

TESTIMONY OF THE LEGAL AID SOCIETY

CONCERNING PRESERVING MITCHELL LAMA HOUSING AND PROTECTED TENANTS LIVING IN CURRENT AND FORMER MITCHELL LAMA BUILDINGS

New York State Assembly
Standing Committee on Housing
Subcommittee on Mitchell-Lama

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The Legal Aid Society

The Legal Aid Society is one of the oldest and largest programs in the nation providing direct legal services to low income families and individuals. The mission of the Society's Civil Practice is to improve the lives of low income New Yorkers by helping vulnerable families and individuals to obtain and maintain the basic necessities of life — housing, health care, food and subsistence income or self-sufficiency. The Society's legal assistance focuses on enhancing individual, family and community stability by resolving a full range of legal problems in the areas of immigration, domestic violence and family law, employment, housing and public benefits, foreclosure prevention, elder law, tax, community economic development, health law and consumer law.

The Society achieves its mission in a number of ways. Through a network of 10 neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects, the Civil Practice provides free direct legal assistance in thousands of matters annually. Overall, combining individual representation with law reform litigation, advocacy and neighborhood initiatives, the Society successfully provides as many low-income New Yorkers as possible with access to justice. In addition to direct legal services, the Society provides extensive back-up support and technical assistance for community organizations in all five boroughs of the City providing services in low-income communities, "know your rights" trainings for community residents, and community education sessions on complex legal issues affecting low-income communities. When it is the most efficient and cost-effective way to help clients, the Society provides legal representation to groups of clients with common legal problems, including those referred by elected officials. Finally, the Society also operates an extensive pro bono program through which over 1,000 volunteers participate to provide more than 50,000 hours of legal assistance to low income New Yorkers annually.

The Need to Preserve Affordable Housing is Urgent

As part of Legal Aid's daily practice, we provide legal representation and advocacy on behalf of low-income tenants whose housing is at risk. Many of our clients are tenants who live in buildings that receive federal or state subsidies. We also represent homeless families and individuals, who are in need of safe and affordable housing but who daily come up against the extreme scarcity of such housing in New York City. In all five boroughs, we represent people with physical disabilities who cannot find accessible housing that is also affordable. For indigent

and lower-income working families, it is a constant struggle to find and maintain safe and affordable housing.

Subsidized affordable housing is a crucial part of maintaining even the inadequate numbers of affordable housing units that now exist in New York City, and curbing the rise in the population of New Yorkers who are homeless. Senior citizens and individuals with disabilities comprise 40% of the tenant population living in project-based Section 8 developments. These apartments are in privately-owned buildings where eligible tenants pay 30% of their income in rent and a subsidy from HUD covers the rest of their rent. A similar rent scheme exists for housing under particular federal programs that provide subsidies at buildings reserved for elderly or disabled people and their families. The median household income for a family living in a Mitchell-Lama development is \$26,000 a year. These subsidized developments protect long-time residents and ensure the continued presence of affordable housing even as neighborhoods change and rents increase.

The federal and State subsidized housing programs are in crisis. There are not sufficient means to keep subsidized buildings affordable. All across the City, private owners of subsidized buildings are opting out of project-based subsidy programs or prepaying subsidized mortgages and selling their buildings to for-profit developers. The steady decrease in Mitchell-Lama units has accelerated over the past several years, with at least 22,000 units leaving the program between 2003 and 2007.¹ In addition, there has also been an 12 percent loss in project-based Section 8 housing since 1990, leaving only 81,928 subsidized privately-owned apartments remaining in New York City.² Meanwhile, the waiting list for Section 8 housing vouchers, closed since 2007 contains 124,760 families.³ In December 2009, the New York City Housing Authority (N.Y.C.H.A.) cancelled 2600 vouchers and recently announced a shortfall of tens of millions of dollar.⁴ This shortfall may result in the termination of subsidies for thousand of low income families.⁵ The rising number of vacant units unavailable for rent,⁶ the fact that housing expansion has not kept pace with population growth,⁷ and the increase in rental housing affected by foreclosure proceedings, have all contributed to the scarcity of available affordable housing.⁸

The State Must Act to Preserve Affordable Housing

It is against the backdrop of so many units potentially deregulating and leaving the affordable housing stock that we are here today to urge the State Assembly to continue its leadership role and act to preserve the homes of so many New Yorkers.

¹ NYC Rent Guidelines Board, *2008 Housing Supply Report*, 9.

² Tom Waters and Victor Bach, Community Service Society, *Closing the Door 2009: Risks of Boom and Bust*, December 2009.

³ N.Y.C.H.A. Fact Sheet <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml>

⁴ *New York Times*, April 7, 2010, "Housing Authority, Facing Shortfall, May Revoke Rental Vouchers, Cara Buckley.

⁵ *New York Times*, April 7, 2010, "Housing Authority, Facing Shortfall, May Revoke Rental Vouchers, Cara Buckley.

⁶ Dr. Moon Wha Lee, *Selected Findings of the 2005 New York City Housing and Vacancy Survey (HVS)*, 4.

⁷ Margary Austin Turner, *Current Rental Housing Market Challenges and the Need for a New Federal Policy Response: Statement before the Committee on Appropriations, Subcommittee on Transportation, HUD, and Related Agencies, US House of Representatives*, 2.

⁸ Center for an Urban Future, *Cause for Distress*, February 2007, 1.

Three years ago, State Supreme Court Justice Marilyn Shafer wrote in Real Estate Board of New York, Inc. v. City Council of the City of New York N.Y.L.J. 4/30/2007 p. 18, col. 1. (Sup. Ct., NY Cnty):

Whether it be by creating a right of first refusal or by extending rent stabilization, the State Legislature may well have the ability to protect low and middle-income residents of Mitchell-Lama buildings, as it has done in the past. In failing to do so, or to permit the City of the New York to do so, the State Legislature has failed the residents of the City of New York. The recent sales and proposed sales of major assisted rental housing complexes in this City and the likely devastating impact of those sales on low and moderate income residents of New York may and should function as a wake-up call for the need for immediate action by the State.

Both before and after Justice Shafer issued her call, the State Assembly had introduced bills that would protect Mitchell-Lama residents whose owners deregulate their homes. This Committee and Subcommittee have certainly not been the obstacle that slowed down the effort to protect tenants and preserve Mitchell-Lama housing.

However, in this time of economic crisis, we once again urge this Committee to pass protections for tenants in buildings whose owners buyout of the Mitchell-Lama program. We strongly support the effort to extend rent regulations to former Mitchell-Lama buildings and thus we support A9230A. We believe extending rent regulations to former Mitchell-Lama buildings would both protect tenants and preserve Mitchell-Lama housing.

While we support A2933 which would also extend rent regulations to former Mitchell-Lama buildings, we are concerned that the bill includes language that would punish tenants who lose their enhanced voucher by denying them the protections of rent regulations. Since January 2009, the Appellate Division, First Department has decided three separate cases which make clear that the New York City's Department of Housing Preservation and Development's decision to terminate tenants is shockingly disproportionate to the offenses alleged.⁹ These three tenants were lucky that they found attorneys to represent them. Most tenants are not that fortunate.

During this economic crisis, The Legal Aid Society has been overwhelmed with clients whose vouchers have been terminated unlawfully. For example, we represent a client who moved out of her apartment when H.P.D. placed a vacate order on it. She immediately reported this to N.Y.C.H.A. and provided an address where she could be reached. N.Y.C.H.A. terminated her Section 8 subsidy because she moved out of her apartment before receiving N.Y.C.H.A.'s permission. Had she remained in the apartment while waiting for N.Y.C.H.A.'s permission, she would have endangered herself and her family and would have been in violation of the law. Another tenant recently sought our advice because he is at risk of having to leave his building, a former Mitchell-lama. The client received an enhanced voucher when the building privatized. At the time, he lived alone in a studio apartment. However, recently he was able to bring his

⁹ Matter of Davis v. New York City Dept. of Hous. Presev. & Dev., 58 A.D.3d 418, (App. Div. 1st Dep't 2009), Matter of Grey v. Donovan, 58 A.D. 2d (App. Div. 1st Dep't 2009), Matter of Williams v. Donovan 2009 NYSlipOp 02468. The Legal Aid Society represented the petitioners in the first two cases.

family to the United States. He requested that H.P.D. add his family to his voucher. H.P.D. required that he obtain permission to add his family from his landlord. His landlord will not sign the papers and although there are two bedrooms standing empty in the building, the landlord will not rent him a two bedroom. Once his family is added to his voucher, he will be overcrowded and will have to move if he wants to keep his voucher. The Legal Aid Society and the other legal services programs in the City have limited resources. Many tenants who lose their vouchers unlawfully have no recourse. We, thus, urge this Committee to reconsider including language in A2933 which would punish tenants for losing their enhanced vouchers.

Conclusion

Thank you for the opportunity to testify before the Assembly's Standing Committee on Housing and the Subcommittee on Mitchell-Lama today. We hope that the State Legislature will do all that is within its power to address the serious threats to affordable, subsidized housing in New York State

Respectfully Submitted:

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