



# Tenant Buy outs!

## Making Them Happen

The following is a summary of a document entitled “TENANT BUY OUTS! Making Them Happen” published in May 2013 by Michelle A. Maratto and Jay B. Itkowitz from the law office ITKOWITZ PLLC. ‘Buy Out’ refers to the predatory practice of paying a tenant to leave sooner than they legally have to. **The following is an actual guide designed to help landlords into tricking or forcing tenants into taking a buy out.**

### I. LANDLORD TRICKS BEFORE FILING A LAWSUIT

According to Maratto and Itkowitz, there are several ways that landlords can trick tenants into taking buy out prior to going to court:

1. Landlord can take the buy-out cash and purchase a condo in the same area that is nicer than the tenant’s Rent Stabilized apartment. If the tenant agrees, the landlord will give them a Lease-for-Life for the new condo instead of a Life Estate. A Lease-for-Life, however, will specify that the tenant’s children or occupants of the subject unit are not entitled to succession; and that the lease should not be recorded. When the tenant who signed the Lease-for-Life agreement dies, the landlord will then have gained an appreciated asset.
2. Landlord offers to move the tenant to another rent-stabilized apartment they own or they can find. The guide warns landlords to be careful not to get stuck with lower rents by moving tenants to an apartment with significantly lower rent than they are already paying. The rules of Rent Stabilization - including the rent - holds, even if the tenant agrees to a higher rent.
3. Landlord finds out the pain point or weakness of the tenant and exploit it to drive them to accept the buy-out. For example, good school districts, cash for cash-strapped families, etc.

If none of the tricks above work, the landlords will proceed with litigation.

### II. HOW LANDLORDS WIN A LAWSUIT

The cost of initiating a landlord and tenant case, compared to other forms of litigation, is relatively cheap, which is why landlords can afford to jump right into suing tenants. The following is a list of advice lawyers from ITKOWITZ PLLC give to landlords to ensure that they are successful in their unethical and inhumane lawsuits that seek to displace vulnerable and mostly long-time members of the community.

1. The longer a landlord delays in commencing a proceeding, the more time it takes to evict. So sue the tenants as soon as possible.

2. To protect themselves (as landlord and the lawyers), every effort should be taken to make sure that the case is procedurally correct.
3. Be ready to bring witnesses and go to trial on each and every date the case comes before a judge to prevent adjournment of the case and a temporary victory for the tenant.
4. Landlords can ask that the court direct the tenant to pay all use and occupancy which accrued as of the date of the petition and on an ongoing basis thereafter.
5. Tenants have historically been able to take advantage of claims that they were improperly served with process, so landlords should make sure to use trained and licensed process servers.
6. If a landlord is sabotaged with a motion to dismiss served on the eve of a court date, the landlord's counsel should be sure to get all parties to agree to a briefing schedule for the motion at the court date so that tenants cannot ask for further adjournments.
7. Landlord's counsel may call the tenant as a first witness to surprise and possibly unsettle the tenant and their counsel.

### **III. GATHERING EVIDENCE VIA SURVEILLANCE**

The lawyers at ITKOWITZ PLLC put a spotlight on Non-Primary Residence as the most common (apart from non-payment of rent) way to terminate a rent stabilized tenancy. It is also a very effective tool to pressure tenants to agree to a buy out.

In proving Non-Primary Residence, the initial burden of proof and the ultimate burden of persuasion is the landlord's. These are fact-specific cases, which means there are no specific rules to determine what constitutes a non-primary residence. The following is a guide on how landlords can effectively surveil tenants to help prove their Non-Primary Residence case.

#### **1. Cameras**

Under the Rent Stabilization Law, it is allowed to install and utilize video cameras to prove a non-primary residence case. However, the lawyer should make sure that the cameras are set up in a way that the video taken will be admissible in court. The goal of using a hidden motion-sensor cameras is to show that

- a. the tenant comes and goes from the apartment much less frequently than they otherwise testifies to
- b. that someone else other than tenant comes and goes from the apartment and the tenant is not there at all
- c. that the apartment is being rented out as an Airbnb as evidenced by different people coming and going all the time.

## 2. E-Discovery

Courts are allowing landlords to circumvent claims to privacy in tenants' social media accounts and electronic communication. This means that a landlord's motion to compel electronic discovery to determine the tenant's actual place of residence would most likely be successful in non-primary residence proceedings. More insidiously, landlords are hoping that the prospect of having the tenants' personal online lives aired out in a public forum will compel them to agree to a buy out.