

## **Flaw Found In Town's Rental Law**

*State Supreme Court judge rules that part of legislation was unconstitutional*  
By Frank S. Costanza, *The Long Island Advance*, August 1, 2002

Brookhaven's attempt to regulate absentee landlords and protect renters from uncouth property owners hit a snag late last month, after a state Supreme Court justice deemed part of the town law unconstitutional.

After reviewing the town's Neighborhood Preservation Act of 1999, Judge Howard Berler ruled that Brookhaven's housing inspectors lack the authority to search any premises without first securing the proper warrants. As part of his ruling, Berler noted that a warrantless inspection of residential rental units violates an individual's right to make money from his property.

Though the ruling doesn't negate other aspects of the town's rental law, which requires landlords to pay bi-annual inspection fees, obey town and county electricity and plumbing codes and limits the numbers of occupants per dwelling to eight people, the decision may put a damper on the effectiveness in which the town's health and safety codes can be enforced.

"It's definitely a problem if we're not able to draft language that will pass the constitutionality test," said Town Councilman Edward Hennessey, who resides in East Moriches. "(The securing of warrants) will require a significant amount of additional administrative cost."

Rater than appeal Judge Berler's ruling, the town board is proposing to craft an amendment to the existing rental permit law, said Brookhaven Town Attorney Annette Eaderesto. A public hearing will be held prior to any changes made to the existing law, whose approval was met with cheers from residents and civic leaders when adopted in December 1999.

"We're going to modify the law to not require an inspection prior to the issuance of the (rental) Permit," she said. "We're going to allow people to take out the permit and if they have objections to an inspection ... then we will contend with it."

Eaderesto noted that the judge's decision would have minimal impact on enforcement since town inspectors never conducted warrantless searches, though the legislation permitted the action. In contrast, she said that warrants were legally obtained if a property owner objected to an inspection on a rental property.

Not everyone praised the law's passage in 1999. Paul Palmieri, President of the Coalition of Landlords, Homeowners and Merchants, a group that boasts more than 2,000 members, insists that the entire law should be dismissed on grounds that absentee landlords are being unfairly discriminated against.

Attorneys representing the Coalition are also challenging the legality of other sections of the town's rental law. The legislation, Palmieri said, unfairly targets minorities, day laborers and low-income families who cannot afford to pay high rent. He noted that the Neighborhood Preservation Act punishes absentee landlords but overlooks private homeowners. The law also excludes property owners on Fire Island.

“I think they should throw the whole law out, totally,” Palmieri said. “If they want to start from scratch and create a law that’s equal across the board and fair to everybody, then I think that’s what should be done.”

Town officials and civic group leaders disagree, claiming that the new rental rules have forced many landlords to comply with the law. Hennessey said the law has proven to be effective over the past two-and-a-half years, forcing landlords to meet the legislation’s requirements to qualify for a rental permit.

In order to obtain a rental permit, however, landlords originally needed to allow their premises to be inspected by one of the town’s code enforcement officers. That may change if the town alters the law as suggested by Eaderesto.

“We’re just trying to make people better neighbors,” Hennessey said. “That’s what this legislation is all about.”

Attorneys for the Coalition of Landlords, Homeowners & Merchants, meanwhile, are determined to overthrow the legislation. “We’re all supposed to be equal under the law,” Palmieri said. “Brookhaven is now saying that landlords and tenants are all separate under the law. They can’t do that.”

The Coalition won its largest settlement to date against the village of Patchogue last year, Palmieri said. The Coalition, which still has more than a dozen lawsuits pending against different municipalities, settled out of court with the village for \$525,000.

That settlement stems from a \$100 million law suit filed against Patchogue in late 1996, after several landlords alleged that the village housing inspectors were unfairly targeting them. Though they denied the accusations, and admitted no liability to any wrongdoing or violation in the settlement, village officials agreed to pay the \$525,000.