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## Home is Where the Art Is: The Impact that Housing Laws and Gentrification Policies Have Had on the Availability and Affordability of Artist Live/Work Spaces

Mary Therese O'Sullivan

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Home is Where the Art Is: The Impact that Housing Laws  
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*Mary Therese O'Sullivan\**

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## INTRODUCTION

Artists have long been praised as creative innovators, respected and admired for their unique perspectives and ability to portray life in a new light. Federal and State Governments, meanwhile, recognize the cultural value that art and artists provide, especially with respect to neighborhood revitalization, which has encouraged legislatures to pass protective housing laws that provide artists with affordable live/work spaces. Today, artists are often portrayed as “starving,” yet studies on urban policy and planning have shown that where artists live, money and capital growth will follow – artists are pioneers of gentrification. Recognizing this, urban planners and many communities have sought to provide incentives that promote artist relocation in order to facilitate the revitalization of cities, neighborhoods, and towns.

This paper will discuss the history of artist housing laws, the prevalent use of artists to promote gentrification, and the future of artist live/work spaces. Though this paper will focus largely upon artists who reside in New York City, it will also survey and discuss notable cases and artist incentive programs throughout the country. Part I of this paper will discuss artist housing laws, specifically focusing on the history of rent control and its impact on the artist community, New York City’s artist-zoned housing, and New York City’s “Loft Laws.” Part II of this paper will discuss gentrification, the effect artists have on gentrification, communities where artists have contributed to gentrification, and current initiatives aimed at increasing artist populations. Lastly, Part III of this paper will discuss the future of artist housing, and will outline the difficulties artists face post-gentrification, prevalent arguments against rent stabilization, and concerns regarding the longevity and permanency of “artist communities.”

## I. ARTIST HOUSING LAWS

Though the original rationales behind the enactment of rent control are no longer applicable today,<sup>1</sup> rent control

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1. Kaushik Basu & Patrick M. Emerson, *The Economics of Tenancy Rent Control*, CORNELL CENTER FOR ANALYTIC ECONOMICS 3 (2000), available at <http://www.arts.cornell.edu/econ/CAE/rentcontrol.pdf> (Originally, rent control laws

remains a staple and a recognizable characteristic of New York City and provides artists with the ability to live in areas that they would not otherwise be able to afford. New York City's rent control provisions facilitate continuous artist presence by enabling artists to focus on their works without needing to obtain a "mainstream job." In other words, New York City's rent control laws permit artists to live and work inexpensively in New York City's expensive market.

### *The History of Rent Control/Stabilization Laws*

Rent control laws were first introduced to the United States during World War II.<sup>2</sup> At their inception, rent control laws were enacted to regulate the very unstable housing market of the time.<sup>3</sup> After World War II, some cities, such as New York City, opted to keep forms of rent control in order to ensure that the return of the United States troops would not lead to sudden and drastic increases in rental prices.<sup>4</sup> In the 1970's, rent control re-emerged in a variety of jurisdictions, including New York, New Jersey, Connecticut, Massachusetts, and California, in order to combat high inflation and social upheaval.<sup>5</sup>

Though rent regulation laws have been abolished in the majority of states and cities, they remain a staple of New York City.<sup>6</sup> Rent controlled apartments are apartments in which the rental rates remain consistent and cannot be increased despite any changes in market value. According to the New York City Rent Guidelines Board,

for an apartment to be under rent control, the tenant (or their lawful successor such as a family member, spouse, or adult lifetime partner) must have been living in that apartment continuously since before July 1, 1971. When a rent controlled apartment becomes vacant, it either becomes rent stabilized, or, if it is in a building with fewer than six units, it is generally removed from

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were enacted in order to stabilize the real estate market during war time).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* In the 1970's, during the Vietnam War, the United States housing market experienced high inflation rates. Understanding the high inflation, a variety of tenant organizations formed and rallied for the enactment of rent control policies. Dennis Keating & Mitch Kahn, *Rent Control in the New Millennium*, NHI, <http://www.nhi.org/online/issues/117/KeatingKahn.html>.

6. See N.Y. UNCONSOL. LAWS ch. 249-B, § 5 (McKinney 2012).

regulation.<sup>7</sup>

Currently, there are about 50,000 apartments in New York State that are covered by rent control.<sup>8</sup>

In addition to rent controlled apartments, New York City creates affordable housing through rent stabilized apartments. Unlike rent controlled apartments, rent stabilized apartments can be subject to annual rental increases of a small percentage, as determined by the Rent Guidelines Board.<sup>9</sup> Throughout New York State, there are approximately one million rent stabilized apartments.<sup>10</sup>

### *Housing Laws Benefiting Artists*

A variety of states and cities have sought to protect artist housing. New York, however, has taken steps beyond most cities and states by enacting a variety of particularly protective laws. For instance, in 1974, the New York State legislature amended the Multiple Dwelling Law Article 7B (“7B”) to permit local municipalities to zone live/work space for artists in visual fine arts.<sup>11</sup> In addition to permitting cities to zone artist-only housing, 7B also allows artists to occupy and use the space for both residential and commercial

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7. *Rent Stabilization and Rent Control*, N.Y. TIMES [http://topics.nytimes.com/top/reference/timestopics/subjects/r/rent\\_control\\_and\\_stabilization/index.html](http://topics.nytimes.com/top/reference/timestopics/subjects/r/rent_control_and_stabilization/index.html) (last visited, Feb. 22, 2013).

8. *Id.* While New York City is widely known for its rent control provisions, rent control has also remained prevalent in cities with historically low-income populations. For example, in 2011, NeighborhoodInfo DC estimated that there were “4,818 properties with 79,145 housing units potentially subject to rent control regulation in [Washington, D.C.]” Peter A. Tartian & Ashley Williams, *A Rent Control Report for the District of Columbia* 2, URBAN INSTITUTE 2, June 2011, available at <http://newsroom.dc.gov/file.aspx/release/22017/Rent%20control%20report%20final%2006-6-11.pdf>. Similarly, the University of California, Berkeley, has asserted that Berkeley, a city with a large artist population, “has the strictest rent control in the nation,” and thus, “[i]f you are a tenant of Berkeley, that means good news for you, since [the] city has rent ceilings, requires just cause for eviction, and forces landlords to pay interest payments on security deposits.” *Rental Assistance Rent Control*, UNIV. CAL. BERKELEY, <http://www.ocf.berkeley.edu/~asucla/index.php?page=rentcontrol> (last visited, Feb. 22, 2013).

9. *Rent Stabilization FAQ*, N.Y.C. RENT GUIDELINES BD., <http://www.housingnyc.com/html/resources/faq/rentstab.html> (last visited Feb. 22, 2013).

10. *Id.* Generally, rent stabilized apartments are much more prevalent than rent controlled apartments. Rent stabilized apartments encompass housing designated by states for low-income populations.

11. N.Y. MULT. DWELL. LAW § 277 (McKinney 1974 & Supp. 1986).

purposes.<sup>12</sup> The New York Legislature's passage of 7B was supported primarily by the well-acknowledged fact that most artists do not earn enough to maintain their live/work spaces.<sup>13</sup> With the passing of 7B, New York City "recognized [artists] as a protected class of persons who enhance [the] city's cultural life, but have limited financial resources and require large amounts of space at low rentals to pursue their artistic endeavors."<sup>14</sup>

In order to determine who is eligible for 7B-zoned art housing, the New York City Department of Cultural Affairs formed a twenty-person coalition to certify artists.<sup>15</sup> Under 7B, an artist is defined as "a person who is regularly engaged in the fine arts, such as painting and sculpture or in the performing or creative arts, including choreography and filmmaking, or in the composition of music on a professional basis, and is so certified by the city department of cultural affairs and/or state council of the arts."<sup>16</sup> Therefore, to live in art-stabilized housing in New York City, the tenant must be both regularly engaging in art and certified as an artist.<sup>17</sup>

### *Loft Laws and the Impact of Artist Squatting*

Throughout the industrial revolution, cities, such as New York City, became a popular spot for manufacturing companies.<sup>18</sup> Yet, as the industrial revolution came to a close,

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12. *Id.*

13. *Id.* § 275

[P]ersons regularly engaged in the arts require larger amounts of space for the pursuit of their artistic endeavors and for the storage of the materials therefore and of the products thereof than are regularly to be found in dwellings subject to this article; that the financial remunerations to be obtained from pursuit of a career in the arts are generally small; that as a result of such limited financial remuneration persons regularly engaged in the arts generally find it financially impossible to maintain quarters for the pursuit of their artistic endeavors separate and apart from their places of residence; that the cultural life of cities of more than one million persons within this state and of the state as a whole is enhanced by the residence in such cities of large numbers of persons regularly engaged in the arts; that the high cost of land within such cities makes it particularly difficult for persons regularly engaged in the arts to obtain the use of the amounts of space required for their work as aforesaid . . .

14. . *Lipkis v. Pikus*, 409 N.Y.S. 2d 598, 600 (N.Y. Civ. Ct. 1978).

15. . *See* N.Y. MULT. DWELL. LAW § 276 (McKinney 2010).

16. *Id.*

17. *Id.*

18. Sandy Hornick & Suzanne O'Keefe, *Reusing Industrial Loft Buildings for*

many companies moved out of cities, leaving behind vacant buildings and loft space.<sup>19</sup> During the 1950's, artists began to move into the vacant loft spaces.<sup>20</sup> While a variety of factors contributed to the artist loft movement, "the combination of a need for open spaces with high ceilings to produce large works, the image of certain locales as providing proximity to other artists and other lifestyle attributes, and the economics of combining a home and studio led to the growth of artists' communities in loft neighborhoods in Manhattan . . . ."<sup>21</sup> It is commonly believed that loft-building owners "welcomed the artist pioneers and later non-artists because they occupied space not otherwise rentable."<sup>22</sup> Even after the initial wave of artist occupancy of lofts, artists were still welcomed in the 1970's by loft building owners because "there was a thirty-five percent vacancy rate in loft buildings."<sup>23</sup>

Then, in 1961, New York City Mayor Robert Wagner entered into an agreement with the Artist Tenants Association which allowed artists to live and work in spaces that were not zoned as residential and that did not have certificates of occupation.<sup>24</sup> In order to "permissibly" squat in unoccupied spots, artists would have to post Artist in Residence ("A.I.R.") signs to inform others that the spot was occupied.<sup>25</sup> By reclaiming unoccupied spaces, artists contributed to the gentrification of the New York City neighborhoods of Chelsea, the Lower East Side, the East Village, the West Village, Soho, and Murray Hill.<sup>26</sup>

In addition to artist squatting, in 1982, the New York Legislature passed what became known as the "Loft Laws," which permit loft owners to convert loft space into residential apartments.<sup>27</sup> Though loft conversions under the Loft Laws

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*Housing: Experiences of New York City in Revitalization and Misuse*, 27 WASH. U. J. URB. & CONTEMP. L. 157, 163-65 (1984).

19. *Id.* at 165-166.

20. Jay Facciol, *Illegal Lofts in New York City: Have the Equities Been Balanced?*, 14 FORDHAM URB. L.J. 559, 561 (1985-1986).

21. Hornick, *supra* note 18, at 166.

22. Facciol, *supra* note 20, at 563.

23. *Id.* at 564.

24. *How an Urban Artists' Colony Was Inadvertently Created*, N.Y. TIMES, June 8, 2003, <http://www.nytimes.com/2003/06/08/realestate/how-an-urban-artists-colony-was-inadvertently-created.html>.

25. *Id.*

26. *Id.*

27. *See generally*, N.Y. MULT. DWELL. LAW §§ 280 - 287 (McKinney 2010).

are not limited to owners who rent to artists, many artists choose to live in loft-converted spaces and to assist in the initial conversions.<sup>28</sup> In order to monitor loft conversions and to resolve issues between tenants and landlords of converted loft spaces, the New York Legislature created the “Loft Board,” a four-to nine-person board tasked with the responsibility of hearing and resolving loft conversion disputes.<sup>29</sup>

Additionally, loft rental rates are established and regulated by the Loft Board,<sup>30</sup> and owners must seek approval from the Loft Board before implementing any increase in loft rents.<sup>31</sup> To rent a loft for residential purposes, a property owner must apply to the Loft Board for a certificate of occupancy, and the loft must comply with a series of requirements set forth in the New York Multiple Dwelling Law.<sup>32</sup> If a loft does not have a certificate of occupancy, the

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28. William Eckstein, *An Evolution of New York Loft Conversion Law*, 10 FORDHAM URBAN L. J. 511, 513 (1981).

29. N.Y. MULT. DWELL. LAW § 282 (McKinney 2010). The Loft Board is charged with

(a) the determination of interim multiple dwelling status and other issues of coverage pursuant to this article; (b) the resolution of all hardship appeals brought under this article; (c) the determination of any claim for rent adjustment under this article by an owner or tenant; (d) the issuance, after a public hearing, and the enforcement of rules and regulations governing minimum housing maintenance standards in interim multiple dwellings (subject to the provisions of this chapter and any local building code), rent adjustments prior to legalization, compliance with this article and the hearing of complaints and applications made to it pursuant to this article; and (e) determination of controversies arising over the fair market value of a residential tenant’s fixtures or reasonable moving expenses.

30. *Id.* § 286.

31. *Id.*

32. *Id.* § 284 Section 284 outlines the timeline an owner must follow for filing for a loft alteration permit, and requiring the altered lofts must comply with state standards of safety and fire protection. For example,

The owner of an interim multiple dwelling (A) shall file an alteration application within nine months from the effective date of chapter three hundred forty-nine of the laws of nineteen hundred eighty-two, and (B) shall take all reasonable and necessary action to obtain an approved alteration permit within twelve months from such effective date, and (C) shall achieve compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building within eighteen months from obtaining such alteration permit or eighteen months from such effective date, whichever is later, and (D) shall take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for the residential portions of the building or structure within thirty-six months from such effective date.



owner is prohibited from collecting rent on that space.<sup>33</sup>

Courts actively enforce the Loft Laws, and recently, because of owners' failure to comply with the Loft Law requirements, one artist made headlines for not having to pay nine years of back rent.<sup>34</sup> Margaret Maugenest moved into her Brooklyn loft in 1984 following the enactment of the Loft Laws.<sup>35</sup> Maugenest initially paid the agreed-upon rent, but in 2003, she stopped paying rent because the living conditions were below the standards set forth by the Loft Board.<sup>36</sup> As a result of Maugenest not paying rent, the owners of the building filed suit in 2008 seeking back pay of rent and eviction.<sup>37</sup> The New York Court of Appeals found that "[b]ecause the [owner's] buildings [did] not have a residential certificate of occupancy, [rental] use of the property is contrary to the Multiple Dwelling Law § 301 which says that . . . 'no multiple dwelling shall be occupied in whole or part until the issuance' of such a certificate."<sup>38</sup> Therefore, because Maugenest's building did not have a certificate of occupancy, "the residential occupancy of the lofts was illegal pure and simple: The tenants had no right to be there, and the landlords had no right to collect rent."<sup>39</sup> Thus, despite the fact that Maugenest owed \$60,000 in back rent, and, according to her attorney, had the means to pay the arrears,<sup>40</sup> the New York Court of Appeals held that the landlord was "not entitled either to collect rent or to evict [Maugenest]."<sup>41</sup> To date, there have been no follow up news reports concerning Maugenest's living situation, yet, presumably, Maugenest is still living in her rent-controlled Brooklyn apartment. In addition to creating sensational news, *Chazon, LLC v. Maugenest* demonstrated the New York Court's willingness to uphold rent control laws and strict compliance with Multiple Dwelling Law § 301.<sup>42</sup>

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33. *Id.* §§ 301, 302.

34. Elizabeth A. Harris, *No Eviction after Renter Didn't Pay for 9 Years*, N.Y. TIMES, June 7, 2012, available at <http://www.nytimes.com/2012/06/08/nyregion/no-eviction-for-new-york-renter-who-hasnt-paid-for-nine-years.html>.

35. *Id.*

36. *Chazon, L.L.C. v. Maugenest*, 19 N.Y.3d 410, 413 (2012).

37. Harris, *supra* note 34.

38. *Maugenest*, 19 N.Y.3d at 413.

39. *Id.*

40. Harris, *supra* note 34.

41. *Maugenest*, 19 N.Y.3d at 413.

42. *See id.*; Harris, *supra* note 34.

## II. GENTRIFICATION

While gentrification can be described in a variety of ways, “[m]ost authors agree on the phenomenological description of gentrification as the process of replacement of lower income groups and uses in a given urban neighborhood for higher ones.”<sup>43</sup> The “cycle” of gentrification is considered complete when “gentrifiers with high cultural/low economic capital are replaced by those with high economic capital.”<sup>44</sup> Gentrification has sparked significant debate, with many arguing that the revitalization is beneficial for cities, while others assert that gentrification destroys the cultural heritage of a city.<sup>45</sup> Regardless of the advantages and disadvantages that result from gentrification, it appears undeniable that artists play a vital role in creating and facilitating the gentrification process.<sup>46</sup>

*The Impact Artists have on Gentrification*

While a variety of factors contribute to the gentrification of an area, scholars and urban planners have long hypothesized that artists and artist populations drastically impact and facilitate gentrification.<sup>47</sup> For instance, artists, as addressed

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43. KATHRYN P. NELSON, GENTRIFICATION AND DISTRESSED CITIES 11 (1988); John J. Betancur, *Can Gentrification Save Detroit? Definition and Experiences from Chicago*, 4 J.L. SOC'Y 1, 3 (2002-2003) (citing NEIL SMITH, THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY 33 (1996); Kenneth Fidel, End of Diversity: The Long-term Effects of *Gentrification* in Lincoln Park, in 2 RESEARCH IN URBAN SOCIOLOGY 145, 146 (Ray Hutchinson ed., 1992).

44. Stuart Cameron & Jon Coaffee, *Art, Gentrification and Regentrification – From the Artist as Pioneer to Public Acts*, EUR. J. OF HOUS. POL'Y, 39, 41 (2005) available at [http://www.scholars-on-bilbao.info/fichas/EJHP\\_cameronandcoaffee2005.pdf](http://www.scholars-on-bilbao.info/fichas/EJHP_cameronandcoaffee2005.pdf).

45. See Betancur, *supra* note 43 at 10 (“Culturally, cities may lose traditional ethnic and racial enclaves that took years and investment to build. Incoming cultures may clash with the special identities, historical identifiers, and particular “enclaves” of entrenched ethnic cultures. On the other hand, many insist that the incoming middle class produces cultural gains. Several neighborhoods of gentrification have been home to many artists and galleries and have hosted intensive cultural lives.”).

46. Cameron & Coaffee, *supra* note 44; see also Community Development Studio, *Gentrification and Rezoning Williamsburg-Greenpoint* 2 EDWARD J. BLOUSTEIN SCH. OF PLANNING AND PUB. POL'Y RUTGERS UNIV. (2007) available at <http://policy.rutgers.edu/academics/projects/studios/Williamsburg07r.pdf>; Alexandra Alter, *Artists vs. Blight* WALL ST. J. (April 17, 2009), <http://online.wsj.com/article/SB123992318352327147.html>.

47. Cameron & Coaffee, *supra* note 44, at 46 (“[B]oth art and culture, and gentrification have been extensively used in public policy as instruments of physical and economic regeneration of declining cities, and the two are often associated in a relationship of mutual dependence.”).

earlier, contributed significantly to the gentrification and revitalization of several New York City neighborhoods, including Chelsea, Lower East Side, East Village, West Village, Soho, and Murray Hill.<sup>48</sup> Of the theories that seek to explain the artist impact on gentrification, three have emerged as the most popular: (1) artists from a working class community bring recognition and therefore increase tourism to the working class community; (2) artists opt to live in communities where other artists live, and thus where the artists go, the money will follow; and (3) urban planners are actively reaching out to artists in hopes of creating an urban or rural renaissance.<sup>49</sup>

Some scholars have referred to artists as pioneers of gentrification.<sup>50</sup> Specifically, the “urban artist is commonly the expeditionary force for the inner city gentrifiers.”<sup>51</sup> Through moving to run down urban neighborhoods, artists provide “cultural capital,” which makes those neighborhoods more appealing to middle class and business class individuals and families.<sup>52</sup> Prior to the influx of the middle and business classes, artists were generally drawn to urbanized areas pre-gentrification because such areas provided low-cost housing and work space. Moreover, the artist’s allure with these areas also was fueled by “[t]he society and culture of a working class neighborhood, especially [one with] ethnic diversity, [that] attract[ed] the artist as it repel[ed] the conventional middle classes.”<sup>53</sup> The popularity of this belief receives tremendous commentator support because “[i]dentification with the dispossessed, freedom from the middle class convention and restraints, and the vitality of working class life have long been associated with the artistic, bohemian lifestyle.”<sup>54</sup> As artists and other progressive individuals move into an area, “the once-neglected neighborhoods become hip, new destinations for young professionals known in the dialogue of gentrification as the

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48. *How an Urban Artists’ Colony Was Inadvertently Created*, *supra* note 24.

49. See Cameron & Coaffee, *supra* note 44.

50. *Id.* at 40; see also DAVID LEY, *THE NEW MIDDLE CLASS AND THE REMAKING OF THE CENTRAL CITY* 191 (1996).

51. Ley, *supra* note 50, at 191.

52. Cameron & Coaffee, *supra* note 44, at 40.

53. *Id.*

54. *Id.*

‘risk-aware’ or the ‘fixer-uppers.’”<sup>55</sup>

*Examples of Artist Gentrification: Where Gentrification has Occurred, and the Consequences*

A major factor in the gentrification of many neighborhoods and communities is artist movement. Williamsburg, Brooklyn, is one such community that underwent revitalization as a result of artist presence.<sup>56</sup> With the construction of the Brooklyn Queens Expressway and the increased presence of sewage treatment facilities in the 1960’s and 1970’s, the Williamsburg community experienced a downturn, and many businesses and residents left the neighborhood.<sup>57</sup> At this same time, many artists seeking “affordable live/work spaces and an alternative to the commercialization of the Lower Manhattan art scene turned to Williamsburg.”<sup>58</sup> As a result, the Williamsburg “community expanded, opening galleries, shops, and restaurants giving the neighborhood a bohemian feel.”<sup>59</sup> Despite artist presence initially helping to revitalize the Williamsburg area, many former residents were no longer able to afford to live there, and today “[a] new younger, wealthier population is calling Williamsburg home.”<sup>60</sup> In recent years, “[t]he percentage of residents between the ages of 20 and 29 has grown . . . [and] [b]etween 1998 and 2004[,] the median income of renters increased by 12 percent.”<sup>61</sup>

Providence, Rhode Island, a previously industrial city, also underwent gentrification in the 1990’s and early 2000’s.<sup>62</sup> Taking over former factories, “recent [Rhode Island School of Design (“RISD”)] and Brown [University] graduates, joined with local activists and bohemians to create an edgy and popular underground art and music scene that drew people from throughout the Northeast. The presence of a flood of young, white people stimulated investments in neighborhood

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55. Matthew Jerzyk, *Gentrification’s Third Way: An Analysis of Housing Policy & Gentrification in Providence*, 3 HARV. L. & POL’Y REV. 413, 415 (2009).

56. Community Development Studio, *supra* note 46.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. Jerzyk, *supra* note 55, at 420.

coffee shops, music and video stores, and local bars and restaurants.”<sup>63</sup> With an increase in artist presence and increased popularity in Providence neighborhoods, in 2001, developers sought to “tear down a cluster of sixteen industrial buildings . . . that were home to over a hundred artists.”<sup>64</sup> Ultimately, despite significant resistance to the developers’ plans, the industrial buildings were torn down, leaving many artists homeless.<sup>65</sup> When asked about gentrification, a Providence artist stated that the urban developers “created social division in the community[, and] . . . a threat of losing one’s home.”<sup>66</sup> The artist continued that he and other artists “have been disrespected by the transplantation of a giant yuppie pod descended from outer space,” emphasizing the artist community’s disapproval of the revitalization and gentrification of an area that had previously provided artists with an abundance of live/work spaces.<sup>67</sup>

Artists should be aware that while their presence may help to revitalize an area, there is a risk that the increased value of the city may, one day, force them to leave. Thus, Williamsburg and Providence serve as cautionary tales for artists. Ultimately, while Williamsburg and Providence appeared to be ideal and cost-effective places for artists to relocate—as the capital value of property rose—artists found themselves no longer able to afford to remain in their respective cities.

Artists have also found refuge by purchasing undervalued homes during the recession. The economic downturn, coupled with an increase in foreclosures in recent years, caused some artists to relocate to economically struggling cities and to create artist communities.<sup>68</sup> Though artists have long been “leaders of an urban vanguard that colonizes blighted areas . . . [in recent years,] [d]rawn by available spaces and cheap rents, artists are filling in some of the neighborhoods being emptied by foreclosures.”<sup>69</sup> In the most economically challenged areas, urban planners and city officials specifically attempted to get artists to relocate and initiate

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63. *Id.*

64. *Id.* at 421.

65. *Id.*

66. *Id.* at 425.

67. *Id.* (internal citations omitted).

68. *See, e.g.,* Alter *supra* note 46.

69. *Id.*

gentrification.<sup>70</sup> For instance, reportedly, “[a]rtists and architects are buying foreclosed homes in Detroit for as little as \$100.”<sup>71</sup> Similarly, “[i]n St. Louis, artists are moving into vacant retail spaces in a shopping mall, turning stores that stood empty for more than a year into studios and event spaces for rents of \$100 a month.”<sup>72</sup> Thus, as they did in New York City neighborhoods, artists relocated to struggling areas in order to find affordable work/live spaces. In 2009, it was reported that “Katherine Chilcote, a local painter, bought a boarded-up, bank-owned house for \$5,000 in Cleveland’s Detroit-Shoreway neighborhood, where one in four family homes has gone into foreclosure in the last three years.”<sup>73</sup> Further, in Cleveland, “[w]hat began as a grass-roots movement, with artists gravitating to cheaper neighborhoods and making improvements, is now being embraced by city officials as a tool to revive neighborhoods reeling from vacancies and home foreclosures.”<sup>74</sup>

Although artists have frequently been displaced after “flock[ing] to, and improv[ing], blighted areas for decades,” urban planners and economists have argued that “now, since real estate has hit rock bottom in many places, artists with little equity and sometimes spotty credit history have a chance to become stakeholders . . . .”<sup>75</sup> Thus, while many have struggled to find the silver lining in today’s economy, the crash of the housing market may actually afford artists an opportunity to revitalize struggling areas without great fear of being pushed out.<sup>76</sup>

### *Initiatives to Increase Artist Populations*

With the well acknowledged economic benefits of gentrification, “[f]ederal, state, and local governments may facilitate private revitalization and gentrification through tax incentives, land use, and zoning permissions, or through the

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70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* (“Thieves had stolen the doors, punched out windows and ripped out all the pipes, sinks and electrical wiring. Eight cats had moved in.”).

74. Alter, *supra* note 46.

75. *Id.*

76. *See id.*

use of eminent domain.”<sup>77</sup> A variety of cities and municipalities have enacted artist incentive programs that seek to increase the artist population and facilitate the revitalization and gentrification of the area.<sup>78</sup> For example, in Covington, Kentucky, a city that has experienced a decline in population and economic productivity, the government has enacted a revitalization plan that includes artist incentives.<sup>79</sup> Specifically, in Covington, an artist may be eligible for a \$6,000 forgivable loan to restore live/work spaces, a \$5,000 loan for the purchase of a home, a \$2,000 architectural assistance grant, a five year property tax freeze, and a variety of tax credits.<sup>80</sup> Similarly, in 2001, Maryland became one of the first states in the country to enact legislation establishing a formal and coordinated program of Arts & Entertainment (“A&E”) Districts as a way to help revitalize communities and improve quality of life.”<sup>81</sup> In Maryland, artists who relocate to the Frostburg or Cumberland A&E districts may be eligible for a ten year property tax freeze, tax credits, project funding, and a variety of grants.<sup>82</sup> Similarly, Seattle recognizes the importance of affordable art housing, and currently provides 150 subsidized housing units for artists.<sup>83</sup>

In addition to cities and states taking legislative action to encourage artist development, a variety of nonprofit organizations seek to provide artists with affordable live/work spaces. In Cleveland, Building Bridges was founded to turn vacant storefronts into artist exhibition spaces.<sup>84</sup> Also, Artspace Projects, Inc., a nonprofit corporation with the mission to “create, foster, and preserve affordable space for artists and arts organizations,” assists artists and communities through “development projects, asset

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77. Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power, and Law*, 63 HASTINGS L.J. 803, 820 (2011-2012).

78. See, e.g., *Artist Relocation*, COVINGTON ART MERCHANTS, [http://www.covingtonartmerchants.com/index\\_files/ArtistRelocation.html](http://www.covingtonartmerchants.com/index_files/ArtistRelocation.html) (last visited Dec. 2, 2012).

79. *Id.*

80. *Id.*

81. *Arts and Entertainment Districts*, ALLEGANY ARTS COUNCIL, <http://www.alleganyartscouncil.org/static.php?page=212> (last visited Dec. 2, 2012).

82. *Artist Relocation Incentives*, ALLEGANY ARTS COUNCIL, <http://www.alleganyartscouncil.org/static.php?page=4> (last visited Dec. 2, 2012).

83. *Artist Housing*, SEATTLE.GOV, [http://www.seattle.gov/housing/levy/levy\\_artists.htm](http://www.seattle.gov/housing/levy/levy_artists.htm) (last visited Dec. 2, 2012).

84. Alter, *supra* note 46.

management activities, consulting services, and community-building activities that serve artists and arts organizations of all disciplines, cultures, and economic circumstances.”<sup>85</sup> With a nationwide presence, Artspace helps to provide affordable live/work and commercial artist spaces in a variety of locations.<sup>86</sup>

It is important to note that the cities, towns, and non-profits discussed in this note are a mere sampling of providers of affordable artist live/work spaces. The wide variety of communities and organizations aiming to provide artist accommodations exemplifies the well-acknowledged importance of ensuring that artists have access to affordable spaces.

### III. THE FUTURE OF ARTIST HOUSING

Despite a variety of artist incentive programs that initially encouraged artists to relocate, and despite the benefits artists provide to their communities, following gentrification, many artists are often pushed out of areas. After providing the cultural capital necessary to revitalize a community, artists often find themselves “priced out” of that community. Thus, without long-term artist sustainability programs, artists are used as pawns to redesign the community.

#### *Pushing Artists Out*

“Artist push-out” occurs because gentrification: (1) “reduces[s] the availability, affordability, and quality of artistic spaces,” (2) “reduce[s] the ability of artists, most of whom are on low-to-modest incomes, to afford residential space in (or near) the neighbourhoods in which they work,” (3) “undermine[s] the sense of community which attracts and sustains artists,” and (4) “alter[s] the aesthetic qualities of the built environment that helped to attract an artistic community in the first instance.”<sup>87</sup>

There are notable advantages and disadvantages to increasing artist communities in lower-income or over-run

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85. *About Artspace*, ARTSPACE, <http://www.artspace.org/about/> (last visited Dec. 2, 2012).

86. *Id.*

87. See Amy Macdonald & Stephanie Chai, *The Effects of Gentrification on Artists in Two Vancouver Neighbourhoods*, 19 W. GEOGRAPHY 61, 67 (2009).



areas. While artists spread cultural awareness, share stories and struggles of particular communities, and bring capital to struggling areas, these advantages are often only temporary. Specifically, artists face difficulty in affording rent and living expenses in their neighborhoods after gentrification has occurred.<sup>88</sup> Thus, “[t]he process of gentrification may decrease the economic feasibility, artistic community, artists’ inclusion in perceptions of the neighborhood, and signs of artistic expression.”<sup>89</sup>

Controversy regarding the treatment of artists as pawns is prevalent.<sup>90</sup> Often, “[d]espite their role in attracting middle class gentrifiers to certain areas, artists’ needs, particularly for artistic spaces such as studios and venues, are often inadequately addressed as gentrification occurs.”<sup>91</sup> Therefore, because “office towers and condominiums typically yield higher returns than arts-oriented use of space . . . artists who live in gentrifying areas are frequently displaced by rising costs and must find new areas, or even new cities in which to settle.”<sup>92</sup> Additionally, after the initial gentrification of an area, wealthy individuals push out artists through regentrification.<sup>93</sup>

As one Brooklyn resident noted,

[i]t’s easy to see why a mayor would love gentrification. Soho, once a neighborhood of abandoned warehouses and loose-cobblestone streets, is today filled with cafes, expensive restaurants, and designer boutiques. But you’ll be hard pressed to find a real-live struggling artist living there. Once the studios open and the smell of cappuccino wafts through the air, price hikes are just around the corner. This leaves the artists, not to mention the original neighborhood residents, packing bags in search of the next, cheap frontier.<sup>94</sup>

Yet, as gentrification takes hold in a neighborhood, the “artists who seek out poor areas for an ‘anti-establishment’

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88. *Id.* at 61.

89. *Id.*

90. See, e.g., Illana Stranger, *The Gentrification Game: Are Artists Pawns or Players in the Gentrification of Low Income Urban Neighborhoods?* NYFA, <http://www.nyfa.org/level4.asp?id=176&fid=1&sid=51&tid=169> (last visited Feb. 22, 2013).

91. Macdonald, *supra* note 87, at 64.

92. *Id.*

93. Cameron & Coaffee, *supra* note 44, at 44.

94. Stranger, *supra* note 87.

aesthetic become accomplices in the gentrification game and end up bringing the bourgeois culture they fled to their new neighborhoods.”<sup>95</sup>

### *The Carnegie Hall Case*

While New York City has long provided a variety of protections for artist housing, artists should still advocate for permanent protection for their live/work spaces. In addition to building the famous Carnegie Concert Hall in 1891, Andrew Carnegie built two apartment towers connected to the hall, which he rented to artists.<sup>96</sup> In 1925, Robert Simon bought Carnegie Concert Hall and the studio towers, and continued to rent the studios to artists.<sup>97</sup> By the late 1950’s, though, Carnegie Hall and the studios faced demolition. In order to prevent the Hall’s destruction, New York City purchased the building, and the New York Legislature created the Carnegie Hall Corporation to maintain both the hall and the studios.<sup>98</sup> After purchase, the Carnegie Hall Corporation rented the studios to Simon, who subleased them to artists at rent-stabilized rates.<sup>99</sup> Yet, in 2007, at the end of the corporation’s lease with Robert Simon, the Carnegie Hall Corporation decided to transform the artist studios into educational facilities and began eviction proceedings.<sup>100</sup>

In deciding whether to grant the corporation’s motion for eviction, the New York Civil Court noted that the Carnegie Hall Corporation was created to increase art education and to make such education available to the public.<sup>101</sup> Furthermore, the court recognized that when New York City bought Carnegie Hall and its studios, it did not do so as a commercial venture, and nothing in the purchase agreement required the committee to lease studio space to artists.<sup>102</sup> Ultimately, despite the studio’s long history of providing rent-stabilized apartments to artists, and the long tenancy of many residents, the court found that Carnegie Hall Corporation was

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95. *Id.*

96. *Carnegie Hall Corp. v. Niffenegger*, 852 N.Y.S.2d 663, 668 (Civ. Ct. 2007).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* at 669.

101. *Carnegie Hall Corp.*, 852 N.Y.S.2d at 668.

102. *Id.* at 674.

entitled to evict residents.<sup>103</sup>

*Arguments Against Rent Stabilization for Artists, and the  
Current State of Housing Laws*

Rent control and rent stabilization laws have continuously survived constitutional challenges in federal and New York state courts.<sup>104</sup> In *Pennell v. City of San Jose*, the Supreme Court held that rent control laws are not, on their face, unconstitutional.<sup>105</sup> Upholding San Jose's rent control laws, the Court noted, "we have long recognized that a legitimate and rational goal of price or rate regulation is the protection of consumer welfare."<sup>106</sup> Similarly, in *Fragopoulos v. Rent Control Board of Cambridge*, the Supreme Court of Massachusetts held that the state's rent control laws would be upheld so long as they did not burden a suspect class or a fundamental interest.<sup>107</sup>

Today, despite its long tradition, landlords continue to object to rent control laws. Specifically, in New York City, landlords assert that it is grossly unfair for rent control laws to require landlords to provide housing far below the market value.<sup>108</sup> Furthermore, landlords also claim that it is unconstitutional for city laws to prohibit them from renting to tenants of their choice, such as family members, because rent control provisions deprive landlords of the ability to evict individuals who follow lease terms.<sup>109</sup> Similarly, opponents of rent control assert that the laws make it difficult for new individuals to move to New York City because the laws discourage tenants in rent controlled apartments from abandoning their beneficial rate.<sup>110</sup>

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103. *Id.* at 675.

104. See *Pennell v. City of San Jose*, 485 U.S. 1, 13-14 (1988); *Fragopoulos v. Rent Control Bd. of Cambridge*, 557 N.E.2d. 1153, 1160 (Mass. 1990).

105. *Pennell*, 485 U.S. at 13-14.

106. *Id.* at 13.

107. *Fragopoulos*, 557 N.E.2d. at 1156; see also *Richardson v. City and County of Honolulu*, 759 F. Supp. 1477 (D. Haw. 1991) (upholding rent control provision as both legitimate and reasonable); *Santa Monica Beach, Ltd. v. Superior Ct.*, 19 Cal. 4th 952 (1999) (emphasizing the legislature's authority to impose rent control provisions).

108. Christopher Mathis, *US Supreme Court Looking at New York Rent Control: UWS Building the Focus of Constitutional Debate*, HUFFINGTON POST (Mar. 5, 2012, 2:56 PM), [http://www.huffingtonpost.com/2012/03/05/us-supreme-court-looking-new-york-rent-control-uws-building-harmon-v-kimmel\\_n\\_1321851.html](http://www.huffingtonpost.com/2012/03/05/us-supreme-court-looking-new-york-rent-control-uws-building-harmon-v-kimmel_n_1321851.html).

109. *Id.*

110. Sandy Hornick & Suzanne O'Keefe, *Reusing Industrial Loft Buildings for*

In April 2012, despite growing public discontent with rent control practices, the United States Supreme Court declined to hear constitutional challenges to New York City's rent control laws.<sup>111</sup> Though unsuccessful in their suit, Upper West Siders James and Jeanne Harmon asserted that the rent control laws were unconstitutional under the Takings Clause of the Fifth Amendment.<sup>112</sup> The Harmons asserted that the New York rent control laws violate the Fifth Amendment by requiring them to continue to rent their property.<sup>113</sup> Specifically, the Harmons argued that New York's rent control laws force them to charge sixty percent less in rent than they would charge if they owned apartments not subject to rent control.<sup>114</sup> The Harmons further claimed that New York City's rent control laws are inherently unfair because rent control is available to individuals who have the ability to pay market value.<sup>115</sup> Specifically, the Harmons point out that one of their renters has to pay only \$1,000 for a large one-bedroom apartment, even though that renter has the ability to pay more – as evidenced by the tenant's house in the Hamptons.<sup>116</sup> In a summary opinion, the Second Circuit struck down all of the Harmons' arguments and held that New York's rent stabilization laws are constitutional.<sup>117</sup> The court noted that because the Harmons bought their property with full knowledge that it was subject to rent stabilization laws, they had "acquiesced in its continued use as rental housing."<sup>118</sup>

### *Is There Longevity in Artist Communities?*

Artists may find themselves compelled to move to a particular area in order to take advantage of the many incentives and benefits offered in exchange for relocation. Yet, it is important for artists to recognize that after the

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*Housing: Experiences of New York City in Revitalization and Misuse*, 27 WASH. U. J. URB. & CONTEMP. L. 157, 176-77 (1984).

111. *Harmon v. Markus*, 412 F. App'x. 420 (2d Cir. 2011) *cert. denied sub nom. Harmon v. Kimmel*, 132 S. Ct. 1991 (2012).

112. *Mathis*, *supra* note 108.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Harmon*, 412 F. App'x. at 422.

118. *Id.*

initial artist relocation, and subsequent gentrification, it can become difficult for artists to maintain their new residency. Without protections and guarantees that rent will not increase, artists may be priced out of the area and forced to find yet another new community with affordable space. An individual need only look at Greenwich Village or Soho in Manhattan to see how former artist communities became chic and expensive neighborhoods, unaffordable to any new and aspiring artist. Despite the incentives for artists to move to a particular area, artists need to be careful and aware that changes in the community could leave them homeless and forced to look for another place to live.

Gentrification usually begins when artists move into a low-cost neighborhood or city, yet, after the initial wave of artist residence, it can be very difficult, if not impossible, for additional artists to move into such areas.<sup>119</sup> For example, one artist who bought studio space in a pre-gentrification Vancouver neighborhood for \$100,000 in 1986 estimated that the space was worth \$1.75 Million in 2007.<sup>120</sup> Therefore, unless a community is fully committed to the neighborhood's artistic presence over the long term, and/or artist organizations are buying foreclosed properties *en masse* for affordable re-sale to artist applicants, it is very likely that only the first wave of artists will be able to afford rental or sale prices.

#### CONCLUSION

Though rent control and rent stabilization policies have been utilized to increase artist presence in many neighborhoods, public opinion disfavors rent control, and in the future rent control may no longer be a viable option for artists. With increases in gentrification nationwide, and public policy favoring revitalization policies, artists need to ensure that they are not merely being used as pawns when relocating, and are ensured long-term security when choosing an area in which to reside and start businesses. The reclaiming of abandoned buildings by artist housing foundations and the conversion of lofts into residential apartments provides an excellent opportunity for artists to

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119. Macdonald, *supra* note 87, at 69.

120. *Id.*

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obtain affordable space and to bring benefits to a community. However, safeguards need to be put in place to ensure that artists will not later be pushed out of the spaces that they convert and occupy.