

## Road Map on Housing Repair Proceedings:

A step-by-step overview of litigating a case for your client. Please review this at each stage of your representation and reach out to your LSNYC mentor with questions.

### ➔ Step 1. Initial Study Group with LSNYC—Week 1.

1. Get pitch of client case.
2. Receive client contact information.

### ➔ Step 2. First contact and interview with client—Week 1.

1. **Please try to call the client within 1-3 days of the study group meeting.** You can schedule a more in-depth interview with the client for a later time that works for everyone, but it is essential to establish contact with your client as soon as possible.
  - Prior to the pandemic we encouraged volunteers to do a home visit (and our manual still references a home visit). This is usually not feasible, but we find it can be really helpful if the client can provide a virtual tour of their unit via WhatsApp or some other video call platform. You should also ask your client to provide you current pictures showing conditions.
  - **Start with a call**, leave a voicemail and follow up with an email, then try them again by phone in a day or so. Consider texting as well if you are able to do so from your office line. Most of our clients are not frequent emailers so merely **emailing the client is not a sufficient form of communication** unless your client insists that this is their preferred method of keeping in touch and they are responsive to your emails.
  - Let your LSNYC mentor know if you cannot reach your client after several attempts. This applies at any point during your representation. **It is not acceptable to wait more than three weeks without hearing back from your client and not notify your LSNYC mentor to ask for their help reengaging with them.**
2. Check the HPD website ([https://hpdonline.hpdnyc.org/HPDOnline/provide\\_address.aspx](https://hpdonline.hpdnyc.org/HPDOnline/provide_address.aspx)) and type in the client's address, then click "All Open Violations" to check current outstanding violations. You can filter by client's apartment number.
  - <https://whoownswhat.justfix.org/en> aggregates city record for residential addresses, and can be easier to navigate than HPD's website

- Regularly check HPD's open violation report and save and archive PDFs of it with the day's date. It is useful to have different records in time of the HPD violations.
  - Always check HPD's open violation report and have it handy before a call with your LSNYC mentor
  - Note: HPD's website does not list violations for NYCHA buildings.
3. Be prepared for the client to explain in great detail every single condition. You can remind the client that HPD will conduct an inspection, but may not find all conditions, so the client should be prepared to point them out to the inspector. It is better for the petition and inspection request form to be overly-inclusive of alleged conditions.
  4. As you talk to your client it is helpful to begin keeping a comprehensive list of all the conditions they describe. This will be the basis for both our 'Schedule A', an exhibit to our petition which serves as a comprehensive list of all the conditions in the apartment, and the Judicial Request for Inspection. Ask them what time period in the day is best for an inspection. Leave the date of inspection blank—the court assigns a date.
  5. This is also a good time to discuss logistical details like the client's access to technology (email, texting, a printer), sharing alternative means of staying in contact with each other, and explaining the need for the client to get the petition notarized.
    - Explain the need for your client to remain in regular communication with you so that you can effectively represent them, and ask how you can help achieve this. How do they prefer to connect (phone/text/email?), when are they generally free for a call vs. when should you avoid calling? Try to establish this early on.
  6. **You should aim to file your papers roughly 3 weeks from initial case assignment.** Come up with a deadline with your client and your mentor – having your client on board for this goal can help keep your case moving.

➔ **Step 3. Complete and file an order to show cause, petition, fee waiver and request for judicial inspection—Week 2 / 3.**

1. Legal Services NYC has templates for the order to show cause and petition. (See '**Order to Show Cause and Verified Petition for Private Landlords/ NYCHA**').
2. You will also need CPLR 1101 fee waiver affirmation to have the filing fee waived as well as a request for judicial inspection – these documents are all available on our website. (See '**1101 Fee Waiver,**' '**Inspection Request Form**').
3. The case can be commenced against the landlord corporate entity, but also against the management company, managing agent, and head officer. Each of these individuals/entities can be found on the HPD website under Property Owner Registration Information. (The Department of State entity search website can help too). Landlords of two unit buildings with an immediate family members living in one of the units are not required to register their Property Owner Registration Information on the HPD website -

we can determine the correct owner and their address by examining the most recent deed on ACRIS, the city's online property registry.

<https://a836-acris.nyc.gov/CP/LookUp/Index>

- If you are uncertain about whether we are naming the proper parties at the correct addresses, ask your LSNYC mentor. **If we sue the wrong parties or serve them at the wrong address our case is dismissable.**
4. The Tenant's Request for Judicial Inspection must include client contact information including phone number, age of any children, list of all conditions.
    - Only include one condition per line – you can submit more than one form.
    - The inspector will only have a print-out of the form, so the description of conditions must be visible (don't overfill the conditions field).
  5. Send every document you intend to file to your LSNYC mentor for review.
  6. Your petition must include a notarized signature page from your client and the request for judicial inspection also needs to be signed by your client. It is likely fastest to mail final documents to your client with a postage-paid, self-addressed envelope.
    - If client has a printer, they can just print the signature pages & you can skip the mailing.
    - Help them find a notary nearby (if they do not know of one)
      - i. Post offices, banks, some real estate/ law offices
      - ii. 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.
    - **Note: your clients must verify the final version of the petition. It is improper for the verification page to predate the final version of the petition. Do not obtain the verification page from your client until you have a final version of the OSC and petition that is ready to file.**
  7. File the order to show cause, petition, fee waiver and request for judicial inspection via NYSCEF (please see '**Filing and Service Guide**' for detailed instructions).
  8. **Regularly check your case profile on NYSCEF 1-3 days after filing.** The so-ordered OSC will include a service deadline which if missed renders our case defective. **Late service is an incurable defect that requires you to completely refile your case.**
  9. On the NYSCEF case profile the Court will upload a signed request for judicial inspection, and will provide a date for the HPD inspection. **Be sure to inform the client of this date so that they can provide access for the HPD inspector.**
  10. The Court will also upload a signed ("so-ordered) Order to Show Cause. The court will provide a hearing date and a service deadline.

- **If the Court does not upload either of these documents** after 3-5 days, **contact the NYSCEF support center** (hotline and email).  
<https://iappscontent.courts.state.ny.us/NYSCEF/live/contact.htm>
  - Reach out to your mentor if there is still no action on your NYSCEF case profile 10 days after filing.
11. Download the filed, verified petition from NYSCEF and email to your LSNYC mentor and your legal server case file email address.
  12. Look up your index number on **WebCivil Local**, and **track your case** so that you receive email notifications about case activity and reminders for court appearances.  
<https://iapps.courts.state.ny.us/webcivilLocal/LCMain>
    - This step is **extremely important**, as a missed court appearance will result in your case being dismissed.

➔ **Step 5. Post-filing—Week 4 / 5.**

1. A conformed copy of the OSC and petition must be served on the landlord corporate entity, management company, managing agent, or officer, AND upon HPD. **It must be served in the manner and time designated by the Court on the OSC.** (see ‘**Filing and Service Guide**’). Before filing anything (including subsequent motions), **always check the service provision in your so-ordered OSC to ensure that you are serving in the manner ordered by the Court.** Ask your LSNYC mentor if you have any questions.
2. After service, prepare an Affirmation or Affidavit of Service based on the templates, to which you should annex copies of your certified mailing receipt and return receipt request receipt for each recipient. Upload this to your case profile on NYSCEF.
3. The HPD inspection will occur between filing and the first hearing date. The client (or an adult over 18) will need to be present in the apartment. It usually takes place a week to 10 days after filing, but you will be provided the date while filing.
  - If no inspection takes place, call the Court and request that a new inspection be scheduled prior to your court date. Sometimes this is not possible but is worth trying. <https://nycourts.gov/courts/nyc/housing/assignments.shtml>
4. Contact the client prior to the inspection to remind them to give access and afterwards to discuss how it went.
5. Check the HPD website to see whether recent conditions have been cited as a result of the inspection.
6. Check the NYSCEF case profile – HPD should upload an inspection report.
7. Review the ‘**Guide to Court Appearances**’ and schedule a call with your LSNYC mentor to prepare for the first court appearance.

→ **Step 6. The first court appearance—Week 6 / 7. (Likely calendared 4 weeks after filing).**

1. **Your first appearance will be in-person.**
2. **When appearing in-person**, check in with the clerk and ask if Respondent’s counsel has checked in. Propose entering into a consent order with Respondent’s counsel. You will be able to consult with the HPD attorney as well in the conference room in the court. If you come to an agreement you can file it with the court officer ask them to have the Judge so-order it. If you cannot come to an agreement you can “put your case up for an application before the judge,” who can help you put together an agreement or will possibly entertain an application for an Order to Correct if Respondent’s counsel is being unreasonable. (see ‘**Guide to Court Appearances**’).
3. If HPD did not identify certain conditions, you can request that the Judge order an additional inspection so that HPD re-inspects. This is not granted as of right so be sure to support why this is necessary. If HPD failed to appear for their inspection the Court should grant you an inspection.
4. Be prepared to concisely and impactfully explain why we are entitled to the relief which we’re seeking. We usually recommend pushing for a Consent Order. It is important that upon default we can attempt to hold the landlord in contempt and seek an order for payment of civil penalties.
5. If the conditions are not as serious, you can also adjourn the case to put together a stipulation of settlement with our opposing counsel which provides access for the landlord to make repairs.
  - You can also be more aggressive and immediately seek an Order to Correct – this is a determination to be made based upon the facts and circumstances of the case. It is rare for the Court to grant us an Order to Correct at the first appearance – they will usually push us to settle via a Consent Order or Stipulation.
  - Landlord attorneys commonly state that they were just retained and seek an adjournment on the first court date— you can still try to set up access dates for repairs prior to the next court date, but landlord attorneys usually do not consent to an Order to Correct on the first court date. The judge can be persuaded to do this over their objection depending on the severity of the conditions and how long they have existed, in the form of an Interim Order to Correct.
6. If the conditions are very serious, seek an Order to Correct from the judge (sometimes the landlord attorney will consent to an Order to Correct – this is called a Consent Order and it will be prepared by the HPD attorney).
  - If you go with a Stipulation or Consent Order signed by Respondent or Respondent’s attorney, you do not need to serve anything after court.
  - **If you obtain an Order to Correct, you should serve it on Respondents and their Counsel via certified mail with a Notice of Entry that annexes the Order.**

Then file an affirmation/affidavit of service. Establishing notice is extremely important for later proving contempt.

7. At each appearance, try to adjourn the case to keep it on the court calendar so you do not need to move to restore if repairs are not completed.

➔ **Step 7. Between court appearances—Weeks 6 / 7 through 10 / 11. (Generally the case is adjourned for approximately 30 days.)**

1. Contact the client a day or two prior to the each scheduled access date to remind them of the scheduled access date.
2. Contact the client immediately following the access dates to ascertain whether conditions were completed.
3. If conditions were not completed, restore the case to the court calendar (if it was not adjourned) or prepare to appear on the adjourn date to seek repair of additional conditions. If the landlord is represented—reach out to the attorney and ask for immediate alternative access prior to the return date.
  - If the landlord has defaulted on the deadline for completing repairs, **it is generally best to restore for civil penalties and contempt as soon as possible to keep up the momentum of your case.** You can and should still push for access dates so that repairs get completed.
  - Generally, stay on top of your opposing counsel. Call, leave VMs, send emails. Text from your office phone if possible.

➔ **Step 8. Second court appearance—Week 10 / 11.**

1. If the parties adjourned (or settled) for the completion of repairs on the prior court appearance, and repairs were not completed, seek an Order to Correct from the judge.
2. If the parties adjourned (or settled) with an order to correct conditions, and repairs were not completed, move for contempt and the imposition of civil penalties and contempt prior to the court appearance (or an order to show cause to get it back on the calendar).
  - Before restoring its best if HPD has re-inspected to show that the violations remain outstanding after the deadline for correction. Encourage your client to call 311 so that an inspector comes back and/or file a new Tenant's Request for Inspection.
    - i. Note that filing a Tenant's Request will often lead to the court calendaring a new court date (without notifying parties), which is why you need to follow this case on eTrack after you initially file to automatically receive notice of upcoming court dates.
  - To avoid paying civil penalties, a landlord may agree to a rent abatement for a tenant. This is a great outcome. You can potentially leverage the threat of contempt to the client's advantage.

- HPD is instrumental in the imposition of civil penalties, so speak with the HPD attorney in advance to see what amount is appropriate (based on the severity of the condition and length of time since an Order to Correct/Consent Order was issued).
3. The landlord's attorney will often attempt to claim that the tenant did not provide access for repairs. Be prepared to rebut this and speak with the tenant in advance about when they were in the apartment. Maintain detailed notes about each access date and what if any work was completed, and bring those notes to each court appearance.

➔ **Step 9. Additional court appearances—Every 30 days thereafter, as needed.**

1. Continue to adjourn or increase the pressure if the landlord does not complete repairs.
  2. On rare occasions, if HPD refuses to find a violation or if we are alleging very serious harassment allegations, a trial or hearing will be necessary to prove the existence of a condition.
    - The tenant should testify about the nature of the condition, and should provide any documentary evidence including photographs, evidence of failed Section 8 inspections, etc.
  3. A hearing may also be necessary to establish the landlord's defense that the tenant is not providing access.
    - The tenant should be prepared to testify regarding how and when access was provided. If the tenant can show pictures of something showing the date and time (like a cell phone) inside the apartment, that can be helpful.
13. When the client has confirmed that the repairs are complete and the case is resolved, consult with your LSNYC mentor, file a final stipulation of discontinuance with your opposing counsel to NYSCEF, and send the client a case closing letter using the template on our homepage with copies of the final stipulation/ consent order which settled the case, stipulation of discontinuance and any other relevant documents. (See “**Stipulation of Discontinuance,**” ‘**Case Closing Letter**’).
- Remain in contact with your client until the work is complete and we can discontinue the case.
  - **Do not wait too long to restore your case.** The Court is often hostile to attempts to a restore a case that has been off of the calendar for more than 6 months and may decline to sign your OSC. Keeping the case active on the calendar gives us leverage to push for the repairs and other relief. Be mindful of allowing the landlord's counsel to string you along with promises of repairs that don't materialize.
  - **We must affirmatively close out our representation of the client.** If the client has fallen out of contact, make a persistent effort to reconnect via phone, email,

and physical mail, and reach out to your LSNYC mentor if you are still unable to reengage with them.

THANK YOU!