

# Flipping Out: New York Legislature Targets Predatory Housing Practices in Proposed Bill

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## Introduction

On May 12, 2023, a group assembled at City Hall Park to rally against predatory housing practices in New York City.<sup>1</sup> Among those in the crowd was New York State Senator Julia Salazar, who sponsored the “Protect our Homes and Communities, Stop Predatory Housing Speculation Act of 2023” in January.<sup>2</sup> The bill aims to stabilize and create more housing opportunity in New York City communities by curtailing predatory housing speculation by implementing a tax on predatory home flipping.<sup>3</sup> The bill amends the administrative code of the city of New York to impose a tax on sale of one to three unit properties within two years of their purchase.<sup>4</sup> The bill has been referred to the Cities 1 Committee where, as of this writing, it awaits approval. A companion bill has been introduced in the New York State Assembly where it is being considered by the Ways And Means Committee.<sup>6</sup>

The bill has received mixed reactions from groups in the community. Some groups oppose it because it would purportedly increase the tax burden imposed on real estate transactions in New York City. Other groups state that it is needed to prevent predatory home flipping that drives out members of the community and disproportionately affects communities of color in New York City.

## Provisions of the Bill

The bill amends the administrative code of the city of New York by adding a new section, § 11-2120.<sup>7</sup> It imposes a tax on “each deed, instrument or transaction at the time of transfer whereby any properties of one to three residential units are transferred by a grantor to a grantee, and such transfer is made within two years from the prior conveyance of the property, including but not limited to transfers which are all cash transactions and transfers of property which have been rented out during such time period.”<sup>8</sup>

There are two different tax rates that could apply to the transaction.<sup>9</sup> The first tax is paid on sales when the time since the prior conveyance of the property is less than one year – a rate of sixty-five percent on the difference between the current sales price and the sales price of the prior conveyance of the property.<sup>10</sup> The second tax rate is paid on sales when the time since the prior conveyance of the property is equal to or more than one year but less than two years – a rate of fifty percent on the difference between the current sales price and the sales price of the prior conveyance of the property.<sup>11</sup> No additional tax is paid when the time since the prior conveyance of the property is equal to or more than two years.<sup>12</sup>

The bill identifies qualified persons and properties that are exempted from the payment of the imposed tax.<sup>13</sup> There are two groups that would not have to pay tax on the conveyance of a property that is made within two years of the prior conveyance: (1) property owners that are conveying property to a family member; and (2) property owners who can demonstrate a financial hardship that justifies a conveyance of property in less than two years.<sup>14</sup> The bill also identifies six properties that would be exempt from the tax: (1) property which was conveyed following the death of a property owner, (2) property being sold as new housing, (3) property where the value conveyed is less than or equal to 10% more than the value of the prior conveyance, (4) property conveyed in lieu of foreclosure or in satisfaction of a mortgage debt, (5) property conveyed pursuant to a foreclosure sale following a default in the satisfaction of an obligation that is secured by a mortgage, and (6) property that is otherwise exempt from real property transfer tax.<sup>15</sup>

The “Justification” section of the bill gives some insight on why they carved out certain exemptions to the tax. It highlights that house flipping is generally for investors who target financially vulnerable homeowners.<sup>16</sup> The bill seeks to disincentivize those investors by implementing this tax and they want to support the financially vulnerable homeowners by ensuring that they are exempted from paying the tax.<sup>17</sup> The overall goal of the bill is to “create more opportunity and equity in the housing market for first time homebuyers by creating a disincentive for predatory real estate speculators to engage in the destabilizing conduct of home flipping.”<sup>18</sup>

## Consequences of the bill

This proposed real estate transfer tax would be applied on top of the existing real estate transfer taxes in New York City. The transfer tax for New York State is 0.4% for properties under \$300,000 and it is 0.65% for properties at or over \$300,000.<sup>19</sup> The transfer tax for New York City is 1% for properties under \$500,000 and it is 1.425% for properties at or over \$500,000.<sup>20</sup> The seller usually pays these transfer taxes.<sup>21</sup> New York State has also introduced a mansion tax for transfers of real property for \$1 million or more.<sup>22</sup> The mansion tax is calculated as a percentage of the purchase price and is increased as the purchase price increases.<sup>23</sup> Generally, the buyer pays for the mansion tax.<sup>24</sup> When it comes to co-ops (and some condos) there is also a flip tax, which goes to the building and not the government.<sup>25</sup> Since the flip tax is individually determined by the building, there is no single agreed upon rate.<sup>26</sup> However, the most common flip tax rate in New York City seems to be about 2%.<sup>27</sup> The seller usually pays the flip tax.<sup>28</sup>

The proposed bill would add another real estate transfer tax if the property was sold less than two years since its prior conveyance. For example, imagine a co-op unit in Manhattan that is sold for \$1 million in only six months since its prior conveyance for \$600,000. The transfer tax for New York State would be \$6,500 and the New York City transfer tax would be \$14,250. The mansion tax would be \$10,000.<sup>29</sup> The bill would impose a sixty-five percent tax rate on the \$400,000 difference between the sales prices,

leading to an additional tax of \$260,000. Thus, under the new bill, the total amount tax that would be paid comes out to \$310,750. While the house flipper still makes a profit, the tax takes out a massive amount of their gain.

## Support

There have been many supporters of the bill, several of which are community-based organizations and advocacy groups. <sup>30</sup> Many of these groups have published their own reports or started petitions to show their support. <sup>31</sup> One report explains that when investors resell properties in a neighborhood at almost triple the price they purchased it for, it increases homeowners' property taxes which in turn raises rent. <sup>32</sup> The increase in the cost of rent lowers the income of many groups in those communities and increases homelessness. <sup>33</sup>

The Association for Neighborhood and Housing Development (ANHD) testified on housing-related proposals in the Governor's Fiscal Year 2023-2024 Executive Budget which included commentary on the Stop Predatory Housing Speculation Act. <sup>34</sup> They described how this bill would protect current and aspiring homeowners from predatory investors that fuel harassment and speculation. <sup>35</sup> They contend that the bill is necessary because it would disincentivize developers and speculators from attempting to drive out low-income families, which affects the stability of communities and perpetuates displacement. <sup>36</sup>

## Opposition

The bill has, predictably, been opposed by the real estate industry. The New York State Association of REALTORS, Inc., (NYSAR) which represents more than six thousand New York State real estate professionals, put out a statement opposing the imposition of the additional real estate transfer tax. <sup>37</sup> Their reasoning is that the bill would dramatically increase the tax burden imposed on real estate transactions in New York City, making homebuying and renting less affordable for residents. <sup>38</sup> NYSAR states:

that while they do respect local community preservation efforts, it should not be at expense of homebuyers. <sup>39</sup>

## Conclusion

The “Protect our Homes and Communities, Stop Predatory Housing Speculation Act of 2023” looks to tackle predatory house-flipping by disincentivizing investors through an increased tax rate. Between 2017 and 2021 a total of 14,016 homes were flipped in New York City. <sup>40</sup> Investors target low-income communities, especially communities of color, and drive up their housing costs to make a quick profit. <sup>41</sup> Many community-based organizations support this bill while real estate professionals oppose the bill. The bill is still in committee but if it does not pass this session, it might be reintroduced in a future legislative session. <sup>42</sup> While the bill’s prospects for passage are uncertain, it will surely attract robust conversations regarding real estate transfer taxes.

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<sup>1</sup> Coalition for Community Advancement (@ENYCoalition), X.com (May 12, 2023, 12:15 PM) <https://x.com/ENYCoalition/status/1657056992651771904?s=20>.

<sup>2</sup> S.1569, N.Y. Senate 2023-24 Leg. Sess. § 1 (Jan. 12, 2023). Senator Julia Salazar sits on the Housing, Construction, and Community Development Committee of the New York State Senate.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* Senator Luis R. Sepúlveda and Senator Robert Jackson, co-sponsors of the bill, both sit on the Cities 1 Committee.

<sup>6</sup> A.1023, N.Y. Senate 2023-24 (Jan. 13, 2023).

<sup>7</sup> S.1569, N.Y. Senate 2023-24 Leg. Sess. § 2 (Jan. 12, 2023).

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 S.1569, N.Y. Senate 2023-24 Leg. Sess. § 2 (Jan. 12, 2023).

14 *Id.*

15 *Id.*

16 See Sponsor Memorandum from Julia Salazar on Senate Bill S1569 (Jan. 12, 2023), available at <https://www.nysenate.gov/legislation/bills/2023/S1569> [hereinafter Sponsor Memorandum]. To view the text of the Sponsor Memorandum, select the link, scroll down the webpage, and select “View More” for the entire Sponsor Memorandum.

17 *Id.*

18 *Id.*

19 James McGrath, *2023 Guide – NYS and NYC Transfer Taxes*, Yoreevo (Nov. 15, 2023), <https://yoreevo.com/blog/nys-nyc-transfer-tax>.

20 *Id.* It is important to note that these rates are for Residential Type 1 and 2 properties, which are one-to-three unit family homes, condos, and co-ops. Other types of property, such as office, retail, and rental buildings, have higher transfer taxes.

21 *Id.*

22 James McGrath, *2023 NYC Mansion Tax Guide: Everything You Need To Know*, Yoreevo (Oct. 31, 2023), <https://yoreevo.com/blog/mansion-tax-nyc-ny>.

23 *Id.*

24 *Id.*

25 James McGrath, *The Flip Tax: Everything NYC Buyers Need to Know*, Yoreevo (Oct. 31, 2023) <https://yoreevo.com/blog/flip-tax>.

26 *Id.*

27 *Id.* In Yoreevo's random sample of Manhattan's co-ops, almost half of them had a 2% flip tax. Some other ways the flip tax was calculated was: (1) a percent of the owner's capital gain, (2) a fixed dollar amount per share, and (3) an amount that declines the longer you hold the apartment.

28 *Id.*

29 The mansion tax on a purchase price between \$1 million and \$2 million is one percent. See McGrath, *supra* note 22.

30 The bill listed some of the groups that support the bill including: the Association for Neighborhood and Housing Development, Inc., Bedford Stuyvesant Restoration Corporation, Center for NYC Neighborhoods, Cypress Hills Local Development Corporation, Neighborhood Housing Services of Jamaica, Legal Aid Society, MFY Legal Services, Chines-American Planning Council, the Coalition for Community Advancement and others.

31 Linda Singleton, *Protect Our Homes and Communities, Stop Predatory Housing Speculation Act (S1569/A1023)*, Change.org (July 15, 2022), <https://www.change.org/p/support-bill-s1569-salazar-a1023-cruz-protect-our-homes-and-communities-stop-predatory-speculation-act> (last visited Oct. 31, 2023).

32 *Id.*

33 *Id.*

34 Barika Williams, *Testimony Before the New York State Senate Finance Committee and Assembly Committee on Ways and Means Regarding Priorities for the New York State Executive Budget for Housing, Fiscal Year 2023-2024*, Association for Neighborhood & Housing Development

(March 1, 2023), <https://anhd.org/report/testimony-new-york-state-senate-finance-committee-and-assembly-committee-ways-and-means>.

35 *Id.*

36 *Id.*

37 Michael Kelly, 2023 *REALTOR Legislative Priorities*, NYSAR, <https://www.nysar.com/advocacy/legislative-priorities/>.

38 *Id.* NYSAR did not provide any evidence as to why they proffer the position that the legislation would make homebuying and renting less affordable. One reason could be because of the increased tax burden, investors would have to charge higher rents to make for the reduction in their capital gains. Additionally, with no home flippers renovating properties, those renovation costs would fall on home buyers which makes it less affordable for them.

39 *Id.*

40 Pratt Center, *Center for NYC Neighborhoods*, Pratt Center for Community Development (March 2023), <https://inquisitive-cendol-5dfe4d.netlify.app/>. This number is for Queens, Brooklyn, the Bronx, and Manhattan. Since the information came from ACRIS, no data is available for Staten Island.

41 *Id.*

42 See S.1569, N.Y. Senate 2023-24 Leg. Sess. § 1 (Jan. 12, 2023). The bill was initially introduced in the 2021-2022 session but did not make it pass the committee stage. It was introduced again in the 2023-2024 session. Due to this, it is likely that it would be introduced again in a future legislative session.

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