

**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.¹ A family may request an interim reexamination of family income or composition because of any changes since the last determination.² 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.³

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

¹ 24 CFR §960.257(a)

² 24 CFR §960.257(4)(b)

³ 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.⁴

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.⁵ 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.⁶ 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

⁴ 24 CFR §5.403

⁵ 24 CFR §960.203(c)

⁶ 24 CFR §960.203(c)(3)

system is often associated with prison history.⁷ 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.⁸ 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

⁷ 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

⁸ 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.⁹ 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.

⁹ 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:

Steven Banks, Attorney in Charge
Adriene Holder, Attorney in Charge Civil Practice
Scott Rosenberg, Supervising Attorney Law Reform Unit-Civil
Judith Goldiner, Supervising Attorney
Afua Atta-Mensah, Staff Attorney
THE LEGAL AID SOCIETY
199 Water Street, 3rd Floor
New York, New York 10038
(212) 577-3964

Victor Bach
Community Service Society
105 E. 22nd Street
New York, NY. 10010

David Robinson, Esq.
Legal Services NYC
The Legal Support Unit
350 Broadway, 6th Floor
New York, NY 10013

