

Report:

Remodeling Market Sentiment Edged Up in the First Quarter of 2023

WASHINGTON, D.C.

The National Association of Home Builders (NAHB) recently released its NAHB/Westlake Royal Remodeling Market Index (RMI) for the first quarter, posting a reading of 70, edging up one point compared to the previous quarter.

The NAHB/Westlake Royal RMI survey asks remodelers to rate five components of the remodeling market as “good,” “fair” or “poor.” Each question is measured on a scale from 0 to 100, where an index number above 50 indicates that a higher share view conditions as good than poor, NAHB officials said.

The Current Conditions Index is an average of three components: the current market for large remodeling projects, moderately-sized projects and small projects. The Future Indicators Index is an average of two components: the current rate at which leads and inquiries are coming in and the current backlog of remodeling projects. The overall RMI is calculated by averaging the Current Conditions Index and the Future Indicators Index. Any number over 50 indicates that more remodelers view remodeling market conditions as good than poor, the report said.

NAHB officials said that the Current Conditions Index averaged 75, dropping two points compared to the previous quarter. Two of the three components declined as well: the component measuring large remodeling projects (\$50,000 or more) fell three points to 71 and the component measuring small remodeling projects (under \$20,000) declined by two points to 77. Meanwhile, the component measuring moderately-sized remodeling projects (at least \$20,000 but less than \$50,000) remained unchanged at 78.

The Future Indicators Index increased two points to 64 compared to the previous quarter. The component measuring the current rate at which leads and inquiries are coming in rose two points to 59 and the component measuring the backlog of remodeling jobs increased two points to 69, the report said.

“Remodelers are generally optimistic about the home improvement market, although some are noting negative effects of material shortages and higher interest rates,” said NAHB Remodelers Chair Alan Archuleta, a remodeler from Morristown, N.J. “Customers are still undertaking larger projects, but are mostly paying cash rather than financing them.”

“An overall RMI of 70 is consistent with NAHB’s projection that the remodeling market will grow in 2023, but at a slower pace than in 2022,” said NAHB Chief Economist Robert Dietz. “One potential area of growth, given the aging U.S. population, is aging-in-place remodeling. In fact, 63 percent of remodelers reported in the first quarter doing aging-in-place work, with bathroom projects like grab bars and curb-less showers being particularly common.”

For the full RMI tables, visit: www.nahb.org/rmi.

The NAHB/Westlake Royal RMI was redesigned in 2020 to ease respondent burden and improve its ability to interpret and track industry trends. The index has now collected enough data for the series to be seasonally adjusted, so moving forward the results will be compared quarter-to-quarter, NAHB officials said.

Westchester County Legislators Pass the Access to Counsel Bill

WHITE PLAINS

The Westchester County Board of Legislators on May 15 passed an Access to Counsel Bill, offering legal representation to households facing eviction and other covered proceedings whose annual income is at or below 300 percent of the federal poverty-line or 60 percent of the county’s Area Median Income (AMI), whichever is higher. The bill was approved by an unanimous vote, board officials said.

Officials from The Westchester County Board of Legislators said that across the country, a number of jurisdictions have enacted Access to Counsel laws, otherwise known as Right to Counsel, ensuring Tenants facing eviction proceedings are provided with an attorney. The law provides for access to legal representation for Tenants facing eviction and/or specified

covered proceedings, including challenges to an unlawful rent increase, instances where a Tenant has been illegally locked out by their Landlord, and Tenants seeking the restoration of essential services. The law, officials from The Westchester County Board of Legislators added, is a critical step toward creating a more just and equitable society, particularly for those who have historically been forced to navigate the complexities of housing court without legal representation.

Nancy Barr (D-6th LD), Vice Chair of The Westchester County Board of Legislators, stressed the importance of ensuring fairness and justice for all Tenants, regardless of their income or background.

“For too long, Low-Income Tenants have faced a legal system that is stacked against them, leaving them vulnerable to displace-

Continued on p. 8

Increases of 1 Percent and 2 Percent Approved by the Westchester County Rent Guidelines Board, Continued from p. 1

“If this trend continues, how many of us small landlords will be left in business? The Rent Guidelines Board can’t continue to treat us like we’re faceless corporations, you know my face and you know my story. Small property owners like us genuinely care – it’s the whole reason why we’re here in the first place,” said Alana Ciuffetelli, chair of the BRI’s Apartment Owners Advisory Council (AOAC), during her June 12 testimony to The Westchester County Rent Guidelines Board. “Last year, we had a tenant testify on our behalf to say that she understands why property owners need sufficient increases in order for tenants to continue receiving the same quality of housing. If our tenants can understand this basic concept, I’m confused as to why this Board continuously provides us with meager increases that barely - if at all - help us break even on our costs.”

Building and realty industry officials said that, along with rising operating costs, the Housing Stability and Tenant Protection Act (HSTPA) of 2019 also placed major restrictions on other programs for funding building improvements and renovations, making the annual increases from The Westchester County Rent Guidelines Board even more critical. Vacancy Bonuses, formerly used to fund the renovations of apartments in between tenants, were eliminated entirely.

In a recent survey conducted by the BRI, nearly all property owners reported not applying for an Individual Apartment Improvement (IAI) adjustment because the new amounts received from it post-HSTPA would be “not worth the effort.” Also in the survey, nearly all property owners reported not applying for a Major Capital Improvement (MCI), with those who indicated that they have a major renovation need saying that they intend to put it off for a more favorable economic climate and hope nothing disastrous happens. According to a study by Hudson Valley Patterns for Progress, the number of MCI applications has dropped by 83 percent in the past five years.

“Unless we get a fair increase moving forward based on the real needs of our buildings and the real costs of keeping housing available, affordable, safe, and dignified, my tenants will suffer along with my buildings,” DeRosa said. “I need to be able to properly address any maintenance or repair issues immediately for the safety and comfort of my tenants. If I don’t have the necessary funds, fixing these issues will take much longer and many of us will have no other option than to look for a cheaper and alternate solution. This doesn’t help my tenants in the long run, nor does it help preserve my building long-term.”

The Westchester County Rent Guidelines Board announced on June 29 that it will be scheduling a further public meeting to be held in September to certify the rent guidelines for rent-stabilized leases commencing between Oct. 1, 2023 and Sep. 30, 2024. This formality will not change the percentage rent increases voted upon on June 29, building and realty industry officials said.

Counsel’s Corner

Court Invalidates Requirement that Landlords Accept Section 8

By Kenneth J. Finger, Esq., Dorothy M. Finger, Esq., Carl L. Finger, Esq., and Daniel S. Finger, Esq.

NEW YORK

New York State Supreme Court Justice Mark G. Masler, on June 27, 2023, held the New York State Human Rights Law requiring Property Owners to accept Section 8 unconstitutional.

The New York State Human Rights Law was amended in 2019. The amendment rendered it an “unlawful discriminatory practice to refuse to rent or lease housing accommodations” based on a person’s Source of Income. Source of Income was defined to include public assistance, federal, state or local, and specifically included Section 8 Vouchers. The Section 8 program, by its nature under Federal Law, is a voluntary program. Owners will recall that over 20 years ago the law was specifically changed to eliminate the “take one take all” provision and render the program completely at the will of the property owner. Owners have simply stated that a voluntary program should be voluntary and that making the program more attractive would entice owners to participate.

Nonetheless, municipalities have passed laws and courts have issued decisions requiring Property Owners to participate in the Section 8 program and to accept Section 8 Vouchers. Property Owners have objected due to the quantity of paperwork, required agreements, investigations by Section 8 staff, inspections of the premises by Section 8 staff, including common areas and systems not part of the leased premises, and other objectionable aspects of the program.

Nonetheless for Rent Stabilized and Emergency Tenant Protection Act (ETPA) tenancies, the acceptance of Section 8 Vouchers became all but mandatory. Thereafter counties such as Westchester County enacted laws requiring the acceptance of Section 8 Vouchers and all that they entailed. And finally, in 2019, New York State enacted a law requiring Property Owners to accept Section 8 Vouchers. A Property Owner would then be required to comply with all Section 8 regulations and requirements including physical inspections and inspections of books and records.

As of March 27, 2023, the legality of this requirement has once again risen to the forefront and, at least in this instance, been declared unlawful.

Background

In the case of People of the State of New York v. Commons West, LLC, et al, County of Tompkins, State of New York, Index No. EF2022-0558, the Respondents were Property Owners purportedly subject to the provision of the law holding that their refusal to rent or lease based on Source of Income, including Section 8, would constitute a violation of the Human Rights Law and subject them to the accordant penalties. In order to require the Respondents to accept Section 8, New York State commenced this proceeding seeking an order directing the Respondents to lease apartments to Section 8 recipients and for penalties.

Respondents defended the case brought by New York State and requested that the Court dismiss the case. The basis of the defense was that in requiring the Respondents to accept Section 8 Voucher recipients, the law required Respondents to sign agreements with the Section 8 administrator, a Public Housing Agency. The agreements in turn required the Respondents to subject their physical properties and their books and records to inspection by the Public Housing Agency. Such inspection rights also included computers, equipment, and facilities with such records. The Respondents claimed that such a requirement violated their right under the Fourth Amendment of the United States Constitution to be free from unreasonable searches and seizures.

Petitioner asserted that the Human Rights Laws do not mandate participation in Section 8, it only prohibits owners from denying an applicant an apartment based on Source of Income, such as Section 8. In other words, according to New York State the Respondents could accept the tenant and voucher but not participate in the Section 8 program. Of course, every Property Owner knows this to be a false assertion as Section 8 will not provide the voucher payment if the Owner is not participating in the Section 8 program including executing all documents and permitting all inspections.

The Court held consistent with reality that in order to accept the Section 8 Voucher the Owner is required to participate in the Section 8 program. The Court further held that the legislation amending the Human Rights law effectively requires Property Owners to participate in Section 8.

The Court, having dispensed with the claim by New York State that owners were not required to participate in Section 8 by law, discussed the impact of the argument by Respondents that participation in the program required them to waive their Fourth Amendment rights. The Court referenced prior decisions by the Court of Appeals of the State of New York, which held specifically that laws authorizing the inspection of residential rental properties without the permission of the Owners violated the Fourth Amendment. The Court concluded that the compulsion to participate in the Section 8 program conclusively required and compelled Property Owners to consent to warrantless searches of their property.

A Key Violation

In addition to the warrantless searches of the property, the Court further held that the requirement that compels Owners to consent to searches of their records without a warrant similarly violated the Fourth Amendment. The Court again found New York States arguments unconvincing and determined that the law improperly compelled Owners to waive their rights.

In other words, the Court held that forcing Property Owners to participate in a program which forces Property Owners to waive their constitutionally protected rights to privacy is unconstitutional. The case brought by New York State was therefore dismissed.

It remains to be seen whether other Courts in New York State will follow suit and certainly New York State will appeal the case. However, this is a positive result for Property Owners seeking to avoid the burdensome and unreasonable aspects of the Section 8 program and Property Owners can hope it is a harbinger of things to come.

Editor’s Note: The authors are attorneys with Finger and Finger, A Professional Corporation. The firm, based in White Plains, is Chief Counsel to The Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI) and its seven component associations.

Construction Compensation Insurance Group Reports a 25 Percent Dividend for its Members, Continued from p. 1

Group 530 Announces Its Dividend

New York State Workers Compensation Group 530, the compensation insurance group for The Cooperative and Condominium Advisory Council (CCAC), The Apartment Owners Advisory Council (AOAC) and The Advisory Council of Managing Agents (ACMA) of The Building and Realty Institute (BRI), recently announced a 25 percent dividend for the policy year ending June 1, 2022.

Group spokesmen said the dividend is in addition to the Advance Discount of 25 percent that group members are eligible to receive. The announcement was made during the group’s Annual Meeting on Apr. 27. A total of 485 cooperatives, condominiums, apartment buildings and office buildings participate in the program, spokesmen said. Group 530 was formed in 1990.



Ken Finger



Dorothy M. Finger



Carl Finger



Dan Finger