

Guide to Court Appearances for Housing Repair Proceedings:

A guide for navigating your first and subsequent court appearance

→ Overview of your court appearance

- The aim of your first court appearance is to secure an Order to Correct, Consent Order or Stipulation of Settlement that establishes which violations or repair issues are going to be repaired, the deadline for completion of repairs, access dates for the work to be completed in your client's apartment, and a default provision that establishes what relief you can seek upon restoring your case to the calendar in the (unfortunately very likely) event that the Respondents-Landlords fail to fully comply with your Order/Stipulation.
- Your client does not need to join you for most court appearances. Your first appearance can be very anti-climactic as you'll likely just be entering into an agreement and not going before the judge. Unless your client wants to join, it's perfectly fine for them to just be available by phone while you're in court.
- Most court appearances will be calendared for the morning, and you can expect to be there for about 1-2.5 hours. There is a lunch recess from 1:00-2:30pm and an afternoon session from 2:30-4:00pm, though your appearance should be resolved during the morning.
- Your LSNYC mentor will be available by phone during your court appearance. Your LSNYC mentor will join for motion arguments or hearings, schedule permitting.

→ Terminology

- OPA/OPC: Opposing party attorney/ opposing party counsel
- Court attorney: Has an office beside the main court room. Can help you conference a case or speak to you before you speak to the judge.
- Clerk: Sits beside the judge, controls the calendar.
- HPD attorney: Represents HPD, can provide you with a draft Consent Order or clarify the contents of an inspection report.
- HPD open violation report: the publicly available list of open HPD violations for your client's building, can be found [here](#).
- HPD inspection report: report prepared by HPD inspector following inspection of your client's apartment.
- Pleadings: The so-ordered Order to Show Cause and Verified Petition with exhibits assembled into a single document.

- Order to Correct: Order written over Respondents-Landlords's objection requiring them to fix the open violations by deadline imposed by court, permitting Petitioner to restore for civil penalties and contempt upon default HMC § 27-2115(h),(i)
- Consent Order: A pre-prepared stipulation where Respondent(s) agree to fix open violations by statutory deadlines, permitting Petitioner to restore for civil penalties and contempt upon default
- Stipulation of Settlement: An agreement drafted by you and OPA in lieu of a Consent Order.
- Civil penalties: Fines that accrue when Respondents-Landlords fail to timely correct an HPD violation and must be paid to the HPD. Resulting from an Order to Pay Civil Penalties which can be sought by Petitioner through motion for civil penalties / contempt.
- Settled: the case has been resolved via an agreement but can generally
- Discontinued: the case has been terminated
- Dismissed: the case has been terminated by court order
- Default provision: Remedy to pursue if Respondents-Landlords fail to comply with the Order/Stipulation (i.e., "Restore for an order to pay civil penalties and a finding of contempt").

→ What to do prior to your court appearance

- Set up a call with your LSNYC mentor to prepare for your appearance, particularly if it's your first time going to court. A week or so beforehand is ideal.
- Remind your client about the HPD inspection the day before it takes place. The Court/HPD rarely can assist us in rescheduling these (even if HPD fails to appear) so do everything you can to avoid your client failing to give access to the inspector.
- Remain in touch with your client about the status of conditions in their apartment and interactions they have with their landlord/ management.
 - It's advisable for your client to let the landlord to do an inspection of the apartment before your first court date, but outside of repairing emergency conditions repairs should be scheduled at your first court date, and not before as landlords will often try to conceal a violation with cosmetic repairs.
 - Always have your client take and send you photos of the conditions before and after the landlord does work in their apartment.
- Discuss with your client potential access dates in the weeks following your court appearance, as well as dates they know they would not be provide access.
- Confirm that your client can be available by phone while you're in court (unless they're joining).
- Check NYSCEF for the inspection report a few days after the inspection. Sometimes HPD fails to upload this and we won't be able to see it until the court appearance (the Court can't help us obtain it from HPD).

- Check HPD’s page for the open violation report. After the inspection new violations should be uploaded.
 - Save dated PDFs of the HPD violation report, as sometimes violations get removed. It’s very helpful to have a record of the open violations at different points of the case. § 328(3)(b) of the Multiple Dwelling Law lets the Court take judicial notice of printed computerized violation files as if they were certified records.
- Court attorney: Has an office beside the main court room. Can help you conference a case or speak to you before you speak to the judge.

➔ **Documents to bring for every court appearance**

- Your pleadings and affirmation/affidavit of service with proof of service.
- HPD open violation report, ideally from the day of or day prior to your first court appearance.
- HPD inspection report (if it was uploaded to NYSCEF).
- Impactful photos of current conditions.
- A simple timeline of events relevant to your client’s claims as they relate to ongoing repair issues, interventions, if any, by Respondents-Landlords and harassment.
- A sample Stipulation of Settlement for suggested structure and language (samples annexed to this guide and available on project homepage).

➔ **Contents of your Consent Orders/Stipulation**

1. **Must haves for your Stipulation.** A consent order will have these provisions already, but if you are drafting a Stipulation with your OPA then you want to make sure to include these. Review the samples annexed to this guide and available on our project’s homepage.
 - a. **A deadline for repairs to be completed.** It’s easy to forget to include this but if we do then the Stipulation is ambiguous as to when can seek to hold the Respondents-Landlords in contempt for defaulting upon the agreement.
 - b. **Reference to your HPD inspection report and date of inspection** as well as **reference to open HPD violation report and date of report.** This way we are clearly establishing which violations must be repaired. If certain conditions do not constitute a violation, we can include “Respondents-Landlords agree to inspect and repair as required by law the following conditions...”.
 - c. **Access dates for repairs to be completed.** Be sure to check with your client before agreeing to access dates and remind them shortly before each access date to avoid the client inadvertently denying access.
 - d. **A control date or adjourn date** keeping the case on the calendar so that you can come back before the Court without having to file a motion to restore the case to the calendar.
 - e. **Default provision.** Ideally, in our Stipulation we want a default provision that mirrors what we could have in an Order to Correct/Consent Order; “Upon default, Petitioner may restore by 8-days written notice for appropriate relief, including but not limited to an Order to Pay Civil Penalties and a finding of Contempt.”

- i. If you include an enforcement provision, when you submit the stipulation to the Court be sure to ask for it to be **“so-ordered” by the judge** so that it will constitute an enforceable order.
 - f. A provision that binds the contents of the proceeding upon successors and assigns in the event the property gets sold/transferred during litigation (in sample stipulation)
- 2. **Other provisions to consider.** These can be useful but not essential.
 - a. COVID provisions – masking, social distancing etc.
 - b. Workers will identify themselves
 - c. Applies to buyers of building (The contents of this stipulation shall be binding upon, and inure the benefit of, the parties hereto, their representatives, successors and assigns.”)
- 3. **Provision to avoid.** Your OPA might try to include these and treat them as par for the course but as a general rule we do not want to include these, call LSNYC mentor if OPA insists.
 - a. **“If matter is not restored within [X] days, matter shall be deemed discontinued.”** This is a means of our case being automatically discontinued. Even if the Respondents-Landlords fails follow through on the repairs, a provision like this would prevent us from restoring the case to the calendar to seek enforcement on the stip. In this example, 30 days is way too brief of a time. Occasionally we can consent to something much longer, perhaps 180 days, but only if we are getting the consent/civil penalties default provision and if Respondents-Landlords have already satisfactorily.
 - b. **“Either party may restore for contempt”** this is usually inappropriate, we don’t any
 - c. Any obligations on our client to pay rent or for repairs
 - d. Any kind of language that allows a landlord to accelerate an eviction proceeding against our client

→ Harassment Claims

- 1. **If you included a harassment claim, you could settle it along with your claim for an Order to Correct**
 - a. **“Without admitting or denying any of the following, Respondents-Landlords agree to not engage in any of the behavior alleged in the underling petition, including but not limited to…”** then describe the behavior we want them to stop and connect it to a default provision so that you have enforcement power
 - b. If OPA is wary of our being able to restore to enforce harassment claims, you could include a notice/cure provision, i.e. **“Petitioner to first advise Respondent-Landlord’s counsel of alleged harassment and give a [x] date cure period prior to moving to restore…”** and/or a provision that requires you to submit an affidavit from someone with first-hand personal knowledge about the alleged harassment (an affidavit from our client describing the continuing harassment, which we would do anyway)
- 2. **If you are unable to settle your harassment claim, you need to bifurcate your claims – settling repair claims for an Order to Correct/ Consent Order/ Stipulation of Settlement, and calendaring harassment claims for a hearing on harassment.**

- a. When picking a court date give yourself enough time to prepare for trial
- b. Ask for clarification when calendaring, i.e. “Will May 15 be a pre-hearing conference or will we begin the trial that day?” It is much easier to work out these details while you’re still in court and have access to the judge/court attorney, rather than trying to track down information and hammer out ambiguities by calling/emailing court personnel after the fact
- c. If the court wants to have a pre-trial/pre-hearing conference you can ask if it’s possible to do the conference remotely via Microsoft teams.

→ **General Tips/Reminders/Logistics**

1. Be sure to check in for your court appearance with the number on the calendar outside of the court room. The default call is usually 30 minutes after the time of your appearance. Give yourself plenty of time to avoid defaulting. When we (the Petitioner) default the case is usually dismissed as No Appearance Petitioner.
2. Each court appearance must be resolved through the filing of an Order (written by the judge) or consent order or stipulation (prepared by you and OPA, submitted to the court officer. Make sure some action has been taken on court before leaving for the day
3. All NYC housing courts have a lunch recess from 1pm and resume operations at around 2:15/2:30pm. You should almost always be able to resolve your case prior to the lunch recess.
4. **Get contact info for your OPA and the HPD attorney.**
5. If you hit an impasse in negotiating with OPA you can make an **application for an Order to Correct** by asking the security officer to put up your case (using the # from your calendar). The judge will call you up when they are ready for your case to be heard/
 - a. The Judge will ask you to state your appearance for the record “[Attorney’s name], for Petitioner, [Firm/Organization], [Firm/Organization’s mailing address]”
 - b. Have a brief pitch (1-3 sentences max) on why you are there (client’s situation, OPA refusing to settle) and why you are entitled to the relief you are seeking. You won’t be able to give an opening statement.
 - c. This is your application and your petition, so try to speak first, don’t wait to be called on. Do your best to not let OPA interrupt you.
 - d. Have your materials handy so that you can aim to quickly and accurately answer the Judge’s questions.
 - e. Feel comfortable slowing things down if you’re not clear on what’s happening next. **Ask questions.** “e.g. *Q1*: OK your honor we understand that the case will be adjourned so that HPD can schedule a new inspection. Will the Court order a new inspection or should we submit a new inspection request form to NYSCEF ourselves? *Q2*: Understood. Can we submit the same for the same form that we submitted initially or do we need to submit a new one?”
 - f. Particularly at your first appearance, it is extremely unlikely that the Judge will issue an Order to Correct at your first appearance. Only make this application during your first appearance if negotiations have broken down. If the Judge doesn’t issue an order the can still help push you towards an agreement.
6. If the **Respondents-Landlords are NYCHA,**

- a. there will be no HPD attorney. You will just work with the NYCHA attorneys who usually have desks set up in the court room. The court will help you prepare a consent order if your OPA agrees to it.
- b. Default provisions can only mention contempt, not civil penalties which cannot be ordered against governmental entities.
- c. HPD's website will not maintain an open violations report, so your inspection report (which will be in the court file and should also be uploaded to NYSCEF) will be more important than in cases against private landlords. If HPD fails to appear for the inspection then you will need to adjourn your first appearance for the inspection to be rescheduled
- d. NYCHA is slightly more likely to grant rent abatements (a percentage waiver for a month's rent based on bad conditions) than private landlords, so it is worth exploring this with your OPA.