



TESTIMONY ON

**EXPANDING AND PRESERVING
AFFORDABLE HOUSING OPTIONS FOR SENIORS**

PRESENTED BEFORE:

**THE NEW YORK CITY COUNCIL
COMMITTEE ON AGING**

PRESENTED BY:

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Good morning Councilmembers and thank you for inviting me to testify before the Committee on Aging. My name is Brian Sullivan. I am a senior staff attorney at MFY Legal Services, Inc.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, MFY provides free legal assistance to residents of New York City on a wide range of civil legal issues. We prioritize services to vulnerable and underserved populations such as older New Yorkers, while simultaneously working to end the root causes of inequities through impact litigation, law reform, and policy advocacy.

Each year, MFY serves more than 2,000 New Yorkers who are at least 60 years old. When they turn to MFY for help, older New Yorkers are often facing eviction, foreclosure, or other housing-related problems, loss of benefits or inability to access them.

MFY plays a key role in preserving affordable housing options for seniors by preventing evictions, and combating the lack of accessibility and discrimination that older New Yorkers and New Yorkers who have disabilities face on a daily basis. MFY's recommendations and testimony are based on our experience preserving existing, affordable housing for older New Yorkers and combating rights violations.

Key Recommendations

1. Expand outreach efforts to make sure that older New Yorkers know about the Senior Citizen Rent Increase Exemption (SCRIE) program and improve the accessibility of the application and recertification processes, especially for LEP seniors.
2. Prioritize outreach about and enforcement of the reasonable accommodation and reasonable modification provisions of the Fair Housing Act, the New York State Human Rights Law, and the New York City Human Rights Law to improve the accessibility of existing housing for older New Yorkers.
3. Increase access to home care services that enable older New Yorkers to age in place with dignity in settings that are more integrated, less restrictive, and less expensive than institutional settings.
4. Expand funding for legal services—including eviction prevention, public benefits claim advocacy, consumer debt defense, and long-term care planning—that help older New Yorkers to pay their rent and avoid displacement or institutionalization.

I. Preserve Existing Affordable Housing so that Older New Yorkers Can Age in Place

Older New Yorkers want to stay in their homes and communities. In one AARP survey, more than 80 percent of respondents who were at least 45 years old indicated that they would like to stay in their current residence for as long as possible.¹ Older New Yorkers are able to age in place only if their home is affordable and accessible.

A. Affordability Is Essential to Allow Older New Yorkers to Age in Place

Older New Yorkers can age in place only if they can continue to afford to pay their rent. The Senior Citizen Rent Increase Exemption (SCRIE) plays an essential role in allowing older New Yorkers to age in place. SCRIE offers eligible tenants who are at least 62 years old an exemption from rent increases. Unfortunately, many older New Yorkers are not aware of the benefits that they may be eligible for through SCRIE. The SCRIE application and recertification processes are also too difficult for many older New Yorkers, particularly for those who have limited English proficiency.

SCRIE's purpose is "to alleviate the severe impact of ever-increasing rental obligations upon low-income senior citizens by fixing their monthly rents at one third of their income. In this way, these senior citizens are protected against erosion of funds available for other necessities, such as food, clothing and medicine."² However, the burdens that are placed on SCRIE applicants and beneficiaries run counter to SCRIE's purpose. Delays in processing SCRIE applications and recertifications jeopardize the housing of older New Yorkers because they can result in rent arrears and eviction proceedings. Clients often come to MFY facing eviction based on problems involving SCRIE payments. These problems often stem from administrative delays and the Department of Finance placement of burdens on tenants that are not consistent with the statute and regulations that govern the SCRIE program.

Based on our clients' experiences, a significant amount of advocacy is necessary to get SCRIE reinstated when an older New Yorker is unable to properly recertify and his or her benefit is terminated. It is particularly difficult for older New Yorkers to have their benefits reinstated retroactively. MFY recommends that New York City expand outreach efforts about SCRIE and continue to simplify and improve the accessibility of the SCRIE application and recertification processes.

B. Accessibility Is Essential to Allow Older New Yorkers to Age in Place

Older New Yorkers can age in place only if their homes are accessible. Accessibility is a major concern for older New Yorkers because approximately 40 percent of people who are at least 65 years old have a disability. Federal, state, and local statutes, rules, and regulations protect the rights of people with disabilities, including people with age-related disabilities.

Antidiscrimination laws recognize that disabilities result from the interaction of a person's impairment with the barriers the person faces. The barriers that a person with a disability faces can be caused by the built environment, such as staircases, narrow doorways, and inaccessible bathrooms, or by attitudinal biases, such as misunderstanding, prejudice, and stigma. Disability-

¹ AARP, *Fixing to Stay: A National Survey of Housing and Home Modification Issues* 24 (2000).

² *Coccaro v. Stupp*, 635 N.Y.S.2d 924, 925, 166 Misc.2d 948, 949-50 (Sup. Ct. NY Cty. 1995).

rights laws are designed to eliminate the physical and attitudinal barriers that people with disabilities often face.

Requests for reasonable accommodations and modifications by older New Yorkers who have disabilities can be governed by the Americans with Disabilities Act (ADA), the Rehabilitation Act, the Fair Housing Act (FHA), the New York State Human Rights Law (NYSHRL), and the New York City Human Rights Law (NYCHRL). Fair Housing laws require individuals and entities owning, managing, selling, or renting housing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. The individual or entity that owns, manages, sells, or rents the relevant property is generally responsible for paying the costs, if any, associated with a reasonable accommodation.

Fair Housing laws also require individuals and entities owning, managing, selling, or renting covered dwellings to permit reasonable modifications of existing premises if modifications may be necessary to allow a person with a disability full enjoyment of the premises. The term “reasonable modification” refers to a change to a physical or structural element of a covered dwelling or common area. According to the Department of Justice and the Department of Housing and Urban Development, “[e]xamples of modifications that typically are reasonable include widening doorways to make rooms more accessible for persons in wheelchairs; installing grab bars in bathrooms; lowering kitchen cabinets to a height suitable for persons in wheelchairs; adding a ramp to make a primary entrance accessible for persons in wheelchairs; or altering a walkway to provide access to a public or common use area.”³ If modifications to the housing unit will not suffice, a person with a disability may request a reasonable accommodation to be transferred to a more accessible unit. Under the FHA, the requester is responsible for paying for a reasonable modification. However, under the recently-modified NYSHRL, the landlord is responsible for paying for a reasonable modification to the common areas. Landlords have also been required to pay for modifications such as adding ramps to public and common areas under the NYCHRL.

Unfortunately, many older New Yorkers who have disabilities are not aware of their rights under the ADA, the Rehabilitation Act, the FHA, the NYSHRL, and the NYCHRL. In order to improve the accessibility of existing housing for older New Yorkers, MFY recommends that the City Council prioritize outreach to older New Yorkers about the reasonable accommodation and reasonable modification provisions of these laws. MFY also recommends that the City Council prioritize funding enforcement of these laws by the New York City Commission on Human Rights and not-for-profits organizations such as MFY.

C. Preserve and Expand SRO Housing for Seniors

For decades SRO housing has been a critical resource for elderly New Yorkers. One study concluded that 25% of New York City SRO residents were over the age of 60. This is due in part to the low cost of SROs. Census figures show an alarming increase in extreme poverty

³ Joint Statement of the Dep’t of Housing and Urban Dev. & the Dep’t of Justice, Reasonable Modifications Under the Fair Housing Act 3 (Mar. 5, 2008), *available at* http://www.hud.gov/offices/ftheo/disabilities/reasonable_modifications_mar08.pdf (last visited Nov. 29, 2011).

among the City's elderly over the past three years.⁴ The number of elderly people in the shelter system increased by 55% between 2002 and 2012.⁵ Many older New Yorkers live on fixed incomes. For impoverished seniors, SROs, which rent for a median monthly amount of \$450-\$705,⁶ are frequently the only form of housing that is affordable.⁷

There are several steps that the City Council could take to preserve existing SRO units. Two primary ways SRO units are lost are demolition and conversion to higher rent use. A building owner can neither demolish nor convert an SRO without City approval, which the owner gets through the Certificate of No Harassment (CONH) program.⁸ The CONH policy provides that no building owner can demolish an SRO unit if tenants in the subject building have been harassed at any point in the past three years. The owner must apply to DHPD for the certificate of no harassment, and DHPD conducts hearings to determine if in fact any harassment took place. The Department of Housing Preservation and Development (DHPD) oversees this program and should be more robust in how it determines whether harassment has occurred.

In addition, the legal restrictions on the construction of SRO units should be eased. Except in certain limited circumstances, it is currently illegal to build new SROs and to convert other multiple dwellings to SRO use.⁹ Despite this fact, there are as many as 500,000 illegally subdivided housing units in New York City.¹⁰ Given the disproportionately large number of seniors amongst New York's poor, it is likely that many inhabitants of these illegal units are elderly.

While not all subdivided units could be legalized and brought up to modern safety standards, it is likely that many could. The City has already taken a positive step in this direction by moving towards legalization of basement apartments. This effort should be expanded to legalize any

⁴ Sam Roberts, Poverty Rate Is Up in New York City, and Income Gap Is Wide, *Census Data Show*, N.Y. Times, September 19, 2013, *available at*: http://www.nytimes.com/2013/09/19/nyregion/poverty-rate-in-city-rises-to-21-2.html?_r=0; Editorial Board, Getting Older, Growing Poorer, N.Y. Times October 25, 2009, *available at*: <http://www.nytimes.com/2013/10/06/opinion/sunday/getting-older-growing-poorer.html>.

⁵ Heidi Evans, Elderly homeless rates jump in New York City; more than 2,200 of today's residents are over 55, N.Y. Daily News, January 27, 2012, *available at*: <http://www.nydailynews.com/new-york/elderly-homeless-knew-article-1.1012594>.

⁶ See Memorandum from N.Y.C. Rent Guidelines Board for All Board Members 4 (June 12, 2012). These figures are based on testimony offered to the Rent Guidelines Board by Goddard-Riverside's West-Side SRO Law Project in 2008 and data they derived from the 2002 Housing and Vacancy Survey. We cite a range rather than a single figure here for two reasons. First, there is a high degree of variance in SRO units and an accordingly high variance in rent charged. Second, unlike other units, SROs are rarely singled out or disaggregated from census rent data, and therefore precise information on rental rates is more difficult to find. In the past, the Rent Guidelines Board has refused to base estimates of SRO rents on registered rents on the ground they are unreliable. N.Y.C. Rent Guidelines Bd., Explanatory Statement—Hotel Order #37, at 8 n.4 (June 27, 2007), *available at* <http://www.nycrgb.org/downloads/guidelines/orders/hotelES37.pdf>.

⁷ For a general discussion of the history of SROs in New York City and a detailed analysis of how SROs form an important piece of the affordable housing landscape, see Brian J. Sullivan and Jonathan Burke, *Single Room Occupancy in New York City: The Origins and Dimensions of a Crisis*, forthcoming, CUNY Law Journal (2014).

⁸ N.Y.C. ADMIN. CODE § 27-2093 (2013).

⁹ N.Y.C. ADMIN. CODE §§ 27-2077, 27-2078 (2013).

¹⁰ Manny Fernandez, Partitioned Apartments Are Risky, But Common in New York, N.Y. TIMES (Feb. 22, 2009), *available at*, <http://www.nytimes.com/2009/02/23/nyregion/23partitions.html>; see also Leslie Kaufman & Manny Fernandez, Illegal Boarding Houses Pit City's Laws Against Lack of Alternatives, N.Y. TIMES (Jan. 22, 2008), *available at*, <http://www.nytimes.com/2008/01/22/nyregion/22homeless.html>.

subdivided unit unless it is physically or economically impossible to do so. By amending the New York City Administrative Code to allow for the creation of new SRO units (or the legalization of already converted units), the Council could potentially create thousands of new affordable housing units.

II. Eviction Prevention and Other Legal Services

More affordable housing is lost in the City's courts in a year than can be built in four years. In 2013 alone, there were almost 30,000 evictions of individuals and families across the City. The vast majority of New Yorkers face losing their homes on their own: 90% of tenants in Housing Court are not represented by an attorney. The majority of landlords, 85% or more, are. Senior citizens, often already marginalized by living on tiny fixed incomes and having to deal with severe health problems, find themselves at great risk in eviction proceedings, most often without any assistance.

Every year thousands of older New Yorkers are sued in NYC Housing Court by their landlords. Most of these seniors, like other tenants, are not represented by attorneys. MFY's Manhattan Seniors Project helps hundreds of seniors to age in place with dignity each year by preventing evictions. Older New Yorkers who have low incomes face daunting challenges in their efforts to live independently in their own homes. With one in five older New Yorkers living at or below the federal poverty level, a growing numbers of older New Yorkers live one crisis away from homelessness as they try to make their fixed retirement or disability income cover the rising costs of housing, utilities, food, medicine, and transportation.

With support from the New York City Department for the Aging (DFTA), MFY's Manhattan Seniors Project provides a broad range of high-quality civil legal services for older New Yorkers. We prioritize the cases of clients who are at risk of losing their housing and independence. The Manhattan Seniors Project is also part of an assigned counsel program in partnership with DFTA social workers. Through this program, MFY defends seniors who are facing imminent eviction and who need both legal and social work assistance to resolve their housing problem. The overarching goal of the work of MFY's Manhattan Seniors Project is to preserve existing affordable housing for older New Yorkers so that they can age in place.

In the past year, MFY and our partners at the Northern Manhattan Improvement Corporation represented elderly low-income tenants through the Assigned Counsel Project funded by the New York City Department for the Aging (DFTA). What we have learned from our work is that Housing Court judges are well-positioned to identify tenants whose age makes them especially vulnerable. When a judge can refer an elderly tenant to the Assigned Counsel Project, then the two represented parties are placed on an even playing field. We strongly encourage the Council to expand DFTA's support for legal services for the elderly.

Unfortunately, the needs of older New Yorkers for these civil legal services are greater than MFY's capacity to provide them. MFY recommends the expansion of funding for legal services that have an impact on the ability of older New Yorkers to pay their rent and age in place. Such an expansion would be cost-effective, because programs like MFY's Manhattan Seniors Project preserve affordable housing and help older New Yorkers avoid institutionalization that is costly both in terms of dignity as well as dollars and cents. An increase in funding for civil legal services for older New Yorkers would allow programs like MFY's Manhattan Seniors Project to

preserve more affordable housing units directly, by representing older New Yorkers in eviction proceedings, and indirectly, by helping older New Yorkers access essential public benefits, resolve consumer debt claims, and engage in long-term care planning.

Conclusion

MFY Legal Services thanks the Committee for holding this hearing on an issue that is of critical importance to older New Yorkers. MFY is committed to working with the City Council to preserve existing affordable housing for older New Yorkers so that they can age in place and to prioritize integration and accessibility in any new residential housing that is created for older New Yorkers.