

# NYCHA MANAGEMENT MANUAL

## CHAPTER IV

### TERMINATION OF TENANCY

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## **I. INTRODUCTION**

### **A. Contents of Chapter**

This chapter of the Management Manual deals with termination of the tenancy of residents in NYCHA-owned projects and leased units in privately owned buildings. With respect to tenants residing on NYCHA-owned sites, it concerns itself with termination of tenancy for reasons other than normal clearance action as, for example, Non-Payment of Rent or Non-Desirability.

The chapter covers the policy of NYCHA with respect to termination of tenancy duties and responsibilities of staff members, grounds for termination, and administrative and legal procedures to be followed in pursuing an action to terminate tenancy.

While this chapter includes definitions of the various grounds for termination, the criteria for applying these definitions are to be found in other chapters of the Management Manual and in Standard procedures. Where necessary, reference will be made to the appropriate chapter or procedure.

This chapter deals in the main with termination of tenancy by NYCHA, and, unless otherwise noted, the procedures herein refer to this type of termination action. Termination of tenancy by a tenant is a fairly simple action and is covered in Section VII. of this chapter.

Section IX. of this chapter contains a list of standard forms to be used in termination actions. Appendix A contains instructions in the preparation of the Notice of Petition and Petition for both Holdover and Non-Payment cases.

### **B. Strict Compliance**

It is essential that there be strict compliance with all of the requirements set forth in this chapter so that the tenant may avail him/herself of all rights to review and appeal

In case a tenant appeals a decision made in favor of NYCHA, NYCHA must be certain to have observed all its own policy determinations, lending agency requirements and the provision of applicable statutes in order to pass judicial review.

It is important that all notices and legal papers in connection with termination proceedings be addressed to all persons whose names are on the lease which is in effect at the time the proceedings are commenced. All leases must, therefore, be kept up to date as regards any changes in family composition.

## **II. DUTIES AND RESPONSIBILITIES**

### **A. Housing Manager**

Among the Housing Manager's over-all responsibilities in administering a project is the prevention of the development of conditions which might lead to termination of tenancy.

Where it appears that a tenant is not fully aware of his/her responsibilities and is thus jeopardizing his/her tenancy, the Housing Manager should acquaint the tenant with these responsibilities. Where a situation involves behavior of the tenants or member of the tenant's family, the Housing Manager should attempt, through discussions and referrals to social agencies, to correct the conditions before they reach a stage where there is no alternative but termination proceedings.

The Housing Manager's specific responsibilities for the processing of termination actions include:

1. Selection of grounds for termination
2. Interviewing tenant & forwarding case to ORRC
3. Preparing and serving all notices appropriate to the particular action
4. Securing approvals of action to be taken
5. Preparation of legal forms necessary for court proceedings
6. Arranging with the Marshal for service of legal papers and physical eviction
7. Complete documentation of all actions taken. This will include written substantiation or reasons for action taken, records of interviews, approvals, record of tenant's rebuttal and filing copies of all notices, legal or otherwise, served on tenant.

B. Office of Resident Review and Counseling (ORRC)

ORRC is responsible for reviewing all cases where the Housing Manager recommends termination of tenancy in order to determine whether the record contains sufficient basis for the recommended action.

C. General Counsel

General Counsel is responsible, upon recommendation by the Office of Resident Review and Counseling, for preparing formal charges against the tenant. These charges must be based on the factual evidence in the record.

D. Hearing Officer

The Hearing Officer is responsible for conducting impartial hearings and making dispositions. These decisions are binding on NYCHA unless the members of NYCHA find that they are contrary to law.

The Hearing Officer must be an attorney with at least five years of appropriate experience who has been appointed to the civil service position of Hearing Officer to assure his/her independence. (S)he may be removed only for incompetence or misconduct.

III. GENERAL POLICY

Termination of tenancy may be required by reason of prohibited conduct by a tenant, a member of the tenant's family, or for non-payment of rent.



In order to safeguard tenants against any arbitrary action and to assure that only those tenants will continue in occupancy who meet their rental obligations and the approved standards of eligibility, specific grounds under which termination actions may be taken and the administrative procedure for processing such actions have been established by NYCHA. This section defines the grounds for termination and the general procedure to be followed in all termination actions. Specific procedures applicable to individual grounds and the details to be followed in each type of action are covered in Section IV., *Administrative Procedures* and Section V., *Legal Procedures*.

A. Escalera and Tyson-Randolph Decisions

Termination of tenancy for grounds other than nonpayment of rent is governed by a federal consent decree in the case of Escalera v. New York City Housing Authority which was later modified by the Tyson-Randolph cases. Grounds for termination under these procedures are non-desirability, breach of rules and regulations, chronic breach of rules and regulations, chronic rent delinquency, non-verifiable income, assignment or transfer of possession and misrepresentation.

Escalera mandates that before a tenancy in public housing can be terminated for other than nonpayment of rent or excess income, the tenant must be accorded a trial-type administrative hearing held by an impartial Hearing Officer, on specific written charges of which the tenant must have had prior notification. Witnesses may be produced both by NYCHA and the tenant, and may be examined and cross-examined. Tenants may be represented by counsel or other persons of their own choice at the hearing. If the tenant cannot afford an attorney, one can be made available from a legal services for the poor. The Hearing Officer must make a written finding as to whether the charges were proven or not, and may make the disposition as regarding action to be taken in the case.

Tyson-Randolph added the requirement that the Hearing Officer be an attorney as discussed in Section II. D. In addition, the dispositional options were expanded to include a finding of "eligible subject to permanent exclusion of one or more person in the household" so that the tenancy of the rest of the family could be preserved if the offending member of the family were permanently excluded. Also added was the provision that the Hearing Officer would make the disposition, instead of merely recommending. See section IV. C. 7. for a discussion of NYCHA review of Hearing Officer's decision.

B. Grounds for Termination

1. Misrepresentation-The willful misstatement to, or concealment from, NYCHA by the tenant of any material fact bearing upon or relating to the tenant's eligibility for admission or continued occupancy, or bearing upon the amount of rent to be paid by the tenant.
2. Breach of Rules and Regulations-The breach by the tenant, or any person occupying the tenant's premises, of any applicable rule, regulation or

resolution of NYCHA. The tenant shall be given an opportunity to cure the Breach of Rules and/or Regulations. Non-cooperation is no longer its own category for termination of tenancy but shall be processed under the category Breach of Rules and Regulations.

3. Chronic Breach of Rules and Regulations-The repeated violation by the tenant or any person occupying the tenant's premises of any NYCHA rule or regulation which the tenant had previously reported as cured by compliance. The tenant shall not be given an opportunity to cure a Chronic Breach.
4. Chronic Delinquency in the Payment of Rent-The tenant's repeated failure or refusal to pay rent within the month due, at least three times during any 12 month period ("3 in 12") (as described in C.3.c.(3) on p.20). Rent need not be in arrears at the time the action is instituted if the record clearly shows repeated failure or refusal to pay.
5. Non-Verifiable Income-The tenant's failure, neglect or refusal to furnish NYCHA a satisfactory verification of family income, to keep records of income and disbursements, or to submit to an audit in accordance with NYCHA's requirements and directives.

If the tenant is self-employed and does not keep proper records, as required, or fails to furnish information required, the action to terminate may be based on Breach of Rules and Regulations as well as on Non-Verifiable Income.

6. Assignment or Transfer of Possession-The possession and use of an apartment by a person or persons other than the tenant of record, without NYCHA permission or consent, after the tenant of record has moved from the apartment or no longer resides there.

This Ground for Termination must be brought as a proceeding against the tenant of record if he/she does not admit to having moved out of the apartment but NYCHA has sufficient evidence to the contrary. Since this basis for termination is rarely used, the Manager shall consult with the Law Department's Tenant Administrative Hearing Division prior to initiating any action to terminate. If there is no dispute that the tenant of record has moved, the Law Department shall pursue licensee or squatter proceedings – see Section IV. E.

7. Squatter/Licensee Occupancy- The possession of an apartment by a person or persons without any legal claim or right thereto. It includes possession by family members or others who continue to live in the premises after the tenant has died or moved out.

A licensee proceeding is initiated when an occupant of a project apartment who is not on the lease resides in the apartment with the permission of either the prior legal tenant or the project management. A squatter proceeding is initiated when someone occupies a project apartment without permission from either the previous tenant or the project management.

In cases of Squatter/Licensee Occupancy, the Management Division of the Legal Department should be consulted prior to any action.

8. Non Desirability is defined by NYCHA as the conduct or behavior of the tenant or any other person occupying the premises of the tenant which constitutes:
  - a. A danger to the health and safety of the tenant's neighbors.
  - b. Conduct on or in the vicinity of NYCHA premises which is in the nature of a sex or a moral offense.
  - c. A source of danger or a cause of damage to the employees, premises or property of NYCHA.
  - d. A source of danger to the peaceful occupation of other tenants, or
  - e. A common law nuisance.
9. Loss of Resident Employee Status-When an employee loses resident status, (s)he must remove from the premises unless (s)he is eligible to become a tenant. See Standard Procedure 040:51:2, Resident Employees, for the procedure governing occupancy of apartments by resident employees.
10. Non-Payment of Rent-This ground applies when a tenant fails to pay rent on the date fixed for payment of such rent including any surcharges, whether current or retroactive, required to be paid pursuant to the tenant's lease and the rules and regulations of NYCHA. For a further explanation of Rent and Rent Collection see Chapter II of the Management Manual.

#### C. Selection of Grounds

The grounds for termination of tenancy must be carefully selected at the initiation of the proceedings or the validity of all subsequent steps may be jeopardized. A tenant may be declared ineligible on more than one ground. For example, if, in addition to misrepresentation, the Housing Manager finds that the tenant is chronically delinquent in the payment of rent the case shall be processed for both Misrepresentation and

Chronic Rent Delinquency.

However, where it appears desirable to declare a tenant ineligible on more than one ground, this may be done only where the grounds to be used require identical procedures. For example, since Breach of Rules and Regulation and Non-Verifiable Income are subject to the same administrative procedures, a tenant may be declared ineligible on both grounds. However, where the administrative procedures for two particular grounds for termination differ, the tenant may be declared ineligible on the basis of one ground only. If there is any question as to the ground(s) to be selected, the

Housing Manager shall consult the Tenant Administrative Hearings and Appeals Division of the Legal Department.

#### IV. ADMINISTRATIVE PROCEDURES

##### A. Grievance Procedure

###### 1. Scope of Procedure

The Grievance Procedure is concerned with individual grievances between the tenant and NYCHA. Policy questions, class grievances, inter-tenant conflicts, personal injury, damage claims or commercial tenants are excluded. Also excluded are grievances involving holdover eviction proceedings based on Non-Desirability, Breach of Rules and Regulations, Chronic Breach of Rules and Regulations, Chronic Rent Delinquency, Non Verifiable Income, Assignment or Transfer of Possession and Misrepresentation. These grounds are covered by the Escalera and Randolph-Tyson decrees as discussed in Section III. A.

A grievance should be restricted to those situations where the tenant appears to be aggrieved or dissatisfied after a discussion with the Manager. It should be kept in mind that if a tenant cannot be satisfied at the project level, NYCHA's rights are best protected by giving the tenant a completed Grievance Summary, Form 0.302A. This puts the burden on the tenant to pursue the matter as a grievance under the grievance regulations. If the tenant fails to do so, (s)he cannot thereafter start a grievance procedure because of this same disagreement.

a. All tenants are entitled to use the Grievance Procedure except:

- (1) tenants to whom 30-day Vacate Notices have been sent after a decision by an administrative hearing officer; and
- (2) tenants against whom judgments have been entered and who have not been reinstated as tenants.

b. Conditions Under Which Grievance Procedure May Be Invoked

- (1) Tenant must have a grievance which is eligible for processing under the Grievance Procedure.
- (2) Tenant must meet deadlines for filing a grievance, making a written request for a district review and a formal hearing by a Hearing Officer.
- (3) Tenant must meet his/her rent paying obligations.

If the tenant fails to fulfill any of the above requirements the tenant has defaulted and the grievance terminates.

## 2. Informal Hearing By Manager

When a tenant appears to have a grievance after having discussed the problem with the Manager, a summary of this discussion shall be prepared on the Grievance Summary, Form #040.302A. One copy of this summary shall be sent to the tenant within ten working days after the office receives notice of a grievance and one copy filed in the tenant folder. This form notifies the tenant that if (s)he is not satisfied with the Manager's decision (s)he may make a written request for a District Office review within ten working days after receipt of the Grievance Summary. If the tenant does request such a review a copy of the Grievance Summary is also to be sent to the District Chief. The Manager will keep a control of all grievances initiated, their current status and their disposition.

## 3. Review By District Chief Manager

Within ten working days after the tenant requests a District review the District Chief shall indicate in writing either agreement with the Manager's disposition or any other disposition (s)he deems appropriate. A copy shall be sent to the Manager and a copy to the tenant.

## 4. Request For A Formal Hearing

If the tenant is dissatisfied with the District Chief's disposition and wishes to pursue the grievance, (s)he must submit to the project office within ten (10) working days of receipt of the District Chief's disposition a written request for a hearing. This request shall state the reasons for the grievance and the actions or relief sought. This request shall be sent to the Office of Resident Review & Counseling together with the folder and all relevant papers. The Office of Resident Review and Counseling will then forward this material to the Legal Department so that a hearing may be scheduled.

## 5. Formal Hearing

The Grievance will be heard in Central Office before a Hearing Officer and the Hearing Officer's decision will be binding on NYCHA. The tenant has the right to be represented by an attorney or other person (s)he chooses and may present evidence and arguments in support of the complaint.

## 6. Decision Of The Hearing Officer

The Hearing Officer will prepare a written decision. Copies of the decision will go to the tenant, the tenant folder, and to a file at Central Office.

**NOTE:** A tenant need not resort to the grievance procedure if (s)he does not wish to. The tenant is free to raise the same objections in court, even if (s)he does not prevail at

the formal grievance hearing.

## 7. Rent Payments

### a. Grievances Involving Rent Increases

When a tenant objects to an increase in rent, the following procedures are to be followed:

- (1) Tenant must request a grievance within ten working days of the date rent is normally due or within fourteen days of the date of the Fourteen-Day Notice of Right to Grievance.
- (2) Before requesting the Grievance Procedure the tenant must pay to the regular rent account the monthly rent amount in effect the month prior to the date of rent increase. Any subsequent rent shall be paid into a NYCHA escrow account.
- (3) During the course of the Grievance Procedure the tenant must pay the amount of the monthly rent in effect prior to the date of rent increase into the NYCHA escrow fund. The new higher rent is not collected until after the grievance is resolved.

NOTE: This procedure does not apply to any across-the-board increase, which is a policy decision and, therefore, not grievable.

### b. Grievances When No Rent Increase Is Involved

When the amount of rent is disputed because of an alleged lack of services or any other grievable matter, the tenant who wishes to invoke the grievance must have paid to the regular rent account the rent due for the month proceeding the month the deficiency allegedly began.

All rent due after the first of the month the grievance is alleged to have begun must be paid into the NYCHA escrow fund. Any other rent arrears shall also be paid by the tenant and deposited to the escrow account.

## 8. Rent Delinquency During Course of Grievance Procedure

After the grievance is initiated, the tenant may not default on rent payments by over five working days or else the entire grievance procedure is voided and the tenant must initiate a new grievance.

## 9. Charges

If a tenant objects to a service charge for repairs, Marshal fees, violations, air conditioning, or parking, and continues to pay rent when due, the charge is not to be collected until the grievance is resolved. The tenant must request the grievance

within the first ten working days of the month in which the charge was due or within fourteen days of the date the "Fourteen-Day Notice of Right to Grievance" was served if this notice includes the objected-to charge. (Refer also to Management Manual Chapter II, Section VI.)

10. Checks

Rent paid into a NYCHA escrow fund must be tendered in the exact amount. No change may be given on any checks. If the amount of a check is greater than what is due, the entire amount is to be credited to the escrow fund or rent payment, whichever is appropriate.

11. Escrow Fund Rent Payment, Form #040.325

- a. An Escrow Fund Rent Payment, Form 040.325, is to be filled out in triplicate before any money is accepted for this fund. Sections I., II., III. and IV. of the form are to be completed by the Housing Assistant. Countersignature by the Manager or Assistant Manager is required if more than (15) working days have elapsed between dates in items "a" and "b", "b" and "c", "c" and "d", and/or "d" and "e" in Section II. Countersignature is also required if more than six (6) months have elapsed since the date the tenant requested a formal hearing. The Teller will return one copy of the form to the Housing Assistant for filing in the tenant folder after posting the rent collection. The original copy will be attached to the PMS report sent to Central Office and one copy to the project copy of the PMS.
- b. This form must be filled out monthly before every escrow payment. Tenants paying rent in person must arrange to have the form originated by the Housing Assistant. The Teller will arrange to have the form completed by the Housing Assistant on the same day that eligible mail escrow payments are received.
- c. When a Hearing Officer disposition results in the termination of the escrow payments, the Manager shall prepare an Escrow Payment Termination (Form 040.325A) in triplicate and forward the original and one copy to the Teller. After completing the form, the Teller shall attach the original to the PMS report and forward it to Central Office and retain one copy at the project. The third copy shall be sent to the Housing Assistant for filing in the tenant folder. The Manager shall authorize any Rent Change Notice or Credit Memo necessary to implement the Hearing Officer's decision.

12. Court Escrow Fund

Tenants paying rent into a court Escrow Fund are not entitled to use the grievance procedure. This procedure is applicable only to a NYCHA Escrow Fund.

NOTE: The grievance procedure terminates when a tenant vacates the apartment.

B. Family Income Over Income Limit for Public Housing

During occupancy, if a family's income increases above the income limit for admission to public housing, NYCHA will not commence a termination of tenancy proceeding or seek to evict the family based solely on the family's income being over the limit for admission to public housing.

The family's rent will be determined in accordance with the procedures set forth in the NYCHA Management Manual, Chapter III, Section VII., *Determining the Rent*.

C. Non-Desirability, Breach of Rules and Regulations, Chronic Breach of Rules and Regulations, Chronic Delinquency in Payment of Rent, Non-Verifiable Income, Assignment or Transfer of Possession, and Misrepresentation.

1. Tenant Interview

If the Housing Manager believes that termination proceedings should be initiated against a tenant, First Call-In Letter, Form 040.185 shall be used to call the tenant to the office for an interview. This letter must be addressed to each tenant of record. At the interview, the tenant may be accompanied by someone, such as an attorney, to assist him/her.

The tenant must be given an opportunity to present his/her side of the story and shall be informed that any statement or document deemed pertinent may be submitted. It is important that the Manager document the tenant interview and that the tenant's side of the story be brought out in the course of the interview. If, at the interview, the tenant states that documentation is available but not at hand, the Manager should provide the tenant with the opportunity to submit documentation subsequent to the interview and prior to submission of the case to Central Office.

If as a result of the interview, the Housing Manager does not feel that a finding of ineligibility is warranted, (s)he may not proceed again on the same grounds without another interview.

In those cases where the Housing Manager, during the course of the interview, offers the tenant a specific time for compliance, as in the case of Breach of Rules and Regulations or Non Verifiable Income, the interview shall not be considered concluded but, rather, adjourned to a subsequent date. The adjournment may not be for more than sixty days.

If, despite the tenant's explanation, the Housing Manager decides to recommend termination, the facts or incidents upon which the Housing Manager may rely in recommending the proposed termination action must be revealed to the tenant. The source of this information, however, need not be revealed.

All of the administrative and legal procedures relating to termination of tenancy shall be explained to the tenant. The tenant shall be advised of his/her right to an impartial hearing before NYCHA's Hearing Officer. At this hearing the tenant may be represented by counsel or by any other person and may present his/her own



evidence or witnesses.

The tenant shall be advised that his/her entire record will be transmitted to the Office of Resident Review and Counseling. At the interview the Housing Manager shall serve the tenant with the original of Form 040.187A, Letter Notifying Tenant of Manager's Recommendation for Termination. If the Manager decides to recommend to terminate tenancy after the completion of the interview, Form 040.187A is to be mailed to the tenant. In either case a copy of Form 040.187A is to be placed in the tenant's file and a notation made as to whether the original copy was given to the tenant personally or sent through the mail.

It is extremely important that the Housing Manager include in the file full documentation of all incidents and facts upon which a recommendation for termination of tenancy may be based. This shall include dates, names and addresses of witnesses or complainants and Housing Officer's name and shield number, when appropriate.

The Housing Manager shall record in the tenant's file all the details of the interview, particularly the following:

- a. Copies of all letters and notices to the tenant.
- b. A summary of the Housing Manager's statement to the tenant.
- c. A factual statement of the tenant's admissions, denials or explanations which the tenant claimed have a bearing on the case.
- d. A statement that the tenant was advised of all applicable procedures and of his rights of appeal.
- e. The Housing Manager's conclusion from the facts presented. Here the Housing Manager may indicate his evaluation of the tenant's statements, the attitude of the tenant toward the situation involved, his apparent recognition or lack of recognition of the problem, and resolving the problem or problems involved.

## 2. Failure of Tenant to Respond

In the event the tenant fails to respond to Form 040.185, First Call-In Letter, a second opportunity to appear for a termination interview shall be given. For this purpose, a Termination of Tenancy - Follow-Up Letter, Form 040.186, shall be sent. Thereafter, if the tenant fails to respond to this second opportunity to appear, Letter Notifying Tenant of Manager's Recommendation to Terminate, Form 040.187A, shall be sent to advise the tenant that the Housing Manager is recommending termination of tenancy.

## 3. Submission to the Office of Resident Review and Counseling(ORRC)

After the Housing Manager has served the tenant with Form 040.187A, the tenant's folder shall be transmitted to the ORRC accompanied by Form 040.276, Transmittal to ORRC-Termination of Tenancy Case.

- a. Non-Desirability Cases - The initial responsibility to determine whether the tenant's behavior has caused such an adverse impact on the project as to warrant termination proceedings rests with the project Manager. In certain cases, most

typically off-project arrest, there may be some doubt as to whether the crime meets this criterion. These cases may be sent to ORRC for evaluation.

- (1) If the submission involves an arrest, include all available information on the incident. In the description, list the name, age and address of the victim (indicating whether it is a project resident) and the place of occurrence (indicating whether it is on, off or near a project). If disruptive behavior is involved, describe each relevant incident separately. With respect to each arrest or other incident of anti-social behavior, set forth the names and addresses of witnesses and specify who will testify.
  - (2) Do not submit cases where the alleged perpetrator's complicity cannot be established by the testimony of a cooperative eyewitness, by an admission of guilt or other evidence (such as certified court dispositions), clearly connecting the objectionable act with the tenant or a family member.
  - (3) In some cases where no first hand testimony or other evidence is available it is necessary for ORRC to obtain the court disposition of the criminal case. If such an incident is the entire or vital part of the case, before the folder is sent, a request should be made to ORRC to follow up on the criminal case and obtain the necessary proof of disposition. This request should include the name, address and date of birth of the person arrested, the date of the arrest and any other available information.
  - (4) When several families are involved in one incident each summary should refer to the companion case(s) and all companion cases should be submitted together, if possible.
- b. Breach of Rules and Regulations - The transmittal form shall include the recent date on which the violation was noted, the person who saw the violation, the specific observations made, and the written demands made upon the tenant. Note that a demand must include a deadline for compliance
- c. Chronic Rent Delinquency - Before considering referral to ORRC of a chronic rent delinquency case, the Project Manager must be sure that all possible action to improve the tenant's rent paying record has been taken. For example, has a two party or vendor check been requested in the case of a chronic welfare delinquent? If all efforts have failed, chronic rent delinquency action may be commenced by sending the tenant folder together with Specification of Charges, Form #040.314 and an original and two copies of Form #040.276, Transmittal to ORRC, Termination of Tenancy Case, directly to ORRC. After review, ORRC will submit them to Legal for a mandatory administrative hearing.

(1) Date Rent Due And Late Payments:

In order to make a chronic rent delinquency determination it is important to understand what is a late rent payment. By the terms of the lease, rent for all tenants is due the first of each month. Tenants who receive public assistance are allowed to pay rent semi-monthly. If either of the semi-monthly

payments is late, the rent for the entire month is considered late. For example tenant's rent is due on the 12th and the 28th of the month. Tenant pays  $\frac{1}{2}$  of the rent on the 20th and the second  $\frac{1}{2}$  on the 31st; or the full month's rent is paid on the 28th.

Rent for the month is considered late in both instances.

(2) Completion Of Specification Of Charges, Form 040.314

(a) Date Rent Paid And Period Covered By Rent:

The column headed "Date Rent Paid" should always have the date the rent Was actually paid. Blank spaces on the form should be discouraged. Therefore, if a tenant paid rent for the months of January 1982, February 1982 and March 1982 on March 31, 1982, the specification should look like this:

<u>DATE RENT DUE</u>	<u>DATE RENT PAID</u>	<u>PERIOD COVERED BY PAYMENT</u>
1/1/82	3/31/82	January 1982
2/1/82	3/31/82	February 1982
3/1/82	3/31/82	March 1982

(b) Tenants On Public Assistance:

Tenants on public assistance are allowed to pay rent semi-monthly. When a tenant on public assistance makes two semi-monthly payments for the same month during that month, it may be expressed as follows:

<u>DATE RENT DUE</u>	<u>DATE RENT PAID</u>	<u>PERIOD COVERED BY PAYMENT</u>
1/1/82	1/2/82, 1/16/82	January 1982

However, when a tenant's fractional payments are not made during the month when due, it may be expressed as:

<u>DATE RENT DUE</u>	<u>DATE RENT PAID</u>	<u>PERIOD COVERED BY PAYMENT</u>
1/1/82	1/2/82, 3/31/82	January 1982
2/1/82	3/31/82	February 1982
3/1/82	3/31/82, 4/15/82	March 1982

NOTE: In preparing the Transmittal Form, list the tenant's welfare check delivery days in the Manager's Case Summary And Recommendation Section.

(c) Final Judgment and Warrants of Eviction

It is important not to confuse the number of warrants issued with the number of final judgments issued. Usually, the number of warrants cannot exceed the number of final judgments entered. Without a final judgment, a warrant of eviction cannot be requested.

## (3) Cases Sent To District

The Department of Resident Review and Counseling shall accept CRD cases When rent payments in a 12 month period are late three times or more for Approximately 50 percent of the projects in each District. Accordingly, each District Director shall determine which projects in his/her District should submit CRD cases under the new "3 in 12" rule. If a project is not designated to fall within the "3 in 12" rule, then the "4 in 12" standard shall apply.

If a Project Manager feels that a tenant's rent paying record does not meet the "3 In 12" or "4 in 12" criteria (depending on the specific project) as discussed above but is serious enough to warrant an administrative hearing, (s)he shall refer the case to the District Office for a decision, respecting merits of the Manager's recommendation for termination.

If the District Director does not agree, (s)he shall return the case to the project With his/her recommendation. However, if the District Director agrees with the Manager, (s)he shall return the record to the project where a termination of Tenancy interview shall be held. The record shall then be sent directly to DRRC for review and submission to the Law Department for a mandatory hearing.

## (4) Guidelines to be followed when preparing folders for CRD action include:

- (a) CRD tenant interviews shall be fully documented and include tenant's reasons for rent delinquency
- (b) Case records shall be complete and accurate
- (c) The termination of tenancy interview shall be conducted by the Manager or designee and shall be fully detailed
- (d) The Transmittal to DRRC (Form #040.276&R) shall be submitted with the Specification of Charges
- (e) Staff shall complete the Specification of Charges (Form #040.314) accurately to obviate unnecessary delays in processing CRD cases.
- (f) Staff shall send the original and five copies of Form #040.314 to DRRC; one copy shall be given to the tenant and one copy kept in the project file. If there are any questions, staff shall contact the Law Department's Tenant Administrative Hearings Division.

## (5) Acceptance Of Rent After Service Of a Warrant

The Manager must document the reason for accepting rent after a tenant has been served with a warrant. If the Manager does accept the rent after service of a warrant the record cannot be sent to ORRC for CRD action for a 6 month period unless:

- (a) Acceptance was court ordered over Management objection.

- (b) The family is unusually large
- (c) There are serious medical problems
- (d) There are other unusual family circumstances.
- (e) "Good Cause" is shown (see below).

(6) Setting Aside Warrants For Good Cause

Managers should be aware that the court will set aside warrants when what is referred to as "good cause" is shown and should consider accepting rent when it is likely that a court decision may go against NYCHA. Among grounds qualifying as "good cause" are:

- (a) Tenant was not properly served with the dispossession.
- (b) Tenant was ill or absent from the city on the return day of the non-payment proceeding.
- (c) Tenant was robbed.
- (d) Tenant was withholding rent because requested repairs had not been made.
- (e) The Department of Social Services refused to pay rent until after the service of the 72-Hour Notice.

When the project Manager accepts rent based on one of the "good cause" grounds a notation of "Legal Defense" should be made in the tenant folder with a brief statement describing the circumstances. In all cases, if the Manager does request waiver of the six-month rule, the tenant folder shall be sent to the District Chief with an attached explanatory memo. If the District Chief approves the Manager's request, the Manager may then hold the termination of tenancy interview prior to submission of the case to ORRC.

NOTE: Prior to requesting a warrant, the sample letter below may be an effective tool for collecting rent.

Dear Tenant:

You now owe \$\_\_\_\_, which covers the rent for the period from \_\_\_\_\_ to \_\_\_\_\_. You have been served with a dispossession, but your rent remains unpaid. We are, therefore, requesting a warrant for your eviction.

We wish to advise you that once you have been served with the warrant the Management Office will be under no obligation to accept your rent and your eviction will be scheduled. We, therefore, urge you to pay whatever balance you owe to avoid loss of your apartment.

Very truly yours,

d. All Cases - Attach the following material to the Transmittal Form:

- (1) All pertinent Police Incident Reports.
- (2) All letters of notice and warning, call-in letters and notification letter 040.187A.

- (3) If the residence of the offender is in question, proof of residence from tenant certificates, interviews or staff observations.
- (4) When an arrest is made by the N.Y.C. Police Department, identification of the arresting officer(s) and information on the court disposition, if possible.

Arrests or incidents of a substantial nature occurring after a case has been forwarded should be reported by memorandum in duplicate to ORRC immediately after they occur for possible inclusion in the charges. If the reason for the submission is removed by compliance or move-out, ORRC should be promptly notified.

e. Review by ORRC

ORRC shall review the file to determine if the facts and documentation submitted by The Housing Manager are sufficient to sustain the recommendation to terminate tenancy. If, in the judgment of ORRC, such is not the case, the file shall be returned to the Housing Manager with suggestions as to any further action to be taken.

If ORRC finds after review, that the file contains sufficient facts and documentation, the case shall be transmitted to the Legal Department. It is to be accompanied by a complete summary of the facts upon which the Housing Manager's recommendation is based and all supporting data and names, addresses and other identification of witnesses.

4. Preparation of Notice to Tenant by Legal Department

The Legal Department shall prepare an appropriate notice to the Tenant (either Form 040.268 or Form 040.260A&R) containing specific charges and advising the tenant of the date on which a hearing will be held and the place at which to appear with witnesses and/or counsel or any other person of his/her choice. In this notice, the tenant shall also be requested to signify no later than 5 days prior to the scheduled hearing his/her intention to appear at the hearing. A copy of the procedures covering the hearing shall be enclosed with this notice which shall be sent to the tenant by both Certified Mail and by Regular Mail. Copies of the notice shall also be sent to the Housing Manager.

5. Hearing

The Hearing Officer shall conduct an impartial hearing based on the charges in the notice to the tenant. A representative of the Legal Department shall present the case. The Hearing Officer shall hear witnesses and receive oral and written proof of the Grounds specified in the notice, and offered by the tenant in reply.

Cross-examination shall be permitted. Technical rules of evidence need not be

enforced, but the proof offered shall be relevant to and based upon the charges. The NYCHA representative is not required to disclose to the tenant material which NYCHA does not intend to offer at the hearing. Subpoenas shall be issued at the request of the tenant or the tenant's representative.

Before the close of the hearing, the tenant or his/her representative shall be permitted to make a statement in mitigation as to why the tenancy should not be terminated. This will enable NYCHA to consider matters which do not strictly pertain to the stated ground for termination but relate, rather, to the family situation or other extenuating circumstances. The NYCHA representative may reply to this statement for the record.

The proceedings shall be recorded by mechanical device. It shall not be necessary to transcribe them unless a subsequent appeal is taken by the tenant, in which case a transcript shall be furnished upon request, without charge. If the tenant fails to reply to the notice or fails to appear at the hearing, the Hearing Officer shall proceed and make a written decision based upon the record. If, however, within a reasonable time after this default, the tenant applies for a hearing, the Hearing Officer may set a new hearing date provided the tenant has shown good cause for the default.

#### 6. Hearing Officer's Decision

The Hearing Officer shall prepare a written decision within a reasonable time after the hearing. It shall set forth with respect to each of the charges, the answers hereto, and all relevant issues raised at the hearing, his/her specific findings as to whether the charges have been proven. Such decision shall be based solely upon the testimony, documents and physical evidence admitted into evidence at the hearing. The Hearing

Officer may find that the tenant is eligible for continued occupancy. However, if the Hearing Officer finds that any of the charges have been proven, (s)he may make any of the following dispositions:

a. Termination of tenancy;

b. Probation;

(1) Probation may be given for a specified term not to exceed a year when there is reason to believe that the conduct or condition which led to the charge of non-desirability may not recur or may have been corrected, or that the tenant is taking or is prepared to take steps to do so.

(2) Probation must be given for a specified term not to exceed one year in the case of absence of the offending member of the household by confinement in jail, away in the Armed Services, participation in residential drug program, etc.

(a) Violation of Probation

If, during the term of probation, the Manager feels that the tenant has violated any condition of the probation, the tenant's folder together with a statement of

the acts purportedly constituting the violation shall be submitted to ORRC. ORRC shall forward the folder and statement to the Legal Department if basis of a possible violation of probation has been found.

The Legal Department shall prepare a summary of the alleged violation and notice of a hearing.

(b) Hearing - Violation of Probation

If the Hearing Officer finds that the probation has been violated he/she may make any of the following dispositions:

- i. Immediate termination of tenancy;
- ii. Continuation of probation already prescribed;
- iii. Probation for an additional prescribed period not to exceed a year on such additional terms or conditions as may be appropriate.

(c) Change of Conditions of Probation

The tenant may apply for review, modification or termination of probation at any time a substantial change has occurred bearing on the need for probation, such as a definitive change in family composition. The application shall be in writing and addressed to ORRC which shall submit the application to the Hearing Officer who may:

- i. Continue the probationary period unchanged.
- ii. Modify the duration of terms of probation, or
- iii. Remove the condition of probation from the tenant's status.

(d) How Probation Ends

If there is no violation of probation the Manager shall prepare a memo certifying to that fact and recommending the removal of probation from the tenant's status at least thirty (30) days prior to the end of the probationary period. The Manager's report shall be sent to ORRC which shall note the removal of the probation from the tenant's status.

- i. If at any point during the year of probation a NYCHA employee discovers evidence that a violation of probation may have occurred, violation of probation procedures shall be followed.
- ii. If the probationary period is concluded and no proceeding on an alleged violation of probation is pending, but the Manager has failed to send a memo, the Tenant's probation shall automatically be removed at the end of four months after the end of the year of probation.



- c. Eligible Subject to Permanent Exclusion of One or More Persons in the Household.

Under this option the tenancy of the rest of the family can be preserved if the offending member is permanently excluded. However, no probation may be granted.

- (1) If, in the opinion of the Manager, the tenant has violated the condition of permanent exclusion, the procedures set forth in the Violation of Probation Section, page 24, shall be followed.
- (2) If the Hearing Officer decides that the condition of permanent exclusion of one or more persons in the household has been violated (s)he may:
  - (a) Make a final decision that the tenant is ineligible for continued occupancy, or
  - (b) May continue the condition on such additional terms or conditions as may be appropriate. The tenant or his/her representative shall immediately be informed in writing of such decision.
- (3) The tenant found eligible subject to permanent exclusion of one or more persons in the household may apply for removal of the condition at any time a substantial change has occurred bearing on the need for such a condition to eligibility. The tenant's application shall be in writing and addressed to the Office of Resident Review and Counseling. ORRC shall submit the application to the Hearing Officer who may:
  - (a) Continue the condition unchanged
  - (b) Remove the condition of permanent exclusion.

NOTE: The tenant or his representative shall be informed in writing of NYCHA's action on the application.

- d. Eligible
- e. Eligible with referral to social services

#### 7. Review by NYCHA Members of Hearing Officer's Decision

The decision of the Hearing Officer shall be binding on NYCHA but cannot be carried out unless notice is mailed to the tenant or his/her representative within ten (10) days from the date of such decision advising that the decision is under review by the Members of NYCHA. In reviewing the decision, the Members of NYCHA shall consider and rely only upon the record and shall be limited to whether the decision of the Hearing Officer is contrary to any applicable laws or violates NYCHA procedures. The determination by the Members shall be made within a reasonable time. Where the determination by the Members is less favorable to the tenant than that of the

Hearing Officer, NYCHA shall include a written statement giving the specific bases for making such determination. Copies of this notice must be sent to the Housing Manager and to ORRC.

#### 8. Notifying Tenants of Authority Dispositions

To have maximum impact upon the tenant, it is important that, in addition to the official notification of NYCHA's determination, an interview be scheduled with the tenant. This interview shall be conducted by the Manager or the Assistant Manager. The terms of NYCHA's disposition shall be carefully reviewed with the tenant who shall be advised that violation will result in immediate termination action. A record of the interview shall be made in the tenant folder.

If the tenant does not appear for the interview, it will not be construed as a violation of an order of probation or permanent exclusion. However, such default shall be noted in the tenant folder.

#### 9. Determination of Tenant Ineligibility

If as a result of a hearing, termination of tenancy has been decided upon, a copy of the Hearing Officer's decision or NYCHA's determination must be mailed or delivered to the tenant before a Notice to Vacate, Form 040.004, may be served. The Notice to Vacate must clarify that the tenant is to vacate the premises by a date not less than one calendar month from the date of its mailing or other service. Failure to do so will result in commencement of holdover proceedings leading to the eviction of the tenant from the premises. It is vital that the grounds for termination be clearly stated in the Notice to Vacate. (For information on service of Notice to Vacate see Section V., *Legal Procedures*).

#### 10. Tenant Appeal of Authority Determination

A tenant who wishes to appeal an adverse NYCHA decision must bring an Article 78 proceeding in the State Supreme Court within 4 months of the determination. If an Article 78 proceeding is instituted, the holdover is normally marked off the calendar pending the outcome. In the holdover, the court may not review NYCHA's determination on the merits, as such a review in an Article 78 proceeding is the responsibility of the Supreme Court. In awarding NYCHA a final judgment of possession, the Housing Court may grant a stay of eviction for up to six months in order to afford the tenant an opportunity to find other housing. During the stay, the tenant must pay use and occupancy in the amount determined by NYCHA. Upon failure of the tenant to pay, the stay accelerates.

#### 11. Rent to be Charged Ineligible Tenants

- a. Non-Desirability, Breach of Rules and Regulations, Chronic Breach of Rules and Regulations, Chronic Delinquency in Payment of Rent, and Assignment or Transfer of Possession

Tenants shall pay rent required by the appropriate rent schedule and rent setting procedures applicable at the projects in which they reside. However, in cases of

Breach of Rules and Regulations, if the actions are based on the tenants' failure to report any information required by the Rules and Regulations and NYCHA Resolutions relating to any determinant of their eligibility for occupancy or rent to be paid, they shall be required to pay retroactive rent surcharges for the period involved, equal to the difference between the rent for that apartment and the family size, and the total rent they actually paid (see 11. b. (2) below). Payment of retroactive rents and NYCHA's acceptance prior to termination of tenancy does not affect termination of tenancy proceedings.

b. Non-Verifiable Income (NVI)

NYCHA requires all tenants to annually submit a completed *Occupant's Affidavit of Income (English and Spanish)*, NYCHA 040.297 ("AOI") and related documents, attesting to family composition and income. Upon review and verification of the provided information, NYCHA determines the tenant's rent.

Tenants who fail to timely submit required documentation are subject to the following actions:

- Retroactive rent charges, if verification indicates that rent should have increased at some earlier date
- The commencement of a termination of tenancy proceeding due to NVI

The following procedure applies if a tenant does not submit required documentation in a timely manner:

(1) Annual Review Additional Information Letter

Staff mails the *Annual Review Additional Information Request*, NYCHA 040.297B, ("A.I. Letter") to the tenant if (s)he fails to submit the AOI or other required documentation.

The letter indicates that it is a request for additional information. This letter contains a notice regarding the penalties of non-verification, a checklist indicating required documents, a deadline date for submission of documentation.

**NOTE:** For detailed information regarding the timeframes of the NVI process, refer to Table A - *Non-Verifiable Income (NVI) Processing Schedule*, at the end of this section.

For cases where NVI processing is already in progress, staff should discontinue use of the old additional information and "Exhibit" letters and use the new A.I. Letter.

For A.I. Letter processing, use the new A.I. Letter that is in the Forms and Reference Library, *Annual Review Additional Information Request*,

## NYCHA 040.297B

- The A.I. Letter is mailed between the **1<sup>st</sup> and 15<sup>th</sup> day** after the original AOI documents Due Date by First Class mail (and a copy placed in the tenant folder)
- The A.I. Letter sets a deadline of **30 days** after the date noted on the letter for submission of required papers to the development Management office.

## (2) Termination of Tenancy Action

## (a) Termination of Tenancy Charges

The Housing Manager commences Termination of Tenancy Action for Non-Verifiable Income with termination call-in letters between the **30<sup>th</sup> and 60<sup>th</sup> day** after the original AOI documents Due Date, if the tenant fails to submit required information.

For pending termination actions, the Housing Manager contacts Applications and Tenancy Administration Department (ATAD) – Termination Unit to amend an active Termination of Tenancy case to include a Non-Verifiable Income charge.

At the termination of tenancy interview the Housing Manager advises the tenant of the information or documentation that is required for the completion of the Annual Review and shall establish a due date for its submission.

Termination action **should not** be initiated if the tenant submits sufficient information that enables the Housing Manager to independently complete the verification.

Refer to Table B - Actions Required for Missing Annual Review Information, at the end of this procedure to determine required actions.

## (b) Mailing of the Termination Of Tenancy Letters

## i. First Termination of Tenancy Interview

The *Termination of Tenancy First Call-In Letter*, NYCHA 040.185, is sent by U.S. mail with a copy of the A.I. Letter attached. A copy is placed in the tenant folder. (Refer to Table A)

## ii. Second Termination of Tenancy Interview

If the tenant fails to appear for the scheduled interview, the *Termination of Tenancy Follow Up Letter*, NYCHA 040.186, with the A.I. Letter attached, shall be promptly sent for a second scheduled interview. A copy is placed in the tenant folder.

## iii. Letter Notifying Tenant of Manager's Recommendation for Termination

Tenants who fail to submit completed AOI documentation or who fail to appear for the interview(s) shall be sent the *Letter Notifying Tenant of Manager's Recommendation for Termination*, NYCHA 040.187A. This form must be mailed when the case is sent to (ATAD) – Termination Unit.

## (c) Submission to the Law Department

Housing Managers must submit NYCHA form 040.276, *Transmittal to (ATAD) – Termination Unit*, to the (ATAD) – Termination Unit **not before the Lease Effective Date and no later than 10 calendar days after the Lease Effective Date.**

If there are special extenuating circumstances, Housing Managers may delay submission to (ATAD) – Termination Unit but no later than 30 days after the Lease Effective Date.

## (d) Tracking NVI Cases

Staff must enter data about the status of NVI cases into the Project Information Management System (PIMS) Tracking System.

- Tenant Data System (TDS) Option 26 - "NVI Adm. Action Tracking"

## (e) Development Follow-Up

Before and after transmittal to (ATAD) – Termination Unit, development staff must follow up on NVI cases on an ongoing basis.

Copies of the current A.I. letter should be delivered to tenants quarterly, by mail or personal delivery, until the required additional information has been submitted or a Hearing Officer has issued a disposition of termination of tenancy. Entries must be made in the tenant folder indicating the dates and type of service.

Housing Assistants should routinely determine if tenants visiting them at the Management Office are NVI cases, and provide them with copies of the A.I. Letter at such time.

## (f) Withdrawal of Termination of Tenancy Case

After submitting a case to the (ATAD) – Termination Unit for termination of tenancy and the tenant subsequently submits required information, the Housing Manager or designee shall immediately contact (ATAD) – Termination Unit to discontinue the termination action

(g) Non-Verifiable Income (NVI) Processing Schedule (Table A)

The NVI Processing Schedule on the following pages provides details on the required timeframes of the NVI process.

(h) Actions Required for Missing Annual Review Information (Table B)

The Actions Required for Missing Annual Review Information Table on the following pages details the appropriate action to take for specified additional information / documentation that has not been received from the tenant.

<b>REFER TO TABLES A AND B ON THE FOLLOWING PAGES</b>
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TABLE A

## NON-VERIFIABLE INCOME (NVI) PROCESSING SCHEDULE

<u>Annual Review Quarter</u>	<u>Annual Review Dates for the period of:</u>	<u>Annual Review Packet Sent</u>  Given to Tenant by this date:  (Mail at least 5 days before this date)	<u>Annual Review Documents Due</u>  Due Date for Tenant Submission of all Annual Review documents	<u>A.I. Letter (040.297B)</u>  <i>Mail during these dates:</i>  - between the <b>1<sup>st</sup></b> and <b>15<sup>th</sup></b> day after Annual Review documents Due Date  <i>Due Date for tenant submission of documents is 15 days after Letter date.</i>	<u>Termination of Tenancy Letter (040.185)*</u>  <i>Mail during these dates:</i>  - between the <b>30<sup>th</sup></b> and <b>60<sup>th</sup></b> day after Annual Review documents Due Date  <i>Termination of tenancy interviews are scheduled 7 days in advance.</i>  <i>*if tenant does not appear, promptly send 040.186 for second scheduled interview</i>	<u>Lease (Annual Review) Effective Date</u>  <i>Mail 040.187A when case is sent to ATAD - Termination Unit.</i>  <i>Submit NVI cases to ATAD - Termination Unit not before and no later than <b>10 calendar days</b> after Lease Effective Date</i>
1st	1/1-12/31	12/1	1/1	1/2 - 1/16	1/31 - 3/1	May 1
2nd	4/1-3/31	3/1	4/1	4/2 - 4/16	5/1 - 5/31	August 1
3rd	7/1-6/30	6/1	7/1	7/2 - 7/16	7/31 - 8/30	November 1
4th	10/1-9/30	9/1	10/1	10/2 - 10/16	10/31 - 11/29	February 1

**EXAMPLE:** 3<sup>rd</sup> Quarter Annual Review 2008. Annual Review covers period of: 7/1/2007 - 6/30/2008.

6/1/08: **Annual Review** packet sent by NYCHA to be received by tenant no later than 6/1/08

7/01/08: **Annual Review** documents due back from tenant

7/02/08 to 7/16/08: **NVI Letter** served on tenant. Requires tenant to submit documents within 30days.

Mail between the **1<sup>st</sup>** and **15<sup>th</sup>** day after original Annual Review documents Due Date

7/31/08 to 8/30/08: Commence mailing **Termination of Tenancy Letter(s)** to tenant. Mail between the **30<sup>th</sup>** and **60<sup>th</sup>** day after original Annual Review documents Due Date. Schedule the Termination Interview **7** days in advance,

11/1/08: **Lease Effective Date** - Send case to ATAD - Termination Unit for termination not before and no later than 10 calendar days after Lease Effective Date. Mail 040.187A when case is sent to ATAD - Termination Unit.

**TABLE B**  
**ACTIONS REQUIRED FOR MISSING ANNUAL REVIEW INFORMATION**

Missing / Incomplete Document(s) that Tenant is Required to Submit <sup>1</sup> (if one or more of the following items are missing or incomplete)	Document Missing		Termination Specification
	Complete Annual Review	Do Not Complete Annual Review (refer for termination)	
Occupant's Affidavit of Income		√	BRR-NVI
MD-34 / Pay stubs / Other verification		√	BRR-NVI
Benefit / Award Letters (if Not Available in Databases)		√	BRR-NVI
Own Business forms		√	BRR-NVI
Social Security Number Verification		√	BRR-NVI
IRS 4506 T <sup>2</sup>		√	BRR-NVI
Citizenship forms		√	BRR-NVI
All Releases - Consent to Release Information etc		√	BRR-NVI
All Tenant - provided Information Needed for Third Party Verification (e.g. Address , telephone / fax of Third Party)		√	BRR-NVI
Affirmation of Non – Employment		√	BRR-NVI
Verification that Family Member is Out of Household		√	BRR-NVI
<i>If the following items are the <u>only</u> missing / incomplete Document or Section, complete Annual Review and commence termination as indicated below:</i>			
DOG/CAT affidavit	√		BRR
Disability status	√		N/A
Window Guard Section	√		BRR
Deduction Verification	√ (no deduction allowed)		N/A
NYCHA Approval of Requests for New Family Members to Reside	√ 3		BRR for unauthorized occupant if Form 040.012, not submitted or approved by Housing Manager <sup>4</sup>

<sup>1</sup> After no response to required Additional Information letter

<sup>2</sup> Effective 3<sup>rd</sup> Quarter, 2005, this form is only required for income discrepancy cases, own-business tenants, or at the Housing Manager's discretion when (s)he suspects that income has not been fully or accurately disclosed.

<sup>3</sup> Complete Annual Review excluding proposed family member

<sup>4</sup> Refer to GM 3707, Management Manual, Chapter I and Chapter IV for information



## c. Misrepresentation

Tenants found ineligible because of Misrepresentation are to be charged future rent in accordance with the appropriate rent schedule and rent setting procedures applicable at the projects in which the tenants reside, provided the family incomes are known. In addition, they shall be required to pay retroactive rent for the period involved equal to the difference between rent actually paid and the rent they should have paid. If the income of the tenants cannot be determined, they shall be required to pay the NVI rent called for in the appropriate rent schedule. They shall also be required to pay retroactive rent for the period involved, equal to the difference between the rent actually paid and the NVI rent. Payment of retroactive rent by the tenants, prior to expiration of a Notice to Vacate, and the acceptance thereof by NYCHA does not affect any proceedings terminating the leases of the tenants on the grounds of Misrepresentation.

## (1) Non-Verifiable Income (NVI) Rents

See Chapter II, Rent and Rent Collection for NVI rents.

## (2) Interest Charges - Misrepresentation Cases

Retroactive charges resulting from misrepresentation or concealment of income shall be subject to interest charges. This interest charge is to cover the period of time over which the misrepresentation occurred and shall be computed and imposed in accordance with instructions below.

## (a) Submission of Misrepresentation Cases to D.R.R.C.

All misrepresentation cases except those listed below, shall be sent to D.R.R.C. The transmittal form, Form 040.276&R, as part of the Manager's case summary shall state the amount of the retroactive charge, if any, and the amount of the interest computed. Also state whether or not the misrepresentation was such that the tenant was ineligible at time of admission.

A misrepresentation case need not be submitted to DRRC if it meets all of the following conditions:

- (i) The misrepresentation charge is undisputed and ascertainable
- (ii) The tenant agrees to pay the charge and the appropriate interest. (See 16d below).
- (iii) The misrepresentation was such that the tenant was eligible at the time of admission.

## (b) Repayment in Twelve Months or Less

If the payment period is 12 months or less, the case need not be submitted to

the District. The tenant will fill out and sign the Statement of Unreported income and the only approval required is that of the project Manager.

(c) Repayment in Twelve Months or More

If the repayment period exceeds one year, the case record must be sent to the District for review. The District may then make either of the following determinations:

1. Disapprove the payment period and recommend that the case be submitted to ORRC for misrepresentation
2. Approve the payment period and return the case record to the project for the tenant to complete Statement of Unreported Income, Form #040.330  
If the tenant defaults in making the payments agreed to, the Manager may  
Institute termination action based on misrepresentation and breach of  
rules and regulations.

(d) Review of Misrepresentation Cases by O.R.R.C.

O.R.R.C. will review misrepresentation cases submitted for completeness and adherence to procedure and shall forward approved cases to the Legal Department for the preparation of charges and the scheduling of a hearing. In appropriate cases, where the tenant agrees to pay the retroactive charge and the interest thereon, a stipulation to this effect may be entered into between NYCHA's attorneys and the tenant. This stipulation is subject to approval by the Hearing Officer and the Members of NYCHA.

(e) Computation of Interest Charges

The charts on pages 32 and 33 are to be used in the computation of interest on retroactive surcharges.

- (i) Determine the amount of the retroactive surcharge in accordance with standard procedure.
- (ii) Divide the amount of retroactive surcharge by the number of months the retroactive surcharge covers in order to arrive at an average monthly retroactive surcharge. Round out this figure to the nearest dollar.
- (iii) Using the chart, multiply the average monthly retroactive surcharge amount determined in (2) by the factor on the chart for the number of months covered by the retroactive surcharge. Round out this figure to the nearest dollar.
- (vi) Subtract the amount of retroactive surcharge from figure obtained in (3)

above. This figure represents the interest charge.

(v) The following example illustrates the procedure outlined above.

Total retroactive surcharge owed by a tenant for a 36 month period is \$1,542.00. To determine the amount of interest charges, take the following steps.

- . Divide \$1,542.00 by 36. This equals \$42.83 or \$43.00 rounded out to the nearest dollar.
- . Using the attached chart, multiply \$43 by 39.532 (36 month figure on chart). This equals \$1,699.88 or \$1,700.00 rounded out to the nearest dollar.
- . \$1,700.00 minus \$1,542.00 equals \$158.00, which is the interest to be charged to the tenant.

(f) Posting of Interest Charges

Upon receipt of the decision authorizing the interest charge, the Manager shall prepare a miscellaneous charge and credit memorandum (Form I32.00I) advising the Bookkeeping Office staff to charge the tenant. The account to be used is "Interest Charges to Tenants", account number 3590.10.

## (g) Computation Chart

ACCUMULATION OF AMOUNT OF \$1 DUE  
ON THE FIRST DAY OF EACH MONTH WITH INTEREST AT  
6% PER ANNUM (½% PER MONTH)

(1) No. of Months	(2) Amount Due at End of Column (1)	(1) No. of Months	(2) Amount Due at End of Column (1)
1	1.005	31	33.608
2	2.015	32	34.781
3	3.030	33	35.960
4	4.050	34	37.145
5	5.075	35	38.336
6	6.105	36	39.532
7	7.141	37	40.735
8	8.182	38	41.944
9	9.228	39	43.158
10	10.279	40	44.379
11	11.335	41	45.606
12	12.397	42	46.839
13	13.464	43	48.078
14	14.536	44	49.324
15	15.614	45	50.575
16	16.697	46	51.833
17	17.785	47	53.097
18	18.879	48	54.368
19	19.979	49	55.645
20	21.084	50	56.928
21	22.194	51	58.218
22	23.310	52	59.514
23	24.431	53	60.817
24	25.559	54	62.126
25	26.669	55	63.441
26	27.830	56	64.764
27	28.974	57	66.092
28	30.124	58	67.428
29	31.280	59	68.770
30	32.441	60	70.119

ACCUMULATION OF AMOUNT OF \$1 DUE ON THE FIRST DAY OF EACH MONTH WITH INTEREST AT  
6% PER ANNUM (½% PER MONTH)

(1) No. of Months	(2) Amount Due at End of Column (1)	(1) No. of Months	(2) Amount Due at End of Column (1)
61	71.474	91	115. 4 52
62	72.837	92	117. 0 34
63	74.206	93	118. 6 24
64	75.582	94	120. 2 22
65	76.965	95	121. 8 29
66	78.355	96	123. 4 43
67	79.752	97	125. 0 65
68	81.155	98	126. 6 95
69	82.566	99	128. 3 34
70	83.984	100	129. 9 80
71	85.409	101	131. 6 35
72	86.841	102	133. 2 98
73	88.280	103	134. 9 70
74	89.727	104	136. 6 50
75	91.180	105	138. 3 38
76	92.641	106	140. 0 35
77	94.109	107	141. 7 40
78	95.585	108	143. 4 54
79	97.068	109	145. 1 76
80	98.558	110	146. 9 07
81	100.056	111	148. 6 46
82	101.561	112	150. 3 95
83	103.074	113	152. 1 51
84	104.594	114	153. 9 17
85	106.122	115	155. 6 92
86	107.658	116	157. 4 75
87	109.201	117	159. 2 68
88	110.752	118	161. 0 69
89	112.311	119	162. 8 79
90	113.877	120	164. 6 99

## 12. Rent Change for Ineligible Tenants

If a change in rent is required, an RCN shall be served before the Termination of Tenancy - First Call-In-Letter (all grounds except excess income) Form 040.185, is sent.

In instances where tenants presently under Final Judgment of Possession or stay thereof are paying lower rents than those provided above, the higher rents, in the form of payment for use and occupancy, shall be imposed in connection with any further stay which may be granted.

## 13. Resubmission of Cases

If a Housing Manager wishes to resubmit a case which has been reviewed and returned by O.R.R.C. without a hearing having been held, s/he may do so provided s/he has obtained additional facts and documentation to support such a recommendation.

If, after a hearing before a Hearing Officer and a determination by the Authority that a tenancy shall not be terminated, the Housing Manager wishes to resubmit the case, s/he may only do so based on subsequent new facts supported by new evidence and new documentation.

## 14. Restoration to Eligibility

## a. Pets

The Housing Manager may restore cases involving pets to eligibility based on written verification that the pet has been removed and confirmed by an inspection of the apartment on two separate occasions. The Manager should complete and sign Form 040.282, Request for Restoration of Tenant to Eligibility, and place it in the tenant's folder. The form will be treated as an actual restoration to eligibility rather than a request and no further signature is required.

If the Manager is not yet ready to restore the tenant to eligibility but wishes to grant an extension of the final order, (s)he may do so for a period of three months by filling out and signing Form 040.286, Request for Extension of final Order. The form will be treated as an actual extension rather than a request and no further signature is required. The signed form should be filed in the tenant's folder. Any further extension beyond the original three months requires written approval of the District Chief Manager.

## b. All Cases Other Than Those Involving Keeping Pets

An evicted tenant may not be restored to eligibility without prior approval of the Members. If the Manager finds that the conditions which originally led him/her to recommend termination no longer exist, (s)he may recommend restoration of the tenant to eligibility after discussing the matter with the District Director.

If the latter concurs, the Manager shall forward the tenant's folder and the original and two copies of Form 040.282 (Request for Restoration of Tenant to Eligibility - All Holdover Actions Except Excess Income) to the Department of Resident Review and Counseling (DRRC). If after consultation with the Director of Management, DRRC endorses the recommendation, DRRC shall submit the recommendation to the Members for final decision.

Upon approval by the Members, DRRC shall return the original Form 040.282

to the project and immediately notify the Law Department by telephone to reflect the action in its Log Book. DRRC shall forward a conformed copy to the Law Department and retain one copy.

D. Failure to Vacate After Giving Notice of Intent

The lease between the Authority and the tenant may be terminated by either party upon one calendar month's written notice. When a tenant gives the Authority written notice (by submitting Notice of Intent to Vacate, Form 040.032) that (s)he intends to vacate his/her apartment, (s)he is required to vacate on the date specified in the notice. If (s)he fails to vacate on that date, the Manager may institute Summary Proceedings to recover possession; a Notice to Vacate need not be served on the tenant. The Manager shall consult with the Law Department's Management Division respecting preparation of the Notice of Petition in such cases.

Before proceeding with legal action, the Manager shall discuss the situation with the tenant to determine the reason for his/her failure to vacate and whether (s)he wishes to withdraw the notice or amend it with respect to the date. If eviction action is contemplated, the Manager shall notify the District Director.

E. Remaining Family Members/Licensee/Squatter

1. Remaining Family Members

**NOTE:** For a table illustrating the criteria necessary to qualify for remaining family member status, see Page 37e.

a. Definition

Remaining family member status applies to occupants of all projects and is defined as

- Persons who were member(s) of the original tenant family, or
- who became permanent member(s) of the tenant family subsequent to move-in with the written approval of the project management, or
- who subsequent to move-in were born or legally adopted into the tenant family and thereafter, remained in continuous occupancy up to and including the time the tenant of record moves or dies.

Any occupant who meets any of these standards shall be deemed a "remaining family member". "Remaining family members" shall be offered an Authority lease if they are otherwise eligible for public housing in accordance with the admission standards for applicants contained in the Housing Applications Manual.

If a "remaining family member" claimant is otherwise eligible for public housing the Manager or Borough Director intends to grant a lease to the claimant, the Manager shall initiate a criminal background check by completing Request for Criminal Background Check (Form 040.418) and submitting it to the Department of Housing Application's Field Liaison Division. The form must note all persons 16 years old or Older including persons joining the household to act as guardians to minors who are remaining family members.

**NOTE:** The Manager shall not grant a lease to the remaining family member claimant if the Field Liaison Division's criminal background check deems the claimant ineligible

b. Right to Grievance

- (1) If the Authority determines that a claimant qualifies for "remaining family member" status but is not "otherwise eligible" for public housing, the Manager shall advise the claimant of his/her right to initiate a grievance proceeding as specified in the Grievance Procedure (see Section IV. E. 1. c.). If the claimant does not initiate a remaining family member grievance within the time limitations and meet the other conditions set forth in the Grievance procedure, or if the grievance is ultimately decided against him/her, the Manager shall commence (or resume) a holdover licensee proceeding against him/her in the Housing Part of the Civil Court.

\* Procedure first promulgated as GM 3397 (June 27, 1991), and applies to all grievances commenced at the project level on or after June 27, 1991.

- (2) At any stage of the grievance proceeding, including at a formal grievance hearing, the Authority may introduce evidence to show that a claimant who may be otherwise qualified for remaining family member status is ineligible to be a tenant of record for any of the reasons set forth in the Authority rules and regulations pertaining to tenant qualifications. If the Authority's evidence establishes that a claimant is not otherwise eligible to be a tenant of record, it shall deny the claimant a lease.
- (3) Any person who claims to be a remaining family member as defined in Section IV. E. 1. a. above, but is denied a lease in public housing on the ground that (s)he is not a remaining family member, shall be entitled to a grievance hearing to review the denial if (s)he makes a showing to District management to substantiate such claim. In such grievance, the claimant shall not be entitled to a lease with the Authority unless (s)he can establish that (s)he is a "remaining family member" and is "otherwise eligible" for public housing as specified in Section IV. E. 1. a. above.
- (4) The following categories of claimants to Remaining Family Member status shall not be entitled to a grievance as set forth in Section IV. E. 1. b. Accordingly, the project Manager shall prepare a written determination stating his/her finding(s) and commence or resume holdover licensee proceedings against them in the Housing Part of the Civil Court (no formal grievance



summary shall be prepared):

- (a) Transfer of Tenancy - Any occupant of an Authority apartment who remains in the original apartment when a tenant of record transfers to another Authority apartment.
- (b) Termination of Tenancy - Any remaining occupant of an Authority apartment at the time the tenancy is terminated, subsequent to the termination but prior to any eviction, when the tenant of record moves or dies.
- (c) Permanent Exclusion - Any member of a tenant family who the Authority permanently excludes from the household.
- (d) Temporary Residents - Family members with permission for temporary residence only.
- (e) Resident Employees - Any resident employee and his/her family who occupies an Authority apartment with a Resident Employee lease only, and not a public housing lease.

c. Grievance Procedure

NOTE: For a flow chart illustrating the grievance procedure, see Page 37f.

- (1) Project Management shall provide Form 040.342 (Important Notice – Remaining Family Member Claim) to claimants with Remaining Family Member status advising them of the availability of a grievance to determine their claim of entitlement to an Authority lease. Staff shall place a copy of this notice in the tenant folder for the subject apartment.
- (2) To commence a grievance, claimants must:
  - (a) Make a claim that they are Remaining Family Members as defined in Section IV. E. 1. a. above.
  - (b) Qualify for the right to a grievance as specified in Section IV. E. 1. b. above.
  - (c) Continue to pay use and occupancy for the subject apartment in the amount of rent paid by the tenant of record prior to and during the pendency of the grievance. However, alternatively, the claimant may pay use and occupancy at a lower rate based on the verified income of all the occupants in the household. Use and occupancy payments pursuant to this subparagraph shall not be placed in any escrow account.
  - (d) Request a grievance with the project Manager within 14 days of receipt of the notice described in Section IV. E. 1. c. (1).

## (3) Processing of Grievance

- (a) If the claimant does not comply with the requirements of Section IV. E. 1. c. (2), staff shall accept no grievance and the project Manager shall commence (or resume) licensee proceedings against the claimant(s) in the Civil Court
- (b) If the claimant complies with the requirements of Section E. 1. c. (2), his/her grievance shall commence with an interview between the Manager and the claimant. At the interview, the claimant may submit any documentary proof or give oral statements which (s)he believes will substantiate his/her claim. If, after the interview, the Manager decides that the claimant is not entitled to a lease, the Manager shall note his/her decision on the Grievance Summary (Form 040.302A) and forward it with the original tenant folder **within two weeks** after the interview to the District Office for automatic review.

**NOTE:** At this stage of the grievance, the Manager shall not notify the claimant of the adverse decision.

- (c) After the Borough Office receives the tenant folder and the Manager's adverse decision, the Borough Director or designee may initially overrule the project Manager's decision and instruct the Manager to offer the claimant a lease.
  - If the Borough Director does not initially overrule the Manager's decision, the Borough Director or designee shall notify the claimant on Form 040.384 (District Notice of Pending Review: Remaining Family Member) that the claim is under review and that (s)he may submit additional written information to support his/her claim and/or request a personal interview with the Borough Director or designee **within ten working days**.

**NOTE:** **Within 30 days** after receiving the tenant folder from the project, the Borough Director shall inform the claimant of the review, schedule an interview, if requested, and issue a written decision.

- If the Borough Director or designee determines that the claimant qualifies for "remaining family member" status but is not "otherwise eligible" for public housing, the Borough Director shall inform the claimant and the Manager of the adverse decision on Form 040.302D. The claimant is thereby notified that (s)he has the option to appeal the Borough Director's ruling within ten working days to the Office of Impartial Hearing Officer.

**NOTE:** If the "remaining family member" claimant appeals to the Office of Impartial Hearing, the Manager shall submit the results of the criminal background check to the Hearing Office along with all other grievance documents prior to the hearing.

- If the Borough Director or designee determines that the claimant has not

fully proved that (s)he qualifies as a "remaining family member" but has made a showing to substantiate his/her claim that (s)he may qualify as a "remaining family member", the Borough Director shall inform the claimant and the Manager of the adverse decision on Form 040.302D. Thereby, the claimant is notified that (s)he can appeal the Borough Director's ruling within ten working days with the Office of Impartial Hearing Officer.

- If the Borough Director or designee determines that the claimant has failed to make any showing to substantiate his/her claim that (s)he may qualify as a "remaining family member", the Borough shall dismiss the grievance and notify the claimant and project of its adverse decision on Form 040.302D. Upon termination of grievance pursuant to this paragraph, there shall be no further appeal to the Office of the Impartial Hearing Officer. Rather, the project Manager shall commence (or resume) licensee proceedings against the claimant in Housing Court.

- (d) At the hearing, before the Hearing Officer, the claimant must clearly demonstrate that (s)he meets the standards for "remaining family member" and is "otherwise eligible" for public housing as specified in Section E. 1. a. If the Authority contends that the claimant is not "otherwise eligible" for public housing the Authority shall provide the claimant with a written notice, at least 5 days before the date that such claim is to be heard by the hearing office, specifying the grounds for the contention.

If the Hearing Officer denies the grievance, (s)he shall so notify the claimant by written decision. Thereafter, the Authority shall commence a licensee-holdover proceeding against the claimant and seek a final judgment of possession and an eviction.

**NOTE:** The licensee-holdover action is commenced by a Ten Day Notice to Quit Instead of the Thirty Day Notice to Vacate used for holdovers after Administrative termination. A holdover licensee-squatter Petition and Notice of Petition are served after the Notice to Quit expires.

d. Forms Used for Remaining Family Member Grievances

- (1) "Important Notice - Remaining Family Member Claim "(Form 040.342) Staff shall send this form to any person who claims to be a "remaining family member" before starting any licensee action in Housing Court. It advises the recipient of the availability of an administrative grievance to determine his/her legal status.

To pursue a grievance, all claimants must pay use and occupancy, i.e., the same rate as the rent the former tenant paid. If a claimant is unable to pay use and occupancy at the rate the former tenant paid, a lower rate shall be set based on the verified income of all occupants in the household.

Staff may refer outstanding balances of the former tenant to the appropriate collection attorney or, if the balance is uncollectible, shall process for write-off.

- (2) "Project Grievance Summary" (Form 040.302A)- Used by project Managers for indicating disposition of any and all grievances by both existing tenants and Remaining Family Member grievants. The form advises the tenant grievant of his/her right to appeal an adverse project determination.

If the grievance is brought by a Remaining Family Member claimant rather by a tenant, the procedure is different. In such case, the Manager shall complete and submit the form with the grievance to the District Office for review (no later than two weeks after the grievance interview).

NOTE: At this stage, staff shall not notify the claimant of the Manager's adverse recommendation.

- (3) "District Notice of Pending Review Remaining Family Member Grievant" (Form 040.384) - Used only for Remaining Family Member claimants whose grievance was denied by the Manager and whose case was forwarded to the District Office. The District Office shall forward this form to the grievant to notify him/her that his/her grievant claim is under review and, within ten business days, (s)he may submit additional written information or request a personal interview with District management.
- (4) "District Grievance Summary" (Form 040.302D) - Standardizes the District response to a grievant's claim after the project has denied the relief requested. The District office shall use the form for either a tenant or Remaining Family Member grievant.

The "Note to Grievant" section of the form, informs a tenant grievant or a remaining family member grievant whose grievance was not dismissed by the District Director of his/her right to appeal to the Impartial Hearing Officer at Central Office.

If the remaining family member grievant failed to make any showing to substantiate his/her claim, the District Director may dismiss the remaining family member grievance and deny an appeal to the Hearing Officer. In such case, staff shall cross out the section containing "Note to Grievant".

**REMAINING FAMILY MEMBER STATUS**

I.		plus	II.	=	<u>Lease</u>
<b><u>REMAINING FAMILY MEMBERS</u></b>			<b><u>OTHERWISE ELIGIBLE</u></b>		
A.	plus	B.	A.	PLUS	B. PLUS C.
<u>ENTER APT. LAWFULLY</u>		<u>REMAIN IN APARTMENT CONTINUOUSLY</u>	<u>CAPACITY TO SIGN LEASE</u>	<u>INCOME</u>	<u>EIGIBILITY FACTORS</u>
1) On original family of composition		On all Affidavits income	1) Reach Majority age (18),	Have verifiable income (within continued occupancy income limits)	Per Housing Applications Manual
2) Born into tenant family		Acceptable breaks in occupancy:	- or -		
3) Receive Manager's written permission to <u>permanently</u> join family		1) Military Service	2) Emancipated Minor or have acceptable guardian		
		2) Incarceration (away in jail)	- and -		
		3) Away at college	3) Mental Capacity to sign lease or have acceptable Guardian		

## 2. Licensee and Squatter

## a. Licensee

The project Manager may institute a licensee proceeding when the project becomes aware that:

- none of the signatories to the lease are living in the leased project apartment because they have either died or moved, and
- person(s) continue in possession who are not signatories to the lease, and
- the person(s) obtained permission to live there from the prior tenant(s) or from project Management and have had a grievance hearing against the claimant or the claimant was not entitled to a grievance hearing and
- the project can substantiate all of the above.

## b. Squatter

The project Manager may commence a squatter proceeding, when occupant(s) reside(s) in a project apartment without the permission of either the Authority or the

tenant of record, after the tenants named in the lease died or vacated the premises and returned the keys to the Authority.

NOTE: The Manager (Authority) shall commence a proceeding, either licensee or squatter, only after contacting the Law Department, Landlord and Tenant Division's attorney in charge of the county (borough) in which the action shall be commenced.

c. Forms Used in Licensee/Squatter Proceedings

- (1) Ten Day Notice to Quit - Licensee (Form 040.320) and Ten Day Notice to Quit - Squatter (Form 040.320A) - These forms shall be addressed to the occupant(s) known by project management to reside in the subject premises. Staff shall enter the person's name, date and the borough in which the project is located. If the person's name is unknown, use "John Doe or Jane Doe".

The occupant(s) are the licensee(s) of the former tenant(s) of record, whose name(s) staff shall note in the designated area. The date is the date project management became aware that the tenant of record was no longer in possession of the premises. The reason the tenant is no longer entitled to possession of the apartment shall be shown by deleting the inapplicable reason, i.e., death or removal.

The ten day period begins the day after service of the Notice to Quit with any necessary mailings. Staff shall note the tenth day in the space provided on the form.

The Housing Assistant shall serve the Ten Day Notice to Quit on the occupant(s) in the same manner as the Notice to Vacate is served in a holdover proceeding. Personal service shall first be attempted, then substituted service, and, only as a last resort, conspicuous place service. (See Section V. A.). When substituted or conspicuous place service is employed, a copy of the Notice to Quit shall also be sent the same day by certified mail and by regular mail service by the Housing Assistant who will later serve the holdover petition and will also be present at the trial in L & T court.

- (2) Affidavit of Service of Notice to Quit (Form 040.318) - Staff shall complete, sign and notarize the form immediately after serving Notice to Quit.
- (3) Petition - Holdover-Licensee (Form 040.317&R) and Petition - Holdover-Squatter (Form 040.317A&R) - The Manager shall complete both sides of the form and sign the form in two places, with the second signature notarized.
- (4) Notice of Petition - Holdover-Licensee-Squatter (Form 040.319&R) - Staff shall complete the form and serve the occupant(s) in the same manner as the Notice of Petition Holdover (see Section V. B. 1. and Appendix A of this chapter). The time the proceeding is scheduled to begin is at 9:30 A.M. If it is a licensee

proceeding, staff shall cross out "SQUATTER" on both sides of the form. If it is a squatter proceeding, the opposite applies.

Staff shall use this form, as well as the petition, only after the ten day period noted on the Notice to Quit has expired.

- (5) Dispossess Proceeding -- Postcard (Form 150.105) - Staff shall enter the L&T number, the court date, check the box indicating that a holdover case is pending, and shall fully address one postcard with proper postage to each individual on the Notice of Petition.

After the Petition and the Notice of Petition has been served, staff shall complete the reverse side of the Notice of Petition, sign and notarize the Affidavit of Service, complete a dispossess postcard and submit them to the court clerk.

d. Acceptance of Payment for Use and Occupancy

After a licensee or squatter proceeding has been initiated by virtue of a Ten Day Notice to Quit (Form 040.320 or 040.320A), no payment for use and occupancy shall be accepted in any manner by the project management until the Notice of Petition and Petition in Holdover Proceedings has been served. This service is not complete until the original Notice of Petition and Petition and Affidavit of Service has been filed with the Clerk of the Court.

e. Filing Papers in L & T Court for Licensee/Squatter Proceedings

1. Serve the occupant(s) of the apartment with the Ten Day Notice to Quit.
2. Immediately after this service is made, staff shall complete, sign, and notarize an Affidavit of Service.
3. Upon expiration of the ten day period, if the respondent(s) are still in possession of the premises, a Holdover Petition and Notice of Petition as well as the originals of the Ten Day Notice and Affidavit of Service shall be filed in the Court Clerk's office in order to obtain an index number and a court date (see Section V. A. 2. of this chapter).
4. The Court shall return the Notice of Petition with an L & T index number and the court date.
5. All copies shall be conformed to the original papers, including L & T number, and the appropriate number of copies shall be served on the occupant(s).
6. Within 3 days after service is made, staff shall complete and return the following to the court clerk.

- Dispossess postcard for each individual named on the Notice of Petition.
- Signed and notarized original Notice of Petition, Affidavit of Service and Holdover Petition.

7. The Court will mail the eviction postcard to the individual.

8. A copy of all the court papers along with copies of the Affidavit of Service of the Ten Day Notice to Quit, the Affidavit of Service of the Petition and Notice of Petition shall be sent, via first class mail to the appropriate attorney in the Law Department Landlord Tenant Division.

NOTE: The Housing Assistant who served both the Notice to Quit and the Petition and Notice of Petition shall be present with the tenant's folder and prior ledger card at the trial in L&T court.

F. Loss of Resident Employee Status (See Standard Procedure 040:51:2, Resident Employees.)

If an employee loses resident status and is not eligible to remain at the project as a tenant, the following procedure shall apply:

1. Loss of Resident Status, Retention of Employment with Authority

The employee shall be notified by letter that (s)he has ninety days within which to vacate the apartment. A copy of a Notice of Intent to Vacate, Form 040.032, shall be enclosed, which the employee is to fill out and return to the Management Office within sixty days of the date of the letter. If this Notice has not been returned at the expiration of the sixty-day period, the Housing Manager shall, with the approval of the Director of Management, serve a Thirty-Day Notice to Vacate (to coincide with the original ninety days). If the employee does not vacate at the expiration of the Notice to Vacate, Summary Proceedings shall be commenced. The Management Division of the Legal Department shall be consulted as to the proper forms to be used in actions of this nature.

2. Termination of Employment with Authority

After approval by the Director of Management, a Thirty-Day Notice to Vacate shall be served on the former employee. If (s)he has not vacated at the expiration of the thirty days, Summary Proceedings shall be instituted. The Management Division of the Legal Department shall be consulted as to the proper forms to be used in actions of this nature.

In special circumstances where it is considered essential to obtain possession of the apartment as soon as possible, the Housing Manager shall consult the Management Division of the Legal Department at least ten days prior to the expiration of the Notice to Vacate.



## G. Failure Physically to Occupy an Apartment

When the Housing Manager becomes aware that an apartment is unoccupied, either because the tenant failed to assume occupancy or, having done so, has thereafter, vacated the premises, the tenant shall be called in for an interview. The Manager shall discuss with the tenant the reasons for not occupying the apartment and try to get him/her to either occupy the apartment or sign a Notice of Intent to Vacate, Form #040.032 or 040.032F. If the tenant refuses both options, the Manager shall consult with the Management Division of the Law Department.

## H. Non-Payment of Rent

When a tenant fails to pay monthly rent on time, non-payment Summary Proceedings must be commenced. (Also refer to Management Manual, Chapter II, Rent and Rent Collection).

## 1. Federal Projects

In Federal projects only the amount of regular retroactive and/or current rent can be sought by a summary non-payment proceeding from a tenant in a Federal Project. However, in cases where the Authority receives a final judgment, or where the tenant agrees to payment of Marshal's fees in return for withdrawal of the non-payment proceeding the Marshal's fees may be included in a non-payment judgment.

## a. Fourteen Day Notice of Right to Grievance

Federal projects must send a 14-day Notice of Right to Grievance,\* Form 040.004F, which specifies the amount due, including charges, not earlier than the second business day of the month. The 14-Day Notice may be sent by regular mail or slipped under the tenant's door. Carbon copies should be kept in the tenant's folder.

## b. Three Day Notice or Personal Demand

After the expiration of the 14 days, (add 3 extra days if mailed) a personal demand for the rent due must be made, or a 3-Day Notice served.

- (1) A personal demand for the regular retroactive and/or current rent may be made either in person or by telephone. The Authority employee making the demand should so note in the tenant folder, showing when, how, and by whom the demand was made, and make an Affidavit of Service, Form 040.004A. The Affidavit is necessary evidence in case the person making the demand is not available for testimony at trial.
- (2) A 3-Day Notice should be served by personal, substitute or conspicuous service and copies mailed by both regular and certified mail. In addition, an Affidavit of Service of Three Day Notice, Form 040.318A, should be made. Copies of the 14-Day Notice and the 3-Day Notice with Affidavit of Service of

the 3-Day Notice should be attached to all copies of the petition and a complete set kept in the tenant folder.

\*If a tenant requests a grievance within the fourteen days and follows the escrow payment of rent procedure, (See Section V. A), the grievance procedure must be complied with before the tenant may be sued for non payment of rent. Under the escrow payment of rent procedure all unpaid rent accumulated prior to the first of the month preceding the month in which the act, or failure to act occurred shall be paid into the Authority escrow account. During the course of the Grievance Procedure tenant must continue to pay into escrow monthly rent. Tenants may be accorded a grievance regarding any dispute with respect to Authority action or failure to act in accordance with NYCHA leases or regulations which adversely affect the tenant's rights, duties, welfare or status.

## 2. State and City Projects

### a. Demand for Rent

The first step in proceedings for Non-Payment of Rent consists of a formal demand for the rent owed. This demand may not be made earlier than the second day of the month in which the rent is due. The demand may be made in either of the following ways:

#### (1) Personal Demand

An authorized employee of the Authority must personally demand the rent from the tenant. A telephone demand is acceptable if the Authority employee making the call identifies the tenant and so notes in the tenant folder. A record of such conversations must always be entered in the tenant's file. It is suggested that when an oral demand has been made for the rent, a copy of the Three-Day Notice to Vacate, Form 040.015, be given to the tenant or sent by regular mail. This will enable the public assistance recipient or any other tenant in need of emergency assistance to apply for the monies due, by submitting this form, to their local income maintenance center.

#### (2) Service of Written Demand

A Three-Day Notice to Vacate, Form 040.015, may be served on the tenant. This notice must be served in the same manner as the Notice to Vacate. (See Section V. A.) Every effort shall be made in the case of rent delinquency to demand the rent personally from the tenants, in order to avoid the expense of Service of Three-Day Notices by certified mail. If a personal demand is not possible and the Three Day Notice is used, an Affidavit of Service of Three Day Notice, Form #040.318A must be prepared. Copies of the Three-Day Notice with its Affidavit of Service should be attached to all copies of the petition and a complete set kept in the tenant folder.

## b. Failure of Tenant to Pay Rent Following Demand

If payment is not made following the demand, the Housing Manager shall institute Summary Proceedings. (See Section V. B., *Non-Payment of Rent*).

## V. LEGAL PROCEDURES

## A. Holdovers

## I. Notice to Vacate

## a. When required

After the finding of ineligibility has become final or the Members have determined, after a hearing, that a tenancy should be terminated, the next step is the service of a Notice to Vacate, Form 040.004, which legally terminates the lease of the tenant as of the date set forth in the notice. The Notice to Vacate informs the tenant that if (s)he fails to vacate the premises on the date specified, holdover proceedings to dispossess him/her will be commenced immediately.

## b. Period of Notice

(1) Excess Income or Assets - Three Calendar Months

(2) All other Grounds - One Calendar Month consisting of at least 30 days (See below).

## c. Expiration Date of Notice to Vacate

(1) The Notice to Vacate must expire on the last day of a calendar month.

(2) All Notices to Vacate because of Excess Income or Assets which ordinarily would expire on the last day of June or July shall be prepared so as to expire on the last day of August because of the limited Civil Court calendar during July and August.

(3) For a Notice to Vacate to expire on the last day of February, it must be served on or before January 28.

(4) Where a tenant has been served with an RCN, the Notice to Vacate shall be prepared so as to expire after the month in which the rent change became effective.

Example: A tenant receives an RCN increasing his rent effective September 1. The Notice to Vacate may expire no earlier than October 31, thus giving him a full calendar month's notice.

## d. Preparation of Notice to Vacate

The Notice to Vacate must state fully and properly the names of all persons who executed the lease which is in effect at the time the action is commenced. For example, if a lease has been signed by John Doe and Mary Doe, it is incorrect to address the Notice to Vacate to "John Doe", "John and Mary Doe", or "Mr. And Mrs. John Doe". In this case, the proper inscription would be "John Doe and Mary Doe".

In determining the proper number of copies of the Notice to Vacate, the following should be borne in mind:

- (1) A copy must be served on each tenant named in the Notice to Vacate.
- (2) For each tenant served by Substituted or Conspicuous Place Service, additional copies must be mailed by both certified and regular mail.
- (3) At least two copies with original signatures should be in the file.
- (4) One copy must be available for attachment to the original Notice of Petition and Petition when Holdover Proceedings are instituted.
- (5) One copy must be available for attachment to the copy of the Notice of Petition and Petition which will be served on each person named in Holdover Proceedings.
- (6) An additional copy must be available for each person who is served the Notice of Petition and Petition by Substituted or Conspicuous Place Service, to be attached to the copy of the Notice of Petition and Petition required to be mailed.
- (7) One copy must be available to be attached to the Notice of Petition and Petition transmitted to the Management Division of the Legal Department.

## e. Method of Service

Service of the Notice to Vacate may be made in one of three ways:

Personal Service;  
Substituted Service; or  
Conspicuous Place Service.

## (1) Personal Service

Personal Service consists of the actual delivery, by hand, of the Notice to Vacate to the person or persons named therein. No mailing is required when service is made by personal service.

## (2) Substituted Service when Tenant Resides in Premises

Substituted Service is effected when the person to be served is absent from the premises sought to be recovered but the person serving the papers can gain peaceable access thereto. The Substituted Service is made upon a person residing in or employed at the premises. Such person must be of suitable age and discretion and must be willing to accept the Notice to Vacate.

Within twenty-four hours after Substituted Service is made, a copy of the Notice to Vacate must be mailed both by certified mail and by regular first class mail to each person named in the Notice, addressed to the premises sought to be recovered.

(3) Conspicuous Place Service when Tenant Resides in Premises

Conspicuous Place Service may be resorted to when repeated attempts to serve the tenant personally or by Substituted Service have failed because the person attempting the service has been unable to gain admission to the premises or has been unable to find anyone there of suitable age and discretion who was willing to accept the Notice to Vacate. Conspicuous Place Service is effected by annexing the Notice to Vacate to the outer door of the premises or by placing a copy under the entrance door of such premises. Within twenty-four hours thereafter, a copy of the Notice to Vacate is to be mailed both by certified mail and by regular first class mail in a separate envelope to each person named in the Notice, addressed to the premises sought to be recovered.

(4) Substituted and Conspicuous Place Service when Tenant Does Not Reside in Premises

When one or more of the tenants named in the Notice does not reside in the premises sought to be recovered, and service was made by Substitution or Conspicuous Placement as described immediately above, such service is not complete until the following additional requirements are met:

- (a) If the project has written information or notice in writing of the actual residence address of the tenant, a copy of the Notice to Vacate must be mailed by certified mail and by regular first class mail to such tenant addressed to his/her last known address.
- (b) If the project has no such information or notice of the tenant's actual residence address, but has written information or notice in writing of the place of business or employment of the tenant, a copy of the Notice to Vacate must be mailed by certified mail and by regular first class mail to the tenant at the tenant's last known place of business or employment.
- (c) If the project has no written information or notice in writing of any residence address other than the premises to be recovered, or any information or notice of the place of business or employment, no additional mailing, other

than that described in e. (3) and (4) immediately above, is required.

When certified mail is required with respect to documents served by the Management Office, it is not necessary that there be a "return receipt".

f. Affidavit of Service

After Service of the Notice to Vacate has been effected, an Affidavit of Service - Notice to Vacate, Form 040.004A, shall be prepared, signed by the person who made the service, and notarized. The Affidavit shall indicate the method of service (Personal Service, Substituted Service, or Conspicuous Place Service). If all persons named in the Notice to Vacate were served simultaneously, only one Affidavit need be prepared. However, if separate services were made, separate Affidavits will be required for each service effected. When service was made by mail, the Affidavit shall note that it was certified mail.

The number of copies of each Affidavit must be the same as the number of copies of the Notice to Vacate. (See Section V. A. 1. d., *Preparation of Notice to Vacate*).

g. Collection of Rent After Service of Notice to Vacate

In a Holdover Summary Proceeding no rent may be collected between the expiration of the Notice to Vacate and the date upon which the Notice of Petition and Petition with proof of service is filed with the clerk of the Court. Money received by mail from the tenant during the period indicated above is to be returned immediately. After completion of service and filing of the Notice of Petition and Petition with proof of service, rent may be collected in the usual manner up to the expiration of any Stay set forth in the Final Judgment of Possession.

h. Extension of Notice to Vacate

The Housing Manager may delay the commencement of Holdover-Proceedings by an Extension of Notice to Vacate, Form 040.037, (a copy of which must be sent to the Legal Department) only in the following cases:

(1) After consultation with the Director of ORRC who shall confer with the Director of Management, or

(2) At the direction of the Legal Department

2. Holdover Proceedings-Preparation of Papers

A Holdover after Administrative Proceedings refers to Summary Proceedings to recover possession of an apartment after the tenant's lease is terminated pursuant to administrative termination of tenancy. These proceedings differ somewhat from Holdover Licensee/Squatter cases, and differ greatly from Summary proceedings

for Non-Payment of Rent, as described in Section V. B. below.

Holdover Proceedings may commence after the Notice to Vacate/Notice to Quit expires. Project staff shall serve the respondent(s) (tenant(s) of record or Licensee/Squatter) with a Notice of Petition and Petition. The Notice of Petition summons the respondent to appear in court on a specific date and to answer the complaint against him/her set forth in the Petition. The Petition presents the facts upon which the Authority seeks to recover possession of the premises.

a. Preparation of Notice of Petition and Petition

Staff shall use the following forms of Notice of Petition and Petition (a minimum of an original and 7 0copies) for all grounds for Holdover Proceedings (after administrative termination) except Failure to Vacate After Giving Notice of Intent, Licensee or Squatter Occupancy, and Loss of Resident Employee Status:

040.082A&R	Original Notice of Petition - Holdover
040.082&R	Original Petition - Summary
	Proceedings - Holdover
040.082B&R	Copy Petition & Notice of Petition –Summary
	Proceedings - Holdover
150.105	Dispossess Postcard

The Law Department's Landlord-Tenant Division shall advise the Project Manager respecting the appropriate form of Notice of Petition and Petition to use.

Authority personnel shall prepare all Notices of Petition and Petition. They may not be dated or served until after expiration of the Notice to Vacate/Notice to Quit. See Appendix A for detailed instructions for the preparation of these forms.

b. Parties to the Proceedings

The parties to the Summary Proceedings, named as respondents on the Notice of Petition and Petition and subsequently served with the papers are defined in the following actions:

o Holdover after Administrative Hearings

The respondents are the tenants of record who signed the lease and whose tenancy was terminated by the Housing Authority

o Licensee/Squatter

The respondents are all adult persons living in the apartment. If there are no adult occupants, staff shall name and serve the oldest minor occupants in addition to any guardian or conservator. When in doubt, it is better for staff to name and serve more people, than less people.

c. Setting the Court Return Date

Authority personnel shall insert a court return date to conform to that borough's Housing Court schedule. When staff sets the court date, they must leave enough time for service of the papers in conformity with the 5 and 12 rule, as explained in f.(1). below.

d. Filing of Original Petition with Court Clerk After the Original Notice of Petition and Petition have been prepared (in accordance with instructions in Appendix A) and all copies conformed, staff shall file the Original Notice of Petition and Petition with the Clerk of the Court in which the proceeding is being brought. Staff shall attach to the Original Petition a copy of the Notice to Vacate/Notice to Quit and any Extensions thereof, if applicable, together with the original Affidavits of Service of the Notice to Vacate/Notice to Quit and of any Extensions. Thereupon, the clerk will:

- (1) Assign an L & T index number to the proceeding
- (2) Signature stamp the original Notice of Petition and return it to the person presenting the documents and
- (3) File the original Petition together with all papers annexed thereto.

e. Conforming Copies of the Notice of Petition and Petition

Prior to taking any further steps in the proceeding, project staff shall conform all copies of the Notice of Petition and Petition to the Original Notice of Petition in the following respects:

- (1) Insert the L & T number assigned by the Clerk
- (2) Insert the name of the Clerk of the Court whose name was nature-stamped on the Original Notice of Petition and
- (3) If the Clerk made any change in the court return date set forth in the Notice of Petition, make this change on the copies of the Notice of Petition.

f. Service of Notice of Petition and Petition

Project staff must assure service of a conformed copy of the Notice of Petition and Petition on each person named as a respondent (see Section V. 2. b. above). The copy of the Petition (with the Notice of Petition on the reverse) served on the respondent must have attached to it a copy of the Notice to



Vacate/Notice to Quit, any applicable Extensions, and the Affidavits of Service pertaining to the Notice to Vacate/Notice to Quit and any Extensions.

(1) Time of Service

Service on the respondent(s) of a conformed copy of the Notice of Petition and Petition must be completed not more than 12 calendar days and not less than 5 calendar days prior to the date fixed for the trial, as set forth in the Notice of Petition. Staff shall file the Original Notice of Petition, together with its Affidavit of Service with the Clerk of the Court within three calendar days after service is complete.

(2) Methods of Service

Service of the Notice of Petition and Petition shall be made in any of one of the three ways:

- o Personal Service
- o Substituted Service or
- o Conspicuous Place Service.

When service to the respondent(s) is made by personal delivery, service is complete immediately upon project staff's personal delivery; when service is made by Substituted or Conspicuous Place Service, staff shall mail to each respondent(s) one copy of the papers by regular first class and another copy by certified mail, no later than one calendar day after delivery of the papers to the apartment. Service is complete only upon the filing with the Clerk of the Court, of the original Notice of Petition with its Affidavit of Service. In the latter two instances, project staff shall assure that service is made in sufficient time to permit filing of the Petition not less than five days before the trial date.

For details respecting service, see Section V. A. 1., *Notice to Vacate*.

(3) Alternative Service by a Marshal

Normally, in Holdover Proceedings project personnel serve the respondent with a Notice of Petition and Petition because they are readily available to testify about service, if necessary. However, at his/her discretion, the Housing Manager may request a Marshal to effect service on the respondent and to make the necessary filing with the Clerk of the Court.

Such Substituted or Conspicuous Place Service made by a Marshal requires follow-up by certified mail. The Marshal must make an additional mailing by regular mail and obtain a Certificate of Mailing at the Post Office. This additional charge is passed on to the Housing Authority. When a Marshal performs the service, (s)he is entitled to the same fees as are paid

for a Non-Payment Petition and Notice of Petition, as listed in Section VI. E. 3. below.

(4) The Dispossess Postcard

(a) Completion by Project Staff

For all cases commenced on or after October 1, 1991, project staff shall fill out and submit to the Court a Dispossess Postcard (Form 150.105, Rev. 9/91). If a case was commenced prior to October 1, 1991, the project must use only the old version of the postcard (Eviction Postcard, Form 150.105, Rev. 9/87), as explained in Section V. B. 4. c. below. Project Staff shall fully address and put proper postage on the new Dispossess Postcard. A separate postcard must be prepared and addressed to each tenant or respondent named on the Notice of Petition and Petition. Additionally staff shall:

o For Holdover cases

- Check the box indicating that it is a Holdover case
- Insert the first court date
- Fill in the L & T index number, and
- Return the postcard to the Clerk of the Housing Court at the same time that the Notice of Petition with the filled out affidavit of service is filed.

o For Non-Payment cases

Check the box indicating that it is a Non-Payment case and send the postcard to the Marshal along with the Petition and Notice of Petition. For ease of handling, staff shall always paper clip the postcard to the Notice of Petition with the respondent(s) address showing. The Marshal will insert the L & T number and return the postcard to court along with the Notice of Petition and a filled out Affidavit of Service.

(b) Mailing by Court Clerk

The Court Clerk will mail the completed postcard to each respondent, giving notice of the pending court action. The postcard notice is in addition to the initial notification by service of the court papers.

g. Transmittal to the Law Department

Immediately after completion of the service of the Notice of Petition and Petition, the Project (or Marshal) shall mail to the Law Department's Landlord-Tenant

Division a conformed copy together with an Affidavit of Service, and copies of all papers attached to the Original Petition. This is the Law Department's only notification that the case is pending. The specific grounds upon which the Holdover Proceedings are based shall be noted in the upper right-hand corner of the Law Department's copy only, and on no other copy served or filed.

h. Preparation for Trial

The Housing Manager shall review the tenant file to assure that it contains the entire tenant record. (In Licensee/ Squatter cases, the file of the apartment's former tenant is needed.) For convenience, (s)he shall place the following items in the front of the file:

- (1) The lease, including current amendments (the latest Rent Change Notice (RCN) -- Form 132.020).
- (2) The Hearing Officer's decision to terminate tenancy (Some judges may require a certified copy of the Hearing Officer's decision. If so, a certified copy shall be obtained from the Office of the Impartial Hearing Officer prior to the court date.)
- (3) The Determination of Status for Continued Occupancy (Form 005.003) – the original with the raised Authority seal is needed.
- (4) Notice to Vacate with Extensions, if applicable and Affidavits of Service.
- (5) A statement of rent arrears, if any, and
- (6) The Determination of the Continued Occupancy Board in excess income or excess assets cases.

i. Trial/Inquest

On the return date set forth in the Notice of Petition, the Housing Manager or a member of the Management staff familiar with the facts in the case, shall appear in Court with the tenant file; a Law Department staff attorney shall also be present. The Housing Manager or representative shall address all questions of court procedure to the Authority's attorney.

If the respondent owes any rent at the time of trial, the Housing Manager shall so advise the Attorney so that (s)he may request immediate payment as a condition of any stay.

If the tenant appears and:

o Consents to Final Judgment

The Authority attorney shall enter a Stipulation Consenting to Entry of Final Judgment with the Court, setting forth the terms of the Final Judgment to which

the tenant consented.

o Does Not Consent to a Final Judgment

A trial will be held and the Housing Manager or representative shall testify as to the facts set forth in the Petition. The Court will also hear the tenant's testimony and render a decision.

If the tenant fails to appear, the Court will direct that an inquest be held. The Housing Manager shall then testify as to the facts contained in the Petition, and the Court will render its decision.

In connection with each Final Judgment issued in favor the Authority, the court will set forth the period of the stay, the rent to be paid during the stay, the liquidation of any arrears, and any other conditions it imposes.

j. Judgment, Warrant and 72 Hour Notice of Eviction

If the respondent consents to a final Judgment of Possession, the length of stay of issuance of the warrant will also be negotiated. If after either trial or inquest, the Court determines that a Holdover Final Judgment of Possession will be awarded in favor of the Authority and against the tenant, the Court will also set the stay of issuance of the warrant of eviction.

Once the stay of issuance of a warrant of eviction expires, the project management staff may ask the City Marshal to request that the Court issue a warrant.

k. Notification to Tenant

Tenants who appear in court with or without an attorney, and participate in trials or enter into stipulations for judgment, are generally aware of the outcome of the proceeding since it has been explained to them by either their attorney or the presiding judge.

If a tenant fails to appear on the court date, the judge will hold an inquest. The court then decides what notification, if any, should be sent to the absent respondent. The court may order a stay of eviction for up to six months. Once the Court issues a warrant to the Marshal, the City Marshal shall serve the 72 Hour Notice of Eviction upon the respondent(s). This is the legally required notification to the tenant of the impending eviction. The project is not required to give any other legal notice.

l. Payments for Use and Occupancy

Tenants against whom a Final Judgment of Possession has been entered are required by court order or stipulation to make payments to the Authority for use and occupancy of the premises. These payments are to be made monthly, in

advance, from the date of entry of the Final Judgment of Possession by the Court to and including the expiration of the stay or any extensions thereof. No money for use and occupancy may be accepted for any period after the expiration of a stay until a Stipulation for Further Stay of Issuance of Warrant (Form 040.086) is executed. Money paid for use and occupancy does not require any special notation either on the ledger card or the tenant's rent book.

m. Acceleration of Stay of Issuance of Warrant Resulting from Tenant Arrears

When a tenant against whom a Final Judgment of Possession has been granted is in arrears in the payment of rent, use and occupancy or charges set forth in that judgment, the Project Manager may recommend acceleration of the stay and immediate issuance of the warrant or as prescribed by the stipulation. In such case, the Project Manager shall prepare an Affidavit of Non-compliance (Form 040.324) together with a Warrant Request (Form 150.106&R). (S)he shall send these forms to the Marshal, who will transmit them along with the warrant to the clerk of the court.

The tenant may apply to the Court for an extension. Where the tenant makes such application to the Court, or obtains a Court Order to Show Cause why an extension should not be granted, the Housing Manager should NOT accept any legal papers from either the tenant or his/her attorney. The Housing Manager is to advise the tenant or the tenant's attorney that legal papers are to be served on the Law Department of the Authority.

(1) Extensions by the Housing Authority

(a) Criteria for Granting Extensions

The following criteria shall be considered in granting an extension beyond the period of the stay granted by the Court:

- (i) A pending change in the circumstances affecting income and/or family composition which might result in the tenant's restoration to eligibility, provided such change has been verified by the Housing Manager.
- (ii) The cooperation shown by the tenant in his efforts to find other accommodations, which efforts have been verified by the Housing Manager.
- (iii) The family's conformance with the Authority's rules since the inception of termination proceedings.
- (iv) Serious illness in the family.
- (v) In the case of excess income or assets, if the tenant has applied for other programs for which (s)he is eligible but has not been offered an apartment through no fault of his own.

(vi) Other compelling reasons or extenuating circumstances.

In all instances where a Housing Manager has granted, or recommended extensions, the reasons shall be fully documented in the tenants' folders.

(b) Extensions in Non-Desirability Cases

After the effective date of the final order, if the Housing Manager believes that the conditions which originally led him/her to recommend termination will soon no longer exist, (s)he may recommend an extension of up to two months, by sending to ORRC Request For Extension of Final Order, Form #040.286, giving his/her reasons. The Director of ORRC shall consult with the Director of Management who shall have the power to approve or disapprove. (In an emergency the Housing Manager may request approval by telephone, to be followed by Form #040.286.)

An additional extension, or an original extension for more than two months, may be granted only with the approval of a Member of the Authority. A Request For Extension of Final Order, Form 040.286, giving the Housing Manager's reason shall be submitted to ORRC. If the Director of ORRC, after consulting with the Director of Management, endorses the recommendation, it shall be submitted to a Member for final decision.

The Law Department shall be notified in writing of all extensions (with one copy of such notification to be sent to ORRC and one to the Director of Management).

(2) Stipulation for Further Stay of Issuance of Warrant, Form #040.086

If a further extension is granted for any period beyond three days after the expiration of any existing stay, it is necessary that a new Stipulation be executed prior to the expiration of the current stay. The tenant shall execute (in quadruplicate) and have notarized a Stipulation for Further Stay of Issuance of Warrant, Form 040.086. After this Stipulation is executed by the tenant, payment for use and occupancy may be accepted for the extended period. The original and three copies of the Stipulation shall be forwarded to the Management Division of the Law Department for execution by the General Counsel on behalf of the Authority. The original and two copies shall be returned to the project where they will be retained until a warrant is applied for, at which time all original copies of the Stipulations applicable to the same tenant are to be submitted to the Court. The tenant shall receive a copy of each Stipulation after execution by General Counsel.

n. Charge to Tenant for Service of Notice of Petition and Petition

In Holdover Proceedings, if the service of the Notice of Petition and Petition is made by project staff, staff shall not charge the tenant for service. However, if a Marshal or process server serves the tenant, the tenant shall pay the same charges as those for

a non-payment proceeding.

## B. Non-Payment of Rent

If the tenant makes no payment after the demand for rent has been made (the demand is preceded by a 14 day Notice of Grievance in Federal projects) in accordance with the procedure outlined in Section IV. H., project staff shall institute a Non-Payment Summary Proceeding. This shall be done in the same manner as for Holdover Proceedings, i.e., by service of a Notice of Petition and Petition. Service of the Petition and Notice of Petition is usually performed by the Marshal or his/her process server.

### 1. Notice of Petition and Petition

#### a. Preparation

The following forms shall be used in all Non-Payment actions:

040.083B&RM	Original Notice of Petition-Summary (Original and Proceedings –Non-Payment Dwelling five copies)
040.083F&R-M	Original Petition - Non-Payment of (Original and Rent (Dwelling) five copies)
150.105	Dispossess Proceeding Postcard

Authority personnel shall prepare all Notices of Petition and Petitions; Appendix A includes detailed instructions for the preparation of these forms. Project staff shall send completed Petitions and Notices of Petition to the project's City Marshal to file, conform, and serve. Project staff shall also complete the Dispossess Postcard (Form 150.105, Rev. 9/91) and send it to the Marshal clipped onto the completed Petition and Notice of Petition (as per 2.g.(4) above).

#### b. Filing

The original Notice of Petition and Petition must be filed with the Clerk of the Court in which the proceedings are brought. Thereupon, the Clerk will:

- (1) Assign the L & T index number;
- (2) Sign the Original Notice of Petition and return it to the person presenting the documents;
- (3) File the Original Petition.

c. Conforming copies of the Notice of Petition and Petition

Prior to taking any further steps in the proceeding, all copies of the Notice of Petition and Petition must be conformed to the originals.

d. Service of Notice of Petition and Petition

Service is made in the same manner as service in the case of Holdover Proceedings.

e. Tenant's Answer

When a Notice of Petition and Petition for Non-Payment of Rent is served on a tenant, (s)he is required to file his/her answer with the Court within five days from date of service. When the tenant files an answer, the Clerk of the Court will advise the Law Department of the nature of the tenant's answer and will fix the date on which the proceeding will be tried. The Law Department shall notify the Housing Manager.

2. Trial

On the trial date, the Housing Manager or the Manager's representative, who must be someone familiar with the facts, must appear in Court and bring with him/her the tenant's file and ledger card. The ledger card(s) going back to the last zero balance should be brought to court. If the tenant appears in Court ready for trial, the Housing Manager will be required to testify and prove:

- a. A lease has been entered into between the Authority and the tenant.
- b. The tenant has agreed to pay the rent specified in the Notice of Petition and Petition. When the monthly rental specified in these documents is not the same as that set forth in the lease, the Housing Manager must produce the RCN showing the current monthly rent.
- c. The Authority has demanded payment of the rent for the specific month or months claimed in the Petition.
- d. The tenant has failed to pay such rent.
- e. Any additional matters relating to defense or counterclaims.

If the court finds that rent is due and owing from the tenant, that due demand was made and that the tenant failed to pay the rent after such demand, a Final Judgment of Possession will be entered in favor of the Authority. The issuance of the Warrant will be stayed for a period decided by the Court.

3. Failure of Tenant to Reply to Notice of Petition and Petition



If the tenant has failed to answer the Notice of Petition and Petition, the Authority is entitled to a Final Judgment of Possession. However, the Final Judgment of Possession may not be entered until ten days have elapsed since the date of service of the Notice of Petition and Petition. Also, as a condition to entry of the Final Judgment of Possession, the Authority must comply with the Soldiers' and Sailors' Civil Relief Act and the applicable provisions of the New York State Military Law. (See Section V. B. 4. below for requirements of these statutes.)

4. Requirements of the Soldiers' and Sailors' Civil Relief Act and the New York State Military Law.

Where a tenant fails to answer the Notice of Petition and Petition, before a Final Judgment of Possession may be entered on default, it is necessary for the Authority:

To file with the Court proof that the tenant is not in military service or dependent upon anyone in military service, or

To obtain an order from the Court dispensing with this requirement.

a. Proof That Tenant Is Not In Military Service

If it is known that the tenant is not in military service and is not dependent upon any one in military service, the proof to be filed with the Court consists of two separate affidavits: an Investigator's Affidavit and an Attorney's Affirmation. The Affidavit of Investigator, Form #040.085A, states that the investigator has talked to the tenant or a member of the tenant's family and has been informed that neither the tenant nor the tenant's family is dependent for support upon anyone in the military service of the United States. If it is not possible to have this conversation with the tenant or a member of the tenant's family an acceptable alternative would be for the Housing Assistant to state that the conversation regarding this tenant was held with the Manager. The Manager should be familiar with the family's situation and should also double check with the tenant folder to determine that, in fact, no family member is dependent for support on anyone in the military service. In this case the Affidavit of Investigator would have to be changed to read that on (date) the investigator had a conversation with the project Manager (name) regarding the tenant who resides at (tenant's address and apartment no.). Do not use the tenant's account number.

This investigation must not be made until the tenant has defaulted in answering the Petition and should, therefore, not be dated until at least ten days after service of the Notice of Petition and Petition - i.e., not until the 11th day.

The Affidavit of Investigator is to be fully and accurately completed, signed and notarized by the project staff after the actual investigation has been made. It should then be sent to the City Marshal for transmittal to the court when requesting a warrant.

## b. Motion to Dispense

If the Investigator learns that the tenant is in Military Service or is dependent upon some person who is in the Military Service, or if (s)he is unable to obtain information regarding the military status of the tenant or anyone on whom (s)he is dependent, it will be necessary for the Authority to bring a motion before the Court to dispense with the requirement for filing the affidavits. In such case, the Housing Manager shall submit to the Management Division of the Law Department a memorandum requesting that this application be made. The memorandum should set forth:

- The name and address of the tenant
- The L & T index number
- The family composition
- The total earnings of the family
- The monthly rent
- Amount due

If the tenant or some person upon whom (s)he is dependent is in military service, the memorandum should also include the information with respect to the military service, the monthly allotment payable to the tenant and any other pertinent information.

If the Housing Manager has no information with respect to military service or dependency, the memorandum should contain full and complete details as to the efforts made to obtain the information, the general circumstances, and the reasons the information could not be obtained.

The Land lord-Tenant Division of the Legal Department will thereupon prepare necessary papers for an application to the Court to dispense with filing the affidavit.

## c. Final Judgment of Possession

After the Project Manager has filed the Non-Military Affidavit or the Court issues an order absolving the Authority from such filing, the Court will enter a final Judgment of Possession.

A Final Judgment is the Court's decision that the Authority has won its case, either because the tenant has failed to answer the P & P or because the Court has decided the case on its merits for the Authority. In a Non-Payment case, if the tenant does not pay the judgment within the time allowed by the Court after it grants the judgment, the Court issues a Warrant of Eviction only when requested.

It is important not to confuse the number of warrants issued with the number of Final Judgments which the Court may have issued. In most circumstances, the

number of warrants cannot exceed the number of final judgments entered. Without a Final Judgment, the Court will not issue a warrant of eviction.

To request a warrant, project management staff shall send to the Marshal a completed Form 150.106&R (Request for Final Order and Issuance of Warrant). They shall also send a completed Form 040.085A (Non-Military Affidavit) if a tenant defaulted and never appeared in Court. If the judgment was obtained pursuant to stipulation or trial, a Non-Military Affidavit is not required. However, an Affidavit of Non-Compliance (Form 040.324) is required to inform the Court that the tenant did not comply with the stipulation or with the court order.

Staff shall submit the old eviction postcard Form 105.105, Rev. 9/87) with the warrant request only for cases commenced prior to October 1, 1991. In these cases, the postcard must be stamped, fully-addressed to the tenant and bear the L & T number. (For cases commenced on or after October 1, 1991, staff shall use the new dispossession postcard (Form 105.105-Rev 9/91), as described in Section V. A. 2. f. (4). above). The Marshal submits the card and the warrant request to the Court and the Court Clerk mails the postcard to the tenant.

#### 5. Failure of Tenant to Appear for Trial

If the tenant files an answer with the Court within five days from the service of the Notice of Petition and Petition but fails to appear in Court on the date set for the trial, the Court will direct entry of a Final Judgment of Possession by default on behalf of the Authority. Generally, the Court will stay the Issuance of the Warrant for five days. Project staff shall then request a warrant by sending the Marshal a Request for Final Order and Issuance of Warrant (Form 150.106&R).

#### 6. Collection of Rent Arrears

##### a. After Service of Notice of Petition and Petition

The tenant has the right to pay all rent and arrears until the warrant is issued from the Court to the Marshal. If (s)he pays them and also pays Court costs, the proceeding shall be discontinued and no further action taken on that case. If the tenant offers only the rent but agrees to pay Marshal fees only at a later time, project staff shall assure completion of a Payment Affidavit Form 040.385&R) described in Management Manual, Chapter II, Section III.

The Payment Affidavit form may include any sums of money due to the Housing Authority. After signature by the tenant(s), the Manager shall countersign and have the form notarized.

If the tenant pays rent and files an answer in Court, it is important that the Project Manager promptly notify the Management Division of the Law Department.

## b. After Issuance of Warrant to Evict

If the Final Judgment of Possession was obtained by default, the tenant may, even after the Warrant has been issued, obtain an order staying execution of the Warrant and vacating the Final Judgment of Possession upon payment of the rent and Court costs. Whenever an Order to Show Cause is served on the Authority staying execution of the Warrant, no further action may be taken by the Housing Manager without the advice of the Management Division of the Law Department.

## c. Installment Payments

## (1) Prior to Issuance of Final Judgment of Possession

If, prior to the issuance of a Final Judgment of Possession, the tenant offers to pay the amount due in installments, arrangements may be made for him/her to do so by signing a Stipulation consenting to the entry of a Final Judgment of Possession. Before proceeding, the Housing Manager should consult the Management Division of the Law Department concerning the terms of the Stipulation covering installment payments. If, after having signed such a stipulation, the tenant fails to pay an installment when due, the Court may be requested to enter a Final Judgment of Possession and issue a Warrant. The Authority is then in a position to evict unless the tenant pays the full amount of the arrears. If the tenant still fails to pay the installment due, the Housing Manager should proceed with the eviction.

If, prior to issuance of the Warrant, the tenant appears to pay the amount stated in the Petition or Judgment, the Housing Manager must accept such payment although additional sums may have come due with issuance of the Petition.

## (2) After Entry of Final Judgment of Possession

If, after entry of the Final Judgment of Possession but before issuance of the Warrant, the tenant offers to make installment payments, the Housing Manager should consult the Management Division of the Law Department for advice.

## 7. Consecutive Proceedings for Non-Payment of Rent

If, after commencement of proceedings for Non-Payment of Rent, the tenant fails to pay the subsequent month's rent, a second action for the latter month need not be started. The initial proceeding is to be pursued so that a Final Judgment of Possession may be entered. If the tenant does not pay the rent due in the initial proceedings, the Housing Manager may proceed to evict. If the tenant pays the rent in the initial action prior to issuance of the Warrant, it then becomes necessary to institute a new action for the subsequent month's rent.

## 8. Charges to Tenant for Service of Notice of Petition and Petition

All expenses in connection with the service of the Notice of Petition and Petition shall be charged to the tenant at the same rates charged by the Marshal. (See following Section VI. E. *Services of Marshal*.)

## VI. EVICTIONS

## A. Holdover

## 1. Request for Permission to Evict

After expiration of any stay, or extensions thereof, the Housing Manager may not proceed with an eviction until (s)he has obtained appropriate approval.

## a. Holdover After Administrative Termination

The Manager seeks approval for the eviction by submitting Form # 040.041, "Request for Permission to Evict Tenant", to the Department of Resident Review and Counseling. A copy of this form should also be sent to the District Director. The District Director shall review the cases and shall advise the Manager of his/her decision.

## b. Holdover – Licensee/Squatter

The Manager seeks approval for the eviction by submitting Form # 040.372, "Request for Permission to Evict Holdover-Licensee/Squatter" to the District Director. The District Director shall review the cases and shall advise the Manager of his/her decision.

Note: If permission to evict has been obtained in any holdover action, the Non-Payment Review Division (NPRD) must be given at least ten (10) working days notice prior to the initially scheduled eviction date. The notification may be by telephone, but must be followed up by sending a copy of the Request for Permission to Evict form to the NPRD.

Prior notification of any adjourned eviction should be telephoned into the NPRD. The notification to the NPRD for Holdover evictions is for informational purposes only and not for the purpose of obtaining permission to evict.

## 2. Issuance of Warrant

Evictions are carried out by a Marshall pursuant to a Warrant issued by the Court. The warrant will not be issued until the Final Judgement of Possession has become effective and any stay provided therein has expired. If it is decided to proceed with an eviction, the Housing Manager shall direct the Marshal to request the warrant. The Manager's request shall be made by Form # 150.106&R, Request for Final Order and Issuance of Warrant.

### 3. Service of 72-hour Notice on Tenant

After the warrant of eviction has been issued from the court to the Marshal, the Marshal must serve a 72 hour notice. This notice, which is served on the tenant at least 72 hours before the eviction, advises the tenant that an eviction will take place anytime after 72 hours. Project Managers must notify the NPR Division after permission has been given to the Marshal to serve the 72 hour notice (see B, 1 below).

### 4. Notification “At Risk”

“At risk” families (persons over the age of 65 years and the physically and mentally impaired) must be identified early in the eviction process and reported to DRRC using the same procedure using the same procedure as in non-payment evictions (see B below). This will enable DRRC to make an early referral of these cases to the Department of Social Services. At the time the eviction date is scheduled, a family’s “at risk” status must be reported to the Marshal who is required to inform the Department of Investigation. The Marshal’s referral of an “at risk” case is independent of any other Authority referral to the Department of Social Services. Early identification of an “at risk” tenant and notification of the Marshal may appreciably reduce any delay which may result from their independent review (see B, 2 below).

### 5. Notification to Department of Social Services

If the tenant is receiving, or has applied for, assistance from the Department of Social Services, the Housing Manager shall notify its local office that an eviction is to take place so that it may make suitable arrangements for the tenant.

### 6. Holdover – Notification of Scheduled Eviction

As a final safeguard, after permission to evict has been approved at all levels, the Housing Manager must notify the District Director and the Non-Payment Review Division of any impending eviction at least 24 hours in advance of the scheduled time of eviction. The Manager must also advise the District Director and the NPRD by telephone of the outcome whether the eviction has taken place, been cancelled, postponed or if the tenant has moved out.

Note: In evictions involving “at Risk tenants (as defined in B, 2 below) emotionally disturbed and other evictions which may present a serious negative impact on the Authority, the Housing Manager must also notify the Assistant to the Deputy Director of Management and the Public Information office by telephone at least 24 hours in advance of the scheduled eviction.

### 7. The manager must continue to use good judgement in each case and contact the District Office and Counseling should circumstances warrant a review of the case before proceeding.

## B. Non-Payment Evictions

## 1. Non-Payment Review Unit

The Non-Resident Review Unit has been established in the Department of Resident Review & Counseling to coordinate and monitor all non-payment actions which may result in evictions.

Project Managers must notify this unit when legal action has reached the stage:

- a. Notification to the Marshal to serve the warrant, and/or
- b. When an eviction date is scheduled.

Telephone numbers for required notification are:

(212) 306-3154	(Bronx and Manhattan projects)
(212) 306-3382	(Brooklyn, Queens, & S.I. projects)
(212) 306-4032	(For inquiries other than required notifications)

The Non-Payment Review Unit is responsible for giving the H.R.A. Department of Income Maintenance, written notification that the warrant has been served. In order to Allow sufficient time for this notification and for H.R.A. to arrange for rent payment and/or relocation of the tenant necessary, no evictions involving "at risk" tenants may take place until 35 calendar days after service of the warrant.

## 2. "At Risk" Tenant

Some tenants are in a category which has been designated as "at risk". Examples of "at risk" tenants are:

- a) Elderly (65 and over)
- b) Disabled
- c) Mentally or emotionally disturbed

The Non-Payment Review Unit is also responsible for giving the H.R.A. Department of Income Maintenance and the Department of General Social Services, written notification potential evictions involving "at risk" tenants. In order to allow sufficient time for the Non-Payment Review Unit to notify H.R.A. of "at risk" cases and for H.R.A. to arrange for rent payment and/or relocation of the tenant, if necessary, no evictions involving "at risk" tenants may take place until 35 calendar days after service of the warrant.

Very serious "at risk" cases (physically handicapped, mentally ill) are to be referred to the Non-Payment Review Unit as soon as the problem becomes known to the Project Manager regardless of the step reached in the eviction process. The Unit will contact the Central Office liaison at G.S.S. for assistance.

NOTE: Holdover Actions involving "at risk" tenants should be referred to the Office of Resident Review & Counseling rather than to the Non-Payment Review Unit.

### 3. Preparation Of Form #095.006&R, Submission For Non-Payment Review

This form is to be prepared by the project management staff for reporting required information regarding potential evictions. As a rule, this form is to be forwarded to the Non-Payment Review Unit at the time that the request for service of the warrant is made. In "at risk" situations the form is to be forwarded to the Non-Payment Review Unit when the warrant itself is being requested.

### 4. Notification to Tenants

When the project Manager asks the Marshal to obtain a warrant, the booklet "An Important Notice About Eviction" must be mailed to the tenant. This booklet contains pertinent information regarding the eviction process.

### 5. Scheduling Of Evictions

In order to schedule an eviction, the project Manager must prepare Form # 040.346, Request For Permission To Evict-Non-Payment, and send it to the District by first class mail. (Copy to the Non-Payment Review Unit). The District Chief Manager must also be contacted by phone and apprised of the information on the form. If for some reason no District Supervisor is available, the Manager is to confer directly with the Deputy Director of Management.

The District Chief or Deputy Director will advise the Manager on whether to proceed with, postpone or cancel the eviction and the Manager will report the eviction date to the Non-Payment Review Unit. In "at risk" cases only, the Director of Public Information and the Assistant to the Deputy Directors of Management must also be advised of the eviction date. In all cases, the tenant must have written notification of the scheduled eviction.

The Non-Payment Review Unit must be notified by the project Manager during any stage of the eviction process. Notification is to be made by telephone when the eviction date is obtained and is followed by the Request for Permission to Evict. The Non-Payment Review if the tenant moves out or if the eviction was carried out, cancelled or postponed.

### 6. Tenant Payment Offer

If, after the warrant of eviction has been issued by the court and the 72 Hr. Notice was served on the tenant by the Marshal, the tenant offers the project Manager a partial amount of the rent due and, in the Manager's judgement, the partial amount of the rent due and, in the Manager's judgement, the partial amount of the rent due and, in the Manager's judgement, the partial amount cannot be accepted, the Manager will immediately contact the District Director. If the District Director agrees with the project Manager's decision and the tenant is in receipt of public assistance or has applied for assistance, the project Manager will contact the local



Income Maintenance Center and inform them of the non-acceptance of the partial rent payment. The project Manager will also contact the Non-Payment Review Unit which must notify the Income Maintenance Central Office liaison staff, in writing, at least 2 days before the eviction date, that the rent has been refused.

#### 7. Manager's Visit to Tenant

On the day before an eviction takes place, the project Manager or his/her designee must visit the tenant to determine if the tenant plans to move out and has made any arrangements for relocation. In all cases (welfare and non-welfare), if there are no such plans, the Manager will advise the Non-Payment Review Unit. For all tenants who are in receipt of public assistance or have applied for assistance, the Unit will then contact Income Maintenance Central Office to inform them of the Manager's findings.

#### C. Information to be Given to Marshals when Scheduling Evictions

When scheduling and eviction the project Management must inform the Marshal if there are any handicapped, mentally ill or physically disabled individuals residing in the apartment. The Marshal then contacts the Department of Investigation who will notify the appropriate social welfare agency.

#### D. Physical Eviction

##### 1. Restrictions on Evictions

###### a. Evictions may NOT be scheduled

(1). To begin before 8:30 A.M.

(2). To begin after 3:00 P.M.

(3). On Saturday, Sunday, a legal holiday, or a religious holiday of the tenant's religion.

###### b. Evictions may not be carried out

(1) While the tenant or any member of the tenant's family in the apartment at the time of the scheduled eviction is temporarily confined to bed, under a doctor's orders. This does not apply to "at risk" tenants (see Section VI. B. 2.).

(2). If the Authority or Marshal has been served with an Order to Show Cause, stopping the eviction.

##### 2. Use of Movers

A marshal engaged by the Authority is required to hire a licensed and bonded mover to remove an evicted tenant's possessions from the apartment and transport them to the appropriate private storage facility or Department of Sanitation depot (Bureau of

Encumbrances), if available.

2. Storage After Eviction -- Private Storage or Storage by Department of Sanitation (Bureau of Encumbrances)

The Bureau of Encumbrances normally accepts all property removed from the premises of an evicted tenant delivered by the Marshal's movers, provided that a copy of an inventory of the tenant's property is presented at the time the property is delivered. The Bureau also requires the name of the Marshal who executed the Warrant, the Shield and Precinct Number of the patrolman who was in attendance at the eviction, and the name and address of the tenant.

NOTE: Presently, NYCHA uses private storage because the Bureau of Encumbrances warehouses have been closed since November 1989. In this context, private storage means the City Marshal not only hires the mover but also arranges to store apartment contents in a private warehouse. The Marshal bills storage charges which shall be paid as billed. They shall be charged to the tenant's account.

E. Services of Marshal

In connection with the services of Marshals, the Housing Manager shall engage the Marshal the Law Department has assigned to the project.

1. Service of Papers - Holdovers

NYCHA shall ordinarily use project personnel for service of Notice of Petition and Petition, and filing in Court. However, the Housing Manager may, at his/her discretion, request the Marshal to effect service and file the necessary papers in Court. In that event, staff shall provide the Marshal with all necessary documents and shall carry out the service and filing in the manner described in Section V. A..

2. Eviction

NYCHA must use the services of a Marshal to carry out an eviction. The Housing Manager shall request, in writing, that the Marshal pick up the Warrant and serve the 72-hour Notice.

3. Marshal's Fees (effective 1/1/16)

a. AMOUNTS PAYABLE TO CITY MARSHAL FOR SERVICES

(1) NOTICE OF PETITION AND PETITION

- |   |          |
|---|----------|
| • Obtaining Index (L & T) Number                                  | \$ 15.00 |
| • Service of Notice of Petition and Petition on <b>one</b> person | \$ 15.00 |

- Service of Notice of Petition and Petition for **each** additional person (named or unnamed on petition) \$ 15.00
- Mileage-travel to development to perform service\* \$ 30.00

## (2) WARRANT OF EVICTION

- Requesting Warrant for **One or More** names \$ 15.00

## (3) SERVICE OF 72 HOUR NOTICE OF EVICTION

- Service of 72-Hour Notice on **one** person\*\* \$ 15.00
- Service of 72-Hour Notice for **each** additional person (named or unnamed on petition)\*\* \$ 15.00
- Mileage-travel to development to perform service\* \$ 30.00

## (4) EXECUTION OF WARRANT - ACTUAL EVICTION

- Execution of Warrant \$ 75.00
- Mileage-travel to development to perform service \$ 30.00

\*The Marshal may charge only one mileage fee of \$25.00 for each trip to the development. This means that if only one trip to the development is required to serve several Notices of Petition and Petition and/or to serve 72-Hour Notices of Eviction, the Marshal may charge only **one** mileage fee for all services.

If a Marshal makes a second trip to the development to satisfy the requirements of service, the Marshal may charge an additional mileage fee. This occurs when more than one attempt at personal service is made – one attempt is made during normal working hours (8:00 A.M. to 6:00 P.M.) and a second attempt is made outside normal working hours.

A Marshal **may not charge more than two mileage fees per service**, except if a person named in the petition is located at a different place outside the development, then an additional mileage fee may be charged for travel to each different location.

## b. AMOUNTS PAYABLE TO CITY MARSHAL FOR MAILING CHARGES

The fees payable to the City Marshal for Services, listed above, assumes that the papers are served *personally*, and no mailing is required.

If service is made by other than *personal service*, the marshal must also mail a copy of the papers to **each** respondent by **regular 1st class mail** and by **certified mail** (return-receipt is **NOT** required.) Postage expenditures by the Marshal needed to perform legal service are

reimbursable, accordingly, the Marshal is entitled to charge the Authority and recoup these fees.

The following are the current mailing rates. Adjustments should be made as US Postal Service rates change.

Regular 1 <sup>st</sup> Class Mail	\$0.49
Certified Mail Total	\$3.45

**Note:** 'Proof of Mailing' of one 1<sup>st</sup> Class mail envelope, also called a 'Certificate of Mailing,' is \$1.35. Although Proof of Mailing is not legally required, it is reimbursable if the Marshal made the expenditure.

c. AMOUNTS CHARGEABLE TO TENANT'S ACCOUNT FOR MARSHAL'S SERVICES

(1) NOTICE OF PETITION AND PETITION

- Serving Notice of Petition and Petition – **One** name \$40.00 \*
- Serving Notice of Petition and Petition – for **each** additional person (named or unnamed on petition) \$19.00 \*\*

(2) REQUEST WARRANT OF EVICTION

- Requesting Warrant of Eviction for **One or More** names. \$15.00

(3) SERVICE OF 72 HOUR NOTICE OF EVICTION

- Service of 72 - Hour Notice – on **one** person \$30.00\*
- Service of 72 - Hour Notice for **each** additional person (named or unnamed on petition) \$19.00\*\*

(4) EXECUTION OF WARRANT - ACTUAL EVICTION

- Execution of warrant - any number of names \$75.00
- Mileage-travel to development to perform service \$30.00

\*Includes mileage and mailing charges

\*\*Includes Mailing charges only

d. Eviction - Moving Charges **[REVISED 1/3/05]**

The City Marshal shall hire a licensed and bonded mover whose rates must match tariff schedules issued by the New York State Public Service Commission. NYCHA has established that the City Marshal is entitled to reimbursement for moving and storage charges up to and including the following dollar amounts for each fee category

Moving Fee	\$85.00 per room, with a four room minimum
Excess Packing	\$15.00 per carton, in excess of 4 cartons per room
Flight Charge	\$100.00 per flight, when furniture needs to be taken by stairs
Waiting Time	\$90.00 per hour of delay
Truck Cancellation Fee	\$250.00, if the Marshal is notified that an eviction is cancelled <u>after</u> \$4:00 p.m. the day before the eviction

- Moving charges are based on the number of rooms in an apartment
- When computing the moving fee, half-rooms shall be considered full rooms
- The number of rooms to be paid for must be the same as the number listed in the Petition
- Any additional fees are considered unreasonable
- Movers are not entitled to any additional fees for waiting time at any storage facility
- Movers shall NOT be paid on an hourly basis.

The Marshal shall make an inventory of everything placed on the truck.

In order to expedite evictions and ensure billing accuracy, please note the following:

- All individuals necessary (management staff person, maintenance staff person with proper tools and the police) should be notified to be present at the designated eviction time.
- During the eviction, management staff must be present to observe the amount of property removed from the apartment. The property actually removed must be properly stated on the Marshal's invoice.
- In consultation with the Deputy Director of Management, the Manager shall approve any extra charges arising from unusual costs of moving (such as: carrying large furniture items down stairs because it does not fit in the elevator, carrying contents of the apartment down stairs because no elevator exists or none is available, apartments with an unusually large volume of possessions).

#### 4. Marshal's Submission of Invoices

Staff shall request the Marshal to submit all invoices directly to the project. An invoice may cover the service of Notices of Petition and Petitions on more than one tenant. However, for each physical eviction, staff shall require the Marshal to submit a separate invoice itemizing the charges.

#### 5. Payment of Marshal's Fees

Payment of Marshal's fees shall be processed through the use of a Certificate for Payment (Form 121.017 A&R). If the charge was not waived, staff shall make a notation on the Certificate that the tenant's account is charged.

If there are extra charges arising from unusual costs of moving, the Housing Manager shall obtain the approval of the District Manager prior to the eviction (if feasible). In such case, the District Manager must sign the Certificate for Payment before it is forwarded to the Disbursements Division.

#### F. Charges to Evicted Tenant

Staff shall charge all costs incurred for evictions to the evicted tenant. In specific cases, if the Housing Manager believes that payment of these charges will create a tenant hardship, (s)he may submit to the District Manager a written request for a waiver. All waivers must be in writing; no charge may be written off unless approved in this manner.

### VII. Tenant's Notice of Intent to Vacate

#### A. Requirements of Lease

All leases for residential space in Authority projects provide that "the landlord or the tenant may each terminate this lease and tenancy at the end of any monthly term by [each] giving to the other one calendar month's prior notice in writing."

#### B. Termination Through Tendering Notice of Intent

All persons who executed the lease must sign a Notice of Intent to Vacate (Form 040.032). If one of the lessees is not available, another may execute the Notice as his/her agent.

#### C. Abandonment of Apartment

If a tenant has abandoned an apartment, the Authority may take possession without any legal proceedings. However, the Authority may not take possession of a vacant apartment during a period for which rent has been paid. The Authority also may not take possession without any legal proceedings if licensees or squatters occupy the apartment.

In those instances where there may be a serious question as to whether a tenant has actually abandoned an apartment the project Manager should personally inspect the Apartment. If there are some possessions remaining in the apartment it may be advisable to institute Summary Proceedings for Non-Payment of Rent and obtain physical possession with the aid of a Marshal.

#### D. Death Of A Single Person Occupant

When a single person occupant dies, leaving no heirs and no next-of-kin closer in relationship than a cousin, the Authority may not enter or take possession of the apartment. The Manager or his/her designee must immediately contact the Public Administrator's office of the appropriate county.

<u>County</u>	<u>Telephone #</u>
New York	(212) 374-8230
Bronx	(212) 293-7660
Kings	(212) 643-3032
Queens	(212) 526-5037
Richmond	(212) 442-1028

Note: The Management Division of the Legal Department should be consulted in questionable cases of abandoned apartments and death of a single person occupant.

#### E. Moving Without Notice

If a tenant moves without giving notice, a Notice of Intent to Vacate, Form 040.032, is To be filled out by a member of the project management staff. It should be indicated on the form that the tenant moved without notice, the date the move-out was discovered, and if obtainable, the tenant's new address and reason for vacating.

### VIII. RECORDS & REPORTS

#### A. Controls of the Ineligible Tenants

All of the actions taken with respect to ineligible tenants are legal actions, and the dates of such actions are important.

These dates should be legibly recorded on an Ineligible Tenant Index, Form 040.014. The Housing Manager shall establish whatever additional records are necessary to maintain a strict control of all actions taken with respect to ineligible tenants. These controls may be in the form of a diary, cards, lists, and other form appropriate to the volume of cases being handled and the staff assigned to the work. Regardless of the method of maintaining control, the following information should be available for each ineligible tenant:

1. Grounds for ineligibility
2. Date of Housing Manager's Finding of Ineligibility
3. Date of the referral to District Chief Manager
4. Date of submission of Tenant's request for Review by Continued Occupancy Board, Form 040.020A
5. Date of return of Tenant's Request for Review by Continued Occupancy Board, Form 040.020A
6. Date of submission of Tenant data for Continued Occupancy Board, Form 040.020B
7. Date of hearings by the Continued Occupancy Board or Hearing Officer
8. Disposition by Continued Occupancy Board or Authority
9. Date returned by Continued Occupancy Board
10. Date of expiration of Notice to Vacate
11. Date of expiration of Extensions of Notice to Vacate
12. Date the Notice of Petition and Petition expires

13. Date of Court trial, name of the Judge, and the length of stay granted
14. Date Warrant of Eviction served
15. Date action is withdrawn
16. Date of move-out
17. Date of eviction
18. Any other appropriate information

#### B. Record of Former Tenant, Form 070.033&R

The Housing Manager must submit the Record of Former Tenant, Form 070.033&R, for tenants who have been evicted, moved out involuntarily, who vacated owing a balance, even if written off, or who moved voluntarily but whose readmission to public housing may be considered undesirable. The Manager or his/her designee must maintain adequate controls to make certain that this form is submitted in every case where appropriate. The original card is submitted to the Applications Index Division, Department of Housing Applications and a duplicate kept for the project records. In addition, upon full payment or final payment resulting from a settlement agreement, Uncollected Account Charges, Form 040.010A, must be submitted to the Department of Housing Applications.

\*A move out is considered involuntary if the tenant has moved out while under a finding of Ineligibility, a Notice to Vacate, a final Judgment of Possession or where an eviction has occurred.

#### C. Reports

1. Managers Monthly Report, Form 040.039 (1, 2, 4)
2. Transcript of Tenant Data, Forms 047.005 and 047.006
3. Income Rechecks and Interim Changes, Form 040.040.

#### IX. FORMS USED

021.017	Certificate for Payment
040.003	Determination of Status - Continued Occupancy
040.004	Notice to Vacate
040.004A	Affidavit of Service-Notice to Vacate
040.004F	14 Day Notice of Right to Grievance
040.014	Ineligible Tenant Index
040.015	Three-Day Notice to Vacate
040.032	Notice of Intent to Vacate
040.033&R	Record of Former Tenant
040.037	Extension of Notice to Vacate
040.041	Request for Permission to Evict Tenant – All Holdover Actions
040.082A&R	Original Notice of Petition - Holdover
040.082B&R	Copy of Petition and Notice of Petition-Summary



	Proceeding Holdover
020.082&R	Original Petition-Summary Proceedings-Holdover
040.083B&R	Original Notice of Petition-Non Payment of Rent
040.085A&B	Affidavit of Investigator & Affirmation of Attorney
040.086	Stipulation for Further Stay of Issuance of Warrant
040.185	First Call-In Letter (All Grounds Except Excess Income)
040.186	Termination of Tenancy - Follow-Up Letter (All Grounds Except Excess Income)
040.187	A Letter Notifying Tenant of Manager's Decision to Terminate
040.260A&R	Termination of Tenancy-Notice to Tenant 040.268
	Termination of Tenancy Notice-Dog in Apartment
040.276	Transmittal to ORRC-Termination of Tenancy Case
040.282	Request For Restoration of Tenant to Eligibility
040.286	Request For Extension of Final Order
040.296	Quarterly Report of Restoration to Eligibility & Extension
	Granted Pet Cases
040.302A	Grievance Summary
040.314	Specification of Charges
040.317A&R	Petition Holdover - Squatter
040.317&R	Petition Holdover - Licensee
040.318	Affidavit of Service of Notice to Quit
040.318A	Affidavit of Service of Three Day Notice
040.319&R	Notice of Petition - Licensee - Squatter
040.320	Ten Day Notice to Quit - Licensee
040.320	A Ten Day Notice to Quit - Squatter
040.321	Stipulation as to Disbursements
040.324	Affidavit of Non-Compliance
040.325	Escrow Fund Rent Payment
040.325A	Escrow Payment Termination
040.330	Statement of Unreported Income
040.342	Important Notice - Remaining Family Member Claim
040.346	Request for Permission to Evict - Non Payment
150.105	Dispossess or Eviction Proceeding (Postcard)

## X. GLOSSARY OF TERMS

This Glossary is intended to provide a brief definition of commonly used legal terms. For more detailed descriptions refer to the appropriate sections in Chapter IV.

Holdover Summary Proceeding – A suit by a landlord in Civil Court, to obtain a Judgement of Possession against a tenant who tenancy has been terminated by a statutory 30 Day Notice to Vacate and who fails to move out at the end of the period of the notice. The suit is based on an Escalera hearing (see definition).

Nonpayment Summary Proceeding – A suit by a landlord in Civil Court, to obtain a judgement

for rent owed by a tenant or a judgement for possession of the premises occupied by a tenant.

Escalera Hearing – A trial-type administrative hearing accorded by the Housing Authority to a tenant under charges which may lead to termination of tenancy on administrative grounds such as non-desirability, breach of rules and regulations, etc. The hearing is held before an impartial hearing officer who may make the final disposition which shall be binding upon the Authority unless they find it contrary to law.

Remaining Family Members – Persons who were members of an original tenant family or who became permanent members of the tenant family subsequent to move-in with the written approval of the project management, and who thereafter remain in continuous occupancy up to and including the time the tenant of record moves or dies. These tenants may be offered a lease if they are otherwise eligible for public housing.

Melton Grievance – HUD guidelines provide that a person who was a member of the family of the tenant of record (usually a child or grandchild) known to and approved for occupancy by the Authority and eligible for public housing, qualifies as a “remaining family member” and is entitled to a lease. If the occupancy of the person or their eligibility for public housing is in question, they may be entitled to a Melton grievance to determine this status. A licensee proceeding may be commenced to remove a person who fails to qualify as a “remaining family member”.

Licensee Proceeding – A holdover summary proceeding initiated by a landlord in Civil Court, when an occupant in a project apartment who is not on the lease resides in the apartment with the permission of the Authority.

Squatter Proceeding - A holdover summary proceeding by a landlord in Civil Court, to obtain a judgement of possession against a person occupying premises without the permission either of the tenant of record or of the Housing Authority.

Excess Income - Tenant income which extends the continued occupancy income limits and subject to review by the District and /or the Continued Occupancy Board.

Grievance Hearing – An administrative hearing accorded to a tenant regarding any dispute (s) may have with respect to Authority action or failure to act in accordance with tenant’s lease or Authority regulations which adversely affect the tenant’s rights, duties, welfare or status.

Order to Show Cause – Court order obtained without prior notice to the other side, to stay a judgement before and eventual hearing.

Warrant Of Eviction - Statutory warrant issued by the court authorizing eviction in landlord tenant proceedings.

72 Hour Notice – Statutory notice required to be served upon a tenant by a City Marshal which advises the tenant that an eviction is being scheduled.

Dispossess – An informal term for notice of petition and petition in a summary nonpayment proceeding in Civil Court which advises the tenant that rent must be paid or the petition answered in five days, or a judgement of eviction will be entered against the tenant.

Acceptance of Rent in Nonpayment Proceedings – Before issuance of the warrant, if the tenant tenders the amount of rent demanded in the petition, the rent must be accepted. After issuance of the warrant, a landlord may reject the rent.

Probation – One of the dispositional options under the Authority Termination of Tenancy Procedures. A family may be placed on probation for a specified period not greater than a year when any substantial charge of non-desirability has been proven and there is reason to believe that the conduct or condition which led to the charge of non-desirability may not recur or may have been cured.

Violation of Probation – An act or omission by a tenant or a member of the tenant's household during probation which constitutes a ground for termination of tenancy under the Authority Termination of Tenancy Procedures.

Permanent Exclusion – A disposition available to the Hearing Officer in Authority Termination of Tenancy Procedures under which the tenant family is found eligible provided the offending member of the household is excluded from residence in the project apartment.

Violation of Permanent Exclusion – If, in the opinion of the Manager, the member of the household permanently excluded has returned to or never left the project apartment, charges of violation of permanent exclusion may be brought against the tenant and a hearing accorded. The Hearing Officer may decide to terminate the tenancy or continue the condition of permanent exclusion on such additional terms or conditions as may be appropriate.

Tyson-Randolph Requirements – The Tyson-Randolph requirements state that the Hearing Officer in a termination of tenancy hearing must be an attorney in the civil service title of Hearing Officer, that permanent exclusion be added as a dispositional option, that the Hearing Officer make the disposition instead of merely recommending and that the Authority may review and reverse the disposition of the Hearing Officer for violation of law or procedural irregularity.

Fourteen Day Notice of Right to Grievance – Notice sent to a tenant in a Federal project, not earlier than the second business day of the month, when a tenant has failed to pay rent. The notice advises the tenant of the right to an administrative grievance hearing fourteen days before the Authority commences nonpayment proceedings. In addition, it advises welfare tenants to bring the notice to the worker at the welfare center. The worker will treat the notice as an emergency.

Demand for Rent – Before a project can commence a nonpayment summary proceeding, a demand must be made for rent. In Federal projects the demand must be made after the service of the fourteen day notice and the expiration of the fourteen days. The law requires either a personal demand for rent or a three day notice in writing.

Notice to Vacate – A thirty (30) day notice sent by the Authority to a tenant prior to

commencement of a summary holdover proceedings. This notice must provide both a calendar month and thirty days notice to satisfy both the Authority lease and the statute. It must also specify the grounds for termination relied upon by the Authority.

Ten Day Notice to Quit – A Ten (10) Day Notice to Vacate used in Squatter/Licensee proceedings.

Rejection of Rent During Holdover – After the expiration of the 30 day notice to vacate commencing a holdover summary proceeding, the project must reject rent until the holdover notice of petition and petition is filed with the clerk of the Civil Court with proof of service. Thereafter rent should be accepted during the pendency of the holdover and any stay or extension of stay following judgement of possession.

Personal Service -- Actual delivery, by hand, of the paper to the person or persons named therein. No additional mailing is required when service is made by personal service.

Substituted Service - Service upon a person of suitable age and discretion at the premises sought to be recovered when the person named is not present. Within twenty-four (24) hours after the substituted service, a copy of the paper served is to be mailed both by certified and regular first class mail to each person named in the paper, addressed to the premises sought to be recovered.

Affidavit of Non-Compliance -- Affidavit sent by the project Manager to the City Marshal with a warrant request when the tenant has failed to comply with the terms of a court stipulation in a summary proceeding.

Stipulation for Disbursements – Stipulation signed by the tenant evidencing a promise to pay for dispossession or other charges when these sums are not included in the tenant payment of rent arrears or the amount demanded in a nonpayment petition.

City Marshal – Officer of the court chosen by the Legal Department of the Housing Authority to serve legal documents and execute warrants of eviction.

Acceleration of Stay of Issuance of Warrant – A court stay or a stipulation with the tenant for a stay in a summary proceedings is normally conditioned on payment of rent or use and occupancy. If the tenant fails to pay, the stay may be accelerated by project management's submission of an affidavit of noncompliance to the marshal with a request for the warrant.

Non-military Affidavit – An affidavit certifying to the fact that a tenant is not dependant upon a person in the military service of the United States. Before the court will grant a judgement to a landlord, this affidavit must be submitted in a non-payment summary proceeding when a tenant defaults in answering or appearing. The non-military affidavit must be supported by an affirmation of attorney.

Self-Help by Landlord – A law enacted by the City Council of New York which prohibits landlords from evicting tenants without benefit of legal process. (No tenant should be locked out or evicted except pursuant to a judgement of possession in a summary proceeding and upon execution of a duly obtained warrant by the City Marshal.)

Continued Occupancy Board - Composed of representatives from the legal Department, ORRC, Research & Policy Development and Community Affairs to review instances of apparent excess income and to determine appropriate action.

Article 78 Proceeding - A suit by a tenant or application Supreme Court to review an adverse Authority determination following a Escalera hearing, a grievance hearing or, in the case of an applicant for public housing, a section by the Application Review Board. The court may confirm the Authority for further proceedings or review or modify a penalty.

Inquest – When a tenant defaults in court, the court may require the Authority to prove certain facts relevant to the case, such as that there is a lease with the tenant and the tenant was properly served with the summary proceeding papers. Where a holdover is involved, the court is asked to take judicial notice of the resolution of the Authority on termination of tenancy and that the Authority followed the resolution by holding a hearing on the charges against the tenant.

## XI. REVIEW/REVISION HISTORY PAGE

### TERMINATION OF TENANCY

Review/ Revision	Review/ Revision Date	Sections Amended	Description of Change
1.	08/21/15	XI.	Added Review/Revision History Page.
2.	08/21/15	IV. B.	Deleted “Excess Income” section and renamed “Family Income Over Income Limit for Public Housing” with new text.
3.	08/21/15	IX.	Deleted forms: 040.020A, 040.020B, 040.020C, 040.020D, 040.020E, 040.020F, 040.345, 040.345A
4.	03/3/16	VI.E.3.	Updated various Marshal’s fees.

5.			
6.			
7.			
8.			

## NYCHA MANAGEMENT MANUAL

TERMINATION OF TENANCY  
APPENDIX – AINSTRUCTION FOR PREPARATION OF FORMS IN  
HOLDOVER AND NON-PAYMENT PROCEEDINGS

## I. INSTRUCTION FOR PREPARATION OF FORMS IN HOLDOVER PROCEEDINGS

Petition and Notice of Petition – Copies Needed

1 Original Copy – Court

2 Copies with Original Signature – Project Folder

**Revised 03/3/16**

1 Copy for Legal Department

Copies For Each Tenant/Signatory to the Lease:

Personal Service – 1 Copy

Substituted or conspicuous Service – 3 Copies (one on or under door, one mailed regular first class mail, and one mailed certified).

- A. Original Notice of Petition-Holdover, NYCHA Form 040.082A&R. and Copy Notice of Petition-Holdover, NYCHA 040.082B-R.

Prepare the Original and copies putting the necessary information in the spaces corresponding to the boxes in “Exhibit A”:

Box 1: Insert project in upper right hand corner.

Box 2: Insert Country in which Proceeding is brought in blank space above caption.

Box 3: In caption, above and to the left of “Respondent(s), Tenant(s)” insert full name or names and address of all persons who signed the lease and are currently tenants.

Box 4: Insert on the second line of the paragraph beginning PLEASE TAKE NOTICE, the County in which the Court is located, the address of the Court, The Borough, the day, month and year of Court hearing. The day inserted must be the day designated as Court Day for your project. It must be no less than five (5) days and no more than twelve (12) days from the day on which service is to be made.

Example: Project assigned Friday as Court Day, Service of Notice of Petition and Petition expected about November 17, 1983. Earliest day that could be inserted in the Notice of Petition would be November 22, 1983. However, November 22, 1983 is not a Court Day so the day to be inserted is November 25, 1983, a Court Day more than five (5) days and less than twelve (12) days from date service is to be made.

Box 5: On the line beginning “Authority verified” the date the petition was sworn to before the Notary Public and in the following lines insert after the “possession of premises described as follows” the Apt. No., floor, room size, address of the building in which apartment is located and County in which property is located.

Box 6: On the line beginning with “TAKE NOTICE” fill in the total rent arrears. The words “interest from” should be followed by the first day of the first month this amount is due.

Box 7: Insert the County in which the Proceeding is being brought on the line beginning “Dated: City of New York, County of...”

Box 8: The Clerk of the Court signs form on the bottom and inserts the day, month, and

year and provides the index number.

Note: Project must conform all copies with the original, as regards date, print in name of Court Clerk and L&T number.

EXHIBIT A

ORIGINAL NOTICE OF PETITION - HOLDOVER

APPENDIX A -

[1] Lillian Wald HOUSES

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF [2] NEW YORK

NEW YORK CITY HOUSING AUTHORITY

Petitioner (Landlord)

against

[3] Emil Conley and Olga Conley Respondent(s) (Tenant(s))  
300 East Houston Street - 6J  
New York, N.Y. 10002 Address

Index No. L. & T. [4] 19 —

Petitioner's Business Address:  
250 Broadway  
New York, N.Y. 10007

NOTICE OF PETITION  
HOLDOVER

To the Respondent(s) above named and described in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE that a hearing at which you must appear will be held at the Civil Court of the City of New York, County of [5] New York at 111 Centre Street Borough of Manhattan City and State of New York, on the 25th day of November 1983 at 9:30 o'clock in the forenoon of that day, on the annexed petition of the New York City Housing Authority verified the [6] 16th day of November 1983 which prays for a final judgment of eviction, awarding to the petitioner the possession of premises described as follows: Apartment No. 6J on the 6th floor, consisting of 4 rooms, in premises known as and located at 300 East Houston Street County of New York in the City of New York, as demanded in the petition, which you must answer. Your answer may set forth any defense or counterclaim against the petitioner if such defense or counterclaim is properly cognizable herein.

[6] \*TAKE NOTICE also that demand is made in the petition herein for judgment against you for the total sum of \$ 250.00 with interest from November 1, 1983.

TAKE NOTICE also that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

In the event of your failure to answer and appear, final judgment by default may be entered against you for the relief demanded in the petition.

Dated: City of New York, County of [7] New York  
the [8] day of 19

Charles E. Williams III, Esq.  
Attorney for the Petitioner

250 Broadway  
New York, N.Y. 10007  
Telephone No. (212) 306-3816

\*Strike out if no rent is due.

[9]  
Clerk of the Civil Court of the City of New York





- B. Original Petition – Summary Proceedings – Holdover, NYCHA Form 040.082&R, and Copy Petition – Summary Proceedings – Holdover, NYCHA Form 040.082B&R.

Prepare the original and copies as follows, putting the necessary information in the spaces corresponding to the boxes in Exhibit B:

Box 1: Insert project in upper right-hand corner.

Box 2: Insert on first line, the name of the Country.

Box 3: Insert in paragraph 2, the names of tenants who signed the lease.

Box 4: Insert, on the lines immediately following, the number of rooms, the floor number, the apartment number of the particular apartment involved, the street address of the apartment and the County in which the premises are located.

Box 5: Insert on the following lines after the words “for the term of one (1) month commencing on the 1<sup>st</sup> day of” and after the words “and terminating at midnight on the last day of” the month in which the most recent lease was signed. The month to be inserted is found in the Resident Monthly Lease Agreement (040.001 and 040.001F) on the line which reads “beginning the first day of \_\_\_\_\_, 19\_\_, and terminating at midnight on the last of \_\_\_\_\_, 19\_\_.”

Box 6: Insert the date the Authority members made a determination to terminate the tenancy of tenants.

Note: A copy of the 30 Day Notice to Vacate and the original of the Affidavit of Service of the 30 Day Notice to Vacate

Box 7: In the sentence beginning “WHEREFORE” insert the total rent arrears. Insert the monthly rent on the indicated line. “Interest from” should be followed by the first of the first month the arrears are due.

Box 8: Insert the date the Petition is signed, following the words “Dated: New York” (which appears just under the WHEREFORE paragraph).

Box 9: The Housing Manager must sign on the line over the word “Manager”. Only in the Manager’s absence, may either the Assistant Manager or the Superintendent sign as “Acting Manager”.

Box 10: The affidavit form on the bottom of the page (below the line signed by the Housing Manager) is known as the “Verification”. In it must be the County in which the notary signs the forms and the name of the Manager. The word “acting” is inserted in blank space if the verification is not signed Manager.

Box 11: “Verification” must be signed by the Manager with his signature notarized.

Box 12: The notarization is accomplished by the insertion of the day, month and year and the signature and the stamp of the notary, in the appropriate, places in the lower left-hand corner of the form.

## APPENDIX A

## EXHIBIT B

## ORIGINAL PETITION - SUMMARY PROCEEDINGS - HOLDOVER

1 Lillian Wald HousesTo the Civil Court of the City of New York, County of 2 New York

The petition of the NEW YORK CITY HOUSING AUTHORITY of said city, respectfully shows as follows:

1. That your petitioner is the NEW YORK CITY HOUSING AUTHORITY, a public corporation organized and existing under and by virtue of the laws of the State of New York, (hereinafter referred to as the "Authority"), which is the owner in fee and Landlord of the premises hereinafter described.

2. That heretofore the said Landlord entered into an agreement in writing with 3 Emil Conley and Olga Conley (the person(s) intended being in possession of the premises here described) as Tenant(s) thereof, whereby the said Tenant(s) hired from the Authority, as such Landlord, for Dwelling Purposes, the premises described and designated as follows: the 4 rooms on the 6th floor, apartment No. 6J in the building designated by the street number, 300 E. Houston Street, which is situated within the County of New York for the term of one (1) month commencing on the 1st day of June, 19 80, and terminating at midnight on the last day of June, 19 80, and automatically renewable thereafter for successive terms of one (1) month each unless terminated by the Landlord or by the Tenant(s) at the end of any monthly term by giving to the other one (1) month's prior notice in writing.

3. That said Tenant(s) entered into possession of said premises pursuant to said agreement and still occupies the same.

4. That the property herein sought to be recovered is the place of residence of the Tenant(s).

5. The premises are: a.) exempt from rent control by reason of the specific statutory exemption of housing accommodations owned and operated by a public housing authority or sought to be recovered by such authority pursuant to statute or regulation under which the accommodation is administered; and b.) not subject to the registration provisions of the Housing Maintenance Code or to the Rent Stabilization Law of 1969 by reason of specific statutory exemptions.

6. That on 6 September 7, 19 83, the members of the Authority made a determination to terminate the tenancy of the said Tenant(s).

7. That the Authority has duly terminated the tenancy of the said Tenant(s).

8. The term for which said premises were leased to said Tenant(s) has expired, and that the said Tenant(s) holds over and continues in possession of said premises without the permission of the Landlord after the expiration of said Tenant's term therein.

9. At least 30 days before the expiration of the term aforesaid, there was served upon said Tenant(s), in the same manner in which a Notice of Petition in summary proceedings is now allowed to be served by law, or as provided in said agreement, a notice in writing, a copy of which with proof of service is hereto annexed and made a part of this petition, that the Authority elected to terminate the said tenancy, and that unless the said Tenant(s) removed from said premises on or before the day on which the said term expired, the Authority would commence summary proceedings under the Statute to remove said Tenant therefrom.

Wherefore, your petitioner prays for final judgment: awarding possession of the premises to the petitioner-landlord; issuance of a warrant to remove respondents from possession thereof; judgment for total rent in arrears plus costs and disbursements herein against respondent tenant for 7 \$250.00 at the monthly rate of \$250.00; fair value of use and occupancy; interest from November 1, 1983.Dated: New York 8 November 16, 19 83.

NEW YORK CITY HOUSING AUTHORITY

Petitioner

By: 9

Manager

Jack Cameron

STATE OF NEW YORK, COUNTY OF 10 New York

ss:

Jack Cameron, being duly sworn, deposes and says:This verification is made by deponent in behalf of petitioner under CPLR Sec. 3020(d)(2) as petitioner is a governmental agency. Deponent is employed by petitioner as Housing manager of the above-described premises, has read the petition and knows that the contents thereof are true to deponent's knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.

The source of deponent's information and the reason for deponent's belief as to all matters in the said petition not stated upon personal knowledge are investigations which deponent caused to be made concerning the subject matter of the proceedings and information acquired by deponent in the course of deponent's duties as manager of said premises and from the records and papers of petitioner.

Sworn to before me this 12 16th day of November, 19 83LOLA HARRINGTON  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK NO. 2-1857  
CERTIFICATE FILED IN NEW YORK COUNTY  
COMMISSION EXPIRES JAN. 1, 198611 

Manager

Jack Cameron

NYCHA 040.082 &amp; R (Rev. 7/83)

**II. INSTRUCTION FOR PREPARATION OF FORMS IN NON-PAYMENT PROCEEDINGS**

- A. Original Notice of Petition-Summary Proceeding (Dwelling), NYCHA Form 040.083B&R.

Prepare original and copies, putting the necessary information in the spaces corresponding to the boxes in Exhibit C:

Box 1: Insert project name.

Box 2: In caption, to the left of "Respondent(s) Tenant(s) and Address", insert the full name or names and address of all persons who have signed the most recent lease and who are in occupancy.

Box 3: Insert on the line starting with "Please take notice" and on the next line, the date on which the petition is signed and notarized.

Box 4: Insert, on the lines immediately following, the apartment number, the floor, the number or rooms, and the street address of the tenant's apartment.

Box 5: Insert, in the first TAKE NOTICE paragraph, the total amount due for rent.  
(Additional charges may be included in State and City projects only.)

NOTE: The amount for rent to be inserted in Box #5 of Exhibit C is the same amount as the amount to be inserted in Boxes #12 and #15 of Exhibit D.

Box 6: Insert, on the following line, the first day of the latest month for which became due.

Box 7: The Court clerk fills in the date, and the signature in spaces which occur at the bottom of the form and provides the index number.

APPENDIX A -

PUBLICLY FUNDED  
By New York City Housing Authority

TEL. NO. 212 306-3818

Original Notice of Petition—Summary Proceeding (Dwelling) NYCHA 040.0818 &amp; R (Rev. 12/81)

EXHIBIT - C

1 Williamsburg HOUSES/SITECivil Court of the City of New York  
County of Kings7 L. & T. # 15498 19 83

NEW YORK CITY HOUSING AUTHORITY

Petitioner,  
(Landlord)

-against-

2 Peter Lund and Dagmar LundRespondent(s)  
(Tenant(s))80 Maujer Street - 4A

Address

Brooklyn, N.Y. 11206

## NOTICE OF PETITION

Non-Payment Dwelling

Petitioner's Business Address:

250 Broadway

New York, N. Y. 10007

## (IMPORTANT TO RESPONDENT)

If you are dependent upon a person in the Military Service of the United States or the State of New York, advise the Clerk of the Court immediately in order to protect your rights.)

To the respondent(s) above named and described, in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE that the annexed petition of The New York City Housing Authority verified the 3 19th day of December 1983 prays for a final judgment of eviction, awarding to the petitioner possession of premises described as follows: Apartment No. 4 4A on the 4th floor, consisting of 4 rooms, in premises known as and located at 80 Maujer Street Borough of Brooklyn, County of Kings, in the City of New York, as demanded in the petition.

TAKE NOTICE also that demand is made in the petition for judgment against you for the sum of \$ 5 275.00 with interest from 6 December 1, 1983.

TAKE NOTICE also that WITHIN FIVE DAYS after service of this Notice of Petition upon you, you must answer, either orally before the Clerk of this Court at 141 Livingston Street, Brooklyn 11201, in the Borough of Brooklyn, County of Kings, City and State of New York, or in writing by serving a copy thereof upon the undersigned attorney for the petitioner, and by filing the original of such answer, with proof of service thereof, in the Office of the Clerk. Your answer may set forth any defense or counterclaim you may have against the petitioner. On receipt of your answer, the Clerk will fix and give notice of the date for trial or hearing which will be held not less than 3 nor more than 8 days thereafter, at which you must appear. If, after the trial or hearing, judgment is rendered against you, the issuance of a warrant dispossessing you may, in the discretion of the Court, be stayed for FIVE days from the date of such judgment.

TAKE NOTICE also that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

In the event you fail to answer and appear, final judgment by default will be entered against you but a warrant dispossessing you will not be issued until the tenth day following the date of the service of this Notice of Petition upon you.

Dated: City of New York, County of Kings

7 the day of 19Charles E. Williams III, Esq.  
Attorney for the Petitioner250 Broadway  
New York, N.Y. 10007

Telephone No. (212) 306-3818

7

Clerk of the Civil Court of the City of New York

- B. Form      040.083F&R (Federal) Original Petition-Non-Payment of Rent (Dwelling)  
                  040.083&R (state & City).

Prepare originals and copies, putting the necessary information in the spaces corresponding to the boxes in Exhibit D (Federal) & Exhibit E (State & City):

Box 1: Insert project name in upper right-hand corner.

Box 2: Insert the Name(s) of the tenant(s), i.e., the person(s) who signed the most recent lease with the Authority and are in occupancy.

Box 3: Insert, on the next line (immediately following the words “amended effective the first day of”), the month and year on which the latest rent change became effective. For example, the Lease Amendment portion of an RCA served on the tenant on September 30, 1982, notified him that effective November 1, 1982, his rent would be increased. The month to be inserted in the space following the words “amended effective the first day of” is November.

Box 4: Insert in the following lines, after the words “designated as follows”, the number of rooms, the floor number, the apartment number of the particular apartment involved, and the street address of the apartment.

Box 5: Insert, after the words “commencing on the 1<sup>st</sup> day of” the month and year on which the most recent change became effective (see item “3” immediately above). Insert after the words “on the last day of,” the month and year on which the most recent rent change became effective.

Box 6: Insert the amount of rent per month which the tenant(s) agreed to pay per month.

Box 7: Insert, the last month and the year for which rent is claimed in the Petition.

Box 8: Insert the total amount the tenant owes for regular monthly rent.

Box 9: Insert, after the words “described; to wit, from the first day of” the earliest month and the year for which rent is claimed.

Box 10: Insert after words “the last day of”, the current month and year for which rent is claimed. For example: if the rent claimed is for December and January, January is to be inserted.

Box 11: Insert, the retroactive rent surcharges or any other charges in this space. Include only regular retroactive rent.

See Exhibit D for example of tenant with retroactive surcharge.

See Exhibit E for example of tenant owing one month’s rent and additional

service charges. State and City Aided Projects Only.

Box 12: Insert total amount for rent and charges owed. (See note on Page 7, Box #5.)

Box 13: In space following this box, type in explanation of charges. If there is not room in the space to type an explanation, insert “see rider”. For Examples see Exhibits D & E.

Box 14: If payment of rent has been requested personally of the tenant, strike out everything in the paragraph after the words “default in the payment thereof”, in the second line. Exhibit E is a personal demand for rent.

Box 14a: In paragraph 10 Exhibit D – (Federal Projects only), insert the day, month and year on which the tenant(s) 14-Day Notice to Vacate was served.

Federal Projects’ Sequence of Service:

1. Serve 14 Notice by ordinary mail or slip under apartment door.
2. After expiration of 14 days, make personal demand for rent or serve Three-Day Notice. (Three-Day Notice to be served by personal, substitute or conspicuous place service and Affidavit of Service prepared).
3. Serve Petition and Notice of Petition. (If written Three-Day Notice was served, wait until 3 days have expired).

Box 15: Insert in the WHEREFORE clause, after the words “for the sum of” the total amount of the arrears. (See note on page 7, Box 5.)

Box 16: Insert in the WHEREFORE clause, after the words “Date: New York,” the date on which the Petition is signed.

Box 17: Have affixed the signature of the Housing Manager or his/her representative above the work “Manager”. Only in the Manager’s absence may the Superintendent or the Assistant Manager sign as “Acting Manager”.

Box 18: The Manager’s name is typed on the line to the left of “being duly sworn....”. The word “acting” is inserted in the blank space, if it is signed in the Manager’s absence.

Box 19: The affidavit form on the bottom of the page (below the line signed by the Housing Manager) is known as the “Verification”. It must also be signed by the Manager on the bottom of the page with his/her signature notarized.

Box 20: The notarization is accomplished by the insertion of the day, month, and year, and the signature and stamp of the notary in the appropriate places in the lower left hand corner of the form.

PUBLICLY FUNDED  
By New York City Housing AuthorityAPPENDIX A -  
TEL. NO. 212 306-3818

Original Petition-Non-Payment of Rent (Dwelling)-Federal NYCHA 040.083F&amp;R (Rev. 12/81)

## EXHIBIT D

[1] Williamsburg HOUSES

To the Civil Court of the City of New York, County of Kings:

The petition of the NEW YORK CITY HOUSING AUTHORITY of said city, respectfully shows as follows:

1. That your petitioner NEW YORK CITY HOUSING AUTHORITY, is a public corporation organized and existing under and by virtue of the laws of the State of New York, (hereinafter referred to as the "Authority"), which is the owner in fee and Landlord of the premises hereinafter described.

2. The premises hereinafter described are situated in a Federally subsidized Public Housing project and are subject to the applicable provisions of the United States Housing Act of 1937 as amended and to the Rules and Regulations of the United States Department of Housing and Urban Development which among other things prohibit the termination of the said lease by the landlord except for cause, regulate the rentals to be fixed by the landlord, and require that the tenant(s) be given notice of his/her right to an Administrative Grievance Proceeding before a non-payment Summary Proceeding may be commenced against him/them.

3. Subject to such Laws, Rules and Regulations, the said Landlord entered into an agreement with [2] Peter Lund and Dagmar Lund (the person(s) intended being in possession of the premises here described) as Tenant(s) thereof, said agreement being last amended effective the first day of [3] November, 19 82, whereby the said Tenant(s) hired from the Authority, as such Landlord, for Dwelling Purposes, the premises described and designated as follows: the [4] 4 rooms on the [4th] floor, apartment No. [4A] in the building designated by the street number 80 Maujer Street which is situated within the County of Kings for the term of one (1) month commencing on the 1st day of [5] November, 19 82, and terminating at midnight on the last day of November, 19 82, and automatically renewable thereafter for successive terms of one (1) month each unless terminated by the Landlord or by the Tenant(s) at the end of any monthly term by giving to the other one (1) month's prior notice in writing.

[6] 4. That the said Tenant(s) in and by said agreement (as amended) undertook and promised to pay to the said Landlord, during the demised term, the sum of \$ 250.00 per month, payable monthly in advance, on the first day of each month, which rent was duly promulgated in accordance with the applicable Laws, Rules and Regulations.

5. That said Tenant(s) entered into possession of said premises pursuant to said agreement and subject to the said Laws, Rules and Regulations and still occupies the same.

6. That the property herein sought to be recovered is the place of residence of the Tenant(s).

7. The premises are: (a) exempt from New York City Rent Control by reason of the specific statutory exemption of housing accommodations owned and operated by a public housing authority or sought to be recovered by such authority pursuant to statute or regulation under which the accommodation is administered; and (b) not subject to the registration provisions of the Housing Maintenance Code or to the Rent Stabilization Law of 1969 (as amended) by reason of specific statutory exemptions. [7]

8. That on the first day of December, 1983, there became and still is due said Landlord under and by virtue of the said agreement (as amended) the sum of \$ [8] 250.00 for regular monthly rent of the said premises herebefore described; to wit, from the first day of [9] December, 19 83, to the last day of [10] December, 19 83, and there also became due to said Landlord the sum of \$ [11] 25.00 additional rent under the terms of said agreement, constituting a total sum of \$ [12] 275.00. [13] See Rider

9. ~~That the said rent has been duly paid to the said Landlord by the said Tenant(s) on or before the date of the said rent due to the said Landlord~~ That on the [14] 16th day of December, 19 83, your petitioner caused a notice in writing to be duly served on the said Tenant(s) herein at least 3 days prior to the commencement of this proceeding requiring in the alternative the payment of the said rent or possession of the premises in accordance with law, a copy of which notice is marked "Exhibit A", annexed hereto and made a part hereof, as more fully appears from the affidavit of service marked "Exhibit B" annexed hereto and made a part hereof, and that the said Tenant(s) has made default in the payment of said rent or delivery of possession as required by the said notice.

10. On the [14A] 2nd day of December, 19 83, at least 14 days prior to commencement of this proceeding, notice was given to the Tenant(s) of his/her right to file a Grievance, if he/she contested the rent demanded of him/them and (a) no Grievance Proceeding has been commenced or, (b) the Tenant(s) Grievance has been dismissed.

11. That the said Tenant(s) hold(s) over and continue(s) in possession of said premises without the permission of the said Landlord after default in the payment of the said rent and demand therefor as aforesaid.

12. That your petitioner demands judgment against the Tenant(s) for the said rent in arrears.

Wherefore, your petitioner prays for a judgment awarding to the Landlord the possession of said premises together with costs of these proceedings, and for a Warrant to remove said Tenant(s) and Occupant(s) from the possession of said premises; and for a judgment for rent in arrears for the sum of \$ [15] 275.00 with interest from the date of the petition herein, together with costs and disbursements of these proceedings.

Dated: New York [16] December 19 83.

NEW YORK CITY HOUSING AUTHORITY

Petitioner

By: [17]

James Curtin  
Manager

James Curtin

STATE OF NEW YORK, COUNTY OF KINGS

[18] James Curtin

being duly sworn, deposes and says:

This verification is made by deponent in behalf of petitioner under CPLR Sec. 3020(d)(2) as petitioner is a governmental agency. Deponent is employed by petitioner as Housing manager of the above-described premises, has read the petition and knows that the contents thereof are true to deponent's knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.

The source of deponent's information and the reason for deponent's belief as to all matters in the said petition not stated upon personal knowledge are investigations which deponent caused to be made concerning the subject matter of the proceedings and information acquired by deponent in the course of deponent's duties as manager of said premises and from the records and papers of petitioner.

LOLA HARRINGTON

COMMISSIONER OF DEEDS

CITY OF NEW YORK NO. 2-1857

CERTIFICATE FILED IN NEW YORK COUNTY  
COMMISSION EXPIRES JAN. 1, 1986

Sworn to before me this [20] 19th day of December

Lola Harrington

[19]

James Curtin  
Manager

James Curtin

EXHIBIT D-RIDER  
RIDER TO PETITION - NON-PAYMENT OF RENT

\$25.00 - Additional sum chargeable as current rent arising from change in income.



**PUBLICLY FUNDED**  
by New York City Housing Authority

APPENDIX A -  
TEL. NO. 212 306-3818

Original Petition—Non-Payment of Rent (Dwelling) NYCHA 040.083 &amp; R (Rev. 1/83)

## EXHIBIT E

① Castle Hill

## HOUSES

To the Civil Court of the City of New York, County of Bronx:

The petition of the NEW YORK CITY HOUSING AUTHORITY of said city, respectfully shows as follows:

1. That your petitioner, NEW YORK CITY HOUSING AUTHORITY, is a public corporation organized and existing under and by virtue of the laws of the State of New York, (hereinafter referred to as the "Authority"), which is the owner in fee and Landlord of the premises hereinafter described.

2. That heretofore the said Landlord entered into an agreement in writing with Joseph Lange and Rhoda Lange (the person(s) intended being in possession of the premises here described) as Tenant(s) thereof, said agreement being last amended effective the first day of 5 November, 19 82, whereby the said Tenant(s) hired from the Authority, as such Landlord, for Dwelling Purposes, the premises described and designated as follows: the 4 rooms on the 4th floor, apartment No. 4A in the building designated by the street number, 645 Castle Hill Avenue, which is situated within the County of Bronx for the term of one (1) month commencing on the 1st day of 5 November, 19: 82, and terminating at midnight on the last day of November, 19 82, and automatically renewable thereafter for successive terms of one (1) month each unless terminated by the Landlord or by the Tenant(s) at the end of any monthly term by giving to the other one (1) month's prior notice in writing.

3. That the said Tenant(s) in 2nd by said agreement (as amended) undertook and promised to pay to the said Landlord, during the demised term, the sum of \$ 6 250.00 per month, payable monthly in advance, on the first day of each month.

4. That said Tenant(s) entered into possession of said premises pursuant to said agreement and still occupies the same.

5. That the property herein sought to be recovered is the place of residence of the Tenant(s).

6. The premises are: a.) exempt from rent control by reason of the specific statutory exemption of housing accommodations owned and operated by a public housing authority or sought to be recovered by such authority pursuant to statute or regulation under which the accommodation is administered; and b.) not subject to the registration provisions of the Housing Maintenance Code or to the Rent Stabilization Law of 1969 by reason of specific statutory exemptions.

7. That on the first day of 7 December, 19 83, there became and still is due said Landlord under and by virtue of the said agreement (as amended) the sum of \$ 8 250.00 for regular monthly rent of the said premises hereinbefore described; to wit, from the first day of 9 December, 19 83, to the last day of 30 December, 19 83, and there also became due to the said Landlord the sum of \$ 11 25.00 chargeable as additional rent-under the terms of said agreement, constituting a total sum of \$ 12 275.00. 13 See Rider

[illegible]

9. That the said Tenant(s) hold(s) over and continue(s) in possession of said premises without the permission of the said Landlord after default in the payment of the said rent and demand therefor as aforesaid.

10. That your petitioner demands judgment against the Tenant(s) for the said rent in arrears.

Wherefore, your petitioner prays for a judgment awarding to the Landlord the possession of said premises together with costs of these proceedings, and for a Warrant to remove said Tenant(s) and Occupant(s) from the possession of said premises; and for a judgment for rent in arrears for the sum of \$ 19,275.00 with interest from the date of the petition herein, together with costs and disbursements of these proceedings.

Dated: New York 16 December 19, 1983

NEW YORK CITY HOUSING AUTHORITY

Petitioner

By: 17

~~Manager~~

Eve Styne

STATE OF NEW YORK COUNTY OF BRONX

18 Eve Styné

SS:

This verification is made by deponent in behalf of petitioner under CPLR Sec. 3020(d)(2) as petitioner is a governmental agency. Deponent is employed by petitioner as **Housing** manager of the above-described premises, has read the petition and knows that the contents thereof are true to deponent's knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.

The source of deponent's information and the basis for deponent's belief as to all matters in the said petition not stated upon personal knowledge are investigations which deponent caused to be made concerning the subject matter of the proceedings and information acquired by deponent in the course of deponent's duties as manager of said premises and from the records and papers of petitioner.

**LOLA HARRINGTON**

**COMMISSIONER OF DEEDS**

CITY OF NEW YORK NO. 2-1857

CERTIFICATE FILED IN NEW YORK COUNTY

COMMISSION EXPIRES JAN. 1, 1986

Sworn to before me this 19th day of December

Manager

Eve Styne

## EXHIBIT E – RIDER

## RIDER TO PETITION – NON-PAYMENT OF RENT

\$25.00 – \$15.00 for cylinder charge  
\$10.00 toilet stoppage

Revised 03/3/16

III. INSTRUCTION FOR COMPLETION OF AFFIDAVIT OF INVESTIGATOR – NYCHA FORM 040.085A & REQUEST FOR FINAL AND ISSUANCE OF ISSUANCE OF WARRANT – NYCHA FORM # 150.106&R AND POSTCARD NYCHA FORM # 10.105.

A. AFFIDAVIT OF INVESTIGATOR – EXHIBIT F – Fa:

Box 1: Insert county in which the proceeding has been brought.

Box 2: Insert the L & T number. After all other essential information is entered (as described in Boxes 1-11,) the Affidavit of Investigator is mailed to the Marshal (form must be filed in Court within 20 days after the tenant is interviewed concerning military dependency.)

Box 3: Insert name of project.

Box 4: Insert full name or names all persons who signed the lease and are currently tenants.

Box 5: Same as Box 1 above.

Box 6: Insert full name of interviewer (no initials are allowed).

Box 7: Insert full home or business address of interviewer.

Box 8: Insert on the following two lines the room size, floor, apartment number and full mailing address of the tenant.

Box 9: Insert on the following lines the date, full mailing address and name of person interviewed or alternatively, see Exhibit Fa, where the affidavit is based on a conversation with the Manager instead of the tenant. (See Section V. B. 4. of Chapter IV). In this case the full name of the Project Manager as well as the name and address of the tenant must be inserted.

Box 10: The Interview must sign by writing full first name and last name (initials are not allowed) in this space.

Box 11: After the affidavit has been signed the Notary or Commissioner of Deeds must sign and stamp the affidavit and insert the date of swearing. This date may be the same as or later than the date in Box #9. It may not be earlier.

**B. REQUEST FOR FINAL ORDER AND ISSUANCE OF WARRANT – NYCHA FORM 150.106&R – EXHIBIT G:**

Box 1: Insert county in which the proceeding has been brought

Box 2: Insert Housing Part

Box 3: Insert L & T number

Box 4: Insert name of project

Box 5: Insert full name(s)s of all persons who signed the lease and are currently tenants, including the full address and apartment number (do not use account numbers).

Box 6: Manager signs his/her name

**C. POSTCARD – NYCHA FORM 150.105 – EXHIBIT G1**

Box 1: Insert full (name(s) of each tenant (all persons who signed the lease) or respondent and project address, including apartment number and zip code. Use one postcard for each respondent or tenant.

Box 2: Place correct-amount stamp on card (presently \$0.19)

Box 3: Place an X in the box that reflects the action; either Non-payment or Holdover Proceeding –

. For a Holdover proceeding

Fill in the Court return date and L & T number. Return the postcard to the court after service of the Petition and Notice of Petition when filing the Petition's Affidavit of Service with the clerk.

. For a Non-Payment Proceeding

Send the filled-in postcard to the Marshal along with the Petition and Notice of Petition.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF <sup>1</sup>KINGSAPPENDIX A  
EXHIBIT F

NEW YORK CITY HOUSING AUTHORITY

Petitioner  
(Landlord)L & T # <sup>2</sup> 15498 19 <sup>83</sup><sup>3</sup> Williamsburg HOUSES

- against -

AFFIDAVIT OF INVESTIGATOR

Respondent  
(Tenant)<sup>4</sup> Peter Lund and Dagmar Lund

STATE OF NEW YORK )

COUNTY OF <sup>5</sup>KINGS ) ss.:<sup>6</sup> Leonard Roberts

being duly sworn, deposes and says:

I reside at <sup>7</sup> 400 President Street, Brooklyn, N.Y. 11215.

This affidavit is made pursuant to the United States Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C.A. App. Secs. 501 ff., for the purpose of obtaining a Warrant to remove the Tenant(s) in the above entitled proceeding from the possession of the following premises:

the <sup>8</sup> 4 rooms on the 4th floor Apartment No. 4A side in House and premises

known as Number 80 Maujer Street, Apt. 4A, Brooklyn, N.Y. 11206.

I have been requested to make an investigation to ascertain if any Tenant herein is at the present time a person in military service and to ascertain if any occupant of the premises sought to be recovered is a dependent of a person in military service. The definition of "person in military service" used herein is that set forth at 50 U.S.C.A. App. Sec. 511(1):

"All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term 'military service', as used in this Act shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of, the United States preliminary to induction into the military service."

<sup>9</sup> On the 27th day of January 1984, I called at premises No.

80 Maujer Street, Apt. 4A, Brooklyn, N.Y. 11206 and had a conversation with Peter Lund.

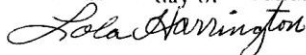
In response to my questions he told me that no Tenant of said premises was in military service; and, further, that he knew that no occupant of said premises was a dependent of a person in military service.

From the facts above set forth, I am convinced that no Tenant of said premises is a person in military service, nor is any occupant of said premises a dependent of a person in military service.

Sworn to before me this

<sup>11</sup> 27th day of January

1984


LOLA HARRINGTON  
COMMISSIONER OF DEEDS<sup>10</sup>


NYCHA 040.085A (Rev. 2/81)

CITY OF NEW YORK NO. 2-1057  
CERTIFICATE FILED IN NEW YORK COUNTY  
COMMISSION EXPIRES JAN. 1, 1986

## APPENDIX A -

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF 1 KINGS

## EXHIBIT F-a

NEW YORK CITY HOUSING AUTHORITY

Petitioner  
(Landlord)L & T # 2 15498 19 833 Williamsburg HOUSES

- against -

## AFFIDAVIT OF INVESTIGATOR

Respondent  
(Tenant)4 Peter Lund and Dagmar Lund

STATE OF NEW YORK )

COUNTY OF 5 KINGS ) ss.:6 Leonard Roberts

being duly sworn, deposes and says:

7 I work at 176 Maujer Street, Brooklyn, N.Y. 11223.

This affidavit is made pursuant to the United States Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C.A. App. Secs. 501 ff., for the purpose of obtaining a Warrant to remove the Tenant(s) in the above entitled proceeding from the possession of the following premises:

the 8 4 rooms on the 4th floor Apartment No. 4A side in House and premises

known as Number 80 Maujer Street, Apt. 4A, Brooklyn, N.Y. 11206.

I have been requested to make an investigation to ascertain if any Tenant herein is at the present time a person in military service and to ascertain if any occupant of the premises sought to be recovered is a dependent of a person in military service. The definition of "person in military service" used herein is that set forth at 50 U.S.C.A. App. Sec. 511(1):

"All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term 'military service', as used in this Act shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of, the United States preliminary to induction into the military service."

9 On the 27th day of January 1984, I had a conversation with (Manager's Name) concerning the Tenant(s) Peter Lund and Dagmar Lund who reside at 80 Maujer Street, Apt. 4A, Brooklyn, N.Y. 11206.

In response to my questions he told me that no Tenant of said premises was in military service; and, further, that he knew that no occupant of said premises was a dependent of a person in military service.

From the facts above set forth, I am convinced that no Tenant of said premises is a person in military service, nor is any occupant of said premises a dependent of a person in military service.

Sworn to before me this

11 30th day of January

*Lola Harrington*  
LOLA HARRINGTON  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK NO. 2-1857  
NYCHA 040.085A (REV. 7/81) CERTIFICATE FILED IN NEW YORK COUNTY  
COMMISSION EXPIRES JAN. 1, 1986

10*Leonard Roberts*

## APPENDIX A -

EXHIBIT GCIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF <sup>[1]</sup> KINGSNEW YORK CITY HOUSING AUTHORITY*Petitioner  
(Landlord)*L & T # <sup>[2]</sup> 15498 19 83<sup>[3]</sup> Williamsburg HOUSES

- against -

AFFIRMATION OF ATTORNEY

*Respondent  
(Tenant)*(NON-MILITARY SERVICE  
OR DEPENDENCY)<sup>[4]</sup> Peter Lund and Dagmar Lund

Charles E. Williams III

I am the attorney in charge of this proceeding in the office of ~~Michael M. Canale~~, Esq., Attorney of Record for the Landlord herein.

This affirmation is made pursuant to the United States Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C.A. App. Secs. 501 ff., for the purpose of obtaining a Warrant to remove the Tenant(s) in the above entitled proceeding.

An investigation has been made, as set forth in the annexed affidavit of

<sup>[5]</sup> Leonard Roberts to ascertain if any Tenant herein is in military service, as defined in said Act at 50 U.S.C.A. App. Sec. 511(1). From the annexed affidavit, I am convinced that no Tenant herein is in military service. I am further convinced from such affidavit that no occupant of the premises herein is a dependent of a person who is in the military service.

The undersigned, an attorney admitted to practice in the courts of the State of New York, hereby affirms that the foregoing statement is true under the penalties of perjury.

Dated: New York, N.Y.,

<sup>[6]</sup> , 19 .<sup>[6]</sup>

COURT ADDRESSES TO BE USED AS RETURN ADDRESS ON ENVELOPES OR POSTCARDS

THE BRONX: CIVIL COURT OF THE CITY OF NEW YORK  
HOUSING COURT CLERK, BASEMENT  
851 GRAND CONCOURSE  
BRONX, NEW YORK 10451

KINGS: CIVIL COURT OF THE CITY OF NEW YORK  
HOUSING COURT CLERK, ROOM 203  
141 LIVINGSTON STREET  
BROOKLYN, NEW YORK 10451

NEW YORK: CIVIL COURT OF THE CITY OF NEW YORK  
HOUSING COURT CLERK, ROOM 225  
111 CENTRE STREET  
NEW YORK, NEW YORK 10013

QUEENS: CIVIL COURT OF THE CITY OF NEW YORK  
HOUSING COURT CLERK, ROOM G-11  
120-55 QUEENS BOULEVARD  
KEW GARDENS, NEW YORK 11424

RICHMOND: CIVIL COURT OF THE CITY OF NEW YORK  
HOUSING COURT CLERK, BASEMENT  
927 CASLETON AVENUE  
STATEN ISLAND, NEW YORK 10310

IF YOUR LOCATION IS OUT OF POSTCARD STOCK, REPRODUCE THIS PAGE, CUT THIS FORM OUT AND PUT IT IN A STAMPED, TENANT-ADDRESSED ENVELOPE.

CIVIL COURT - HOUSING PART  
CORTE CIVIL - PARTE DE VIVIENDA

INDEX (LIBRO) NO.  
L & T \_\_\_\_\_ / \_\_\_\_\_

**DISPOSSESS OR EVICTION PROCEEDING / PROCEDIMIENTO DE DESAHUCIO**

PAPERS HAVE BEEN SENT TO YOU AND FILED IN COURT ASKING THIS COURT TO EVICT YOU FROM YOUR RESIDENCE.

DOCUMENTOS HAN SIDO ENVIADOS A UD. Y REGISTRADOS EN LA CORTE PARA DESALOJARLO DE SU RESIDENCIA.

☐ **NON PAYMENT PROCEEDING:** YOU MUST APPEAR IN COURT AND FILE AN ANSWER TO THE LANDLORD'S CLAIM. IF YOU HAVE NOT RECEIVED THE PAPERS, GO TO THE HOUSING PART OF THE CIVIL COURT IMMEDIATELY AND BRING THIS CARD WITH YOU.

UD. TIENE QUE COMPARECER EN LA CORTE Y REGISTRAR UNA RESPUESTA A LA RECLAMACION DEL PROPIETARIO. SI NO HA RECIBIDO LOS DOCUMENTOS, VAYA A LA PARTE DE VIVIENDAS DE LA CORTE CIVIL INMEDIATAMENTE Y TRAIGA ESTA TARJETA CON USTED.

☐ **HOLD OVER PROCEEDING:** YOU MUST APPEAR IN COURT ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 199\_\_\_\_, AT 9:30 A.M. YOU MAY FILE YOUR ANSWER AT THAT TIME. IF YOU HAVE NOT RECEIVED THE PAPERS, YOU STILL MUST APPEAR IN COURT ON THE DATE INDICATED ABOVE AND BRING THIS CARD WITH YOU.

UD. TIENE QUE COMPARECER EN LA CORTE EL DIA \_\_\_\_\_ DE \_\_\_\_\_, 199\_\_\_\_ A LAS 9:30 A.M. PUEDE REGISTRAR SU RESPUESTA EN ESE MOMENTO. SI UD. NO HA RECIBIDO LOS DOCUMENTOS, DE TODAS MANERAS TIENE QUE COMPARECER EN LA CORTE EN LA FECHA INDICADA ARRIBA, Y TRAER ESTA TARJETA CONSIGO.

IF YOU DO NOT APPEAR IN COURT, YOU MAY BE EVICTED. YOU ALSO MAY WISH TO CONTACT AN ATTORNEY.

SI UD. NO COMPARECE EN LA CORTE, PUEDE SER DESALOJADO. SI QUIERE PUEDE PONERSE EN CONTACTO CON UN ABOGADO.

NYCHA 150.105 (Rev. 9/91)

## Exhibit G 1



## IV. INSTRUCTION FOR PREPARATION OF FORMS IN HOLDOVER LICENSEE – SQUATTER PROCEEDINGS.

A. Original notice of Petition – Holdover Licensee – Squatter, NYCHA Form 040.319&R.

“EXHIBIT H”

Refer to instructions for the preparation of Forms in Holdover Proceedings, Pages 1 and 2 of the Appendix.

NOTE: All forms in this proceeding should be addressed to the occupant(s) known by Project Management to reside in the subject premises. If, in addition to the known Licensee, the name(s) of any other occupant(s) are unknown, add “and John Doe and Jane Doe”. Service of appropriate papers must be made on each person known or unknown.

The word “Squatter” must be crossed out wherever it appears on the form for a Holdover – Licensee Proceeding.

A. Petition – Holdover – Licensee, NYCHA Form 040.317&R

“Exhibit I”

This form must be prepared to conform with “Holdover – Licensee – Ten Day Notice to Quit” NYCHA Form 040.320 and “Affidavit of Service” NYCHA Form 040.318.

NOTE: A copy of the Ten Day Notice to Quit and the original of the Affidavit of Service of the Ten day Notice to Quit must be attached to the original petition for the Court. These papers must also be attached to the copies served on the tenant. All copies must have original signatures. Carbon copies or photostatic copies of signatures are not acceptable.



## EXHIBIT H

APPENDIX A -

ORIGINAL NOTICE OF PETITION - HOLDOVER LICENSEE - ~~XXXXXX~~1 Lincoln HOUSESCIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF 2 NEW YORK

NEW YORK CITY HOUSING AUTHORITY

Petitioner (Landlord)

Index No. L. & T. 8 19

against

Petitioner's Business Address:

250 Broadway  
New York, N.Y. 100073 Earl Wells

Respondent(s)

160 East 135th Street - Apt. 12C  
New York, N.Y. 10037

Address

NOTICE OF PETITION  
HOLDOVER  
LICENSEE - ~~XXXXXX~~

To the Respondent(s) above named and described in possession of the premises hereinafter described or claiming possession thereof:

PLEASE TAKE NOTICE that a hearing at which you must appear will be held at the Civil Court of the City of New York, County of 4 New York at 111 Centre Street Borough of Manhattan City and State of New York, on the 29th day of June 1984 at 9:30 o'clock in the forenoon of that day, on the annexed petition of the New York City Housing Authority verified the 5 19th day of June 1984 which prays for a final judgment of eviction, awarding to the petitioner the possession premises described as follows: Apartment No. 12C on the 12th floor, consisting of 4 rooms, in premises known as and located at 160 East 135th Street

County of New York in the City of New York, as demanded in the petition, which you must answer. Your answer may set forth any defense or counterclaim against the petitioner if such defense or counterclaim is properly cognizable herein.

TAKE NOTICE also that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

6 \*TAKE NOTICE also that demand is made in the petition herein for judgment against you for the sum of \$ 787.77 with interest from December 1 1983.

In the event of your failure to answer and appear, final judgment by default may be entered against you for the relief demanded in the petition.

Dated: City of New York, County of 7 New York

8 the 19th day of June 1984

Charles E. Williams III, Esq.  
Attorney for the Petitioner

250 Broadway  
New York, N.Y. 10007  
Telephone No. (212) 306-3818

9 Frances Tombini  
Clerk of the Civil Court of the City of New York

\*Strike out if inapplicable.

NYCHA 040.317&amp;R (2/80)

EXHIBIT I

APPENDIX A -

## PETITION - HOLDOVER - LICENSEE

Lincoln Houses

The petition of New York City Housing Authority respectfully shows:-

1. Petitioner is a domestic public corporation created by the laws of the State of New York and is duly authorized to maintain this proceeding.

2. Prior to February 15, 1984 respondent(s) entered into occupancy of apartment 12C in the premises

160 East 135th Street, County of New York, City and State of New York, which is part of Lincoln Houses, a low rent public housing project owned and operated by petitioner as licensee(s) of Margaret Wells since deceased ~~deceased~~, who was then entitled to possession of said apartment and said licensor is no longer in or entitled to possession thereof and said respondent(s) has (have) continuously occupied said apartment using the same as a place of residence without the consent of petitioner.

3. A notice in writing, a copy of which is hereto annexed and made a part hereof, was:-

- ~~delivered personally upon said respondent(s)~~
- ~~delivered in and left personally with a person of suitable age and discretion who resides at the apartment sought to be recovered and in addition by mailing to respondent(s) by certified mail~~
- affixed upon a conspicuous part of the property sought to be recovered, and in addition, by mailing to respondent(s) by certified mail,

If the 10 day notice to quit was personally served, strike out the above subparagraphs b. and c.

If the 10 day notice to quit was served by substituted service, strike out the above subparagraphs a. and c.

If the 10 day notice to quit was served by conspicuous service, strike out the above subparagraphs a. and b.

as appears more fully from the affidavit of service annexed hereto, requiring said respondent(s) and all persons occupying said apartment to quit the same.

4. Said respondent(s) hold(s) over and continue(s) in possession of the said premises without the permission of petitioner although such notice to quit has been served and the time for removal from the said premises has expired.

5. The property is not subject to the Rent Control Law, the Rent Stabilization Law of 1969, the Emergency Tenant Protection Act of 1974 or the registration provisions of the Housing Maintenance Code (Administrative Code, Article 41, Section D26-41.23) by reason of the exemption of petitioner from the provisions thereof.

Wherefore, petitioner prays for a final judgment awarding to it the possession of said premises, together with costs of these proceedings, and for a warrant to remove the said respondent(s) from the possession of the said premises and for the fair value of the use and occupancy of the premises for the period of occupancy during which no rent was due.

Dated: New York, N.Y.

19th day June, 1984

NEW YORK CITY HOUSING AUTHORITY

By

  
 Manager

Cynthia Nivens

STATE OF NEW YORK )  
 COUNTY OF New York ) ss.:

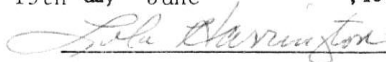
Cynthia Nivens, being duly sworn, deposes and says;

This verification is made by deponent in behalf of petitioner under CPLR Sec. 3020 (d) (2) as petitioner is a public corporation and a corporate governmental agency. Deponent is employed by petitioner as Housing Manager of the above described premises, has read the petition and knows that the contents thereof are true to deponent's knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes the same to be true.

The source of deponent's information and the reason for deponent's belief as to all matters in the said petition not stated upon personal knowledge are investigations which deponent caused to be made concerning the subject matter of the proceedings and information acquired by deponent in the course of deponent's duties as Housing Manager of said premises and from the records and papers of petitioner.

Sworn to before me this

19th day June, 1984



LOLA HARRINGTON  
 COMMISSIONER OF DEEDS  
 CITY OF NEW YORK NO. 2-1857  
 CERTIFICATE FILED IN NEW YORK COUNTY  
 COMMISSION EXPIRES JAN. 1, 1986

  
 Manager

Cynthia Nivens