

Emily Myers ([00:01](#)):

I'm Emily Myers, and this is the Brick Underground Podcast covering everything you need to know about New York city real estate, whether it's buying, selling, renting, or renovating. In this episode, we are going to answer some of our reader and listener questions, which is what Brick Underground is all about—finding solutions to all your housing questions, so that you can better navigate the market, find a deal and make sense of the legal jargon as well as staying one step ahead of the competition, whether you're buying, selling, or renting. So this episode is going to be weighted a little more towards rental questions. And for that I'm joined by Corcoran broker Vicki Negron, who has 30 years of experience in both rentals and sales primarily, but not exclusively in Brooklyn and also real estate attorney Steven Kirkpatrick, who is with the law firm, Roma Debbas and deals with all sorts of residential leasing issues and real estate questions. Hi to you both.

Vicki Negron ([00:58](#)):

Hi, Emily. And hi Steven. It's a pleasure to be here.

Steven Kirkpatrick ([01:02](#)):

Yes. Hi, Emily. And hi, Vicki. Nice to see both of you.

Emily Myers ([01:06](#)):

Great to have you both on the podcast. So as you might expect, we are getting plenty of questions about negotiability when it comes to renting in New York right now. The pandemic generated a lot of empty apartments, but the landscape is changing a bit Vicki right now. What kind of negotiability we heard earlier about, you know, people getting three free months rent, but in terms of negotiability, is there some more flexibility or are we going back to slightly more pre-pandemic times?

Vicki Negron ([01:34](#)):

Uh, no. Um, things are being incentivized widely, uh, extra months of rent. As many I've seen as three or four, um, longer leases, uh, less rent, um, and perks like, um, storage being thrown in and of course, broker fee, uh, being taken off the table because most landlords are willing to pay that.

Emily Myers ([01:55](#)):

Okay. And is this something you see going on for several more months, we're now in the spring market, which is typically quite competitive.

Vicki Negron ([02:05](#)):

So, yeah, but also in the spring market, what I'm beginning to see is prices beginning to resume normals of almost what they were before the pandemic. Now we feel that the greater part of the pandemic may be behind us. So I see rents creeping back up, but the incentives are still on the table. So the negotiability is still there.

Emily Myers ([02:27](#)):

Okay. And can you say where the best deals actually are within the city?

Vicki Negron ([02:33](#)):

Well, it just stands to reason that there would be more negotiability in a larger building or a very small building because both of those aspects have greater loss, potential, a larger building can't have a vacancy allowance of 20%. That would be very, very harmful. And a two or three unit building can't stand to have two units vacant. So the middle ground is the 40 or 50 unit building is probably the least negotiable.

Emily Myers ([03:06](#)):

Okay. So one message we recently received from a reader says: my landlord did not send me a full copy of the lease. He left out the part with the spaces for our signatures. Is that okay? What should I do? Steven, how important is the signature page? And what's your advice here?

Steven Kirkpatrick ([03:25](#)):

Um, so the signature page is critical because if a lease is not signed, then there is no lease. Um, so if the landlord does not return a complete copy of the lease, the tenant would not know whether the lease was in fact counter signed by the landlord. But it actually works both ways—it works against the tenant because the tenant may not have a binding lease, but it could work against the tenant. And the reason for this is as follows that unlike many contracts, because a lease for real estate, there's a requirement that a signed copy of fully executed copy of the lease be delivered back to the tenant. And so even if the landlord counter signs and holds on to their copy of the lease and does not return a fully signed copy of the tenant, that failure to deliver means that there is no lease in effect. So the tenant, if the tenant wants to be cute, the tenant now can just sit there, be in the apartment, pay the rent. But if the tenant wants to have an exit strategy, tenant can say, goodbye landlord, I'm done. You never delivered the executed lease to me and I have no further obligations.

Emily Myers ([04:39](#)):

Interesting. So perhaps you can outline perhaps the important issues to look for when you're signing a lease. And should you get legal advice if it's just a standard rental?

Steven Kirkpatrick ([04:47](#)):

In most residential leases, neither the landlord nor the tenant is represented by counsel. I see a lot of situations where the broker prepares the lease. Um, some of the leases that are prepared are fine. Some are horrendous. Um, if you're a landlord it's very important to have a good lease because a good lease will give you some protections. A bad lease will not only give you no protections, but could actually harm you, you know, in the, in the higher price departments. And by that, I mean apartments over \$10,000 a month, there, you start to see more lawyers involved, but even then, um, you know, but more often than not, leases are not reviewed by lawyers are not heavily negotiated tenants signs. Um, and the, and the, one of the reasons for that is that there are a lot of protections by law, either statutory protections or common law protections under case law, and therefore from the tenant's viewpoint, what is said in the lease may not really be enforceable because you may have superceding laws that apply

Emily Myers ([05:59](#)):

Vicki. How do you advise your clients, your rental clients when they're signing the lease?

Vicki Negron ([06:03](#)):

Uh, I always advise them to, uh, have as many eyes on that document as possible because it is a binding document. And as Steven alluded to earlier, uh, the higher, the rental point, the more eyes on there should be

Emily Myers ([06:19](#)):

Obviously lots of people have tried to get out of leases in the past year. Vicki, have you been dealing with this and what's your advice?

Vicki Negron ([06:25](#)):

Well, we've had a tremendous amount of, uh, uh, early terminations and, uh, generally speaking, there is a clause in the lease that addresses that there's oftentimes a penalty for early termination, that tenants, because they've lost, their jobs are unable or unwilling to pay, but usually a landlord will be flexible in as much as if the tenant can replace themselves with a like-kind tenant who is acceptable to the landlord. Uh, then the landlord agrees to a termination without penalty. But generally speaking, I think that Steven may concur with this. There's always a termination clause in that lease somewhere that addresses, uh, an early out.

Emily Myers ([07:11](#)):

So Steven, is that something you should be looking for in a lease?

Steven Kirkpatrick ([07:14](#)):

Is great if you have concerns that you may have to leave to get a termination clause, a lot of leases that I see don't have a termination clause. It's just, you know, the lease is silent. The lease is for a one-year term, a two year term, you know, may have been signed, say, you know, January one. And it continues through the end of December. And basically if the tenant wants to leave, the tenant would be liable to pay the rest of the rent due under the lease, whether they're there or not. However, in 2019, the legislature passed a tenant protection law that expanded tenant protections very significantly. And one of the things that was done in that law was to require that landlords mitigate their damages, that landlords try to relet the apartment, and to do that, a landlord has to make good faith efforts to rent at the lower of the current rent or fair market value. And that's significant, now in the pandemic times, as Vicki was saying, the market has been hit, rents have gone down. Um, and that means that if you're paying say \$3000 a month, if the landlord goes and markets the apartment at \$3,100, then likely the landlord will not be complying with the new law. Um, but then the question is, what is the market rent is at \$2300, is it \$2,700, but a smart landlord will reduce the value of the price of the apartment. Will try to rerent it. If it's re rented, then the tenant would be liable for the difference between their lease rent and what the apartment is rented for. And it's, you know, not a bad outcome, but if the landlord is not able to rerent it and shows good faith efforts than the tenant could remain liable to pay ongoing rent.

Steven Kirkpatrick ([09:12](#)):

Interesting. I have a question here about breaking a rent stabilized lease. We may have just addressed this, but our listener says my son and his wife live in a rent-stabilized building in Clinton Hill paying over \$2,000 a month. They both lost their jobs last year and have been unable to find work in New York city. My son just found a job in California and they are moving there. He asked the landlord about breaking the lease and was told that unless they were able to rent it to somebody else, my son will be liable for all rent through to September 2022. What should they do? Clearly they should be looking for another tenant and in a rent stabilized apartment—does that make a difference?

Steven Kirkpatrick ([09:50](#)):

It does not make any difference. The laws I had described a minute ago applies whether the apartment is rent, stabilized, not rent stabilized under the, um, tenant protection law of 2019, the ability to get that vacancy increase was eliminated. So landlords now do not any longer have the incentive to get a vacancy and, you know, rent stabilized, apartment owners, like any other owners, simply looking at how do I maximize my rental income and will be more difficult than they may have been before in letting a tenant out of a lease.

Emily Myers ([10:27](#)):

And Vicky I'm assuming, you'd think it would be smart to involve a broker. If you're looking to find someone to take on your lease?

Vicki Negron ([10:36](#)):

Well, most of our landlords do either advise us directly to take on the listing or advise the tenant to contact us, to take on the listing just because we have a broader base of customers from which to draw.

Emily Myers ([10:49](#)):

We have a question from a renter in Manhattan.

Denise ([10:53](#)):

Hi, my name is Denise. I live in New York city in Yorkville. I live in a 13 story, residential building, and it has one elevator I'm on the 11th floor. I was told by my management company that there will be three days next week, where the elevator will be undergoing repairs. And we'd be out of service from nine am on Monday through the afternoon on Wednesday, I contacted them and told them that I am unable to walk up and down 11 flights of stairs and asked them to please put me up in a hotel for these two nights, three days. They said they will not do that. After bantering back and forth a bit they told me that they can give me a small discount on my rent. They prorated it depending on what floor you're at and for how long. So it came to 13% of a day's rent. So it was basically \$37 and 56 cents. And then as a courtesy credit, a hundred dollars. So \$137 and 56 cents to rent a hotel room and that's the best they would do. So my question is, since it is only one elevator, are they allowed to say too bad?

Steven Kirkpatrick ([12:04](#)):

So the, the landlord has a right to shut down the elevator service to make repairs. Um, it's, um, you know, in pretty much every standard form lease, um, there are also different statutes that require maintenance of the elevator. And some of the maintenance may require that it be shut down. Um, that being said, there's something called a warranty of habitability that is implied into every lease and in a situation like this with a high floor apartment, um, the fact that the elevator is shut down, even if it's for maintenance and repairs, you know, would likely, um, breach the warranty of habitability and entitle the tenant to some compensation. Uh, and that would vary by the, uh, you know, how high up the apartment is. So in the example that you gave, I think 11 floor, that's a high up apartment, and there would be a significant reduction in the value of the apartment to account for that.

Emily Myers ([13:09](#)):

For other people in similar situations. Would that be a question of sort of approaching your landlord and seeing what you can get? And, um, I got the sense that Denise felt that \$137 wouldn't go very far. Is there a sort of, how is that compensation calculated and, uh, can you sort of push for more?

Steven Kirkpatrick ([13:27](#)):

If the elevator work is going to go on for a period of time that that's a, you know, a low amount of compensation, it really depends on the floor, but, um, that you're on. So if you're on the third floor, for example, it may be one amount. If you're on the 10th floor, it's going to be a higher amount, but it, the, the amount is calculated by the reduction percentage-wise in the value of the apartment. So let's say hypothetically 11th floor apartment, it's a reduction of 60% of the value. Um, so if it was, um, a \$2,000 apartment, you would then have a 60% reduction for the time that the elevator is not in service.

Steven Kirkpatrick ([14:12](#)):

Okay. Interesting. Okay. Here's a question about what you can and can't do in a rental. A reader says my lease in a rent stabilized apartment does not allow washing machines, but because of COVID, I want to use a portable washing machine. Uh, it uses very little water and electricity. Can I do it without asking the landlord? If I just connect it to the bathroom sink, Steven, what would you advise here?

Steven Kirkpatrick ([14:38](#)):

The answer to that is no, you cannot do it most leases, um, have a prohibition, on having washing machines. And the reason for that is that they put pressure on the plumbing system when they discharge water. And you can have backups in other apartments where you have, you know, coming out of the sink, sudsy water from the washing machine above. So it is a concern, um, and a landlord may, if they find out serve a default notice,

Steven Kirkpatrick ([15:09](#)):

Yeah, Vicky thinking of must have amenities. Outdoor space has become a hot item. What should renters know about outdoor space, how it can be used, any restrictions, pros and cons. I mean, is a balcony really, as wonderful as, uh, the brokers will tell you,

Vicki Negron ([15:26](#)):

It completely is, um, it affords a tenant, an opportunity to change their environment. And particularly when people have pets or tend to want to get away from a smaller environment on the inside, an outdoor space is just key in that what you have to be aware of and, uh, is the difference between a private outdoor space and a common outdoor space. And because, uh, lots of, a lot of people have pets these days. Can the pet be in a common outdoor space, for example, in a garden or on a roof deck? Um, and they have to, those items are usually spelled out in the lease. Can I cook outside? Uh, can I entertain outside? What's the capacity in a common outdoor space, like a roof deck or a common garden, because we're in COVID, you can't have a birthday party on the roof with 30 people, but you could have one perhaps with five. Um, so, uh, those are the considerations. Also insurance plays a part in that if it's a roof deck, um, the owner may require additional insurance for the apartment that includes use of the roof deck.

Emily Myers ([16:33](#)):

Interesting. Okay. Um, we have articles on every aspect of buying, selling, and renting in New York city. If you go to our website, brick underground.com, and we have comprehensive guides to closing costs,

lots of information about the rental process, including what fees you might expect and what your rights are much of, which has changed in the past two years, as Steven mentioned, um, through the rent reforms, and also as a result of the pandemic, our market reports also take a look at the data on deals and leases, which can help you navigate your housing goals, whatever they are, and our bread and butter is answering your questions. So please do get in touch either via the website or @BrickU on Twitter and @BrickUndergrounder on Facebook. One question we received recently was to do with a rental buildings, pet policy. I know we mentioned this, but, um, many people obviously decided to bring pets into their lives during the isolating months of the pandemic, a Vicky, are rental buildings, showing them more flexibility when it comes to pets.

Vicki Negron ([17:33](#)):

Absolutely. And the laws as Steven will probably concur have changed with regard to what types of animals are. Absolutely. Um, uh, uh, must, uh, in inclusion, uh, such as emotional support, animals, therapy, dogs, and things of nature. I had a funny incident where, um, a woman applied for an apartment and there was a weight restriction on the dog and she presented the dog with pictures of the dog as a puppy. And the dog then grew to be a hundred pounds, but he was approved as a Buffy. So, uh, yeah, the, the, uh, the landlords have to have more flexibility and most of them concur.

Emily Myers ([18:12](#)):

Yeah, great. That's a good trick there. So actually someone has got in touch with us to say, I rented an apartment for 12 years. This is a little bit more to do with the security deposit. So I rented an apartment to 12 years and only in the past three years has no smoking been allowed. I haven't smoked in the apartment since the rule change, but I did previously and it's in the walls, uh, which were never repainted during my tenancy. Can my landlord keep my deposit? Steven, what are your thoughts on this?

Vicki Negron ([18:43](#)):

In your example, likely not. And the reason for that is that the standard, when you give back a apartment is that the apartment has to be in, in good condition, ordinary wear and tear accepted. Um, so what that means is that when you leave, you take the furniture out, you, um, the floors are left in what's called broom clean condition mean that meaning that you don't have piles of rubbish. You don't have trash left on the floor, but smoke in the walls. Uh, first of all, apartments under New York city law have to be repainted every three years, um, by the landlord it's, you know, often not done, but had the landlord complied with their obligations. Tthe smoke issue would have been eliminated that way, but, um, you know, besides that it would smoke would likely be considered, um, ordinary wear and tear, and the landlord would still be required to get back to security deposit.

Emily Myers ([19:48](#)):

Okay. I mean, it's probably worth outlining for our readers, the rules on the security deposit. Vicky, do you want to help with that?

Vicki Negron ([19:55](#)):

Usually the timeframe within which the security is expected to be returned is two weeks. I think that's the newest change. Is that correct? Steven?

Steven Kirkpatrick ([20:06](#)):

That is correct.

Emily Myers ([20:06](#)):

Do you encourage your rental clients to document the condition of their apartment? I know the rules have changed and made it hopefully easier for tenants to get their deposit back in a timely manner. But do you, do you also encourage sort of the documentation of the apartment when they move in and how do you advise them when it comes to fostering a good landlord tenant relationship?

Vicki Negron ([20:25](#)):

You know what, it's funny that you should ask that because recently I've been experiencing, um, an increase of tenants calling me to ask me to walk through the apartment as they exit, which is my extra eyes on the apartment to say the walls are intact, you've hung some art it's normal, um, that the, uh, apartment is clean and habitable. So, uh, things have shifted, uh, but if there's doubt they should, indeed take photos or invite someone in to do an exit walkthrough.

Emily Myers ([21:01](#)):

As the broker. Are you doing the walkthrough on behalf of the tenants or the owners?

Vicki Negron ([21:06](#)):

Uh, sometimes both. Sometimes both. Okay.

Steven Kirkpatrick ([21:09](#)):

Okay. Steven, do you have any extra guidance when it comes to security deposits and getting it back?

Steven Kirkpatrick ([21:15](#)):

Yes. So my advice to both landlords and tenants is document the condition of the apartment both before, um, the tenancy begins and also at the end. Um, it also makes sense for the tenant now has a right, um, to request that the landlord do a pre vacating inspection of the apartment and point out if there are any potential issues, um, that that would impact the return of the security. Um, so that should be done as well. And then the, um, the conditions of the apartment at the end should be documented. And if the landlord does not return the money, it has to be returned within 14 days. Um, if any money is taken out, there has to be a letter sent, documenting what's being taken, um, you know, in the amount of any, um, repairs that are needed. And, um, you know, with a tenant should follow up and not some tenants, you know, just let the, let things go and don't follow up, but it's, you know, it's the tenants money and you should follow up to get it back.

Emily Myers ([22:23](#)):

So if a landlords identifies perhaps an area that, you know, perhaps a broken tile or a, um, you know, a shelf that might've come up a wall or something, do they say, you know, can you please correct this? Or are they, or are they itemizing it for, uh, you know, for payment's sake? Or are they saying, you know, if you can mend this by the time you leave, uh, you know, we won't charge you.

Steven Kirkpatrick ([22:48](#)):

Yeah. I mean, that's the purpose of the walkthrough. So if there's a, um, you know, a kitchen cabinet door that's loose, the tenant might be able to just hire somebody and fix it. Um, you know, tighten a

screw, um, and, you know, resolve the problem. I mean, that's the purpose of the inspection being done before. Some of the things, you know, may not be resolvable by the tenant, but at least the tenant then knows the landlord's position. And, you know, they're there in the apartment to document the condition.

Emily Myers ([23:22](#)):

The next question is about short-term renting. Someone says I own a single family home in Queens. The tenant recently moved out nine, tend to start using the property for Airbnb rentals. I do not live in the property. I have heard of issues to do with the legality or otherwise of using single family homes for Airbnb, particularly when the owner is not living in the property. Can you advise me how to go about this? We do have lots of information at Brick Underground on this. It's certainly illegal for new Yorkers to live in buildings with three or more residential units to rent their apartments out for less than 30 days, unless the owner or lease holder is present during the stay. Steven, do you have any more, you can add on this?

Steven Kirkpatrick ([24:02](#)):

Yes. So until recently there was an ambiguity regarding whether owners of one or two family houses could do short term rentals while not residing in the apartment or house being rented. Um, that ambiguity has now been resolved by an appellate court, um, in New York and the appellate court held that the rules are applicable to one and two family houses. So what that means is that in your situation, the one you described, um, the owner of the single family house who is not living there would not be allowed to do short-term rentals in that house. Um, and what short-term rentals mean are those which are under 30 days. So if you're renting for 30 or more days, then that's fine. If you're renting for 29 days or less, and the owner is not present, then it's against the law. The fines, even for a first time violation can be anywhere from 10,000 up to potentially a hundred thousand dollars. So people are shocked. I would get calls, you know, from homeowners, the little, you know, a lady in Brooklyn who has two family brownstone that she's owned for 30 years, inspectors came in top to bottom. Now she's looking at, you know, \$80,000 in fines. It's just absolutely brutal. Um, the city's policies were not well-publicized and it was just, you know, the small homeowners, it was heartbreaking. We're getting socked with massive, massive fines.

Emily Myers ([25:38](#)):

Gosh, that's important advice. Then someone else got in touch to say she was purchasing a new condo in a new construction and negotiated a parking spot. So in her words, she says, now that we're going to close the parking garage, isn't ready yet. And doesn't have an estimated date of opening. I saw that the garage is available and is operating when they do open houses and for the construction crew. The sponsor said their priority is to finish. The other units are not the garage. Is there any recourse for us? It's going to cost \$450 a month for us to park somewhere else in our neighborhood. Steven, what are your thoughts on this? Is this, uh, something that a sponsor's sort of entitled to do?

Steven Kirkpatrick ([26:22](#)):

It depends on what your contract says. It depends on what the offering documents say. You know, typically the, the parking would be a separate item, but, um, if it is required to be provided, then the, uh, the owner or the purchaser would have an argument, but it, um, in most cases is a separate item. They probably would not be obligated to pay the parking fees while they don't have parking, but, you know, they, they would have to get parking elsewhere at a higher price.



Emily Myers (26:52):

So is that a reminder then to read the offering plan on a new developments?

Steven Kirkpatrick (26:57):

Always, yeah.

Emily Myers (26:59):

Vicky?

Vicki Negron (26:59):

Absolutely parking can drive a deal. I have buyers and renters that will only look at properties that offer parking, which are very rare and hard to find.

Steven Kirkpatrick (27:10):

Yes. And of course, during the Corona virus, actually people have been using their cars more frequently in order to try and perhaps avoid public transport where they can. So, um, okay. Here's an interesting question. The message is: I've lived in a building for over 40 years, uh, they don't actually say where, but I've never missed rent. My family of five is now down to three. My mom passed away. I have three large bedrooms and one bath and a long hallway. We never had a real renovation to the apartment. Can I ask for a buyout? My rent is \$640, or should I stay, I mean, obviously this is very dependent on personal circumstances, but what would you, what would you say Vicky?

Vicki Negron (27:50):

Well, I think it depends on the size of the building and the location in an apartment with a \$600 rent is definitely disadvantageous to a landlord. So the landlord is probably got a number in his mind or a date in his mind as to when he thinks this apartment will be available so that he can rent it at market levels. A buyout, uh, takes into consideration—where are you going to go with the money you make? How long will the money that you make work for you? And, uh, things of that nature, uh, have a dollar sign attached to them. So, you know, the cost of living is tremendous here in New York. If they're planning to move to Arizona, then a buyout might take you through the end of your life. If it's a \$50,000 buyout and you plan to stay in New York, you're here for two years. Um, so it just has to make sense on all parts of the equation.

Emily Myers (28:48):

Steven, do you have thoughts on that one?

Steven Kirkpatrick (28:49):

Yes. So a couple of thoughts first, uh, the fact that the apartment is in the \$600 range, um, likely means that it's a rent stabilized or rent controlled apartment. Um, however, one of the negative effects of the new tenant protection law is that buyouts in many situations are significantly reduced under the 2019 law. Number one, you can no longer deregulate. It's not permitted anymore. Um, number two, the increases for what they call IAI is individual apartment improvements are significantly reduced. And as a result, landlords are disincentivized from offering buyouts, at least significant buyouts to get back an apartment. I have clients with rent, stabilized properties—they, you know, they are, their view is let the tenants stay because I'm not going to renovate the apartment. I'm not going to do anything. I may as

well have somebody there, the tenant who has been there hasn't caused me problems paying \$640 a month. But when, you know, when I, when I, if I rent it to somebody new, I can charge, I can only charge the same amount. And so there's no incentive anymore. And the other point on buyouts is if a tenant goes to a landlord and asks for a buyout, it usually the number is going to be less than if the landlord needs that apartment and comes to the tenant. It's sort of, whoever goes first is going to pay the price of that. And you know, the best thing that a tenant can do is probably wait.

Vicki Negron ([30:29](#)):

I'd like to add something to, and Steven, let me know if you agree with this? If the scenario is one in which let's say, for example, you're in a forest six unit building and you have this \$600 ish renter and the building is for sale. Then the building is enormously more valuable if the tenant is removed.

Emily Myers ([30:49](#)):

So I think the takeaway for our readers is that first that you lose a bit of leverage if you approach your landlord. So wait for your landlord to approach you ideally. And it depends on the circumstances of the building. If it's a multi-family that is potentially going to be sold, you might have a bit more leverage. Can we sum it up like that? Well, listen, it's been a real pleasure chatting with you. I think you've shared some really, really valuable stuff for our readers. So thank you very much.

Vicki Negron ([31:18](#)):

Thank you for having us.

Steven Kirkpatrick ([31:19](#)):

Thank you.

Steven Kirkpatrick ([31:20](#)):

So I've been speaking with Vicki Negron, a broker with Corcoran and Steven Kirkpatrick, a real estate attorney with Roma Debbas. I'm Emily Myers. Thank you for downloading the Brick Underground podcast. For more information, head to [brickunderground.com](http://brickunderground.com). The podcast is produced by myself and Jenny Falcon. Terry Rogers is our executive producer.