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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

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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

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 have long recognized the cultural value that art and artists provide, and thus, legislatures have passed protective housing laws that provide artists with affordable live/work spaces. Today, though artists have often been portrayed as "starving," studies on urban policy/planning have shown that where artists live, money and capital growth will follow. Artists are pioneers of gentrification. Thus, 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 (1) the history of rent control and its impact on the artist community, (2) New York City's artist zoned housing, and (3) New York City's "Loft Laws." Part II of this paper will discuss gentrification, specifically focusing on (1) the effect artists have on gentrification, (2) communities where artists have contributed to gentrification, and (3) current initiatives aimed at increasing artist populations. Lastly, Part III of this paper will discuss the future of artist housing, and will outline (1) the difficulties artists face post-gentrification, (2) prevalent arguments against rent stabilization, and (3) concerns regarding the longevity and permanency of "artist communities."

PART I. ARTIST HOUSING LAWS

Though the original rationales behind the enactment of rent control are no longer applicable today,¹ rent control has become a staple and a recognizable characteristic of New York City, and has provided artists with the ability to live in areas that they would not otherwise be able to afford. Rent control provisions have facilitated a continuous artist presence in New York City

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

through enabling artists to focus on their trade/craft without having to obtain a "mainstream job." In other words, New York City rent control laws permit artists to live and work an artist's low profit lifestyle in New York City's expensive market.

a. THE HISTORY OF RENT CONTROL/STABILIZATION LAWS

Rent control laws were first introduced to the United States during World War II.² At their first inception, rent control laws were enacted to regulate the very unstable housing market.³ Post-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.⁴ 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 social upheaval.⁵

Though rent regulation laws have been abolished in the majority of states and cities, they remain a staple of New York City.⁶ Rent controlled apartments are apartments in which the rental rates remain consistent, and cannot be increased despite

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See N.Y. Uncon. Laws § 26-401 (McKINNEY 2012).

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 regulation.⁷

Currently, there are about 50,000 apartments in New York State that are covered by rent control.⁸ 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.⁹ Throughout New York State, there are approximately one million rent stabilized apartments.¹⁰

Rent control and rent stabilization laws have continuously survived constitutional challenges.¹¹ In *Pennell v. City of San Jose*, the Supreme Court held that rent control laws are not, on

⁷ *Id.*

⁸ *Rent Stabilization and Rent Control*, N.Y. TIMES http://topics.nytimes.com/top/reference/timestopics/subjects/r/rent_control_and_stabilization/index.html (last visited, Dec. 2, 2012).

⁹ New York City Rent Guidelines Board, *Rent Stabilization FAQ*, <http://www.housingnyc.com/html/resources/faq/rentstab.html> (last visited Dec. 2, 2012).

¹⁰ *Id.*

¹¹ See *Pennell v. City of San Jose*, 485 U.S. 1 (1988); *Fragolopoulos v. Rent Control Bd. Of Cambridge*, 557 N.E. 2d. 1153 (Mass. 1990).

their face, unconstitutional.¹² 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."¹³ Similarly, in *Fragolopoulos v. Rent Control Bd. 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.¹⁴ Recently, in April 2012, despite growing public discontentment with rent control practices, the Supreme Court denied certification to hear constitutional challenges to New York City's rent control laws.¹⁵

b. HOUSING LAWS BENEFITING ARTISTS

Though a variety of states and cities have sought to protect artist housing, New York has enacted a variety of particularly protective laws. In 1974, the New York State legislature amended the Multiple Dwelling Law Article 7B ("7B") to permit local municipalities to zone living/work space for artists in visual fine arts.¹⁶ In addition to permitting cities to zone artist-only housing, 7B also allows artists to occupy

¹² *Pennell*, 485 U.S. at 13.

¹³ *Id.*

¹⁴ *Fragolopoulos*, 557 N.E. 2d. at 1156.

¹⁵ *Harmon v. Markus*, 412 Fed. Appx. 420 (2d Cir. 2011) cert. denied 132 S.Ct 1991 (2012).

¹⁶ N.Y. Mult. Dwell. Law § 277 (McKINNEY 1974 & Supp. 1986).

and use space for both residential and commercial purposes.¹⁷ As stated in the legislative findings underlying the enactment of 7B,

persons 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;¹⁸

With the passing of 7B, artists were "recognized [in New York City] 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."¹⁹ Thus, in passing 7B, the New York legislature

¹⁷ *Id.*

¹⁸ *Id.* at § 275.

¹⁹ *Lipkis v. Pikus*, 409 N.Y.S. 2d 598, 600 (N.Y. Civ. Ct. 1978).

recognized the need for artists to have access to substantial live/work space.²⁰

In order to be eligible for 7B zoned art housing, the New York City Department of Cultural Affairs formed a twenty-person coalition to certify artists.²¹ 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."²² Thus, to live in art stabilized housing in New York City, the tenant must be both regularly engaging in art, and certified as an artist.²³

C. 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.²⁴ Yet, as the industrial revolution came to a close, many companies moved out of cities, leaving behind vacant buildings

²⁰ *Id.*

²¹ See N.Y. Mult. Dwell. Law § 276.

²² *Id.*

²³ *Id.*

²⁴ Sandy Hornick & Suzanne O'Keefe, *Reusing Industrial Loft Buildings for Housing: Experiences of New York City in Revitalization and Misuse*, 27 WASH. U. J. URB. & CONTEMP. L. 157, 163-65 (1984).

and loft space.²⁵ During the 1950's, artists began to move into the vacant loft spaces.²⁶ Though 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" ²⁷ It is commonly believed that loft-building owners "welcomed the artist pioneers and later non-artists because they occupied space not otherwise rentable."²⁸ Even after the initial wave of artist occupancy of lofts, in the 1970's artists were still welcomed by loft building owners because "there was a thirty-five percent vacancy rate in loft buildings."²⁹

In 1961, New York City Mayor 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.³⁰

²⁵ *Id.*

²⁶ Jay Facciol, *Illegal Lofts in New York City: Have the Equities Been Balanced?* 14 FORDHAM URB. L.J. 559, 561 (1985-1986).

²⁷ Hornick, *supra* note 24 at 166.

²⁸ Facciol, *supra* note 25 at 563.

²⁹ *Id.* at 564.

³⁰ *How an Urban Artists' Colony Was Inadvertently Created*, N.Y. TIMES, June 8, 2003,

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.³¹ Through reclaiming unoccupied spaces, artists contributed to the gentrification of the New York City neighborhoods of Chelsea, Lower East Side, East Village, West Village, Soho, and Murray Hill.³²

In addition to artist squatting, in 1982, the New York Legislature passed what has come to be known as the "Loft Laws," which permit loft owners to convert loft space into residential apartments.³³ Though loft conversions under the Loft Laws are not limited to owners who rent to artists, many artists chose to live in loft-converted spaces and to assist in the initial conversions.³⁴ 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 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

<http://www.nytimes.com/2003/06/08/realestate/how-an-urban-artists-colony-was-inadvertently-created.html>.

³¹ *Id.*

³² *Id.*

³³ See generally N.Y. Mult. Dwell. Law §§ 280 - 287 (MCKINLEY 2010).

³⁴ William Eckstein, *An Evolution of New York Loft Conversion Law*, 10 *FORDHAM URBAN L. J.* 511, 513 (1981).

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.³⁵

In order for a property owner to rent a loft for residential purposes, the 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.³⁶ If a loft does not have a certificate of occupancy, the owner is prohibited from collecting rent on that space.³⁷ In addition to allowing commercial or manufacturing lofts to be converted into residential spaces, the Loft Laws ensure that loft rental rates are established and regulated by the Loft Board.³⁸ Furthermore, owners must seek approval from the Loft Board before implementing any increase in loft rents.³⁹

Courts have actively enforced 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

³⁵ N.Y. Mult. Dwell. Law § 282 (MCKINLEY 2010).

³⁶ *Id.* at § 284.

³⁷ *Id.* at §§ 301, 302.

³⁸ *Id.* at § 286.

³⁹ *Id.*

nine years worth of back rent.⁴⁰ Margaret Maugenest moved into her Brooklyn loft in 1984, following the passing of the Loft Laws.⁴¹ Though Maugenest paid the agreed upon rent initially, in 2003, she stopped paying rent because the living conditions were below the standards set forth by the Loft Board.⁴² The owners of Maugenest's building filed suit in 2008 seeking back pay of rent and eviction.⁴³ The court 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."⁴⁴ The New York Court of Appeals found that 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."⁴⁵ Thus, despite the fact that Maugenest owed \$60,000.00 in back rent, and, according to her attorney, had the means to pay the arrears,⁴⁶ the New York Court

⁴⁰ 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>.

⁴¹ *Id.*

⁴² *Chazon, LLC v. Maugenest*, 19 N.Y. 3d 410, 413 (N.Y. 2012).

⁴³ *No Eviction after Renter Didn't Pay*, *supra* note 40.

⁴⁴ *Maugenest*, 19 N.Y. 3d at 413.

⁴⁵ *Id.*

⁴⁶ *No Eviction after Renter Didn't Pay*, *supra* note 40.

of Appeals held that the landlord was "not entitled either to collect rent or to evict [Manugnest]."47

PART II. GENTRIFICATION

Though there is no set definition of gentrification, "[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."⁴⁸ Gentrification has sparked sufficient debate; many arguing that it is beneficial for cities, while others assert that gentrification destroys the cultural heritage of a city.⁴⁹ 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.⁵⁰

⁴⁷ *Maugenest*, 19 N.Y. 3d at 413.

⁴⁸ John J. Betancur, *Can Gentrification Save Detroit? Definition and Experiences from Chicago*, 4 J.L. Soc'y 1, 3 (2002-2003).

⁴⁹ See *id.* 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.").

⁵⁰ See Stuart Cameron & Jon Coaffee, *Art, Gentrification and Regentrification - From the Artist as Pioneer to Public Acts*, EUROPEAN J. OF HOUS. POLICY, 41 (2005) PDF available at http://www.scholars-on-bilbao.info/fichas/EJHP_cameronandcoaffee2005.pdf; Community

a. THE IMPACT ARTISTS HAVE ON GENTRIFICATION

Though there are many factors that contribute to gentrification, scholars and urban planners have long hypothesized that artists, and artist populations, drastically impact and facilitate gentrification.⁵¹ As stated earlier, artists have contributed to the gentrification of the New York City neighborhoods of Chelsea, Lower East Side, East Village, West Village, Soho, and Murray Hill.⁵² The "cycle" of gentrification is considered complete when "gentrifiers with high cultural/low economic capital are replaced with high economic capital."⁵³ Three common theories of artist impact on gentrification have become popular: (1) artists from a working class community bring recognition and therefore tourism to the working class community, (2) artists opt to live in communities

Development Studio, *Gentrification and Rezoning Williamsburg-Greenpoint 2*, EDWARD J. BLOUSTEIN SCH. OF PLANNING AND PUB. POLICY 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 available at <http://online.wsj.com/article/SB123992318352327147.html>.

⁵¹ *Id.* at 46 ("Both 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.").

⁵² *How an Urban Artists' Colony Was Inadvertently Created*, *supra* note 30.

⁵³ Stuart Cameron & Jon Coaffee, *Art, Gentrification and Regentrification - From the Artist as Pioneer to Public Acts*, EUROPEAN J. OF HOUS. POLICY, 41 (2005) PDF available at http://www.scholars-on-bilbao.info/fichas/EJHP_cameronandcoaffee2005.pdf.

where other artists live, and where the artists go, money will follow, and (3) urban planners are reaching out to artists in hopes of creating an urban or rural renaissance.⁵⁴

Artists have been referred to as pioneers of gentrification.⁵⁵ Specifically, it has been asserted that the "urban artist is commonly the expeditionary force for the inner city gentrifiers."⁵⁶ 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.⁵⁷ Artists are generally drawn to urbanized areas pre-gentrification because such areas provide low-cost housing and work space, yet also because "[t]he society and culture of a working class neighborhood, especially where this includes ethnic diversity, attracts the artist as it repels the conventional middle classes."⁵⁸ This is believed to be especially true 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."⁵⁹ As artists and other

⁵⁴ *Id.*

⁵⁵ *Id.* at 40; Ley, *The New Middle Class and the Remaking of the Central City*, 191 (Oxford University Press 1996).

⁵⁶ Ley, *supra* note 55 at 191.

⁵⁷ *Art, Gentrification and Regentrification*, *supra* note 53 at 40.

⁵⁸ *Id.*

⁵⁹ *Id.*

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 'risk-aware' or the 'fixer-uppers.'"⁶⁰

b. *EXAMPLES OF ARTIST GENTRIFICATION: WHERE GENTRIFICATION HAS OCCURRED, AND THE CONSEQUENCES*

Artist movement has been a major factor in the gentrification of many neighborhoods and communities. One community that has been revamped due to artist presence is Williamsburg, Brooklyn.⁶¹ In the 1960's and 1970's, with the construction of the Brooklyn Queens Expressway and the increased presence of sewage treatment facilities, the Williamsburg community took a downturn, and many businesses and residents left the neighborhood.⁶² Many artists seeking "affordable live work spaces and an alternative to the commercialization of the Lower Manhattan art scene turned to Williamsburg."⁶³ The Williamsburg "community expanded, opening galleries, shops, and restaurants giving the neighborhood a bohemian feel."⁶⁴ Though artist presence initially helped to

⁶⁰ Matthew Jerzyk, *Gentrification's Third Way: An Analysis of Housing Policy & Gentrification in Providence*, 3 HARV. L. & POL'Y REV. 413, 415 (2009).

⁶¹ Community Development Studio, *Gentrification and Rezoning Williamsburg-Greenpoint 2*, EDWARD J. BLOUSTEIN SCH. OF PLANNING AND PUB. POLICY RUTGERS UNIV. (2007) available at <http://policy.rutgers.edu/academics/projects/studios/Williamsburg07r.pdf>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

revitalize the Williamsburg area, many former residents are no longer able to afford the area, and today “[a] new younger wealthier population is calling Wililamsburg home.”⁶⁵ 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.”⁶⁶

Providence, Rhode Island, a previously industrial city, underwent gentrification in the 1990’s and early 2000’s.⁶⁷ Taking over former factories, “recent [Rhode Island School of Design (RISD)] and Brown 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 coffee shops, music and video stores, and local bars and restaurants.”⁶⁸ 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.”⁶⁹ Though significant resistance to the developers’ plans arose, ultimately, an influx of retail stores left many artists

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Jerzyk, *supra* note 60 at 420.

⁶⁸ *Id.*

⁶⁹ *Id.* at 421.

homeless.”⁷⁰ 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.”⁷¹ The artist went on to say that he and other artists “have been disrespected by the transplanted of a giant yuppie pod descended from outer space.”⁷²

With the downturn of the economy, and the increased numbers of foreclosures in recent years, some artists have opted to relocate to economically struggling cities and create artist communities.⁷³ 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.”⁷⁴ In particularly struggling areas, urban planners and city officials have specifically attempted to get artists to relocate and initiate gentrification.⁷⁵ For instance, reportedly “[a]rtists and architects are buying foreclosed homes in Detroit for as little as \$100.”⁷⁶ Similarly, “[i]n St. Louis, artists are moving into vacant retail spaces in a shopping mall,

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 425 (internal citations omitted).

⁷³ See e.g., Alexandra Alter, *Artists vs. Blight*, WALL ST. J., April 17, 2009 available at <http://online.wsj.com/article/SB123992318352327147.html>.

⁷⁴ *Id.*

⁷⁵ See *id.*

⁷⁶ *Id.*

turning stores that stood empty for more than a year into studios and event spaces for rents of \$100 a month.”⁷⁷ Thus, as they did in New York City neighborhoods, artists have 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.”⁷⁸ 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.”⁷⁹

Urban planners and economists have argued that though artists have frequently been displaced after “flock[ing] to, and improv[ing], blighted areas for decades . . . 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”⁸⁰ Thus, while many have struggled to find the silver lining in today’s economy, the crash of the

⁷⁷ *Id.*

⁷⁸ *Id.* (“Thieves had stolen the doors, punched out windows and ripped out all the pipes, sinks and electrical wiring. Eight cats had moved in.”).

⁷⁹ *Artists vs. Blight*, *supra* note 73.

⁸⁰ *Id.*

housing market may afford artists with the opportunity to revitalize struggling areas without great fear of being pushed out.⁸¹

C. 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 use of eminent domain.”⁸² 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.⁸³ For example, in Covington, KY, a city that has experienced a decline in population and economic productivity, the government has enacted a revitalization plan that includes artist incentives.⁸⁴ Specifically, in Covington, an artist may be eligible for a \$6,000.00 forgivable loan to restore live/work spaces, a \$5,000.00 loan for the purchase of a home, a \$2,000.00 architectural assistance grant, a five year

⁸¹ See *id.*

⁸² Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power, and Law* 63 HASTINGS L.J. 803, 820 (2011-2012).

⁸³ See e.g., *Artist Relocation*, http://www.covingtonartmerchants.com/index_files/ArtistRelocation.html (last visited Dec. 2, 2012).

⁸⁴ *Id.*

property tax freeze, and a variety of tax credits.⁸⁵ 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."⁸⁶ 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.⁸⁷

In addition to cities and states taking government action to encourage artist development, a variety of nonprofit organizations have sought to provide artists with affordable live/work spaces. In Cleveland, the Building Bridges nonprofit was founded to turn vacant storefronts into artist exhibition spaces.⁸⁸ Seattle has recognized the importance of affordable art housing, and currently provides 150 subsidized housing units for artists.⁸⁹ Lastly, Artspace Projects, Inc., a nonprofit corporation with the mission to "create, foster, and preserve

⁸⁵ *Id.*

⁸⁶ *Arts and Entertainment Districts*, <http://www.alleganyartscouncil.org/static.php?page=212> (last visited Dec. 2, 2012).

⁸⁷ *Artist Relocation Incentives*, <http://www.alleganyartscouncil.org/static.php?page=4> (last visited Dec. 2, 2012).

⁸⁸ *Artists vs. Blight*, *supra* note 73.

⁸⁹ *Artist Housing*, http://www.seattle.gov/housing/levy/levy_artists.htm (last visited Dec. 2, 2012).

affordable space for artists and arts organizations," assists artists and communities through "development projects, asset management activities, consulting services, and community-building activities that serve artists and arts organizations of all disciplines, cultures, and economic circumstances."⁹⁰ With a nationwide presence, Artspace helps to provide affordable live/work and commercial artist spaces in a variety of locations.⁹¹

It is important to note that the listed cities, towns, and non-profits mentioned in this paper are a mere sampling of providers of affordable artist live/work spaces. The variety of communities and organizations aiming to provide artist accommodations demonstrates not only the abundance of benefits that artists presence provides a community, yet also exemplifies the well acknowledged importance of ensuring that artists have access to affordable spaces.

PART III. THE FUTURE OF ARTIST HOUSING

Though there has been an abundance of discussion regarding the benefits of artist presence, especially in low economic

⁹⁰ *About Artspace*, <http://www.artspace.org/about/> (last visited Dec. 2, 2012).

⁹¹ *Id.*

areas, and though there have been a variety artist incentive programs encouraging artist relocation, artists are often pushed out of areas after gentrification occurs. After artists have provided the cultural capital that is required to revitalize a community, artists often find themselves "priced out" of that community, and thus, without long-term artist sustainability programs, artists are used as pawns to redesign the community.

a. *PUSHING ARTISTS OUT*

Artist push-out occurs after gentrification for four reasons: (1) gentrification "reduces[s] the availability, affordability, and quality of artistic spaces," (2) gentrification "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) gentrification "undermine[s] the sense of community which attracts and sustains artists," and (4) gentrification "alter[s] the aesthetic qualities of the built environment that helped to attract an artistic community in the first instance."⁹²

There are notable advantages and disadvantages to increasing artist communities in lower-income or over-run areas. Though artists help to spread cultural awareness, share stories

⁹² See Amy Macdonald and Stephanie Chai, *The Effects of Gentrification on Artists in Two Vancouver Neighbourhoods*, 67 W. GEOGRAPHY (2007-09).

and struggles of particular communities, and help to bring capital to struggling areas, artist presence can be temporary. Specifically, artists have faced difficulty being able to afford rent and living expenses in their neighborhoods after gentrification has occurred.⁹³ Thus, it has been asserted that “[t]he process of gentrification may decrease the economic feasibility, artistic community, artists’ inclusion in perceptions of the neighborhood, and signs of artistic expression.”⁹⁴

Controversy regarding the treatment of artists as pawns has become prevalent.⁹⁵ 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.”⁹⁶ Thus, 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

⁹³ *Id.* at 61.

⁹⁴ *Id.*

⁹⁵ See, e.g., Illana Stranger, *The Gentrification Game Are Artists Pawns or Players in the Gentrification of Low Income Urban Neighborhoods?* NYFA, available at <http://www.nyfa.org/level4.asp?id=176&fid=1&sid=51&tid=169>.

⁹⁶ Macdonald, *supra* note 92 at 64.

settle."⁹⁷ Additionally, after the initial gentrification of an area, wealthy individuals push out artists through regentrification.⁹⁸

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.⁹⁹

Yet, as the cycle of gentrification is complete, the "artists who [sought] out poor areas for an "anti-establishment" aesthetic become accomplices in the gentrification game and end up bringing the bourgeois culture they fled to their new neighborhoods."¹⁰⁰

b. THE CARNEGIE HALL CASE

Though New York City has provided a variety of artist housing protections, artists should be concerned about whether their live/work spaces will permanently remain live/work space. This issue was discussed in *Carnegie Hall Corp. v.*

⁹⁷ *Id.*

⁹⁸ *Art, Gentrification and Regentrification, supra note 53 at 44.*

⁹⁹ *Stranger, supra note 95.*

¹⁰⁰ *Id.*

Niffenegger.¹⁰¹ In addition to building the famous Carnegie Concert Hall in 1891, Andrew Carnegie built two studio towers that are connected to the hall, which he rented to artists.¹⁰² In 1925, Robert Simon bought Carnegie Concert Hall and studios, and continued to rent the studios to artists.¹⁰³

In the late 1950's, Carnegie Hall and the studios faced demolition, and thus, to prevent the Hall's destruction, New York City purchased the building, and the New York Legislature created the Carnegie Hall Corporation to maintain the hall and studios.¹⁰⁴ After purchase, the Carnegie Hall Corporation signed rented Robert Simon the studios, from which Robert Simon subleased the studios to artists at rent-stabilized rates.¹⁰⁵ Yet, in 2007, at the end of the corporation's lease with Robert Simon, the Carnegie Hall Corporation decided to transform the studios that had, for many years, been rented out to artists into educational facilities.¹⁰⁶

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

¹⁰¹ *Carnegie Hall Corp. v. Niffenegger*, 852 N.Y.S. 2d 663 (N.Y. Civ. Ct. 2007).

¹⁰² *Id.* at 668.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 669.

such education available to the public.¹⁰⁷ Furthermore, the court noted 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.¹⁰⁸ Eventually, despite the studio's long history of providing rent stabilized apartments to artists, and despite the long tenancy that many of the residents had in the studios, the court found that Carnegie Hall Corporation was entitled to evictions.¹⁰⁹

C. ARGUMENTS AGAINST RENT STABILIZATION FOR ARTISTS, AND THE CURRENT STATE OF HOUSING LAWS

Landlords have continuously objected to rent control laws. Specifically, in New York City, landlords have asserted that it is unconstitutional and grossly unfair for rent control laws to require landlords to provide housing far below the market value.¹¹⁰ For example, Upper West Siders James and Jeanne Harmon have argued that New York's rent control laws force them to charge 60% less in rent than they would charge if they owned

¹⁰⁷ *Carnegie Hall Corp.*, 852 N.Y.S. 2d at 668.

¹⁰⁸ *Id.* at 674.

¹⁰⁹ *Id.* at 675.

¹¹⁰ Christopher Mathis, *US Supreme Court Looking at New York Rent Control: UWS Building the Focus of Constitutional Debate*, HUFFINGTON POST, Mar. 5, 2012, http://www.huffingtonpost.com/2012/03/05/us-supreme-court-looking-new-york-rent-control-uws-building-harmon-v-kimmel_n_1321851.html (last visited Dec. 2, 2012).

non-rent control apartments.¹¹¹ The Harmons argued 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.¹¹² Specifically, the Harmons assert 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.¹¹³

Furthermore, landlords have asserted that it is unconstitutional for city laws to prohibit landlords from renting to tenants of their choice, such as family members, because rent control provisions deprive landlords of the ability to evict individuals who have followed lease terms.¹¹⁴ Though they were unsuccessful in their suit, the Harmons asserted that the rent control laws were unconstitutional under the Takings Clause of the 5th Amendment because the laws require landlords to charge a specific amount for rent, and to continue to rent to unwanted tenants.¹¹⁵ The Harmons asserted that the New York rent control laws violate the 5th Amendment through requiring Harmons to be obligated to continue to rent their property.¹¹⁶

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *US Supreme Court Looking at New York Rent Control, supra note 110.*

¹¹⁶ *Id.*

Similarly, opponents of rent stabilization assert that the laws have made it difficult for new individuals to move to New York City because the laws discourage tenants in rent stabilized apartments from abandoning their beneficial rate.¹¹⁷ Yet, despite the public opposition and legal challenges that have been exerted against rent control and rent stabilization laws, the Supreme Court has refused to hear challenges to the laws.¹¹⁸

d. *IS THERE LONGEVITY IN ARTIST COMMUNITIES?*

While many artists may be eager to move to an area, and thus, take advantage of the many incentives and benefits of moving to that community, post-gentrification it can become difficult for artists to continue their residences. Without protections and guarantees that rent will not increase, artists may be priced out of the area and forced to find a new community that has affordable space. An individual need only look at Greenwich Village and Soho to see how former artist communities have become chic and expensive neighborhoods, unaffordable to any new and aspiring artist. Thus, despite encouragement and incentives for artists to move to a particular area, artists need to be careful and aware that changes in the community could

¹¹⁷ Sandy Hornick & Suzanne O'Keefe, *Reusing Industrial Loft Buildings for Housing: Experiences of New York City in Revitalization and Misuse*, 27 WASH. U. J. URB. & CONTEMP. L. 157, 176-77 (1984).

¹¹⁸ See e.g., *Harmon v. Markus*, 412 Fed. Appx. 420 (2d Cir. 2011) cert. denied 132 S.Ct 1991 (2012).

leave artists homeless and forced to look for another place in which to relocate.

Though gentrification usually begins when artists move into a low-cost neighborhood or city, after the initial wave of artist residence, it can be very difficult, if not impossible, for additional artists to move into such areas.¹¹⁹ For example, one artist that bought studio space in a pre-gentrification Vancouver neighborhood for \$100,000 in 1986 estimated that the space was worth \$1.75 Million in 2007.¹²⁰ Thus, unless a community is fully committed to a long-term goal of artist presence, it is very likely that only the first wave of artists will be able to afford rental or sale prices.

CONCLUSIONS

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 nation wide, and public policy favoring gentrification, artists need to ensure that they are not merely being used as pawns when relocating, and are ensured

¹¹⁹ Macdonald, *supra* note 92 at 69.

¹²⁰ *Id.*

long-term security when choosing a location to reside and start business. The reclaiming of abandoned buildings by artist housing foundations and the conversion of lofts into residential apartments provides an excellent opportunity for artists to obtain affordable space and to bring benefits to a community, yet, like gentrification, 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.