



HOUSING
JUSTICE
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Governor Cuomo's Obstruction
& Renters' Injustice:
Two Years of the Housing Stability &
Tenant Protection Act of 2019

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A Policy Report By
Housing Justice For All

Introduction:

In 2019, the New York State legislature passed the Housing Stability and Tenant Protection Act (HSTPA) of 2019: a historic expansion of rental protections and a significant blow to the real estate industry who, for decades, has controlled politics in Albany. Two years later however, the Division of Homes and Community Renewal (HCR), mandated by Governor Cuomo to implement the laws, has yet to produce regulations that would make the new tenant protections a reality. This is just another example of how Cuomo and HCR, and the agency he controls, have used bureaucratic systems to prioritize real estate over renters in enforcement cases and obstruct pro-tenant legislation from being fully implemented. To move the implementation process forward, Cuomo must allow HCR to release their proposed regulation for HSTPA 2019 and allow the public input process to begin.

Passing HSTPA was only the first step in preventing further displacement and deregulation; HCR must now produce regulations and enforce the HSTPA as adopted into law. Two years after the passage of HSTPA, renters are still waiting for regulations to be made public by the agency because Cuomo has refused to sign off on their release. Without even seeing the proposed regulations, it has become impossible for renters to even advocate for changes to the implementation process. The blame for this lies directly with Governor Cuomo who has had since January 2021 to release the proposed regulations and begin the process of implementation. His failure to do so is just another example of his fealty to the real estate industry at the expense of everyday New Yorkers.

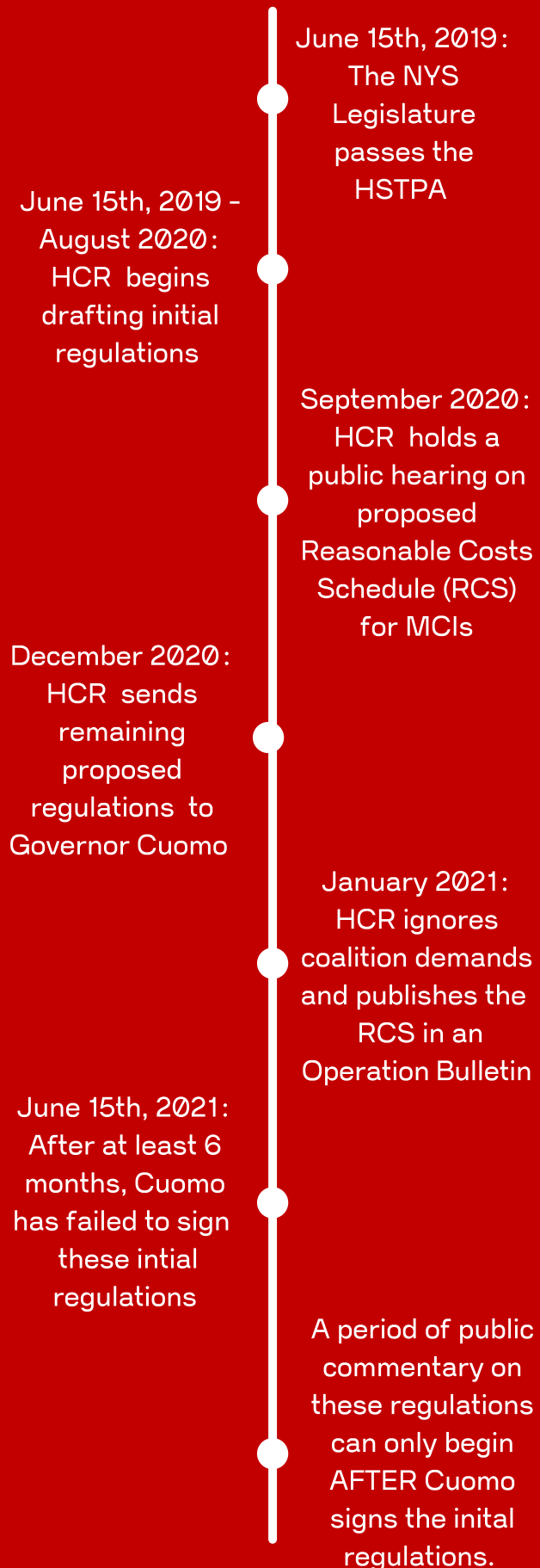
This obstruction from Governor Cuomo has broad racial justice implications. 76% of rent stabilized tenants are people of color: 42% are Latinx, 22% are Black and 11% are Asian.¹ A high percentage of families in rent stabilized and rent controlled apartments are rent burdened,² and frequently experience rent hikes, harassment, and an inability to secure enforcement of State-wide tenant protections.³ Black and brown New Yorkers bear the brunt of poor housing conditions while the state agency responsible for enforcing tenant protections encourages and condones landlord harassment and displacement through lack of oversight.

Introduction

These regulations would deliver the reforms of the HSTPA for New York renters by implementing restrictions on approval of Major Capital Improvements (MCIs) and Individual Apartment Improvements (IAIs), requiring rigorous enforcement of repeals of preferential rents and vacancy increases, and preventing new tactics by landlords to destabilize units. Tenants living in Manufactured Homes and Supportive Housing Units will see their rights enshrined in Rent Stabilization Law for the first time. These reforms must be made in order to make HCR's programs and services more accessible to tenants seeking enforcement and to improve data collection and transparency overall. In addition to better serving rent stabilized and rent controlled tenants, HCR must also work to serve populations newly brought under rent stabilization under HSTPA.

As tenants continue to wait for the full implementation of HSTPA two years after it's passing, they still suffer the same exploitative behaviors from landlords that they experienced in the past, leading to displacement and continued housing instability. If implemented comprehensively, the HSTPA would bring relief and security for hundreds of thousands of New York renters at a time when housing insecurity is higher than ever due in part to COVID-19. If New York is to fully recover from the pandemic and its devastating impact on our lives and homes, Cuomo and HCR must move to finally implement the HSTPA and guarantee housing stability to millions of New Yorkers.

Implementation Timeline



HOW HCR WORKS FOR LANDLORDS, NOT RENTERS:

Governor Cuomo's HCR has long created barriers for tenants seeking enforcement of their rights in rent stabilized and rent controlled apartments. By continuing to administer a highly bureaucratic and opaque system of landlord self-reporting developed by the landlord interest group Rent Stabilization Association (RSA) in the aftermath of the Emergency Tenant Protection Act 1974 (ETPA), HCR bars the average renter from successfully advocating for themselves and their housing rights. This excludes non-native English speakers and requires tenants to become experts on the minutiae of the rent stabilization code in order to navigate a simple enforcement case.

HCR's system puts the burden on tenants to proactively enforce their own rights and recognize landlord abuse and harassment without information from the agency. For example, tenants must go out of their way to request their own rental histories to spot overcharges and discrepancies. Under a renter centered agency system, residents would be provided this information proactively and would be supported by the agency in correcting landlord abuse and stopping patterns of abusive behavior across landlord portfolios. Tenants should not have to do HCR's job for them in order to have their rights enforced.

Tenants who know their rights and demand HCR enforce them still struggle to navigate enforcement programs. To be successful in responding to landlords' applications to pass rent increases through MCIs or deregulate apartments entirely, Tenant advocates in the legal community pay for subscriptions to receive information about HCR decisions needed to make administrative arguments in enforcement cases, but tenants on their own are left in the dark. HCR also has a track record of ignoring cases of tenant harassment or landlord fraud made by other agencies, like the New York City Department of Buildings.

Once an active enforcement case is initiated, it can take over a year for HCR to respond and even decide to enforce the law. Overcharge cases often languish in bureaucratic limbo for years before tenants hear from the agency. The same cannot be said for landlords who pursue MCIs, a rent raising mechanism that remains in the ETPA; their applications are often approved within months. This discrepancy of enforcement on HCR's part is a clear indication of the agency's ties to the real estate industry. Below are three case studies of tenant organizations navigating the bureaucracy of Governor Cuomo's HCR and seeing firsthand how the agency prioritizes real estate over people.

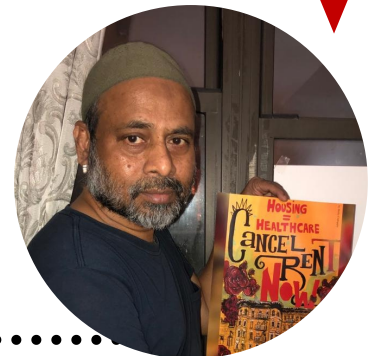
CASE STUDY: ZARA TENANTS COALITION

Zara Realty is one of the largest multi-family landlords in Queens, with 43 apartment buildings and a total of 3,174 rental units). Zara tenants are mostly working class immigrant households who have been devastated by the COVID-19 pandemic. In recent years, at least three different government agencies have taken legal action against Zara for practices of abuse and discrimination against tenants, including a lawsuit from the NY Attorney General against Zara for “[targeting] tenants in at least 38 rent-stabilized buildings by charging excessive fees, coercing them into signing improper leases, illegally raising rents, and denying tenant rights.” Additional action was taken by the NYS and NYC Divisions of Human Rights.

More than 25 MCI applications are being processed for 11 different Zara buildings—including at least 2 filed during the pandemic—with potential rent increases of up \$135 per room per month.

“Zara understands that MCI’s are a way to evict tenants and increase property value at the same time. My neighbors and I have organized and pushed back the last 4 years. We’ve pointed out that the landlord has lied multiple times on his application, inflated the price, and continues to harass tenants. If these applications are approved, many of my neighbors will be forced to move, including myself.”

– Mr. Khan, a Zara resident of 10 years



“My mother is 92 years old and I am putting her at risk because we don’t have keys. Ultimately, what’s the point of DHCR? People say they are working for the landlords and sometimes I wonder if it’s true.”

Cristina, resident of 94-25 57th Avenue

Cristina is a single mother supporting her son and her elderly mother. They share one key and are forced to wait with neighbors for their key, heightening the risk of viral transmission.

After Zara refused to provide keys to tenants after electing to install new lock systems, tenants in several Zara buildings have organized and filed Rent Reduction Applications with HCR.

Across the board, tenants waited more than a year to receive a ruling from the HCR. This was the case at 94-25 57th Avenue in Elmhurst, where tenants won a Rent Reduction Order due to Zara’s failure to provide keys. After Zara refused to comply, tenants filed yet another complaint. 6 months later, HCR notified tenants that they had reached a settlement with the landlord, yet failed to disclose the penalty charges imposed on Zara.

CASE STUDY

Tenant Harassment in the Lower East Side

In Manhattan, a coalition of Tenant Associations joined together in 2015 to form Tenants Taking Control to fight against the predatory equity tactics ravaging their community, such as building buy-outs, construction harassment, and failure to provide utilities, repairs and services.

In 2020, the Attorney General stated that Madison Realty Capital, who loaned the money for the purchase of the buildings, “aided and abetted tenant harassment and other fraud.”⁷

Tenants have lived through years of warehousing, in which the buildings were mostly empty, leading to frequent issues with vermin. These tenants also report a lack of repairs in many of the buildings, even while other renovations are underway.

"Frankensteining"

Madison Realty Capital has filed permits in at least two buildings, 327 E. 12th St. and 228 East 6th St. for “apartment combination,” a practice known as “Frankensteining”. After living with years of intense displacement pressure and mismanagement, tenants are now bracing themselves to experience another round of intense renovations that could raise even more apartments out of affordability.



TTC tenants stand next to warehoused apartments in their building

Rent Increase

550 Broome St. was purchased by Bluestar Properties in December 2017. The tenant association is fighting two MCI increases, which Bluestar applied for in March 2020 and HCR approved in May 2021; **the two MCIs totaled roughly \$109,000** and will increase tenants' rents by approximately **\$35-\$50/month**. Among the questionable work approved was \$9,000 worth of asbestos abatement, despite seeing no abatement work in common areas..



TTC tenants hold a press conference/action in front of one of their buildings

Safety/Habitability

332 East 4th Street sold a few months before the HSTPA became law. The landlord, Frontier Fourth Development LP, rushed renovations and received DOB/OATH violations for construction and a Department of Health and Mental Hygiene Commissioner's Order to remediate lead dust covering the building's common areas.⁸ During the pandemic, tenants were notified of a **\$512,901.22 MCI** application filed by Frontier. However, tenants report that improvements the landlord had claimed in the MCI application were ineffective from the start, with broken tile work and a malfunctioning front door still persisting as issues.

CASE STUDY: STEVEN FINKLESTEIN

Steven Finklestein, of FTRE Management, is one of the highest evicting landlords in the Bronx and the self-proclaimed MCI King, across his 4281-unit portfolio in the Bronx. The buildings in his portfolio have an average age of almost 90 years, the average size being 54 units, all in predominantly black and latinx neighborhoods in the Bronx where historic redlining practices ravaged communities and where events like the recent Jerome Avenue Rezoning are speeding up the pressure of gentrification on rents in an already rent burdened area.

For years tenants have fought these rent increases in MCI opposition cases with HCR, but have been largely unsuccessful due to the allowances in RSL for inflated costs and frivolous renovations, in addition to the agency's inability to hold landlords accountable for fraud and poor conditions.

This was the case at 2770-80 Kingsbridge Terrace, where in 2018 DHCR granted an **MCI rent increase of over \$1.3 million dollars** from so called kitchen and bathroom renovations done in 2015. However, The TA argued in their opposition that FTRE made multiple false statements in the MCI application that DHCR ignored. They reported Finkelstein first told DOB that there were no rent-stabilized tenants (or no tenants at all), and then turned around and used these DOB approvals to get an MCI rent increase from the same rent-stabilized tenants he claimed did not exist.

"HCR is allowing owners to use MCIs to to hike rents, to endanger tenants with unsafe constructions and call it renovations, and to force us out of our neighborhoods. The pandemic is not over and neither is the housing crisis that has only gotten worse due to COVID19. Every appeal gets denied, every 311 complaint goes no where, every rent relief program requires us to prove our worth ; when will it end?"

Juan Nunñez, Tenant Leader
2770-80 Kingsbridge Terrace



The tenants have been appealing HCR's decision through their Petition for Administrative Review (PAR) for over two years. They started a rent strike in August, 2020 to protest MCI rent increases and poor building conditions.



901 Walton Tenants' Association seen here meeting with their landlord Steven Finklestein in November, 2019

A frequent tactic of FTRE is to gut renovate all kitchens and bathrooms in a building, regardless of current conditions, while ignoring other apartment needs, and imposing dangerous conditions on tenants during construction such as in 901 Walton Avenue. **Tenants are demanding that HCR remove kitchen & bathroom renovations from the list of MCI eligibility requirements in HSTPA.**

HOW HCR SHOULD IMPLEMENT THE HSTPA:

The NYS legislature passed the HSTPA in 2019 to improve housing stability and provide robust tenant protections. The legislative intent is clear: to ensure safe and dignified housing for tenants and to stop further destabilization of apartments and neighborhoods. Yet Governor Cuomo (and the regulatory agency he controls) are consistently undermining the work of both the State legislature and the tenant movement who fought for this important legislation. In order to implement the HSTPA within the spirit of the legislation the agency should pursue the following regulations:

Major Capital Improvements (MCIs):

What We Won:

Major Capital Improvements or (MCIs) are a legal mechanism for landlords to pass the cost of large, building systems repairs onto renters. They have long been used to harass and price gouge renters, and a large source of fraud. The HSTPA established the following requirements for HCR to reduce fraud in the MCI system:

- HCR must establish a Reasonable Cost Schedule (RCS) to prevent inflated costs,
- The type of work eligible for MCIs are restricted
- HCR is barred from approving MCIs in buildings where there are open "B" and "C" violations placed by HPD.
- MCIs are now temporary
- MCIs are capped at 2%, instead of previously capped at 6%

What Just Implementation Requires:

- Clear rules specifying what qualifies as an MCI and prohibiting qualification of non-structural and individual apartment improvements as MCIs.
- HCR should require landlord explanation and justification provided for every MCI outlining why improvements benefit tenants and why they are essential.
- HCR must deny previously denied MCI applications re-submitted for approval.
- HCR must also implement a policy of requiring clear differentiation of temporary MCI rent increases from permanent rent increases under the law.
- The Reasonable Costs Schedule (RCS) for MCIs, which is currently being administered through an "Operational Bulletin," must be fully implemented into Rent Stabilization Law and more work must be done to ensure it will meaningfully restrict inflated costs.
- HCR must remove the waiver system of the RCS, which current nullifies the intent of the law by allowing landlord to sidestep the RCS entirely.

Individual Apartment Improvement Increases (IAIs):

What We Won:

Individual Apartment Increases (IAIs) are renovations to rent stabilized apartments that allow landlords to increase the legal rent. Before 2019, IAIs were unlimited and landlords would use them to deregulate apartments every time a tenant moved out.

Under the HSTPA, rent increases due to IAIs were capped at \$89.00 a month in buildings with 35 or fewer units and at \$83.00 in buildings with more than 35 units.

This drastically limited landlords' ability to use IAIs to significantly increase rent in between tenancies.

What Just Implementation Requires:

- We urge HCR to review pre-HSTPA claims for IAIs that resulted in deregulation of an apartment unit and to inform current tenants of how they can challenge the deregulation of their apartment.
- HCR must also establish a notice and documentation procedure for IAIs to notify tenants moving into an apartment with a pre-existing IAI and provide information, without the tenant filing a FOIL or subpoena, to understand the work that took place and hold their landlord accountable if the IAI was done incorrectly.
- IAIs must be completed in accordance with a Reasonable Costs Schedule.
- HCR must inform landlords that they must itemize IAI increases by year of improvement in order to ensure that each IAI is removed 30 years after the base date and must clarify to landlords that IAI increases cannot be compounded.

The stakes of unjust implementation

Without implementation of these demands we will continue to see illegal increases and abuse by landlords. While we wait for Cuomo to allow HCR to move forward on implementation, housing organizers have seen an uptick in applications, especially for MCIs, in the wake of repeals to additional allowances in RSL for rent hikes. Despite calls for a moratorium on MCI applications until regulations are passed, HCR continues to accept and approve applications from landlords under pre-HSTPA regulations. This keeps the door to excessive rent increases wide open at a time when reform limitations should have been well established. In passing the HSTPA the state legislature intended to limit the number and impact of MCIs by requiring more information sharing with tenants, stricter rules for using MCIs and IAIs, and a commitment from the agency to rigorously enforce fraud. Without proper implementation we will continue to see more and illegal increase approvals, efforts to keep tenants in the dark or deprive them of their rights, and landlords pushing the boundaries of the law by taking advantage of inadequate agency review.

Preferential Rent, Vacancy Increases, Vacancy Decontrol

What we won

HSTPA attempts to curb deregulation by repealing the common practice of Vacancy Decontrol, and repealing additional loopholes allowing above-guidelines rent increases to occur that were used in concert to raise rents to the regulation ceiling. Preferential rents were made permanent for individual tenants during the course of tenancy with landlords prohibited from revoking those rates in addition to vacancy increases that have long incentivised displacement.

What just implementation requires

In order to preserve these protections, HCR must fully enforce rent and vacancy regulations, penalize owners who fail to register regulated apartments, and require landlords serve tenants with notice of apartment registrations. HCR must take steps to proactively monitor and enforce against illegal vacancy increases and decontrol. HCR must take steps to keep landlords from failing to register units or reporting units as properly stabilized, then marketing and renting them to tenants at market-rate.

HCR must also take steps to prevent harassment of tenants with preferential rent and hold landlords who do engage in harassment accountable by freezing rents and applying preferential rents to future tenants. HCR should also share know your rights information with preferential rent tenants and provide information on how to submit complaints for overcharge.

The stakes of unjust implementation

Without proper information sharing with tenants and landlord accountability, landlords will target tenants protected by preferential rent with harassment in order to revoke preferential rent upon vacancy and sidestep the law on preferential rent entirely by illegally increasing the rents of protected tenants. Without full oversight and enforcement against these risks, tenants will continue to go unaware of their rights or without access to the information needed to enforce them and the limited stock and affordability levels of our regulated housing will face further erosion.

Revision and Review of Loopholes

What we won

The HSTPA closed various loopholes in New York's rent regulation laws. These changes help ensure that regulated apartments are protected from illegal rent increases and deregulation, and helps curb deceptive practices by landlords attempting to avoid compliance with the law.

What just implementation requires

Since the passage of HSTPA and the closing of various rent regulation loopholes, landlords have sought alternatives to pushing the boundary of the law. Many have taken to combining, dividing, or otherwise changing the layout of units, a practice also known as "frankensteining," in order to set a new "first rent" on these "new units." This tactic gives landlords free reign to increase rents as high as they like, undermining the intent and impact of the HSTPA and rent regulation. Landlords are incentivised to harass and displace tenants in order to combine units. In many cases, this means warehousing – intentionally leaving apartments vacant for long periods of time in anticipation of combining adjacent units.

Every rent-regulated unit is a public good, and warehousing wastes and erodes our limited stock of regulated housing. To combat warehousing and frankensteining, HCR must require landlords to submit detailed applications to HCR before combining, dividing, or changing the dimensions of a rent regulated apartment and new tenants should be given an opportunity to challenge modification approvals. HCR should also ensure that rents for combined regulated apartments continue to be regulated and that new rents on combined apartments are set no higher than the sum rent of the two previously separate units.

The stakes of unjust implementation

Whether through "Frankensteining" or other new loopholes altogether, landlords are finding new attempts to deregulate apartments. Without requirements by HCR curbing these practices and sharing information with tenants affected by them, these practices among landlords seeking to skirt the law, remove their units from regulation, and shrink the stock of regulated housing available to New York tenants will become commonplace.

Agency Transparency

What we won

The HSTPA enacted critical reforms related to the specific rules and procedures of apartment regulation and interactions between tenants and landlords. Winning proper implementation and agency information sharing remains a critical and ongoing priority of the tenant movement.

What just implementation requires

Tenants and advocates need more information to hold landlords and HCR accountable. HCR should create a database providing rent histories for regulated apartments and buildings more broadly - not only to tenants of individual units - and should provide building-wide and yearly data on stabilized units. HCRs database should flag when a landlord's total number of registered stabilized units in one year falls below the number reported the year before. It should also track the correct legal status of every rent-stabilized unit in the state.

At a minimum, HCR should report building-level data for all buildings with at least 6 units and should list apartment registrations, stabilized and rent controlled status of units, tax exemption-based stabilizations, vacant unit information, preferential rents on units, individual apartment improvements on units, and major capital improvements. HCR should also take extra steps to ensure that the new populations brought under the protection of the HSTPA know about their rights and have access to the information necessary to protect those rights.

The stakes of unjust implementation

Organizers have seen tenant wait times for case review grow longer and longer while requests for crucial information from HCR for those cases have gone unanswered for months. Agency and legal barriers have made it impossible for tenants to access the information they need to advance their cases. Failure to provide the information demanded above will deprive New York renters of critical information necessary for defending their rights and will empower landlords to commit systemic fraud and deception without accountability or transparency.

CONCLUSION:

The HSTPA was intended to enact a foundational shift within the rent stabilized housing landscape divesting power from corporate landlords systematically fueling displacement for a payday in order to empower and protect tenants and preserve affordable housing. After passing in the summer of 2019, HCR only implemented a Reasonable Costs Schedule MCIs through Operation Bulletin in January, 2021. The remaining proposed regulation has yet to be released by the agency, pending the Governor's approval, which is a critical step to allow the public to begin participating in the implementation process. Cuomo's refusal to move forward the implementation of HSTPA for two years is a gross neglect of his duty and a deliberate disservice to New York's Tenants.

After two years of waiting for implementation it is time for Governor Cuomo's favors to big real estate to end. Governor Cuomo and his HCR must put tenant rights over the interests of corporate landlord interests. We urge Governor Cuomo to allow HCR to immediately release draft regulations consistent with the demands outlined here and in the Housing Justice for All Coalition's 2020 policy recommendations, to instruct HCR to advance implementation of the HSTPA, and to continue to work with directly impacted New Yorkers to ensure their concerns are prioritized in the effort to protect their rights.

The fight does not end with HSTPA implementation. Governor Cuomo continues to bend the rules to allow his corporate landlord donors to extract profits from protected renters. Vigilant and ongoing oversight of enforcement are needed in order to guard against big real estate lobbying to erode tenant rights and to ensure that HSTPA's protections are enacted to the full extent intended by the law. HSTPA's success starts with HCR and it is up to the housing movement to ensure that they remain accountable to renters, not to big landlords.



END NOTES

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4. NYC Commission of Human Rights, NYC Charges Queens Landlord With Retaliating Against Immigrant Tenants Who Filed Discrimination Complaints (Describing the sending of Cease and Desist Letter against Zara), Press Release (July 2017) <https://www1.nyc.gov/office-of-the-mayor/news/491-17/nyc-charges-queens-landlord-retaliating-against-immigrant-tenants-who-filed-discrimination>. See also Office of the Governor Of New York, Governor Cuomo Announces Actions to Support Fair Housing for All (Describing how NYS Division of Human Rights files Complaint against Zara) (April 2018) <https://www.governor.ny.gov/news/governor-cuomo-announces-actions-support-fair-housing-all>
5. Office of the New York State Attorney General, Attorney General James And Governor Cuomo Announce Lawsuit Against Queens Landlord For Violating Rent Stabilization Laws And Tenant Harassment, Press Release (March 2019) ag.ny.gov/press-release/2019/attorney-general-james-and-governor-cuomo-announce-lawsuit-against-queens
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