

TESTIMONY FOR NYCHA DGM FOR OPERATIONS GLORIA FINKELMAN  
NYCHA'S OCCUPANCY AND REMAINING FAMILY MEMBER GRIEVANCE  
POLICY

CITY COUNCIL COMMITTEE ON PUBLIC HOUSING

MONDAY, JUNE 28, 2010 – 1:00 PM

250 BROADWAY – 14<sup>TH</sup> FLOOR

Chairwoman Rosie Mendez, distinguished members of the Public Housing Committee, and to all the members of the City Council — it is my pleasure to be with you today. I am Gloria Finkelman, Deputy General Manager for Operations of the New York City Housing Authority (NYCHA). And joining me this afternoon is Alan Pelikow, Assistant Director in the Office of Resident Policy and Administration.

We all know how vital a good home is to a family's quality of life. As a social resource, public housing has few peers. It is because this resource is so important—not only to the family's who live in public housing, but for all of us—that NYCHA has, throughout its history, maintained a policy detailing rules and provisions for the proper occupancy and transfer of our apartments.

Today, I would like to take the Council through the Authority's Occupancy and Remaining Family Member Policy, as well as the process by which applicants may challenge the Authority's assessment on who may or may not lawfully succeed to an existing public housing lease, more formally known as NYCHA's Remaining Family Member Grievance.

**Why NYCHA's Policy Must Consider Our Waiting List**

Before I begin, though, let me say that NYCHA does not make decisions—particularly one as impactful on the lives of residents as who may or may not join a NYCHA household—either lightly or in a vacuum. But as we consider NYCHA families—residents who request permission for a family member to join their household permanently, or those who have petitioned to succeed to an existing lease—we must also consider the many families who yet wait and hope for their first chance at the promise of public housing.

As we speak, there are 136,203 households on New York City's public housing waiting list. NYCHA's Occupancy and Remaining Family Member policy must—and does—consider these families, as well. If the Authority did not have consistent standards for the governance of its leases and the occupancy of its apartments, the already significant number of families on the NYCHA waiting list would grow even more. We must do our best to make the opportunity of public housing available both to the many families who already rely on it as a strong foundation and to those who seek that fair start in their own lives.

### **Who constitutes a NYCHA family?**

An “original” NYCHA family consists of the tenant (or tenants) who sign the initial lease and any persons listed on the Housing Application and authorized to reside in the apartment at move-in.

For decades, NYCHA has maintained an Occupancy and Remaining Family Member policy. In 1988, the Authority updated its procedures to stipulate that no one may be added to an existing tenant’s household unless the tenant requests permission in writing and permission is granted by the development’s management. Exceptions are, of course, made for natural “family growth,” including births, legal adoptions and court appointed guardian- and custodianships.

Tenants may either request to have an additional person join their household on a permanent basis or temporarily. As I will discuss, the procedure for Permanent Residency Permission requests is more rigorous than requests for temporary tenancy.

### **Permanent Residency Permission Requests**

The criteria for adding a “permanent” household member include the following: The tenant making the request must currently live in the apartment and be in “good standing” with the Authority—they must be current in all rent payments; they may not be in violation of any NYCHA rule or regulation; and they may not be party to current or pending Termination of Tenancy proceedings.

Furthermore, the person who is requested to join the household permanently must be either the tenant’s spouse or registered domestic partner; parent (including stepparents and parents-in-law); grandparent; grandchild; child (including stepchildren and children-in-law); or sibling (including half-siblings). And if she is older than 16, the proposed permanent resident must pass a criminal background check.

In addition, if the proposed resident will cause an “overcrowded” situation, based on the Authority’s occupancy standards, NYCHA must deny permission for that person to be added to the household.

I should also mention that the income of the additional permanent household member is not a factor in NYCHA’s deliberation; but if the person officially joins the household, her income will be included in the total family income for rent calculation purposes.

Applications for both permanent and temporary residency are reviewed by NYCHA’s Housing Managers. If—after careful review of the application, including all supporting documents and, in some cases, a personal interview—the Housing Manager determines the request should be granted, she does so in writing within 60 days of the application date. If the Housing Manager must deny the request, she also does so in writing, indicating the reasons for the

denial. If the Housing Manager does not approve a permanent residency permission request, the request is deemed denied. The tenant may commence an administrative grievance to contest the denial.

Once a person has received permission to permanently reside in a NYCHA apartment under an existing lease, she must remain in the apartment continuously—in other words, the added occupant must be shown to live in the apartment on each of the tenant's annual Affidavits of Income. If an authorized household member leaves the apartment and seeks to return at some later date, she is not automatically granted permission to rejoin the household—permission on her behalf must be requested by the tenant and is subject to the same review process as discussed.

### **Temporary Residency Permission Requests**

Often, tenants will request that a person be allowed to reside in their household temporarily. Unlike permanent residency requests, there are no specific requirements for a familial relationship between the tenant and the person she proposes be granted temporary permission to live in the apartment, except that boarders and paying guests are prohibited.

The income of the person applying for temporary residency permission is not considered and is not included as part of family income for the purposes of adjusting the tenant's rent.

Furthermore, the Housing Manager may grant temporary residency permission even if the additional person "overcrowds" the apartment, provided that the apartment does not become "extremely overcrowded" per NYCHA's *Occupancy Standards for Families*.

Housing Managers may approve the length of a temporary stay to a maximum period of one year, except as modified for foster children and home care attendants.

### **Succeeding to a Lease and the One Year Rule**

NYCHA's Remaining Family Member (RFM) policy defines who may succeed to a lease as a remaining family member after a tenancy ends—whereby the tenant (or tenants) move out of the apartment or pass away.

The policy stipulates that a person claiming Remaining Family Member status and, thus, the right to succeed to an existing lease, may acquire such status only if she entered the apartment through the process described earlier and occupied the apartment "continuously." Continuous occupancy is confirmed if the Remaining Family Member claimant appears on all Affidavits of Income filed after she joined the household, with exceptions made for non-continuous occupancy if the resident is away in Military Service or college. While there are no income limits for Remaining Family Member claimants, the Remaining Family Member's income will be used to calculate the total family income if a lease is offered.

In 2002, NYCHA established a one year occupancy rule for anyone added to a household by permanent permission. Under the rule's provisions, even if a person is granted permanent permission to join a household, the tenancy must continue for at least one year after permission is granted before the tenancy ends, in order for the person to acquire Remaining Family Member status and possibly succeed to an existing lease.

Finally, the Remaining Family Member must also pass a criminal background check before succeeding to the apartment and have the capacity to sign the lease—she has reached the age of adulthood (18); is an emancipated minor (usually 17 years old); or has an acceptable guardian.

### **Remaining Family Member Grievance**

If a tenant requests Remaining Family Member status and feels the request was wrongfully denied, the tenant may initiate an administrative grievance with the development Housing Manager, followed by a Management Department review. Some Remaining Family Member claimants may also be eligible to a grievance hearing before an Impartial Hearing Officer. The burden of proof rests with the claimant, who must demonstrate that she qualifies for a lease.

Finally, to pursue a RFM Grievance, the claimant must formally claim that she is a Remaining Family Member as described earlier and pay use and occupancy for the apartment during the time the grievance is pending.

### **Keeping Residents Informed**

As you can see, NYCHA's Occupancy and Remaining Family Member Policy has several procedural steps, each presenting various responsibilities, as well as rights. NYCHA takes the duty to inform our residents of this, and other, NYCHA policies very seriously. To that end, NYCHA communicates the Occupancy and Remaining Family Member Policy to residents when a family signs a new lease, when a tenant requests permanent permission for a family member to be added to the household, and twice each year—in the annual Affidavit of Income and in the yearly Lease Addendum and Rent Notice, which is issued at the end of the annual review process.

Nonetheless, the Authority is taking steps to improve how we communicate this important policy to NYCHA families, including broadening the languages into which the policy is translated and making it available on the NYCHA website. Furthermore, residents are encouraged to reach out to the management staff where they live if they have any questions regarding this policy.

### **Conclusion**

As custodian of New York City's prized public housing resource, NYCHA has employed a longstanding occupancy and succession policy to ensure the proper distribution of its apartments to both meet the needs of public housing families and to preserve the integrity of the public housing waiting list for new applicants. We are committed to safeguarding these homes for the families who count on

them, and we pledge to continue to work with the City Council and with our residents to ensure that our process is clear, fair and transparent.

Thank you very much and I look forward to your questions.



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## 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

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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.”)

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. 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 are 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 occur, 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 in 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.

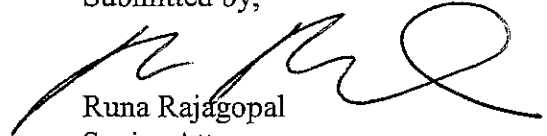
Absent reform of the administrative process, including accountability when NYCHA staff misinform tenants and otherwise fail to follow the required procedures for

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.

DATED: June 28<sup>th</sup>, 2010

Submitted by,



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**Testimony by New York Legal Assistance Group (NYLAG)**  
**before the NYC Council Committee on Public Housing:**  
**Oversight—The New York City Housing Authority's Succession Procedures**  
**and Remaining Family Member Issues**

**June 28, 2010**

Chairwoman Rosie Mendez, Council Members, staff, good afternoon and thank you for the opportunity to speak about NYCHA's Succession Procedures and Remaining Family Member Issues. My name is Kamilla Sjödín and I am the Supervising Attorney of the Housing Project at the New York Legal Assistance Group, a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBT community, Holocaust survivors, as well as others in need of free legal services. For full disclosure, I am a former employee of the New York City Council where I, at one time, served as counsel to the Subcommittee on Public Housing. I am joined today by Shari Morris, a Staff Attorney in the Housing Project who has a lot of experience working on NYCHA succession cases.

Although, there are several points in the NYCHA succession process that could be improved, we have chosen only four things to talk about today, which we believe need immediate reform and would be very easy for NYCHA to remedy. First, the five year ban on applying for public housing after losing an Remaining Family Member (RFM) case must be repealed. Second, all NYCHA tenants and advocates must have better access to the NYCHA Management and Applications Manuals, the rules that govern most aspects of NYCHA procedures. Specifically relevant here, tenants who try to add family members to the household composition must have access to information regarding the difference between receiving temporary vs. permanent permission to stay, as well the rules relating to when they are eligible for either or both. Third, NYCHA should expand the categories of familial relationships that are eligible as Remaining Family Members and adopt a similar standard to that set forth in the landmark case, Braschi,<sup>1</sup> where the court recognized a definition of family that includes emotional and financial interdependence even in cases where people are not related by blood or marriage. And, fourth, NYCHA should provide for exemptions to the one year of continuous occupancy rule for people who are elderly or disabled.

NYCHA's Succession/Remaining Family Member process is procedurally fairly complicated. If a tenant of record leaves a NYCHA apartment, either by moving or due to death, a Remaining Family Member must first make a request to succeed to the subject apartment with the project management office. That application is then sent to the borough office. If denied, the RFM is notified that she may request a hearing regarding the matter in writing. Among many rules to be eligible to succeed to a NYCHA apartment, the RFM must have been placed on the family composition by the tenant of

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<sup>1</sup> *Braschi v. Stahl Associates Comp.*, 74 N.Y.2d 201, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989).

record, have had permission to remain in the apartment permanently, and have lived with the tenant of record continuously for at least one year prior the tenant of record leaving the apartment. NYLAG has come across many cases where individuals are given temporary permission to stay in NYCHA apartments where they should have received permanent permission, where life-long partners are denied succession to apartments because they are not married or registered as domestic partners and where disabled people are evicted because they cannot demonstrate that they lived in a given apartment for a year or longer prior to the tenant of record leaving. Perhaps most egregiously, these folks who try to challenge a NYCHA succession denial and who ultimately loses that challenge are precluded from applying for NYCHA housing for five years.

#### **Repeal the Five (5) Year Rule**

The Appendix to the 2010 Tenant Selection and Assignment Plan (TSAP), a supporting document for the Annual Plan,<sup>2</sup> states that “persons who have been or are about to be evicted from a NYCHA apartment pursuant to a licensee action” are “ineligible for five years from the date of the move-out or eviction.” As such, Remaining Family Member claimants who lose their grievance hearings are deemed ineligible, merely because they exercised the rights guaranteed to them under the Due Process Clause of both the Federal and State Constitution. This regulation is unduly harsh for those who do not know of it, or deters people from pursuing their legal rights.

As a comparison, NYCHA deems numerous other categories as ineligible for applying for public housing. These categories largely include those who have been convicted of crimes or have committed other violent or otherwise hazardous behavior. In the majority of these categories, those who have committed a prohibited act are deemed

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<sup>2</sup> Available at [http://www.nyc.gov/html/nycha/downloads/pdf/TSAP\\_draft.pdf](http://www.nyc.gov/html/nycha/downloads/pdf/TSAP_draft.pdf).

ineligible for a time period of fewer than five years.<sup>3</sup> Therefore, those who have been convicted of criminal acts or have engaged in behavior that is potentially destructive to others, such as violence or arson, are in fact deemed ineligible for *less* time than someone who merely asks for a closer look at his or her status as a Remaining Family Member.

Further, the notice informing claimants of their right to file a grievance proceeding does not inform them of the consequences of losing the grievance beyond eviction. Therefore, NYCHA is essentially encouraging claimants to take action that would impede their future eligibility for public housing. At the very least, NYCHA is only informing claimants to a portion of their rights. The grievance process and subsequent eviction proceeding can take multiple years to be completed, as many who lose a grievance will also file an Article 78 to appeal the decision of the Hearing Officer, therefore making someone ineligible for far more than five years from the initial determination of ineligibility. To exclude someone from applying for public housing merely because they exercise a legal right is unconstitutional and this regulation must be repealed.

### **Immediate Access to Rules and Increased Transparency at NYCHA**

There simply must be greater access to and transparency of the NYCHA regulations contained in the Applications Manual and the Management Manual.

Residents of NYCHA public housing have virtually *no* access to the regulations that

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<sup>3</sup> As an example, NYCHA deems the following categories ineligible for the following time periods: (a) those convicted of class A, B, or C felonies are ineligible for six years after completion of punishment; (b) those convicted of class D or E felonies are ineligible for five years after completion of punishment; (c) those convicted of class A misdemeanors are ineligible for four years after completion of punishment; (d) those convicted of class B misdemeanors are ineligible for three years after completion of punishment; (e) those who have been involved in a “fire-related incident” are ineligible for four years; (f) those who have behaved violently or destroyed property are ineligible for three years; (g) those who have illegally used a controlled substance are ineligible for three years; and (h) those who committed acts such as fraud or bribery in connection with a government housing program will be ineligible for three years. 2010 NYCHA TSAP Appendix, pages 5-7, *available at* [http://www.nyc.gov/html/nycha/downloads/pdf/TSAP\\_draft.pdf](http://www.nyc.gov/html/nycha/downloads/pdf/TSAP_draft.pdf).

govern their everyday life until they are alleged to have violates such a regulation. They are then held accountable for allegedly breaking a rule for which they had no way to know if its existence. Specifically, as relevant to the instant issue, the NYCHA Management Manual currently sets forth the procedures for requesting that a party be given either temporary or permanent permission to reside in the household. There are different regulations governing temporary and permanent permission, and the different forms of permission confer different rights on the recipient.<sup>4</sup> However, the NYCHA Management Manual is *not available to the public*. Since only those given permanent permission are eligible to succeed to an apartment the permanent vs. temporary permission difference is crucial to many tenants.

NYLAG has seen the case of Ms. O, who recently lost an Article 78 appeal of a denial of a Remaining Family Member grievance. Ms. O lived in a NYCHA apartment for her entire life, with the exception of one year. When she returned to the apartment, she and her mother, the head of household, asked the Housing Assistant (HA) to add Ms. O and her children back on the household composition. Ms. O was told that she needed to fill out a form for temporary permission, and if she passed her criminal background check she would automatically be granted permanent permission. Hearing nothing further from the HA, Ms. O wrongly assumed that she had passed and had permanent permission to reside there. Having lost a hearing and a subsequent appeal of her succession denial, Ms. O will now most likely be forced to leave the home in which she lived for the majority of her life, and is further ineligible to apply for public housing for five additional years.

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<sup>4</sup> See NYCHA Management Manual, Chapter IV, Subdivision IV, pages 5-10.

Ms. O's case is not unique, and her issue stems from the same place as many others: the fact that she had no idea of the governing regulations and had to rely on the misinformation of a NYCHA employee. Had she been shown a copy of the regulations, she would have known precisely how to proceed, and would have known that the information that she was given by the HA was incorrect. Therefore, it is imperative that NYCHA residents have access to the Management Manual so that their Constitutional rights are protected and so that they are not penalized for breaking a rule they did not even know existed.

### **Expanding the Category of Eligible Remaining Family Members**

In the context of succession to regulated housing, New York has long recognized that there are many individuals who form familial relationships without being married or related by blood. NYCHA's categories of eligible Remaining Family Members are very limited and extended to a few categories of people, such as parents, children or those legally married or with a registered domestic partnership. Because there are many instances where people may be living as partners or as family but have decided for various reasons that do not wish to either get married, when allowable, or register as domestic partners, we urge NYCHA to adopt a standard for determining who may qualify as a Remaining Family Member that is similar to that in the landmark case Braschi. Specifically, in determining RFM status, NYCHA should take into account what actually makes a family, including but not limited to such matters as emotional and financial interdependence.

### **Exemptions to the One (1) Year Continuous Occupancy Rule**

Finally, we urge NYCHA to grant exemptions to the one year of continuous occupancy rule to individuals who are elderly or disabled. Again, an exemption to the length of time in an apartment required to be eligible to succeed to a regulated apartment exists in cases where people are elderly or disabled. Recognizing that finding affordable housing in New York City is next to impossible, NYCHA should be urged to not make homeless those of us who are most vulnerable.

### **Conclusion**

In conclusion, we urge the Council and NYCHA to work together to: 1) immediately repeal the Five (5) Year Ban on applying for public housing, especially in Succession/RFM cases; and make all NYCHA rules and regulations immediately available online and in each management office. We further urge NYCHA to work on expanding the categories of those eligible to succeed to apartments and on making exceptions for elderly and disabled RFMs where appropriate.

We would welcome the opportunity to further discuss or comment on these matters in the future.

Thank you for the opportunity to testify today.

Respectfully submitted,

Kamilla Sjödin, Supervising Attorney

Shari Morris, Staff Attorney

**Testimony by The Legal Aid Society, Legal Services NYC, and the  
Community Service Society, before the Committee on Public Housing on  
Addition of Family Members in a New York City Housing Authority  
Development  
June 28, 2010**

**Interest and Expertise of the Legal Aid Society and the Community Service Society**

The Legal Aid Society is the oldest and largest provider of legal assistance to low income families and individuals in the United States. The Society's Civil Practice operates neighborhood offices in each borough and city-wide units serving residents throughout New York City and provides comprehensive legal assistance in housing, public assistance, and other civil areas of primary concern to low income families and individuals. The Society is counsel on numerous class-action cases concerning the rights of public housing residents and is counsel to the New York City Public Housing Resident Alliance. The New York City Public Housing Resident Alliance seeks to inform and network with residents, so that they can have a strong and effective voice and secure greater accountability in local, state and federal policy decisions that affect public housing in New York City.

The Community Service Society of New York (CSS) is a 160 year-old organization dedicated to promoting the economic security of low-income New Yorkers. For the past 15 years, we have worked closely with public housing resident leaders and other advocacy organizations to press for greater responsiveness and accountability in policy decisions made by the New York City Housing Authority (NYCHA).

Legal Services NYC provides free legal services in civil matters to low-income households in New York City. The nineteen neighborhood offices of Legal Services NYC

operate in diverse communities throughout the City to represent low-income tenants annually in disputes involving tenants' rights to remain in their homes.

We appreciate the opportunity to testify before the Committee on Public Housing on this important matter.

### **FAMILY COMPOSITION RULES**

Every year NYCHA must conduct an examination of a residents' income and family composition.<sup>1</sup> A family may request an interim reexamination of family income or composition because of any changes since the last determination.<sup>2</sup> On November 22, 2002, NYCHA adopted stringent rules regarding who may lawfully reside in a NYCHA apartment. Three categories of persons may lawfully reside in a NYCHA apartment: (1) original family members; (2) additional family members automatically authorized to reside in the apartment because of "family growth"; and (3) persons granted permission for permanent residency in writing by the Housing Manager.<sup>3</sup>

Before November 22, 2002, a NYCHA Housing Manager could grant permission for permanent residency to (1) two or ore persons living together related by blood, marriage, or adoption, or (2) two or more unrelated persons, regardless of sex, living together as a cohesive family group in a sharing relationship. Currently, NYCHA only allows a Housing Manager to grant permanent residency to the following persons:

- (a) spouse
- (b) child or step-child,
- (c) parent or step parent
- (d) sibling or step/half sibling
- (e) a domestic partner who submits a Certificate of Domestic Partnership Registration by the City Clerk of the City of New York; or

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<sup>1</sup> 24 CFR §960.257(a)

<sup>2</sup> 24 CFR §960.257(4)(b)

<sup>3</sup> Original Family Members are those authorized to reside in the apartment at the initial move-in. Family Growth refers to those persons born to, legally adopted by, or judicially declared to be the ward of the tenant or authorized permanent family member are automatically authorized to reside in a NYCHA apartment.

- (f) an original family member who moved out and now seeks to move back into the household.

NYCHA's definition of family unreasonably limits the family structure. The federal regulations liberally define family as including but not be limited to: (1) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size); (2) An elderly family; (3) A near-elderly family; (4) A disabled family; (5) A displaced family; (6) The remaining member of a tenant family; and (7) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.<sup>4</sup>

#### **Re-entry and Addition to the Household Composition**

Assuming the individual seeking to be added to the household composition is one of the eligible groups of persons listed above and is over the age of 16, s/he must undergo a criminal background check. A housing authority in the selection of families for admission to a public housing development or unit is responsible for screening family behavior and suitability for tenancy.<sup>5</sup> In making this determination NYCHA may look at the history of criminal activity involving crimes of physical violence and other criminal actions that affect the safety and welfare of other tenants.<sup>6</sup> While federal regulations require a public housing authority to review the criminal backgrounds of applicants, NYCHA does have wide latitude in deciding whether to admit non-violent ex-offenders admission into public housing. The routine denial of these individuals into public housing has resulted in an increased reliance on the shelter system. The NYC Department of Homeless Services (DHS) notes that chronic and episodic use of the shelter

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<sup>4</sup> 24 CFR §5.403

<sup>5</sup> 24 CFR §960.203(c)

<sup>6</sup> 24 CFR §960.203(c)(3)

system is often associated with prison history.<sup>7</sup> Even though NYCHA has discretion in constructing an admission policy, NYCHA has chosen to enact a highly restrictive policy that makes many non-violent ex-offenders ineligible for public housing. Individuals who have a criminal violation or DWI (driving while impaired) infraction on their record are ineligible for public housing for two (2) years, after serving their sentence or completing probation. Violations include such petty offenses as disorderly conduct, and trespass. Individuals who have a Class B misdemeanor on their record are ineligible for admission into public housing for three (3) years after serving their sentence or completing the probationary period. Misdemeanor infractions include such minor offenses as possession of marijuana, loitering, and trespassing on public housing property. Residents and their family members are not given any guidance on how to demonstrate that their ex-offender family members would be positive public housing residents, who pose no threat to their neighbors. NYCHA purports to take into consideration information/documents that show the family member's rehabilitation; however, there is no procedure outlining this process. Instead, NYCHA residents are left to navigate this labyrinth alone. Housing Managers subjectively decide whether an ex-offender is worthy of public housing admission with little oversight. The practical implications of NYCHA's harsh policies are dire for many public housing residents.

### **CHANGE IN ADMISSIONS POLICY**

Currently, 35.4% of NYCHA households are headed by persons over 62 years of age.<sup>8</sup> When these seniors become infirm or in need of care, adult children often return to the household to become the primary caregiver to their parent. Many times, the elderly parent does not inform the caregiver who moved into the apartment about the process s/he must undergo to be properly

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<sup>7</sup> Housing and Reintegration in East and Central Harlem: Coming Home and No Place to Live, The Policy and Work Group of the Harlem Community and Academic Partnership

<sup>8</sup> NYCHA demographics: <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml>

added to the household composition because the elderly parent is unaware of the procedure or is unable to inform the caregiver about the procedure due to medical problems. Accordingly, many additions to the household composition go unreported. In many instances NYCHA staff does not bother to address this problem, even when they are aware of the family member's occupancy in the household. It is not until the ill tenant of record dies, that the care-giving occupant learns that s/he is not allowed to succeed to the apartment.

After the death of a family member, the decedents' remaining family members should be allowed to grieve in peace. Instead, many low income New Yorkers who live in NYCHA developments are forced to deal with the death of a loved one, eviction from their home, and, to make matters worse, a five-year ban from public housing. In February 2007 NYCHA adopted a new admissions policy which creates a five-year period of ineligibility from public housing for persons facing eviction from a NYCHA apartment in a licensee holdover proceeding. These individuals are family members of the tenant of record who, through no fault of their own, were not properly added to the household composition. Public housing authorities must follow specific procedures including notice to the community, public hearings, consideration of all public comments and consultation with the local Resident Advisory Board before adopting their Annual Plans and submitting them to HUD for approval.<sup>9</sup> This five-year period of ineligibility change in the admissions policy was not adopted after its inclusion in an Annual Plan, subject to public hearing and comment. NYCHA unilaterally added it as a new "Standard of Admission" in its Tenant Selection Admission Plan (TSAP). Notably, the Standard for Admission regarding licensees is the only one of the twelve standards which is not based on the fault of the applicant; rather it penalizes the applicant based upon the actions or inaction by the host NYCHA tenant, who did not have the licensee added to the household composition.

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<sup>9</sup> 42 U.S.C. § 1437 c-1(b); 24 C.F.R. §§ 903.4 & 903.7(b).

This change in admission policy is completely unreasonable and devastating for families who are in dire need of public housing. In comparison, NYCHA's admissions policy renders ineligible for admission in public housing persons who have behaved violently or destroyed property for three years. Individuals found to have committed fraud, bribery, or any other corrupt or criminal act in connection with a government housing program are banned from admission into for public housing for three years. Persons who have engaged in or threatened abusive or violent behavior toward Housing Authority staff are also ineligible for only three years. The arbitrary nature of NYCHA's admissions eligibility criteria is clear, and is further exacerbated by the (in)actions of many NYCHA employees. NYCHA employees routinely fail to inform residents how to properly add someone to their household composition, and refuse to give residents the form(s) needed to begin this process upon request. Many residents who properly adhere to the process are left in limbo as there is no deadline for how long NYCHA has to respond to the request.

We call upon NYCHA to make the following changes:

1. The New York City Housing Authority must abolish its five-year admissions ban of all unauthorized family members who remain in an apartment after the death or relocation of the tenant of record.
2. NYCHA should issue a directive to all of its Housing Assistants mandating that permanent permission request forms must be distributed to all tenants who request them.
3. NYCHA should amend its occupancy policy and allow an additional family member to be added to where the addition(s) do not violate HUD's occupancy rules.
4. NYCHA's policy of restricting eligibility for occupancy to parents, children, spouses and domestic partners unlawfully restricts the definition of "family member". NYCHA must expand its current discriminatory definition of family member to the broader definition outlined in the federal regulations.

5. Understanding the dire need for affordable housing during these difficult economic times, NYCHA should encourage tenants to properly add current unauthorized family members to the household composition without penalty for prior failure to do so.

6. NYCHA must set a deadline for how long it has to respond to an addition to the household composition request, and should send a notice to residents confirming the receipt of the request.

7. NYCHA's current requirement that those individuals who have been granted permanent residency by a housing manager must also live in the apartment continuously for one year prior to the date the tenant of record dies or permanently vacates the apartment should be repealed.

8. The Appellate Division in McFarlane v. New York City Housing Authority, held that written consent is not the sole mechanism an occupant can use to gain succession rights to a NYCHA apartment. If the Authority knew of and took no preventative action against the occupancy by the tenant's relative, then the occupant may succeed to the apartment. NYCHA, in their remaining family member grievance must allow the applicant to establish that NYCHA knew of his/her tenancy and/or impeded the applicant from availing themselves of the addition to the household composition process in making their remaining family member claim.

### **CONCLUSION:**

Thank you again for the opportunity to testify before the Subcommittee on Public Housing.

Respectfully Submitted:

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Name: LIA BURRIS

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I represent: GOUTS / PHOES

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I represent: Goles

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