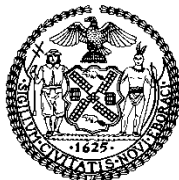


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Hon. Rosie Mendez, Chair

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Oversight: Rightsizing/Downsizing –
NYCHA’s Policy of Transferring Tenants in Under-Occupied Apartments

Introduction

On October 23, 2012, the Committee on Public Housing (the “Committee”), chaired by Council Member Rosie Mendez, will hold a public hearing to examine the New York City Housing Authority’s (NYCHA) policy of transferring tenants living in “under-occupied” apartments. This policy is part of *Plan NYCHA – A Roadmap for Preservation*, which is NYCHA’s five-year strategic plan to “preserve Public Housing for current and future generations of New Yorkers.”¹ NYCHA hopes this transfer policy will help to “maximize occupancy in its units to accommodate more families in need.”²

¹ *Plan NYCHA* is available online at <http://www.nyc.gov/html/nycha/downloads/pdf/plan-nycha.pdf>.

² *Plan NYCHA*, pg. 29.

Background of NYCHA

NYCHA was created in 1934, three years *before* public housing was established at the national level.³ NYCHA originally had two goals – (1) to provide relatively low-cost housing for middle-class, working people that were temporarily unemployed because of the Depression and (2) to bolster the lagging economy by creating jobs for the building trades.⁴ Overtime however, NYCHA’s goal evolved into providing safe, decent housing for families with the lowest incomes.⁵

The first NYCHA development – appropriately named “First Houses” – was built in 1935 and contained 123 public housing units.⁶ By 1942, there were 12 NYCHA developments and 13,180 units.⁷ Today, there are 334 NYCHA developments, 2,597 NYCHA buildings, and 178,895 NYCHA public housing units, making it the largest public housing authority in North America. NYCHA also administers Section 8 affordable housing vouchers for 94,400 apartments. All told, NYCHA serves a community of 629,345 people, which is roughly the population of Boston.⁸

“Under-occupied”/Overcrowded Apartments

According to NYCHA, approximately 56,326 of its public housing apartments are “under-occupied” and 15,223 are overcrowded (see Table 1 below). An “under-occupied” apartment is one where the number of bedrooms exceeds the needs of the occupants. An

³ Peter Marcuse, “The Beginnings of Public Housing in New York,” *Journal of Urban History* 12(4) at 353-54 (1986).

⁴ Marcuse (1986), 353-54; J.A. Stoloff, “A Brief History of Public Housing,” *Paper presented at August 14 meeting of the American Sociological Association*, at 3 (2004).

⁵ Marcuse (1986), 354; Stoloff (2004), 1; *see also* Judith D. Feins, et al., “Revised Methods of Providing Federal Funds for Public Housing Agencies,” *US Department of Housing and Urban Development*, at 9 (1994).

⁶ Marcuse (1986), 356.

⁷ Nicholas Dagen Bloom, “Public Housing That Worked: New York in the Twentieth Century,” *University of Pennsylvania Press*, at 43 (2008).

⁸ *See* NYCHA’s Fact Sheet available online at <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml>.

overcrowded apartment is the opposite – the number of bedrooms is insufficient to meet the needs of the occupants.

Table 1: Occupancy Status of NYCHA Apartments (as of early 2012)

	Number of Units	Percentage of Total Public Housing Units
Total Public Housing Units	178,895	100%
Under-occupied	56,326*	31.5%
Overcrowded	15,223**	8.5%
Appropriately occupied	104,231	58.3%
Vacant (due to turnover)	1,471	0.8%
Vacant	1,644***	0.9%

Sources: *Plan NYCHA* (pg. 29), the Transcript of the Public Housing Committee’s February 27, 2012 hearing on Plan NYCHA (pgs. 38, 44), and the Transcript of the Public Housing Committee’s March 12, 2012 hearing on NYCHA’s preliminary budget (pgs. 14 – 15).

* Includes 11,890 “extremely” under-occupied apartments.

** Includes 654 “extremely” overcrowded apartments.

*** Includes apartments in need of repairs/modernization or being used as office space for NYCHA management, resident associations, or community service providers.

The United States Department of Housing and Urban Development (HUD), which oversees public housing authorities like NYCHA, allows authorities to set their own occupancy standards for determining when an apartment is under-occupied or overcrowded. HUD *recommends* – but does not require – that public housing authorities, when drafting their occupancy standards, follow a general rule of two persons per bedroom and advises that they consider (1) the size and configuration of the public housing authority’s housing units; (2) limitations imposed by the capacity of water and sewer systems; (3) site density issues; (4) characteristics of individual families; and (5) avoiding both under-utilizing space and overcrowding families.⁹ The occupancy standards NYCHA created are summarized in Table 2 below.

⁹ HUD’s “Public Housing Occupancy Guidebook,” pg. 65, *available online at* http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10760.pdf.

Table 2: NYCHA Occupancy Standards

Number of Bedrooms	Standard Occupancy	Overcrowded	Extremely Overcrowded	Under-occupied	Extremely Under-occupied
0	1	2a	2b, 3 or more	--	--
1	2a	2b, 3 or 4	4a, 5 or more	--	--
2	2b, 3 or 4	4a, 5 or 6	7 or more	1, 2a	--
3	4a, 5	6, 7 or 8	9 or more	2b, 3	1, 2a
4	6, 7 or 8	9 or 10	11 or more	4a, 5	4 or fewer
5	9 or 10	11 or 12	13 or more	8	7 or fewer
6	11 or 12	13 or 14	15 or more	9 or 10	8 or fewer
7	13 or 14	15 or 16	17 or more	11 or 12	10 or fewer
8	15 or 16	17 or 18	19 or more	13 or 14	12 or fewer
9	17 or 18	19 or 20	21 or more	15 or 16	14 or fewer

Source: NYCHA Management Manual, Chapter IV, Appendix D “NYCHA Occupancy Standards for Families.”

Note: Numbers shown are the numbers of occupants, except for the column “Number of bedrooms.”

2a = A married couple, a couple registered as domestic partners, or a single person with a child less than six years old.

2b = Two adults that are not married or registered as domestic partners, or a single adult with a child that is at least six years old.

4a = Either (1) a couple that is married or registered as domestic partners with two other family members (one male and one female) that are not married or registered as domestic partners; (2) three females living with one male; or (3) three males living with one female.

NYCHA’s Transfer Policy for Under-Occupied Apartments

HUD also appears to leave it to public housing authorities to determine whether to move tenants living in under-occupied apartments. HUD rules require that public housing authorities annually check the size of every family living in public housing. But if during that check the authority learns a family is living in an inappropriate size apartment, the authority *may* – but does not have to – require the family to move to an appropriate size apartment.¹⁰ Similarly, HUD rules require that every lease for a public housing apartment contain a transfer provision. But that transfer provision requires tenants living in inappropriate size apartments to move *only if* the public housing authority demands it (and there must of course be an appropriate size apartment available).¹¹

¹⁰ 24 CFR 960.257(a).

¹¹ 24 CFR § 966.4(c)(3).

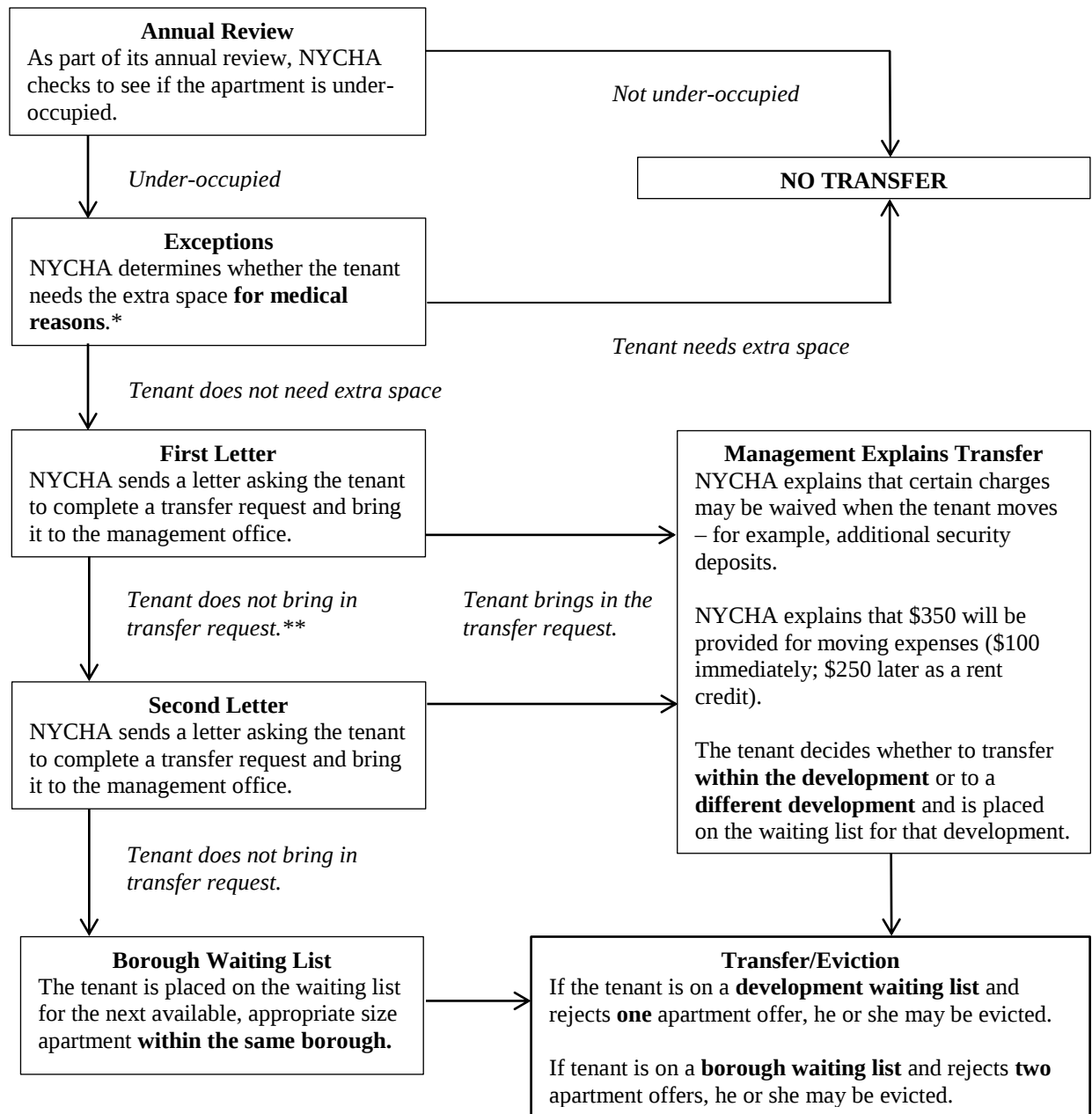
In the past, NYCHA appears to have exercised this discretion by not aggressively pursuing the transfer of tenants living in under-occupied apartments.¹² To the extent NYCHA pursued such transfers at all, it focused almost entirely on moving tenants out of *extremely* under-occupied apartments – as opposed to moving tenants from just “under-occupied” apartments. This approach is reflected in the transfer process outlined in NYCHA’s Management Manual, which is summarized below in Figure 1. The Manual calls for NYCHA staff to send *one* letter to every tenant living in an under-occupied apartment requesting that those tenants place themselves on a transfer waiting list. If a tenant ignores that letter, the Manual calls for further action but *only* if the apartment is extremely under-occupied. If the apartment is just under-occupied, no additional action is required after the first letter.

With the release of *Plan NYCHA*, it appears that NYCHA intends to ramp up its transfer efforts. But what exactly this will mean for tenants remains to be seen. NYCHA has made clear that it wants *all* tenants living in under-occupied apartments – not just extremely under-occupied apartments – to be on transfer lists so that NYCHA can “begin to manage the problem.”¹³ But it is unclear whether “managing the problem” will entail actually moving every tenant living in an under-occupied apartment.

¹² Transcript of the Public Housing Committee’s February 27, 2012 hearing on *Plan NYCHA* (“February 27th Transcript”), pgs. 48-49.

¹³ February 27th Transcript, pgs. 47-48.

Figure 1: NYCHA’s Transfer Process for Under-Occupied Units



Source: NYCHA Management Manual, Chapter IV, Section IV(6), pgs. 44-50 (eff. 2/4/10).

* A tenant may need the extra space if (1) a family member has a medical condition that requires large medical equipment, like a hospital bed; (2) moving would pose a direct threat to the life of a family member because of his or her health condition; or (3) the family was assigned an extra bedroom by NYCHA staff because, for example, a family member is mobility impaired.

** Under the NYCHA Management Manual, no further action will be taken place unless the apartment is *extremely* under-occupied. It is unclear whether NYCHA intends to revise this policy.

Issues and Concerns

The public has raised a number of concerns about NYCHA's transfer policy, but perhaps chief among them is the policy's impact on seniors. Approximately 30,000 NYCHA apartments – or roughly half of all under-occupied NYCHA apartments – are occupied by seniors.¹⁴ Many if not most of these seniors have lived in their apartments for decades and uprooting them can pose significant risks to their health and well-being.

NYCHA has recognized some of these risks. For example, at the Committee's February 2012 hearing concerning *Plan NYCHA*, Chairman John Rhea testified about the importance of "communicating clearly [about the transfer policy] to NYCHA seniors, without causing undue anxiety."¹⁵ At the Committee's March 2012 hearing, the Chairman elaborated that NYCHA is trying to be "considerate and thoughtful about the impact [of the transfer policy] on each family," and he promised that NYCHA will consider "alternatives" to transfer and will try to address seniors' needs for access to their "friends and family, clergy, [and] doctors."¹⁶

However, these assurances are not yet reflected in NYCHA's formal transfer process. As shown above in Figure 1, the transfer process laid out in NYCHA's Management Manual only identifies *three* exceptions to the transfer requirement and each exception is tailored to a specific health or medical issue. There is no provision that alternatives to transfer be considered, and there is no provision that access to friends, family, clergy, doctors, or anyone else be factored into a transfer decision. Today's hearing will give NYCHA the opportunity to explain what procedural safeguards are or will be put in place to guarantee its commitment that the unique needs of seniors will be taken into account in its transfer process.

¹⁴ *Plan NYCHA*, pg. 29, and February 27th Transcript, pg. 39.

¹⁵ February 27th Transcript, pg. 47.

¹⁶ Transcript of the Public Housing Committee's March 12, 2012 hearing on *Plan NYCHA* and NYCHA's preliminary budget, pgs. 21-22.

Further, this hearing will afford NYCHA and the general public the opportunity to discuss (1) what NYCHA's newly ramped-up transfer policy will specifically entail and what it will mean for public housing tenants; (2) whether NYCHA *must* aggressively pursue the transfer of tenants living in under-occupied apartments and, if not, *why* NYCHA has chosen this course of action; (3) whether NYCHA intends to actually move all or most tenants out of under-occupied apartments; (4) how and when NYCHA foresees these transfers occurring and whether they will be accomplished in phases or wholesale and (5) where NYCHA plans to move these tenants considering the extremely low vacancy rate in public housing.