

TESTIMONY FROM NYCHA'S SENIOR ADVISOR TO THE GENERAL COUNSEL DAN HAFETZ

***EXAMINING DOI'S REPORT ON NYCHA'S PERMANENT EXCLUSION POLICY*
COMMITTEE ON PUBLIC HOUSING WITH THE COMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

MONDAY, APRIL 24, 2017 – 10:00 AM

250 BROADWAY, 16TH FLOOR COMMITTEE ROOM, NEW YORK, NY

Chairs Ritchie Torres and Vincent Gentile, members of the Committees on Public Housing and Oversight and Investigations, and other distinguished members of the City Council: good morning. I am Dan Hafetz, Senior Advisor to the General Counsel for the New York City Housing Authority. Joining me today are David Farber, NYCHA's Executive Vice President for Legal Affairs and General Counsel, and Gerald Nelson, Vice President for Public Safety. We are also joined by Deputy Inspector Howard Gottesman from the NYPD.

Under the leadership of Chair Olatoye and through our long-term strategic plan, NextGeneration NYCHA, we are changing the way we do business to create the safe, clean, and connected communities that all New Yorkers deserve. Thank you for this opportunity to discuss NYCHA's new permanent exclusion policies, which are designed to ensure the safety and well-being of residents while promoting stable and healthy communities.

Since we last spoke with the Council, NYCHA has made considerable progress in its approach to this complex issue. The safety of residents remains our top priority, and we have been working with a variety of partners, including the NYPD, the Mayor's Office of Criminal Justice (MOCJ), residents, and criminal justice experts, to create policies that keep residents secure while helping ensure that our city's most vulnerable families have a home they can afford.

What Is Permanent Exclusion?

Permanent Exclusion is a strategy used by NYCHA to promote the safety and security of its residents. Permanent Exclusion happens when NYCHA brings a

“termination of tenancy” action against a NYCHA tenant for dangerous conduct that violates the tenant’s lease agreement. Instead of terminating the lease (which would mean evicting the whole family), NYCHA can save the residents’ tenancy by excluding only the dangerous person. An excluded person is barred from residing in or visiting the apartment as long as the Permanent Exclusion is in place.

Permanent exclusion arose from federal litigation in the 1970s, when NYCHA was criticized for evicting too many families. Permanent exclusion enables NYCHA to remove individuals who threaten the safety of the community while protecting the tenancy of innocent family members who are not involved in any wrongdoing. Oftentimes, we are saving the tenancy of grandmothers, seniors, children, and people with disabilities, families who would likely be homeless if it were not for public housing.

We evaluate each case individually, looking at all the facts and evidence to assess risk to the community – from the information that we have at our disposal to the evidence we gather from our own rigorous investigations. When the head of household is the dangerous person, NYCHA seeks eviction. If the head of household is not the person involved in the offense, we believe that permanent exclusion is the best and most sensible remedy, for the safety of residents and the stability of the community. For instance, we used permanent exclusion to save the tenancy of a grandmother who was in her 70s living at Patterson Houses whose grandson, a 29-year-old unauthorized occupant, was indicted as part of a federal gang takedown in 2015.

Permanent exclusion is not permanent – tenants can apply to have it lifted, which I’ll discuss later in my testimony. It is enforced through unannounced visits by trained NYCHA staff to apartments where individuals have been excluded. If the exclusion is violated, we open a case against the tenant.

Our Work to Improve the Permanent Exclusion Process

Enhanced Collaboration: Better Information and Faster Response

Last year, NYCHA developed a plan to improve the permanent exclusion process, based on recommendations that the Department of Investigations (DOI) made previously and on our own assessment of the need to modernize our process. To that end, NYCHA led the development of a digital database shared by the Authority and the Police Department that ensures NYCHA gets accurate, comprehensive information on criminal cases from the NYPD quickly. Our progress in information sharing was noted in DOI's report from last month. We also worked with the NYPD to create criteria for high-priority cases concerning violence such as murder, sex crimes, robberies, assaults, and crimes involving guns. "High priority" means moving cases faster, usually within 60 days, although all investigations of dangerous offenses are a priority to NYCHA and are generally handled within several months.

These enhancements enable us to focus our resources on addressing dangerous offenses more efficiently. In the year following the DOI's 2015 report, the NYPD sent 80 percent more cases centrally to NYCHA's Law Department. A quarter of the cases received since the 2015 report were designated high priority, which we handled aggressively, leading to more permanent exclusions than in non-High Priority cases.

Improved Policies

Throughout the past two years, we worked with a range of partners to an unprecedented degree to craft new permanent exclusion policies informed by social science research and data. Our new guidelines clearly spell out for residents and staff when NYCHA will pursue permanent exclusion and how it can be lifted. There are several key improvements:

- We developed clear, written guidelines for when permanent exclusion can be lifted. There are now two paths for this: evidence of changed circumstances (such as participation in a rehabilitative program) and a certain period of crime-free time, demonstrating that the individual is no longer a risk to the community. With our stakeholders, we developed a new, user-friendly application for lifting the permanent exclusion; the form is online and submission will become available through our website and the self-serve kiosks at our property management offices. By simplifying this process and lifting exclusions that are no longer warranted, we can focus our limited resources on those who present a danger to the community rather than those who do not.
- We are developing clear, written guidelines on when permanent exclusion is sought. Violent crimes are prioritized for exclusion, and NYCHA staff now has guidance on the kinds of offenses that are likely to present a risk of future harm to the community as well as the factors that may mitigate the risk. This guidance is based on the latest research, but every case that comes across our desk is assessed individually.
- We started an education and outreach campaign to better familiarize the community with these new policies and guidelines. We have already met with the presidents of NYCHA's resident associations as well as our Youth Leadership Councils to discuss these changes and get their input, and there will be targeted outreach at developments with a high number of permanent exclusions. New and revised communication materials, including FAQs and posters, are part of the education campaign and can be viewed on our website.
- We will train NYCHA case handlers on the new policies and procedures, and on implicit bias, and will bring in experts on risk assessment, risk mitigation, and criminal justice reform.

We have already released some of our new forms and policies, and more will be available in the coming months. In addition to publishing the permanent exclusion policies for the first time, we are publishing an annual report on our website that will provide statistics on the number of investigations of dangerous conduct we opened; permanent exclusions, terminations and other dispositions from our administrative process; the number of applications to lift permanent exclusions; and the number approved.

In order to evaluate this issue from every angle and craft a new approach that best serves the community, we developed these new policies, and the associated forms and communication materials, in collaboration with our stakeholders, from residents to advocates. For instance, the Vera Institute of Justice and John Jay College professor Fritz Umbach released a report this past February that outlined a host of recommended changes to our policies and procedures, based on extensive review of our practices and significant engagement with us. This report and its recommendations are vital to grounding our practice in the best research on risk and rehabilitation. We are bringing virtually all of these recommendations to fruition. Over the past two years, we also met extensively with residents (including victims and the formerly incarcerated, the Citywide Council of Presidents, and the Youth Leadership Councils), legal and community advocates, the NYPD, DOI, prosecutors' offices, MOCJ, the Department of Probation, and the Department of Corrections.

Our Response to the DOI Report

I'd now like to make a few points about the DOI's recent report, which received significant attention a few weeks ago. First, we object to the notion that NYCHA is harboring criminals – that is simply not true. Second, these cases are not as simple as the report would suggest, and require a fair and effective approach. Third, the report assumes that evicting an entire innocent (and vulnerable) family promotes safety – we reject this premise. Finally, the report suggests that

there's a tremendous problem. However, the reality is that the vast majority of NYCHA residents are not involved in wrongdoing – to suggest otherwise unfairly stigmatizes the entire public housing community, which is overwhelmingly a community of hardworking families, the backbone of our city.

Here are the facts that disprove DOI's claim that NYCHA allows criminals to reside in public housing. In over 5,000 visits to apartments during the period covered by the DOI report, NYCHA found approximately 130 violations of permanent exclusion, 57 of which NYCHA has final outcomes that we can share. Of those, 20 were withdrawn for good reasons (the permanent exclusion had been lifted, the tenant was deceased or the offender was incarcerated, or the inspectors were refused access by a visiting relative who didn't know they were supposed to let our investigators in). Of the violations where the excluded person was actually found in the apartment, 16 percent of the cases resulted in termination or the tenant moving out. For nearly all of the other cases, we continued the permanent exclusion for good reasons, such as the fact that the family had serious vulnerabilities and the excluded person posed little threat to the community, or there was a long history of compliance with the exclusion, so eviction based on one violation would have been unwarranted.

For example, there was the case of a very ill tenant of Redfern in her 70s whose son was excluded 20 years ago. Her son picked up her medication because she was recuperating from surgery and the elevator was out of service for rehabilitation (which we confirmed). Or take the case of a 61-year-old tenant with disabilities who lives with two disabled sons and a disabled granddaughter at Lafayette Gardens. The excluded person came to the apartment uninvited, and the tenant tried to get him to leave. In light of the circumstances, NYCHA decided to give her another chance.

In many of its examples, the report concludes that NYCHA should have evicted an entire family and that NYCHA had the evidence to prove the violations of permanent exclusion. This is not accurate. In many cases cited in the report, the

offender provided a NYCHA address, but we didn't find sufficient evidence that the offender was actually living at NYCHA or we found evidence indicating that the offender was living elsewhere. For instance, the registered sex offender cited in the report listed an old NYCHA address with the State Sex Offender Registry. Upon investigating, we found no evidence he was living there; instead, we found evidence that he was living somewhere else.

Ultimately, we are guided by our responsibilities as a landlord, a provider of affordable housing to some of the city's neediest and most vulnerable families. It would be irresponsible and unconscionable to evict innocent grandmothers and children for the bad acts of friends or family – and doing so would often put them on the street or in a shelter. To illustrate: the report suggested that we should have evicted a 27-year-old mother and her two children, ages 7 and 1, because her partner, an unauthorized occupant, was charged with felony gun possession. This, we believe, would not solve the root problem of crime; it would destabilize communities rather than strengthen them.

That said, we acknowledge that there are areas where we can do better. In addition to the efforts I described to create a smarter, more efficient, and more transparent process that identifies the highest priority cases, we are reviewing our policies and procedures to see where we should act more aggressively on permanent exclusion violations. And we agree with several of the DOI report's other recommendations:

- When residents fail to show up for a hearing and seek to reopen their default, we should contest these applications more often and more systematically, when warranted by the evidence.
- When feasible and appropriate, we can do better in requiring tenants to transfer (for example, when members of the household are involved with a local gang).
- We will provide more training for our investigators (for example, in tactical safety and de-escalation strategies).

A Holistic Approach to Safety

Creating safe and secure communities requires a holistic approach, with a focus beyond exclusions and evictions. Our permanent exclusion policies were developed as part of a comprehensive strategy that includes a host of other safety measures. Thanks to support from the Mayor, City Council, and Manhattan District Attorney's Office, we have invested more than \$130 million over the past three years on critical infrastructure upgrades at our developments, installing enhanced front entrance security systems and over 4,700 exterior safety lights, and bringing our total number of security cameras to more than 13,800. We launched a Public Safety Advisory Committee that enables residents, staff, the NYPD, and other partners to collaborate on creating safer communities. The Mayor's Action Plan for Neighborhood Safety brings together more than 10 City agencies with community groups and non-profits to reduce crime at 15 NYCHA developments through a variety of initiatives. Through our Family Re-Entry Program, we are working to stabilize families and communities and reduce recidivism by providing people with histories of justice involvement with the support and stable housing they need to succeed.

Conclusion

Our mission is to provide safe, decent, and affordable housing that offers a vital pathway to opportunity for low-income New Yorkers. For many families, NYCHA is the difference between housing stability and homelessness. We are neither law enforcement nor the criminal justice system, but a landlord that must manage the balance of determining when eviction makes sense and when it does more harm than good, to the community and the city at large.

We're making good strides. Through enhanced collaboration with the NYPD and clearer guidelines, we're moving faster to exclude dangerous individuals. By getting smarter about who needs to be excluded and working to lift the exclusions

of those who don't pose a threat, we're promoting stability and directing our resources where they're needed most.

There are no simple, easy solutions here, but we will continue to work with residents, the NYPD, DOI, MOCJ, City Council, experts, and advocates to establish the best and most reasonable approach for the community.

Thank you for your support as we strive to fulfill our NextGeneration NYCHA vision of safe, clean, and connected communities. We are happy to answer any questions you may have.