

Road Map on Housing Repair Proceedings:

An overview on litigating a case for your pro bono client. Please review this at every step of your representation and please reach out to your LSNYC mentor with any questions. We are excited to work with you on our case!

→ Step 1. Initial Study Group with LSNYC—Week 1.

1. Get pitch of client case.
2. Receive client contact information.

→ Step 2. First contact and interview with client—Week 1-2.

1. **Please try to call the client within 1-3 days of the study group meeting.** You can schedule a more in-depth interview with the client for a later time that works for everyone, but it is essential to establish contact with your client as soon as possible. During your initial call, please confirm the client's preferred method of communication.
 - Prior to the pandemic we encouraged volunteers to do a home visit (and our manual still references a home visit). This is usually not feasible, but we find it can be really helpful if the client can provide a virtual tour of their unit via WhatsApp or some other video call platform. You should also ask your client to provide you current pictures showing conditions.
 - Start with a call. If the client doesn't answer, leave a voicemail and follow up with an email, then try them again by phone in a day or so. Consider texting as well if you are able to do so from your office line. Most of our clients are not frequent emailers so merely **emailing the client is not a sufficient form of communication** unless your client insists that this is their preferred method of keeping in touch and they are responsive to your emails.
 - Let your LSNYC mentor know if you cannot reach your client after several attempts. This applies at any point during your representation. **It is not acceptable to wait more than three weeks without hearing back from your client and not notify your LSNC mentor to ask for their help reengaging with them.**
2. Check the HPD website (<https://hpdonline.nyc.gov/hpdonline/>) and type in the client's address, then click the Violations tab at the top of the page to check the current outstanding violations.
 - <https://whoownswhat.justfix.org/en> aggregates city records for residential addresses, and can be easier to navigate than HPD's website.

- Regularly check HPD’s open violation report and save and archive PDFs of the report with the date. It is useful to have different records of the ongoing open HPD violations.
 - Always check HPD’s open violation report and have it handy before a call with your LSNYC mentor.
 - Note: HPD’s website does not list violations for NYCHA buildings.
3. Be prepared for the client to explain in great detail every single condition. You can remind the client that HPD will conduct an inspection, but may not find all conditions, so the client should be prepared to point them out to the inspector. It is better for the petition and inspection request form to be overly-inclusive of alleged conditions.
 4. As you talk to your client it is helpful to begin keeping a comprehensive list of all the conditions they describe. This will be the basis for both our ‘Schedule A’, an exhibit to our petition which serves as a comprehensive list of all the conditions in the apartment, and the request for judicial inspection. Ask them what time period in the day is best for an inspection. Leave the date of inspection blank—the court assigns a date.
 5. This is also a good time to discuss logistical details like the client’s access to technology (email, texting, a printer), the best time of day for the client to be reached by phone, sharing alternative means of staying in contact with each other, and explaining the need for the client to get the petition notarized.

➔ **Step 3. Complete and file an order to show cause, petition, fee waiver and request for judicial inspection—Week 3 / 4.**

1. Legal Services NYC has templates for the order to show cause and petition. (See “**Order to Show Cause and Verified Petition for Private Landlords/ NYCHA**”).
2. You will also need a CPLR 1101 fee waiver affirmation to have the filing fee waived as well as a request for judicial inspection – these documents are all available on our website. (See “**1101 Fee Waiver,**” “**Inspection Request Form**”).
3. The case can be commenced against the landlord corporate entity, but also against the management company, managing agent, and officers. Each of these individuals/entities can be found on the HPD website under Property Owner Registration Information. (The Department of State entity search website can help too.) Landlords of 2 family buildings are not required to register their Property Owner Registration Information on the HPD website - we can determine the correct owner and their address by examining the most recent deed on ACRIS, the city’s online property registry.
<https://a836-acris.nyc.gov/CP/LookUp/Index>
 - If you are uncertain about whether we are naming the proper parties at the correct addresses, ask your LSNYC mentor. **If we sue the wrong parties or serve them at the wrong address our case is dismissible.**
4. The Inspection Request Form must include client contact information including phone number, age of any children, and list of all conditions.

- Only include one condition per line – you can submit more than one form.
 - The inspector will only have a print-out of the form, so the description of conditions must be visible (don't overfill the conditions field).
5. Send every document you intend to file to your LSNYC mentor for review.
 6. Your petition must include a notarized signature page from your client and the request for judicial inspection also needs to be signed by your client. It is likely fastest to mail final documents to your client with a postage-paid, self-addressed envelope.
 - If client has a printer, they can just print the signature pages & you can skip the mailing.
 - Help them find a notary nearby (if they do not know of one)
 - i. Post offices, banks, some real estate/ law offices
 - ii. Google and call nearby notaries if needed
 - Failing that, arrange for transportation to the firm or for a notary to visit them if they are homebound.
 - If they have are able to take a digital picture, they can send signature pages to you via phone or email. If not, they can mail hard copies back to you.
 - **Note: your clients must verify the final version of the petition.** It is improper for the verification page to predate the final version of the petition. **Do not obtain the verification page from your client until you have a final version of the petition that is ready to file.**
 7. File the order to show cause, petition, fee waiver and inspection request form via NYSCEF (See 'Filing and Service Guide' for detailed instructions).
 8. **Regularly check your case profile on NYSCEF 1-5 days after filing.** The so-ordered OSC will include a service deadline which if missed renders our case defective. **Late service is an incurable defect that requires you to completely refile your case.**
 9. On the NYSCEF case profile the Court will upload a signed inspection request form and will provide a date for the HPD inspection. **Be sure to inform the client of this date so that they can provide access for the HPD inspector.**
 - **Note:** if the client isn't available to provide access to HPD on the date of their inspection confirm with them whether there is anyone over the age of 18 who can provide access.
 10. The Court will also upload a signed ("so-ordered") Order to Show Cause. The court will provide a hearing date and a service deadline.
 11. If the Court does not upload either of these documents within a week of filing, notify your LSNYC mentor and contact the **NYSCEF Resource Center's** hotline and email. <https://iappscontent.courts.state.ny.us/NYSCEF/live/contact.htm>
 12. Download the filed, verified petition from NYSCEF and email it to your LSNYC mentor and your legal server case file email address.

13. Look up your index number on **WebCivil Local**, and **track your case** so that you receive email notifications about case activity and reminders for court appearances.

<https://iapps.courts.state.ny.us/webcivilLocal/LCMain>

➔ **Step 5. Post-filing—Week 4 / 5.**

1. A conformed copy of the OSC and verified petition must be served on the landlord corporate entity, management company, managing agent, or officer, AND upon HPD. **It must be served in the manner and time designated by the Court on the OSC.** (see “**Filing and Service Guide**”).
 - **Always check the service provision in your so-ordered OSC to ensure that you are serving in the manner ordered by the Court.**
2. After service, prepare an Affirmation or Affidavit of Service based on the templates, to which you should annex copies of your certified mailing receipt and return receipt request receipt for each recipient. Upload this to your case profile on NYSCEF. (See “**Affirmation/ Affidavit of Service**”)
3. The HPD inspection will occur between filing and the first hearing date. The client (or an adult over 18) will need to be present in the apartment. It usually takes place a week to 10 days after filing, but you will be provided the date while filing.
 - NOTE: if no inspection takes place, call the Court and request that a new inspection be scheduled prior to your court date. Sometimes this is not possible but is worth trying. <https://nycourts.gov/courts/nyc/housing/assignments.shtml>
4. Contact the client prior to the inspection to remind them to give access and afterwards to discuss how it went.
5. Check the HPD website to see whether recent conditions have been cited as a result of the inspection.
6. Check the NYSCEF case profile – HPD should upload an inspection report.

➔ **Step 6. The first court appearance—Week 6 / 7. (Likely calendared 4 weeks after filing).**

1. **Your first appearance will be in-person.**
2. **When appearing in-person**, check in with the clerk and ask if Respondent’s counsel has checked in. Propose entering into a Consent Order with Respondent’s counsel. You will be able to consult with the HPD attorney who can provide a template Consent Order. If you come to an agreement you can add it to the case file and ask to have the Judge so-order it. If you cannot come to an agreement you can “put your case up for an application before the judge,” who can help you come to an agreement, may entertain an application for an Order to Correct if Respondent’s counsel is being unreasonable, or may adjourn

you for a trial date if they believe a hearing is necessary. (see “**Guide to Court Appearances**”).

3. If HPD did not identify certain conditions, you can request that the Judge order an additional inspection so that HPD re-inspects. This is not granted as of right so be sure to support why this is necessary. If HPD failed to appear for the inspection the Court should order a new inspection.
4. Be prepared to concisely and impactfully explain why we are entitled to the relief which we’re seeking. We usually recommend pushing for a Consent Order, as similar to an Order to Correct it contains a provision which lets us restore for contempt and civil penalties. It is important that upon default we can attempt to hold the landlord in contempt and seek an order for payment of civil penalties.
5. If the conditions are not as serious, you can also adjourn the case to put together a stipulation of settlement with your opposing counsel which provides access for the landlord to make repairs.
 - You can also be more aggressive and immediately seek an Order to Correct – this of course is a determination to be made based upon the facts and circumstances of the case. It is very rare for the Court to grant us an Order to Correct – they will usually push us to settle via a Consent Order or Stipulation
 - Landlord attorneys commonly state that they were just retained and seek an adjournment on the first court date— you can still try to set up access dates for repairs prior to the next court date, but landlord attorneys usually do not consent to an order to correct on the first court date. The judge can be persuaded to do this over their objection depending on the gravity of the conditions and how long they have existed, in the form of an Interim Order to Correct.
6. If the conditions are very serious, seek an Order to Correct from the judge (sometimes the landlord attorney will consent to an Order to Correct – this is called a Consent Order and it will be prepared by the HPD attorney).
 - If you enter into a Consent Order or Stipulation signed by Respondent or Respondent’s attorney, you do not need to serve anything after court.
 - If you obtain an Order to Correct, you should serve it on Respondents and their Counsel via certified mail with a Notice of Entry that annexes the Order. Then file an affirmation/affidavit of service with proof of service. Establishing notice via service is extremely important for later proving contempt and a Notice of Entry starts the time for appeal.
7. If you obtain an Order to Correct or Consent Order, your case does not need an adjourn date and it will be “marked off calendar” to later be restored if necessary. If you settle via a stipulation of settlement without a default provision which lets us restore for civil penalties and contempt, then you should adjourn the case to keep it on the court calendar so that you do not need to move to restore if repairs are not completed. At your subsequent appearance you should seek an Order to Correct or Consent Order.

→ **Step 7. Between court appearances—Weeks 6 / 7 through 10 / 11. (Generally, the case is adjourned for approximately 30 days.)**

1. Contact the client a day or two prior to each scheduled access date to remind them of the scheduled access date.
2. Contact the client immediately following the access dates to ascertain whether conditions were completed and document what happened.
3. If conditions were not completed, restore the case to the court calendar (if it was not adjourned) or prepare to appear on the adjourn date to seek repair of additional conditions. Or, if the landlord is represented—reach out to the attorney and ask for immediate alternative access prior to the return date.
 - If the landlord has defaulted on the deadline for completing repairs, **it is generally best to restore for civil penalties and contempt as soon as possible to keep up the momentum of your case.** You can and should still push for access dates so that repairs get completed.
 - Generally, stay on top of your opposing counsel. Call, leave VMs, send emails. Text from your office phone if possible.

→ **Step 8. Second court appearance—Week 10 / 11.**

1. If the parties adjourned (or settled) for the completion of repairs on the prior court appearance, and repairs were not completed, seek an order to correct from the judge.
2. If the parties adjourned (or settled) with an order to correct conditions, and repairs were not completed, move for contempt and the imposition of civil penalties prior to the court appearance.
 - Before restoring its best if HPD has re-inspected to show that the violations remain outstanding after the deadline for correction. Encourage your client to call 311 and report that a condition is still present and/or file a new Tenant’s Request for Inspection.
 - i. Filing a new Tenant’s Request for Inspection when the case is off calendar may result in the Court calendaring a new court date without notifying the parties, which is why you need to follow this case on eTrack after you initially file to automatically receive notice of upcoming dates. You cannot add the case to eTrack once it’s off calendar.
 - Generally, stay on top of your opposing counsel. Call, leave VMs, send emails. Text from your office phone if possible.
 - To avoid paying civil penalties, a landlord may agree to a rent abatement for the tenant. This is a great outcome. You can often leverage the threat of contempt/civil penalties to the client’s advantage.

- HPD is instrumental in the imposition of civil penalties, so speak with the HPD attorney in advance to see what amount is appropriate (based on the severity of the condition and the length of time since an order to correct was issued).
3. The landlord's attorney will often attempt to claim that the tenant did not provide access for repairs. Be prepared to rebut this and speak with the tenant in advance about when workers were in the apartment. Maintain notes about each access date and what if any work was completed, and bring those notes to each court appearance.

➔ **Step 9. Additional court appearances—Every 30 days thereafter, as needed.**

1. Continue to adjourn or increase the pressure if the landlord does not complete repairs. Some judges will adjourn a case for trial after one or two appearances. Notify your LSNC mentor if this happens and they will help you prepare for trial. Review the Lebovitz Primer to review what constitutes a defense and tips on securing an Order to Correct at trial (see “**Judge Lebovitz, HP Proceedings: A Primer**”).
2. If HPD refuses to find a violation or if we allege serious harassment allegations, a trial or hearing will be necessary to prove the existence of the condition/harassment.
 - The tenant should testify about the nature of the condition, and should provide any documentary evidence including photographs, evidence of failed Section 8 inspections, etc.
3. A hearing may also be necessary to overcome the landlord's defense that the tenant is not providing access (this is not a defense to an Order to Correct, but is to civil contempt).
 - The tenant should be prepared to testify regarding how and when access was provided. If the tenant can show pictures of something showing the date and time (like a cell phone) inside the apartment, that can be helpful.
14. When the client has confirmed that the repairs are complete and the case is resolved, consult with your LSNYC mentor, file a final stipulation of discontinuance with your opposing counsel to NYSCEF, and send the client a case closing letter using the template on our homepage with copies of the final stipulation/ consent order which settled the case, stipulation of discontinuance and any other relevant documents. (See “**Stipulation of Discontinuance,**” **‘Case Closing Letter’**).