right now is astronomical the a hundred million, which may sound like a lot of money in the abstract, compared to the actual billions of dollars now in rental arrears is a drop in the bucket. So no 16%, I'm actually surprised it's as high as 16% because it just, you know, it was never, I don't know that anybody ever expected it to go very far and it didn't.

Emily Myers ([24:52](#)):

Yeah. I think it you had to be rent burdened and having, you know, particularly low-income before you could even apply.

Andrew Scherer ([25:02](#)):

That's right. There was a, there was, there was certainly you know, somewhat convoluted, cumbersome application process in what you had to show. But even beyond that, even if, you know you're able to make it through, the money, you know, disappeared in a very quick turnaround because it just wasn't enough of it.

Emily Myers ([25:24](#)):

So are you saying that all that money has gone?

Speaker 2 ([25:27](#)):

That was my understanding. Wow. Okay. But it wasn't, it wasn't much REL you know, relative to the need. Yeah. And the other, you know, the other interesting thing about it is that that, because at the point where you came out, really nothing was happening in the courts and people were really unclear about what's going on. They may have also been people who said, well, you know, what happens if I get some of the money and I pay it now, and yet I still can't continue to pay? And am I kind of waking a sleeping giant? I may making problems for myself? Because it was very, you know, relatively early, we didn't know we were early in the pandemic then, because who knew how it was going to go. People may have been thinking, well, what do I do? What do I do next month?

Speaker 1 ([26:10](#)):

Okay. So you talked about the energy coming back to New York and we got a glimpse of it a couple of weekends ago. Obviously we're now on the other side of the election, what are your hopes then for January and for new York's rental situation, then?

Speaker 2 ([26:24](#)):

If there's a new stimulus bill and it gives enough money to actually start to deal with rental liability hardship for small landlords that would be great. And I think if there's going to be a breakthrough, I think, you know, certainly if the, if the Democrats control the Senate, whatever happens in Georgia will, will make a difference. Even if they don't the sense I get, and this is just from reading the press, is that there's, you know, enough of an interest that there may be some follow ups, stimulus bill probably wouldn't be anywhere - it wouldn't be anywhere near what it might be like if the Dems has control the Senate, but that's, that's one big factor. And then, and then the other factor is that we would have an administration that's at least, you know not hostile to issues affecting low-income people. Right? So what ways would that manifest itself? I know there, you know, there've been several bills introduced in the house to call for a right to counsel, supporting a right to counsel on a national level that, that, that the Feds would do that. I mean, you know, there are possibilities there. But there's, you know, th there's a lot that needs to be done, some of which would be at the federal level, some of which would you know, have to take place at the state level, which is where a good portion of housing policy really takes place. Right?

Andrew Scherer ([27:47](#)):

But money, more money would flow in and that would really help. So for, for, you know, construction of affordable housing and I mean, let me just say, I think this is a moment for a reset. It's so interesting to look at this, I believe, and I, I, I can't imagine I'm wrong about this—it's the first time in the history of the United States that no one has been evicted for this length of time, certainly in the city of New York. Now people are being evicted elsewhere in the country, but I think it's time for a reset. I mean, you know, it's good that the powers that be have said, well, 'we're not going to, you know, keep our system moving at its usual pace, because we recognize that there's a pandemic and people are gonna, you know, fall ill if they come to court.

Andrew Scherer ([28:36](#)):

And if people do get evicted, they're gonna become homeless, which is already a you know, a terrible, devastating experience. But now compounding that with being rendered, homeless into a pandemic, it's awful.' But you know, it's, it's a matter of degree. I mean, these were always consequences, you know, they're always dire consequences of eviction and we need to rethink some of the fundamentals here now that we've sort of experienced this, you know, hiatus in evictions. And, and shifting somewhat in

the courts when people fall into rent arrears, because of problems that they've suffered, maybe we can find ways to actually help them pay the rent or at the very least have the judgment be for rent and not for eviction. You know, it's handled like that in other countries. I think it's time for us to really step back and, and have a reset on, on a lot of what governs landlord tenant relations.

Andrew Scherer ([29:33](#)):

And I think that would be wonderful for the city. I mean, if we had a stable city where people felt like they can, the rent where they can live in their communities, where they can, you know, be integrated into the life of the city in the long run, we're going to have less crime, we're going to have less health problems. We're going to have better education system. And a lot of it stems from housing. You know, a lot of it sort of emanates from what happens about people's ability to have a stable home life.

Emily Myers ([30:06](#)):

Yeah. So rethinking eviction as a concept itself and, you know, enforcing that right to safe and affordable housing across the city.

Andrew Scherer ([30:15](#)):

Yup. Yup.

Andrew Scherer ([30:16](#)):

Yeah. There's, there's a movement in that direction right now. People are being motivated and activated and you know, I certainly hope that it's going to lead to the kind of profound changes that we really need.

Emily Myers ([30:31](#)):

Well, on that hopeful note I think we will close our podcast there. Thank you very much, Andrew, for joining us.

Andrew Scherer ([30:38](#)):

You're very welcome.

New Speaker ([30:39](#)):

That's Andrew Scherer, a visiting associate professor at New York law school. I'm Emily Myers. The brick underground podcast is produced by myself and Jenny Falcon. Terry Rogers is our executive producer. Thanks for listening.