



L E G A L

S E R V I C E S

I N C O R P O R A T E D

TESTIMONY

ON

INTRO 240 AND INTRO 368

PRESENTED BEFORE

THE NEW YORK CITY COUNCIL

**Committee on Housing and Buildings and
Committee on Fire and Criminal Justice Services**

**“Oversight - Access Denied: Examining the City's Response to
Illegal Use and Illegal Conversion Complaints”**

Presented by:

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Good afternoon. My name is Tanya Kessler. I am a staff attorney at MFY Legal Services. Thank you for the opportunity to testify today about the proposed bills in relation to illegal residential conversions and to Department of Buildings' access to investigate complaints.

MFY Legal Services provides legal assistance to 7,500 New Yorkers each year. Our practice focuses special attention on our city's most vulnerable residents, including people with mental disabilities, SRO tenants, adult home residents and the elderly.

I work on MFY's Three-quarter House Project. We provide assistance and representation to tenants of three-quarter houses, also known as illegal boarding houses, sober houses, or transitional houses. This is an underground industry, whose growth has been assisted by the severe shortage of decent affordable housing options for very low-income individuals. Many three-quarter houses have been illegally converted and it is common for three-quarter house operators to deny access to Department of Buildings' inspectors. Many of the tenants in three-quarter houses have been referred to them by city agencies.

Background

I first want to explain what three-quarter houses are.

Three-quarter houses are buildings that falsely hold themselves out as supportive housing programs, but have no contract or license to operate a residential service program of any kind. They recruit people from hospitals, substance abuse programs, prisons, jails, soup kitchens, and other service systems that interact with people who are homeless, on the verge of homelessness, or otherwise desperate for housing.

While we don't know the origin of the term "three-quarter house," the term seems intended to capitalize on familiarity with the half-way house concept. The term is used to imply that people who are trying to overcome setbacks in their lives, often coming from institutional settings, will get the support and assistance they need to reintegrate into the community. Unfortunately, in three-quarter houses, usually the opposite is true.

Many of the three-quarter houses distribute marketing materials, and claim to provide support services and eventually a path to permanent housing. They give themselves names that sound like social service providers, such as "Steps to Better Living," "Harmony Outreach," "Miracle House," and "Uplifting Men." They develop relationships with discharge planners, social workers and other service professionals who are looking for decent housing alternatives for their clients, and often are not aware that these are not legitimate housing providers. The three-quarter house operators do presentations in jails, prisons, crisis centers, soup kitchens, shelters, and inpatient detox and rehab units to recruit residents, giving out written materials promising a variety of services. (See attached materials from Steps to Better Living, Inc. and Harmony Outreach, LLC.)

Most three-quarter houses require residents to sign agreements that purport to waive the most basic tenancy protections under New York law. These agreements usually state that residents are not “tenants” and can be “discharged” for violating house rules. This amounts to eviction on the spot, with no court process, in violation of the Unlawful Eviction Law.¹ Operators use these agreements to convince police officers that they run housing programs exempt from the Unlawful Eviction Law and that tenants have waived the right to court process.

After arriving and signing on the dotted line, here is what new three-quarter house residents discover: They are packed in rooms in illegally converted buildings, in bunk-beds, sometimes with as many as eight people in a room. There are rarely sprinklers or sufficient means of egress. In addition to extreme overcrowding, typical conditions include jury-rigged electrical wiring, a lack of heat and hot water in winter, and vermin, especially bedbugs.

Many tenants pay rent out of their public assistance benefits, which pay \$215 per month in rent for a single adult. Many are required to pay as much as \$40 or \$50 out of their meager cash benefits to the landlord for utilities. Extreme harassment, unlawful evictions, and retaliation for complaints, including false reports to parole or probation officers, are commonplace.

Evolution of the Three-quarter House Industry

Over three years ago, the Coalition for the Homeless issued a report documenting the problem, including unsafe living conditions in many of the buildings, a stream of referrals from city shelters, and a number of vacate orders.² At that time, the vast majority of three-quarter houses operated in small buildings, with two or three legal units. By packing numerous tenants into bedrooms, living rooms and even kitchens, the operators of the buildings were able to cram in forty or more people.

The three-quarter house industry has evolved in three ways since the Coalition’s report.

1. Operators have diversified their outreach and recruitment targets, far beyond the NYC shelter system.
2. Many three-quarter houses have developed questionable relationships with outpatient substance abuse programs, which may provide an especially lucrative source of revenue.
3. Three-quarter houses are increasingly operating out of larger, rent-stabilized buildings, including Class A multiple dwellings and Class B SROs – denying tenants their rights under rent stabilization and effectively removing regulated housing from the market. We have filed lawsuits against two such operators, but the practice continues in other buildings.

¹ N.Y.C. Admin. Code § 267-521 et seq.

² Lindsey Davis, *Warehousing the Homeless: The Rising Use of Illegal Boarding Houses to Shelter Homeless New Yorkers* (2008), available at <http://www.coalitionforthehomeless.org/pages/warehousing-the-homeless>

I have already described the recruitment efforts in a wide range of programs and institutional settings.

As to the relationship with substance abuse programs, here is how it appears to work: in many of the houses, all residents are required to attend one specific outpatient substance abuse program. These programs, which are certified by the New York State Office of Alcoholism and Substance Abuse Services (“OASAS”), bill Medicaid approximately \$70 – \$80 for every visit. Residents are generally required to go to the program five times per week when they first move in. If they were already connected to outpatient services before moving in, they have to transfer to the program the house is affiliated with. If they stop attending, for whatever reason – because they are found ineligible, successfully graduate from the program, or decide that the program services are not helping them – they are forced onto the street immediately. It is not uncommon for three-quarter house operators to encourage residents who have graduated from programs to relapse, to make themselves eligible once again for a Medicaid-billing substance abuse program; if they refuse, they are forced out of the building. Tenants tell us over and over that the three-quarter house operators have a financial stake in their attendance at outpatient programs.

Building Code Enforcement in Three-quarter Houses

I already described the abject conditions three-quarter house tenants endure. Tenants frequently report that they are told by the operators and staff of three-quarter houses not to contact city agencies about building conditions on pain of immediate “discharge” – the three-quarter house euphemism for illegal eviction. House managers tell us that the operators instruct them not to give access to inspectors. Tenants who allow inspectors in face retaliation, including immediate eviction.

Thus it is not surprising that the Department of Buildings records online frequently show complaints for illegal conversions, and that inspectors are frequently denied access.

Three-quarter House Tenants’ Perspective on Building Code Enforcement

MFY works with a group of three-quarter house tenants who have formed the Three-quarter House Organizing Project (“TOP”). TOP members were saddened by the death of two individuals in Bushwick in an illegal boarding house recently; they are concerned about their own safety and that of all tenants and the surrounding communities. To that end, they want to see better enforcement of the Housing Maintenance Code and Building Code in three-quarter houses. However, at the same time, they are deeply concerned about the effect of such stepped-up enforcement on their lives, given the lack of alternative housing.

Intro. No. 240

Intro. No. 240 is unlikely to have much effect on enforcement of the building codes in relation to three-quarter houses. While the bill provides for the issuance of a summons or notice of violation based on readily observable circumstantial evidence of unlawful

conversion, such as an excess number of mail boxes, utility meters or doorbells, these kinds of indicators are usually not present at three-quarter houses. Tenants do not have their own mailboxes, doorbells or utility meters. We do not take a position on this bill.

Intro. 368

We see pluses and minuses to Intro. 368.

On the plus side, by requiring the Department of Buildings to seek a court order for access to buildings where the allegations in the complaint suggest there is an immediately hazardous or major violation, Intro. 368 would likely provide some measure of protection to residents and communities from dangerous conditions in these houses. With improved access, more violations would undoubtedly be placed.

There would likely be an increased number of vacate orders as well.

MFY is not taking a position on Intro. 368 because our clients, and the members of TOP, are in constant fear of winding up on the street following a DOB or Fire Department vacate order. Three-quarter house residents feel they have just two dangerous options: living in an overcrowded illegally converted three-quarter house, or becoming homeless again, which is also hazardous to their health and safety. Neither is acceptable to them. Neither should be acceptable to any of us.

The overriding question we hear from three-quarter house tenants is: Where are we to go?

The official answer is: if there's a vacate order, occupants are entitled to relocation services.³ The real-life answer is: quite possibly the street. It's proven difficult for three-quarter house tenants to access HPD's relocation services. HPD requires three-quarter house tenants to show a great deal of documentation to prove their occupancy, and three-quarter house tenants usually don't have utility bills, leases, and or other bills that would satisfy HPD.

What Should Be Done

1. Facilitate Eligibility for Relocation Services

HPD should reconsider its documentation requirements for relocation services and promulgate new requirements that are consistent with the type of documentation three-quarter house residents can reasonably be expected to have, such as records of their address on file with HRA and other government agencies.

2. Prohibit Unsafe Housing Referrals

³N.Y.C. Admin. Code § 26-301(1)(a)(v); *see also Smith v. Donovan*, 61 A.D.3d 505, 878 N.Y.S.2d 675 (App. Div. 1st Dep't 2009) (holding that tenants in buildings subject to vacate orders are entitled to relocation services regardless of whether their dwelling units are lawful).

Single adults desperate for a place to live continue to be referred to three-quarter houses by city and state agencies. These referrals are the very reason three-quarter houses are proliferating. So long as the practice of city agencies referring individuals to unsafe housing continues on the front end, yet other city agencies will struggle to enforce the buildings code and maintain public safety on the back end. A coordinated response is needed. Every city agency that is involved with referrals to housing should prohibit unsafe placements.

The regulation and pilot project adopted by the Department of Homeless Services last July⁴ appears to have significantly decreased the number of referrals from city shelters to three-quarter houses. Other agencies, including the Human Resources Administration, the Health and Hospitals Corporation, the Department of Health and Mental Hygiene, should follow suit. Every agency and every organization that receives city funding should at a minimum be required to screen housing placements. At a minimum, publicly available information should be reviewed and referrals prohibited to all buildings that:

- have a DOB, HPD or Fire Department vacate order in effect
- show uncorrected violations related to unlawful occupancy or conversion on the Department of Buildings website
- show complaints related to unlawful occupancy or conversion, even where no violation has been placed, where inspectors have been denied access, as indicated on the Department of Buildings website
- have pending litigation with HPD
- are in the HPD alternative enforcement program

In addition, several additional criteria would provide sorely-needed protection to clients of city programs:

- presentations and the posting of flyers should be prohibited from three-quarter house operators whose buildings meet the above criteria
- “house rules” and other agreements prospective residents are required to sign should be reviewed and placements should be prohibited at any three-quarter houses that require residents to waive their rights under landlord-tenant law or to attend an outpatient program as a condition of residency

Conclusion

The problem of three-quarter houses requires a coordinated response, that begins with preventing unsafe placements and ensures that tenants in buildings that have been vacated are able to obtain relocation services.

Thank you for holding this hearing and for the opportunity to testify today.

⁴ 31 RCNY § 2-01.