

## Housing Repair Actions:

Prosecuting Code Violations on Behalf of Low-Income New Yorkers

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# HOUSING COURT CASES:

## REPAIR + ANTI-HARASSMENT



Housing  
repair and  
anti-  
harassment  
("HPs")

- Only opportunity for tenants to go on the offense
- Civil penalties may accrue
- Result: repairs, end of harassment, negotiate financial settlements.

# **PART 1: INTRODUCTION**

# WHO WE ARE



Legal Services NYC fights poverty and seeks racial, social, and economic justice for low-income New Yorkers. LSNYC is the largest civil legal services provider in the country, helping more than 100,000 New Yorkers annually.

17  
Offices

600 Dedicated  
Staff

110,000 New Yorkers  
Helped Annually

# PROGRAM AREAS

Veterans

Benefits

Disability

Education

Immigration

Civil Rights

Community  
Economic  
Development

LGBTQ/HIV

Consumer

Housing

Employment

Family Law

# OTHER PRO BONO OPPORTUNITIES

1. Securing disability benefits: SSI hearings & federal appeals.
2. Safety for DV survivors: Civil Orders of Protection.
3. Immigration relief: U-Visas, VAWA self-petitions, asylum, naturalizations.
4. Student debt relief.

# OUR CLIENTS

Low-income New Yorkers, usually at or below 200% of poverty.

Federal poverty line = **\$13,590** for an individual.

**1.7 million** New Yorkers live at or below 100% of the poverty line.

**3 million** New Yorkers live at or below 200% of the poverty line.

# WHERE DO LOW-INCOME PEOPLE LIVE IN NYC?

## Rent regulated apartments

- 45.4% of private units are rent stabilized—almost **1 million units**
- 1.8% are rent controlled—almost **40,000 units**

## Public housing

- **396,581** residents
- **176,066** units
- When including Section 8, total = **590,216** people
- If NYCHA were a city, it would be the 32<sup>nd</sup> largest in the U.S.



# WHAT ABOUT EVERYONE ELSE?

## NYCHA waitlist

- **257,143** families
- **146,808** families for Section 8

## Homeless population

- **80,000+**

# EXISTING AFFORDABLE HOUSING DISAPPEARING

Landlords pushing low-income tenants out of rent-stabilized apartments

- Illegal evictions
- Harassment
- Refusing to make repairs

Public housing chronically underfunded

# STRUCTURAL RACISM AND HOUSING CONDITIONS

## Public Housing

- First NYCHA developments in the 1930s were strictly segregated and most residents were white
- When legal segregation ended and NYCHA housing integrated in the 1950s, the government disinvested and buildings have fallen further and further into disrepair

## Private Housing

- Redlining began in the 1930s and made it impossible to obtain loans to buy homes in majority Black and brown neighborhoods – in turn leading to concentrated poverty, disinvestment, and disrepair
- A direct result was that homeownership was impossible for generations of people of color – today, Black and Latinx people are 2x as likely to rent as white people
- Predatory lending, deed theft, and other illegal activities regularly targeted people of color in low-income neighborhoods, leading to higher rates of foreclosure

# STRUCTURAL RACISM AND HOUSING COURT

## Housing Court

- The vast majority of respondents in NYC evictions proceedings are people of color – historically without attorneys, while predominant white landlords nearly all had counsel
- Between 2017 and 2019, tenants living in majority Black zip codes were more than three times as likely to be evicted as tenants living in majority white zip codes
- Both attorneys of color and tenants of color often treated with implicit or explicit racism within the court system
- See October 2020 report by Jeh Johnson on racism in the NY Court System:  
<http://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>

# A NEW DAY IN HOUSING COURT

LSNYC's housing unit 4x larger in recent years

- 200+ housing advocates at LSNYC alone
- Advocates challenging racism in court systems

Right to counsel:  
**tenants in some zip codes have access to full representation for eviction cases (not HPs)**

Still swimming against the tide, with far more clients than we can serve.

# NEW YORK TIMES VIDEO: 98 LINDEN ST.



Access video [here](#).

“Housing is absolutely essential to human flourishing.  
Without stable shelter, it all falls apart.”

-Matthew Desmond

# **PART 2: THE CASES**

1. HP basics
2. Preparation
3. Commencing the case
4. Inspection
5. Order to correct or stip
6. Enforcement

# **PART 2.1:**

# **HP BASICS**



# WHAT IS AN HP ACTION?

1. Special proceeding brought by tenant(s) to enforce the housing maintenance code.
2. Compels landlord to make repairs and provide essential services, like heat and hot water, and/or to cease harassing tenants.
3. Three forms of relief available under an HP action:
  - Order to correct
  - Order to cease harassment
  - Order to pay civil penalties (usually after contempt motion)

# PARTIES IN A HP ACTION

1. The tenant is the Petitioner.
2. The tenant's landlords are the first set of Respondents. We name the parties registered on HPD's page for the building (link in script and roadmap) and use those addresses for service.
3. HPD is the Department of Housing Preservation and Development which enforces the Housing Maintenance Code. HPD is also a Respondent in these cases.

Litigation/Case Status		Building Registration Summary Report									
Tenant Harassment Report		Find Apartment# <input type="text"/> <input type="button" value="Clear"/> <input type="button" value="Search"/>									
All Open Violations		Owner	Last Reg Dt Reg Expire Dt	Organization	Last Nm	First Nm	House No	Street Nm	Apt	City	State Zip
prior year Open Viol.'s		Head Officer	07/16/2020 09/01/2021	NEGER ISAAC	3900	12TH AVE	#	BROOKLYN NY	11218		
Recertification		Officer	07/16/2020 09/01/2021	KATZ MARC	3900	12 AVE		BROOKLYN NY	11218		
Overdue Lead Paint Viol. Correction		Corporation	07/16/2020 09/01/2021	16TH AVENUE REALTY LLC		3900	12 AVE	BROOKLYN NY	11218		
Vacate Orders		Managing Agent	07/16/2020 09/01/2021	16TH AVE RLTY LLC	KATZ MARK	3900	12TH AVE	#	BROOKLYN NY	11218	
		Open Violations - ALL DATES There are 7 Violations. Arranged by category: A class: 0 B class: 5 C class: 2 I class: 0									

# LIFE OF AN HP

1. Commence an HP action
2. HPD inspections
3. Court appearances
  - Settlement
  - Trial
4. Order to Correct
5. Enforcement

# **PART 2.2:**

# **PREPARATION**

# PREPARATION

1. Identify conditions
2. Prepare tenants while managing expectations
3. Gather evidence

# ID CONDITIONS

1. Accurate list of all problems
2. Categorize by room
3. As specific as possible

# PREPARE TENANTS

1. Explain process and time frame
2. Explain that City agency called the Department of Housing Preservation and Development (“HPD”) is involved
3. Tenant availability for HPD inspections and repairs

# GATHER EVIDENCE

- Photograph conditions
  - Best to visit apartment, though not required
- Tenant's Heat log
  - Room thermometers available at local hardware store
- Agency reports
  - Explore violations placed by DEP, DOB, DOHMH, etc.
  - Only certified hard copies will be admissible, except HPD violations
- Real evidence. *E.g.*, chunk of ceiling that fell on tenant



# **PART 2.3:**

# **COMMENCING THE CASE**

# COMMENCING THE HP (1)



## 1. Order to Show Cause

- HP Part Judge signs OSC

## 2. Verified Petition

- Identifying Petitioner
- Identifying Respondents, including owner, managing agent, and HPD
- Demanding relief

# COMMENCING THE HP (2)

## 3. Relief Sought

- Order to correct all violations
- Civil penalties
  - **“C” Violation** –
    - \$50/day (1-5 units)
    - \$50-\$150 one-time +\$125/day (5+ units)
    - \$250-\$500/day for heat/hot water violation
    - \$500-\$1,000/day for heat/hot water if prior violation w/i 2 years
    - \$250/day for lead paint
  - **“B” Violation** - \$25-\$100 one-time +\$10/day
  - **“A” Violation** - \$10-\$50 one-time

- Complaint History
- Litigation/Case Status
- Tenant Harassment Report
- All Open Violations
- Open Violations
- Recertification
- Overdue Lead Paint Viol. Correction
- Vacate Orders
- I-Card Images
- PROS Online
- Bed Bugs
- Map

### Building Registration Summary Report

Find Apartment#

Owner	Last Reg Dt Reg Expire Dt	Organization	Last Nm	First Nm	House No	Street Nm	Apt	City	State	Zip
Head Officer	01/14/2021 <b>09/01/2021</b>		SAPERSTEIN	MICHAEL	80	VARICK STREET	1A	New York	NY	10013
Officer	01/14/2021 <b>09/01/2021</b>		RAMER	MARC	80	VARICK STREET	1A	New York	NY	10013
Corporation	01/14/2021 <b>09/01/2021</b>	407-205, LLC			775	BROOKLYN AVENUE	103	Baldwin	NY	11510
Managing Agent	01/14/2021 <b>09/01/2021</b>	YORKSHIRE PROPERTY MANAGEMENT LLC	RAJCOOAR	SHEN	2965	DECATUR AVE	BSMT	Bronx	NY	10458

### Open Violations - ALL DATES

There are 309 Violations. Arranged by category: A class: 42 B class: 152 C class: 114 I class: 1

For Definitions of the columns indicated below, select glossary under the Services option (located at the upper right).

To sort the columns, click on their underlined headers below in the blue area.

<u>Apt Story</u>	<u>Reported Date, nov ISSUED Date</u>	<u>Hzrd Class</u>	<u>Order no</u>	<u>Violation ID, NOV ID, NOV Type</u>	<u>Violation Description</u>	<u>Status Status Date</u>	<u>Certify By Date Actual Cert. Date</u>
5D 5	2021/10/04 2021/10/06	C	530	14607960 7503026 Original	§ 27-2005, 2007, 204.1 hmc code: arrange and make self-closing the doors in the entrance located at apt 5d, 5th story, 1st apartment from east at south	NOV SENT 2021/10/06	2021/11/06
5E 5	2021/10/04 2021/10/06	C	568	14607979 7503022 Original	hmc adm code: § 27-2017.4 abate the infestation consisting of roaches in the entire apartment located at apt 5e, 5th story, 1st apartment from south at west	NOI SENT 2021/10/06	2021/11/06
5E 5	2021/10/04 2021/10/06	C	569	14607982 7503022 Original	hmc adm code: § 27-2017.4 abate the infestation consisting of mice in the entire apartment located at apt 5e, 5th story, 1st apartment from south at west	NOI SENT 2021/10/06	2021/11/06
5E 5	2021/10/04 2021/10/06	C	510	14608028 7503020 Original	§ 27-2005 adm code & 309 m/d law abate the nuisance consisting of air conditioner unit installed at fire escape window creating an encumbrance to secondary egress in the 4th room from north located at apt 5e, 5th story, 1st apartment from south at west	NOV SENT 2021/10/06	2021/10/19

# COMMENCING THE HP (3)



## 1. Exhibits

- HPD printouts of violations
- Schedule of alleged conditions
- Consider attaching photos, heat logs, or affidavits

## 2. Filing Fee or Poor Person's Certification

- CPLR 1101(A) motion for “poor person’s relief”
- Requires affidavit of income from client

## 3. Service

- Include service provision in OSC (manner of service)

# KEY PLEADINGS

## 1. Order to Show Cause

- HP Part Judge signs OSC
- Include manner of service in OSC

## 2. Verified Petition

- Identifying Petitioner
- Identifying Respondents, including owner, managing agent, and HPD
- Demanding relief
- Exhibits – HPD violations, schedule of conditions

## 3. Order of Inspection

## 4. Filing fee or Poor Persons Certification + Affidavit

## 5. Proof of Service

# Review the Pleadings

## 1. Review with client

- Email your drafts to client (or go through them over the phone)
- Confirm accuracy of information and that everything they want is included

## 2. Review by LSNYC mentor

- Email the drafts to the LSNYC mentor you were connected to on the launch email

# Signatures & notarization

## **Mail final documents to your client with a postage-paid, self-addressed envelope**

- Petition needs to be signed and notarized
- Inspection request form needs to be signed
- If client has a printer, they can just print the signature pages & you can skip the mailing

## **Help them find a notary nearby**

- Post offices, banks, some real estate/ law offices
- Google and call nearby notaries if needed
- Failing that, arrange for transportation to the firm or for a notary to visit them if they are homebound
- If they have are able to take a digital picture, they can send signature pages to you via phone or email
- If not, they can mail hard copies back to you



# Preparing to file



**Once you have the signed/notarized documents, you can prepare the following PDFs for filing**

1. Order to Show Cause
2. Verified Petition and exhibits
3. Fee Waiver Affidavit
4. Inspection Request Form



# New York State Unified Court System

## NYSCEF - New York State Courts Electronic Filing (Live System)

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### Welcome

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# New York State Unified Court System

## NYSCEF - Civil Court (Live System)

Skip To: [Content](#) [Navig](#)



Court **Case Type** Parties Documents Payment Review & File

**e-File: Select Case Type**

Select a case type. For housing cases, you will be required to enter the property address.

 **NOTE:** If you need to submit an Order to Show Cause for signing to commence your case, please select from one of the "Landlord and Tenant (LT) - Pre-OSC Procedure" case types.

Case Type

✓

Landlord and Tenant - Alleged Illegal Lockout

Landlord and Tenant - Article 7A

Landlord and Tenant - Holdover

Landlord and Tenant - Holdover (Illegal Activity)

Landlord and Tenant - HP Action (Breach of Warrant of Habitability)

Landlord and Tenant - HP Action (to obtain repairs)

Landlord and Tenant - HP Action (with Harassment)

Landlord and Tenant - Nonpayment

Landlord and Tenant - Pre-OSC Procedure (HP Action)

Landlord and Tenant - Pre-OSC Procedure (Recovery of Possession or Property)

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### e-File: Add Parties

Court: **Kings County Civil Court - Landlord and Tenant Division - Housing Part**  
 Case Type: **Landlord and Tenant - Pre-OSC Procedure (HP Action)**

#### Parties Added

Name	Role	Action
Landlord Corp 200 23rd Street, Brooklyn, NY 11232	Respondent	<a href="#">Edit</a> <a href="#">Remove</a>

*Enter a petitioner and a respondent. An address is required for each respondent.*

#### Petitioner

First Name

Middle Last Name

Suffix

Business/Organization Name

-OR- [Other Name/Status](#)

[Add Another Petitioner](#)

#### Respondent

First Name

Middle Last Name

Suffix

Business/Organization Name

-OR- [Other Name/Status](#)

☐ Undertenant  
This respondent is the undertenant

Address

☐ Check this box to use the property address -OR- enter a different address below.

Street Address

City

State

Zip


[Add Another Address](#)

[Add Another Respondent](#)

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### e-File: Add Commencing Document

Caption: **Jim McCormick v. Landlord Corp et al**  
 Court: **Kings County Civil Court - Landlord and Tenant Division - Housing Part**  
 Case Type: **Landlord and Tenant - Pre-OSC Procedure (HP Action)**


**IMPORTANT:** NYSCEF will not accept certain PDF documents. [Check your PDF documents now.](#)  
 For more information, view [NYSCEF Document Requirements](#).

Add a commencing document to your filing. \* Required fields.

Document Type \*

PETITION ▼

Additional Document Information

Attach PDF (Max size 100 MB) \*

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Based on your PETITION document, the following document is required.

Document Type

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Add any accompanying documents for this case. \* Required fields.

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APPLICATION TO WAIVE FILING FEE

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LT-~~3071~~21/KI - Kings County Civil Court - Landlord And Tenant Division



Short Caption: ~~Ta~~ v. Gregory Russ et al  
 Case Type: Landlord and Tenant - HP Action (to obtain repairs)  
 eFiling Status: [Partial Participation Recorded](#)

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6	<a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION Opposition to OSC</a>	Jones, S. Filed: 08/17/2021 Received: 08/17/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
7	<a href="#">NOTICE OF APPEARANCE</a>	Mccormick, J. Filed: 08/18/2021 Received: 08/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
8	<a href="#">INSPECTION REQUEST INSPECTION REPORT</a>	Court User Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
9	<a href="#">DECISION AND ORDER by Judge Foley dated 8/24/21, access dates given/order to correct; , case is marked off calendar</a>	Court User Filed: 08/20/2021 Received: 08/20/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Service

1. The so-ordered OSC uploaded to NYSCEF will provide a service deadline – this is the deadline for when the pleadings need to be put in the mail to respondents (not a deadline for them to receive the pleadings)
2. The Landlords-Respondents need to be served first class mail, certified, return receipt requested.
3. The person who performed service must complete an affidavit/affirmation of service that annexes the certified mail receipts (proof of service)
4. This should be uploaded to NYSCEF

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**LT-2021-00000000-21/KI** - Kings County Civil Court - Landlord And Tenant Division
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


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1	<a href="#">VERIFIED PETITION IN SUPPORT OF AN OSC OSC, FEE WAIVER</a>	<b>[REDACTED]</b> (Pro Hac / Pro Se) Filed: 08/03/2021 Received: 08/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
2	<a href="#">ORDER TO SHOW CAUSE - CONFORMED COPY OSC, VERIFIED PETITION, FEE WAIVER</a>	<b>[REDACTED]</b> (Pro Hac / Pro Se) Filed: 08/03/2021 Received: 08/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
3	<a href="#">EXHIBIT(S) - 1 Inspection Request Form</a>	<b>[REDACTED]</b> (Pro Hac / Pro Se) Filed: 08/03/2021 Received: 08/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
4	<a href="#">ORDER TO SHOW CAUSE-SIGNED (LC)</a>	Court User	<b>Processed</b>





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# New York State Unified Court System

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 (Notice of Motion, Notice of Cross-Motion, Proposed OSC/Ex Parte App., or a document related to)

☐ Yes
 ☒ No

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New York State Unified Court System

AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION

AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE

AFFIDAVIT OR AFFIRMATION IN REPLY

AFFIDAVIT/AFFIRMATION OF NON-COMPLIANCE

AFFIDAVIT/AFFIRMATION OF SERVICE OF PETITION/NOTICE OF PETITION

AFFIRMATION OF ENGAGEMENT

AFFIRMATION/AFFIDAVIT OF SERVICE

ANSWER (AMENDED)

ANSWER (ATTORNEY)

ANSWER (SELF-REPRESENTED)

Additional Document InformationExhibit Number/Letter (if applicable)

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# **PART 2.4:**

# **INSPECTION**

# JUDICIAL ORDER OF INSPECTION

1. Request Judicial Order of Inspection
  - Form from clerk
  - Fill out
  - Clerk will call for date
  - New violations part of case
2. Client should be given copy of Inspection request form
3. Someone must be home to let inspector in
4. Advise client to be courteous but thorough
5. Even if inspector finds no violation, you can move forward

## **PART 2.5:**

# **SECURING AN ORDER TO CORRECT OR STIP**



# Court appearance



1. Check HPD website before appearing in court.
  - If possible, discuss with potential settlement with client
2. Check NYSCEF for inspection report
  - Compare to conditions on website and in petition
3. Settlement
  - Common, even when no formal “violation”
  - HPD consent order form
  - Include time frame for repair
  - Lead paint and mold protocols (NYC Admin 27-2056)
  - Enlist HPD when possible

# Court appearance



1. Check in on your case
2. Talk to Opposing Party Attorney (OPA)
3. Conference with HPD counsel
4. Make an application before the judge if necessary, otherwise submit stipulation/consent order to be “so-ordered.”

# Different orders

## 1. Order to correct:

- Written by the judge over Respondent's objection
- Requires Respondent to correct the open violations in the inspection report/HPD violations report within the statutory deadlines (48 hours for most Cs, 30 days for Bs, 90 days for As)
- Upon default, “Petitioner can restore for civil penalties and contempt”
- Very rare to get this at a first appearance

## 2. Consent order:

- Printed by the HPD attorney, agreed to by both parties
- Respondent agrees to correct the open violations in inspection report/HPD violations, both parties add access dates and can tweak the deadlines or leave as the statutory deadlines
- Upon default, “Petitioner can restore for civil penalties and contempt”

# Different orders

## 3. Stipulation of Settlement:

- Drafted by both Petitioner and Respondent's counsels, agreed to by both parties
- Respondent agrees to correct the open violations in inspection report/HPD violations, includes access dates, deadline for repairs
- Can include many other provision (timing of repairs, social distancing protocol, special care taken by workers etc).
- Can include the stronger default provision (“Petitioner can restore for civil penalties and contempt”) or the weaker default provision (“Parties can restore for appropriate relief”)
- Advocate should ask for it to be “so-ordered” by the judge so that it is a

# TIPS FOR REMOTE APPEARANCE



1. Download Microsoft Teams to your computer once the invite is sent
  - Confer with client whether they are joining, and if they are comfortable with Teams or the dial-in
  - If client not joining, discuss their availability for access prior
  - Log in 10 minutes early so that you can troubleshoot tech difficulties
2. State your appearance for the record
  - Your name, who you're representing, your firm/organization and mailing address e.g. "Jim McCormick, for Petitioner, Legal Services NYC, 40 Worth Street, Suite 606..."
3. Helpful to prepare an "elevator pitch" of your case and an outline, but don't be married to a script
  - Pitch can include background of tenancy, history of repair/harassment issues and present conditions and what we're seeking
  - Be as concise and plain spoken as possible
  - Outline can include all other important points

# TIPS FOR REMOTE APPEARANCE CONT'D



4. Speak up and make yourself heard.
  - Raise the issues you and your client want to raise – client should always feel free to speak up, this is their case
  - Ask for clarification on an issue before the session ends
5. These are informal conferences and can feel rushed and bewildering – just focus on contents of the agreement being put together with opposing counsel.
6. Finalization of a consent order or stipulation will take place after the conference, or email and phone with opposing counsel
  - Establish as many of the details while still on the record, e.g. a default provision that allows you to restore the case for civil penalties and contempt, or special concessions from the landlord
  - Once it's finalized and executed you can file it via NYSCEF and send the Court a copy

# TRIAL

1. Not common for repairs (more so for harassment)
2. Scope of hearing depends on defenses in landlord's answer, including:
  - Lack of personal jurisdiction
  - No standing because not tenants
  - Not an owner
  - No violations
  - Economic Infeasibility (cost of repairs exceeds value of property)
  - Conditions corrected (mere testimony not enough—need doc evidence)
3. Defenses do NOT include:
  - Lack of prior notice
  - Vacate order

# TENANT'S BURDEN OF PROOF

1. Petitioner is a tenant or “a person having a lawful right in the premises.”
  - Leases, rent receipts, testimony, photos, video
2. Respondents are owners
  - Certified copy of HPD property registration form or deed
3. Service
  - Certified copies of HPD’s affidavits of service; proof of mailing notice(s) of violation
4. Conditions constitute violations
  - Computer print out of HPD violations record or visual display of HPD records on court computer; reports of court-ordered inspections; photos; video; testimony
  - Existence and Absence of violations on report—prima facie, but rebuttable proof violations do/don’t exist.



# ORDER TO CORRECT



1. If you succeed, the court will issue an order to correct
2. Similar to HPD consent order form
3. Sets forth deadline for repairs and potential penalties

# **PART 2.6:**

# **ENFORCEMENT**

# ENFORCEMENT

## 1. Service

- Serve on each respondent and respondent's counsel. Even though case law says it's not needed, CPLR § 5104 requires service of a certified order to pursue contempt.

## 2. Re-inspection by HPD

## 3. Motion for Contempt or Civil Penalties

# CONTEMPT/PENALTIES (1)



1. When to bring—if LL fails to comply
2. Contents
  - Copy of order
  - HPD printout
  - Tenant affidavits
  - New photos
  - New correspondence
3. Relief sought

# CONTEMPT/PENALTIES (2)

## Service

Type of Relief	Type of Service & Timing
<b>Civil Penalties</b> (fines payable to HPD)	Serve respondent's attorney 8 days before hearing (add 5 days for mail service). If filing with motion for contempt, follow service requirements below.
<b>Civil Contempt</b> (fines payable to aggrieved party)	Service on respondent and respondent's attorney, 10-30 days before hearing. (Add five days for mail service).
<b>Criminal Contempt</b> (fines payable to City and imprisonment for willful disobedience)	Personal service on each respondent separately. Service on attorney should be made also.
HPD should be served by mail with copies of motion. Affidavit by server and certified mail receipts should be provided to court on return date.	

# CONTEMPT/PENALTIES (3)



1. Settlement
  - Virtually any terms to which the parties agree
  - Could include rent abatement and correction of NVR conditions
2. Hearing
  - Proof of harm
  - Contempt is discretionary
3. Relief
  - Contempt findings are rare
  - Civil penalties are NOT discretionary, but HPD may settle
4. Enforcement of money judgments by HPD

# **PART 3:**

# **HARASSMENT CASES**

# HARASSMENT (1)

**Harassment is any act or omission by an owner that causes or intends to cause tenant to be constructively evicted or give up rights, and includes 1 of the following:**

- Using force or threats of force against lawful occupant;
- Repeated interruptions of essential services that impair habitability;
- Repeatedly bringing frivolous litigation;
- Removing possessions;
- Removing doors or locks;
- Other enumerated infractions.



# HARASSMENT (2)

Local Law 7 (2008) NYC Admin. Code 27-2004:  
Prohibits LL's from harassing tenants and allows  
tenants to bring harassment claims in an HP  
proceeding.

- Same parties and procedures as regular HP
- No inspection unless lack of services/repairs is the harassment
  - If it is, at least one of the conditions must have been a previously recorded violation

# HARASSMENT: CIVIL PENALTIES



1. NYC Admin. Code 27-2115
2. Class “C” (immediately hazardous) condition
3. Civil penalties between \$2,000-\$10,000 for each violation
  - If there was a prior harassment finding within past 5 years, civil penalties between \$4,000-\$10,000 for each violation
4. HPD must post on its website the following information:
  - Address of the building
  - Name of the property owner
  - Civil penalty imposed
  - Date of civil penalty
  - Whether a restraining order was issued to prevent the landlord from engaging in harassment under Admin. Code 27-2005

# **PART 4:**

# **PRACTICE NOTES &**

# **MISCELLANEOUS**

# HOUSING COURT: WHAT TO EXPECT



1. Where to go when you arrive
2. The key parties
3. Dealing with opposing counsel
4. Dealing with Judges
5. Dealing with HPD
6. How a hearing will be conducted
7. When to arrive/when case will be called
8. Common pitfalls — relying on LL's atty; forgetting HPD can help; expecting expeditious results.

# REPRESENTING MULTIPLE UNITS

1. Same rules apply, across the board.
2. Somewhat more work because more units to coordinate.
3. Can resolve building-wide issues.
4. Depending on number of units at issue, may decide not to focus on every issue in every apartment, but rather on systemic problems.

# HP CASES INVOLVING NYCHA BUILDINGS

- **HPD does not issue violations.**
- **HPD inspection report will not appear online, but it will be available in the court file.**
- **HPD attorneys do not appear on HP cases involving NYCHA buildings.**
  - **HPD is still a respondent in these cases.**
- **All boroughs, except Staten Island, have a NYCHA Part.**

# MOLD IN NYCHA BUILDINGS

- Special procedures apply to NYCHA cases involving mold. *Baez v. NYCHA*, 13-cv-8916 (S.D.N.Y.)
- Please see relevant exhibits in the manual if you have a case that fits this bill.
- Please also confer with your mentor at LSNYC on this topic.

# A NOTE ON EMAIL

- Phone should be primary method of contact
  - Most of our clients aren't frequent emailers
  - Phone allows for direct communication
- Be careful about CCing
  - separate chains for emails with clients, emails with your team, emails with opposing party attorney (OPA)
  - No need to CC me on each email, just CC the legal server email for your case
- Emails with opposing counsel should be short and professional
  - no representations about settlement until talking to your client/mentor



# THE ROADMAP - TAB 1

1. Call with LSNYC
2. Meet with the client
3. Draft/file OSC, petition, & poor person's affidavit
4. Post-filing: service & inspections
5. 1<sup>st</sup> court appearance
6. Between court
7. 2<sup>nd</sup> court appearance
8. Additional court appearances as needed

# WORKING EFFECTIVELY WITH OUR CLIENTS



1. Legal Services NYC serves—and you will be assisting—vulnerable people with few options.
2. Extremely low-income. Many other crises may be going on.
3. Some clients may miss appointments, either because they can't afford the cost of traveling, or because of work, public benefits appointments, or child care issues.
4. For many clients, LSNYC, and you, are the first people to ever assist them in legal matters, and champion their cause.
5. Consider taking steps to make meetings easier—pay for MetroCard, meet downstairs, etc.
6. Phones may run out of minutes.
7. Please be kind, be patient, and reach out to LSNYC if you have trouble with any client. We are happy to help.

# WORKING TOGETHER

## LSNYC Mentor

- help brainstorm ideas for pleadings/ litigation strategy
- review pleadings before filing
- provide additional resources and connect with support

## Pro Bono Attorney

- meet client
- draft pleadings and file via NYCSEF
- handle all client communication
- negotiate with landlord's counsel
- restore case as necessary

# THANK YOU!

