



**LEGAL  
SERVICES**

**INCORPORATED**

## **TESTIMONY**

on

**Oversight – NYCHA's Succession Procedures and Remaining  
Family Member Issues**

**PRESENTED BEFORE:  
THE NEW YORK CITY COUNCIL  
COMMITTEE ON PUBLIC HOUSING**

**PRESENTED BY:  
Runa Rajagopal  
Senior Attorney  
June 28<sup>th</sup>, 2010**

Good Afternoon. My name is Runa Rajagopal and I am a senior attorney at MFY Legal Services, Inc., a non-profit law firm that works towards equal access to justice for New York's neediest communities.

I work in the Mental Health Law Project, which has been funded by the New York City Department of Health and Mental Hygiene since 1983 to address the civil legal needs of New Yorkers who are severely and persistently mentally ill. While ours is a general practice project, our clients' greatest need for legal assistance relates to eviction prevention and preservation of affordable housing, which includes public housing.

My comments today seek to address an important issue to many of our clients: the obstacles faced by all tenants and remaining family, especially those who are mentally disabled, regarding the process of adding family members to households and in succeeding to New York City Housing Authority (NYCHA) apartments.

### **RELEVANT NYCHA PROCEDURES**

When discussing succession in public housing, we must start with NYCHA's rules regarding a tenant's ability to add a family member to his household. Recognizing that during the course of a tenant's residency, changes may occur to a family's composition, NYCHA has set up a process by which one must obtain permission to permanently add a family member to the household. *See* NYCHA Management Manual, Ch. IV, Subd. IV, F, Changes in Family Composition. Only after a family member has been given permission to live in the household and has co-resided with the family member for one year continuously ("one year rule"), can the individual be given a lease as a remaining family member when the tenant of record vacates or dies. *See* NYCHA Management Manual, Ch. VII, IV, E. Remaining Family Members; NYCHA GM-3692 Nov. 22, 2002 (revised); NYCHA GM-3692 Amended July 11, 2003.

Under these procedures, both the tenant of record and the management office have responsibilities. The management is required to inform the tenant of his rights and responsibilities, provide the requisite forms, process the paperwork and approve or deny the proposed additional occupant in a timely fashion. The tenant must notify the management office of his desire to add a family member and submit the necessary forms and supplemental documentation.

### **MUST MEET DEFINITION OF "FAMILY" TO BE ELIGIBLE**

According to the NYCHA Management Manual, when a tenant requests a permanent addition to the household, staff must give the tenant form 040.012 ("Permanent Permission Request for Family Member") to be completed by the tenant and the family member to be added. NYCHA Management Manual, Ch. IV, Subd. IV, F. 4

The individual being added to the household must fall into NYCHA's definition of "family" to be eligible to be added to the household. Prior to 2002, NYCHA had more expansive categories for families, which included: 1) two or more person(s) living together by blood, marriage, or adoption, 2) two or more unrelated person(s), regardless of sex, living together as a cohesive

family group in a sharing relationship, or 3) a single person living alone. NYCHA Management Manual, Ch. IV, Subd. IV, F. 4. (a)(2).

However, on November 22, 2002, NYCHA limited the permissible categories of relatives eligible for permanent residency to either: 1) husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother (including half-brother), sister (including half-sister), grandfather, grandmother, grandson, granddaughter, son-in-law, daughter-in-law, father-in-law, mother-in-law, 2) Domestic partner of the tenant of record who submits a certificate of domestic partnership registration issued by the City Clerk of the City of New York, or 3) persons seeking to rejoin the family. NYCHA GM-3692 Nov. 22, 2002 (revised).

It should be noted that under New York State law, succession to rent controlled or rent stabilized tenancies is governed by rules that recognize a more contemporary view and definition of family which relies more on the realities of relationships than rigid requirements regarding degree of relatedness.<sup>1</sup>

## **OTHER ELIGIBILITY REQUIREMENTS**

The individual requesting additions to the household must be the tenant of record, must occupy the apartment and be in good standing. NYCHA Management Manual, Ch. IV, Subd. IV, F. 4.(a)(1). The additional person requested to permanently join the household must also be “otherwise eligible” for admission based on income, family size and desirability (criminal background check). NYCHA Management Manual, Ch. IV, Subd. IV, F. 4. (a)(2).

## **TIMING FOR REVIEW**

The Housing Manager must review the tenant’s request to have a family member added to the household based on the above requirements, and must notify the tenant of record in writing whether the requested individual is eligible. *See* NYCHA Management Manual, Ch. IV, Subd. IV, F. 4.(b)(6). Previously, the Housing Manager was required to make a determination within 90 days, and upon her failure to act within this time period, the family member would be deemed to have permanent permission. *See* NYCHA Management Manual, Ch. IV, Subd. IV, F. 4.(b)(6). However, in 2002, NYCHA eliminated any acquisition of permanent permission upon the Manager’s failure to act, and revised its rule so that permanent residency can only be acquired upon written approval of the Housing Manager. *See* NYCHA GM-3691 Amended July 11, 2003.

## **NOTICE OF APPROVAL OR DISAPPROVAL**

If a new occupant is deemed ineligible, the Manager must require the tenant of record to remove the occupant within 15 days of denial. NYCHA Management Manual, Ch. IV, Subd. IV, F.

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<sup>1</sup> *Braschi v. Stahl Associates Co.*, 74 N.Y.2d 201, 211, 544 N.Y.S.2d 784 (1989) (“[W]e conclude that the term “family” should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order. The intended protection against sudden eviction should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life. In the context of eviction, a more realistic, and certainly equally valid, view of family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence.”)

4.(b)(9). If the unauthorized occupant fails to vacate the apartment, the Housing Manager must initiate termination of tenancy proceedings against the tenant of record. *Id.* The tenant of record is entitled to a grievance if the requested individual is disapproved. *See id.*

## **REASONABLE ACCOMMODATIONS**

In conjunction with the procedures set forth above, NYCHA is also required by federal, state and city civil rights law to operate its program in a manner that ensures that it is readily accessible to and usable by persons with disabilities, which includes making reasonable accommodations in policies, rules, practices, services and procedures for persons with disabilities so that such individuals can make effective use of its housing program. *See* HUD Public Housing Occupancy Guidebook, Ch 1; *see also* 42 U.S.C.A. § 3601(Fair Housing Amendments Act); New York State Executive Law § 296; New York City Administrative Code § 8-107; 24 C.F.R. Part 8 (Section 504 of the Rehabilitation Act of 1973) and 28 C.F.R. Part 35 (Title II of the Americans with Disabilities Act of 1990). Moreover, NYCHA is not only required to comply with fair housing law, but is obligated to affirmatively further fair housing. *See* HUD Public Housing Occupancy Guidebook, Ch. 1, p. 13, (“the Fair Housing Act requires the Secretary of HUD to administer all programs and activities relating to housing and urban development, which includes the public housing program, in a manner that *affirmatively* furthers fair housing.”) (emphasis added).

In light of these obligations, NYCHA staff should be working with and accommodating disabled tenants to help them be aware of the rules and help them to complete the process.

## **NYCHA ROUTINELY FAILS TO FOLLOW THESE PROCEDURES**

The rules regarding adding family members and succession are highly specific and not well-known or understood by NYCHA tenants. Tenants cannot be expected to be aware of these rules without receiving accurate explanations of them from NYCHA staff. Many tenants with disabilities require assistance and accommodations in order to understand these procedures and to navigate them successfully.

However, we have found that NYCHA staff often fail to follow their own procedures by misinforming tenants about the process and their rights and obligations, by failing or refusing to provide the requisite forms, by failing to timely approve requests, by inappropriately or arbitrarily denying permanent permission requests or by failing to notify a tenant’s right to grieve a housing manager’s determination. Moreover, we have found that when NYCHA staff is aware of a tenant’s disability, they often fail to make reasonable accommodations that are required by law.

| NYCHA’s failure to follow its own procedures is particularly troubling ~~;~~ because so often the tenants who request that family members be added to their household do so because they are elderly, physically and/or psychiatrically disabled, or otherwise infirm, and need someone in the house to help them live and survive. Family members, who in the case of our clients are often are disabled themselves, leave their housing situations to their own detriment when moving into the NYCHA apartment to help their parent, grandparent, uncle, aunt, sibling or other relative or loved one. When NYCHA bungles a request to add a family member to the household, the effects can be devastating. Tenants can be deprived of the much-needed care of a family

member. Family members who move in to provide care can find themselves homeless when the tenant dies or moves out and NYCHA refuses to recognize them as a remaining family member.

The harms caused by NYCHA's failure to follow their own procedures are seen in some real life examples of my own clients.

### **Magda and Thomas' Story**

Magda, a 65 year old woman with diabetes, cancer and limited English proficiency, requested that her adult son, Thomas, be added to her household in 2004. Thomas, who was mentally disabled himself, grew up in this apartment and wanted to rejoin the household to be with his mother. Magda explained in a detailed letter to the management office that due to her medical conditions, she needed someone in the apartment to help her overnight, as well as to assist with her medications and take her to her medical appointments. After several visits back and forth to the management office, Magda was able to obtain the requisite form and submitted all required information. She also informed the management office that Thomas would be moving into her apartment. He was previously living in a private apartment.

Two years later, Magda's housing manager called her into their office and threatened to bring a termination of tenancy case against her for having an unauthorized occupant (Thomas) in her apartment. Magda explained that she had submitted the necessary paperwork two years earlier and that, since she had not heard otherwise, she thought she had obtained the requisite permission. NYCHA did not advise her that she was misinformed. After this meeting, no proceeding was brought against Magda and she was never advised that she had not obtained permission for Thomas to be added to her household.

In 2007, Magda's health declined and by May she had passed away. Thomas was with her until the end. Although he was grief-stricken by his mother's death, he promptly informed the management office of her passing by submitting Magda's death certificate. Thomas continued to live in the apartment and paid the rent monthly.

In 2008, Thomas received a notice from the management office stating that he had to vacate the apartment and upon his failure to do so, he would be taken to court to be evicted. Thomas was shocked at receiving these papers and went to the management office to gain clarification. It turns out that in 2006, two years after his mother had submitted her request to obtain permission, the management office had performed a criminal background check and found that Thomas had a past felony conviction. They denied Magda's request to add him to her household, but they had not informed Magda that her request was denied or that she had a right to appeal that determination.

Thomas's past criminal conduct had been related to his then undiagnosed mental disability. He had rehabilitated himself after being diagnosed, was in treatment, was taking medication and was a changed person. Had the management office followed NYCHA's procedures by promptly deciding Magda's request and informing her of her right to appeal, Magda and Thomas would have been able to seek a reversal of the decision by demonstrating Thomas' rehabilitation.

Although Thomas is now represented by MFY and is currently appealing his case, he is at great risk of losing his home.

### **Esther and Marjorie's Story**

Esther, a 40 year old, psychiatrically disabled mother of two, moved into a NYCHA apartment from a private apartment to care for her elderly grandmother, Marjorie, in 2006. Esther helped Marjorie obtain the necessary paperwork from NYCHA and promptly filled out the appropriate NYCHA forms to request permission for Esther and her two minor children to join Marjorie's household. A couple of years later, Esther and her grandmother were informed verbally that Esther could not live in the apartment because Esther had only one bedroom and it would be over-occupied if two adults and two children resided in it.

NYCHA never informed Marjorie of her right to request a transfer or of her right to appeal NYCHA's denial of her request. Within a year, Marjorie developed dementia and became unable to manage any of her own affairs. Esther has subsequently tried several times to gain permission to remain in the apartment but has been advised verbally that she will not receive permission and that if her grandmother ever passes away, she must leave the apartment.

As it stands, because of NYCHA's failure to follow its own procedures and its refusal to cooperate with Esther, Esther has no right to remain in the apartment if her grandmother dies or goes into a nursing home. When either of these events occurs, Esther and her children will become homeless.

### **Pamela and Jake's Story**

Pamela, a 46 year old woman who suffers from major depression and mental retardation, was born and raised in a public housing development located on the Upper West Side. She met and fell in love with Jake, who lived in the same development. Jake was also a disabled individual and legally blind. Pamela moved into Jake's apartment.

While they were living together, Jake made two attempts to gain permission for Pamela to live in his apartment. The first time was shortly after they moved in together. Jake and Pamela were called into the management office and advised that they could not live together because Pamela did not have permission from NYCHA to live in Jake's apartment and they were further advised that because they were not married, they could not get permission. In fact, the management office misinformed Jake and Pamela of their rights. At the time, two people living together as a cohesive family group in a sharing relationship were permitted to live in public housing as a household.

Pamela and Jake continued to live together openly over the years. When they officially got married, Jake went to the management office to show proof and then asked for Pamela to be formally added to the household. Jake's housing manager took the documents he submitted and handed him a permanent permission form and told him to fill it out and bring it back.

Normally, this would not be a great task for a tenant. But Jake was legally blind. The management office knew of Jake's disability, and in fact typically filled out all his housing

paperwork for him. In this instance, they failed to accommodate his disability and expected him to fill out the form by himself, without explaining the repercussions of his not doing so.

Shortly after Jake informed the office of his marriage, he fell ill. Within six months, he died from prostate cancer. The next year, NYCHA brought an action against Pamela. This is despite the fact that Pamela was otherwise eligible for NYCHA housing, and in fact had been living in public housing before moving in with Jake.

Pamela's case was referred to MFY by a member of City Council, and although we are representing her on appeal, Pamela remains at great risk of being evicted from her home.

## **CONCLUSION**

MFY is contacted each year by many individuals, community organizations and City Council members with similarly heartbreaking stories of families who are at risk of eviction because of NYCHA's failure to inform tenants of their obligations, failure to follow its own procedures and failure to reasonably accommodate its disabled tenants.

However, Courts have uniformly declined to recognize succession rights unless a remaining family member was expressly given permission by NYCHA to live in the apartment and met the one year rule, even when NYCHA's has failed to follow its own procedures regarding a tenant's request to add a family member to his household.

Absent reform of the administrative process, including accountability when NYCHA staff misinform tenants and otherwise fail to follow the required procedures for processing requests to add new members to households and an explicit directive for NYCHA staff to provide reasonable accommodations in the process for disabled tenants, remaining family members will continue to be unjustly evicted from their homes. At a minimum, in addition to a directive regarding reasonable accommodations, rules should be adopted requiring NYCHA to take remedial steps whenever its staff has disadvantaged a tenant or remaining family member by failing to follow the appropriate procedures for adding a new household member.

We look forward to working with the City Council to finding solutions to this problem and I thank you for giving us this opportunity to testify at this hearing.

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