

**THE ASSOCIATION OF THE BAR  
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May 6, 2005

Tino Hernandez  
Board of Directors, Chairman  
New York City Housing Authority  
250 Broadway  
New York, NY 10007

Dear Mr. Hernandez:

On behalf of the Sex and Law Committee and the Domestic Violence Task Force of the Association of the Bar of the City of New York, we are writing to urge the New York City Housing Authority (NYCHA) to continue and strengthen its efforts to ensure that its policies most effectively help battered women seek and maintain safety.<sup>1</sup>

Domestic violence victims' ability to maintain safe and secure housing is often key to their safety. Recognizing that a lack of safe housing can threaten domestic violence victims' very survival, Congress directed the United States Department of Housing and Urban Development (HUD) to develop plans to ensure that domestic violence victims are not discriminated against in receiving or maintaining public housing because of their victimization.<sup>2</sup> HUD in turn has encouraged Public Housing Authorities (PHAs) to develop policies and programs that are responsive to domestic

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<sup>1</sup> Although both men and women can be victims of gender-based violence, this letter refers to "battered women" in recognition of the fact that most intimate partner violence is committed by men against women. *See, e.g.,* CALLIE MARIE RENNISTON, U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE, 1993-2001, NCJ 197838, at 1 (reporting, *inter alia*, that violence by an intimate partner accounted for twenty percent of all non-fatal violent crime experienced by women in 2001, and three percent of the non-fatal violent crime experienced by men that same year) (last visited Nov. 23, 2004).

<sup>2</sup> H.R. REP. No. 107-272, at 120 (2001).

violence victims' needs and concerns.<sup>3</sup> Given this directive, and the fact that domestic violence is a primary cause of homelessness for women and their families,<sup>4</sup> we urge you to follow the guidance set out by HUD and to adopt, in consultation with domestic violence providers and advocates, a plan for addressing the needs of New York City domestic violence victims in their attempt to obtain and maintain public housing.

We recognize the challenge of addressing domestic violence victims' safety concerns in the context of administering a large and complex public housing authority. In balancing these multiple considerations, we urge NYCHA to work in close collaboration with those who represent domestic violence victims to revise policies that can interfere with domestic violence victims' ability to seek and obtain safety. This letter emphasizes three policy recommendations that can substantially advance victims' safety: recognizing a range of documentation rather than requiring police reports or orders of protection to establish abuse; ensuring that any policy for transfer does not arbitrarily require victims to move or to prevent them from moving to areas in which they likely will be safe from their abuser; and ensuring that eviction policies do not discriminate against domestic violence victims because of their victimization.

### **Proof of Domestic Violence and Preferences for Admission to Public Housing**

The Association is concerned that NYCHA requires too narrow a range of acceptable proof of domestic violence for victims to be eligible for a high preference for admission to public housing. HUD encourages PHAs to "exercise [ ] discretionary authority in accepting a broad range of evidence as proof of domestic violence" when it determines whether a tenant is a victim of domestic violence.<sup>5</sup> The following documentation should be recognized in identifying applicants as domestic violence victims:

Victim's report. As lawyers dedicated to valuing individual experience, we encourage NYCHA to place great weight on a victim's own report of domestic violence. That may be a "statement, testimony or affidavit outlining the facts of the violence or cruelty in each incident."<sup>6</sup> Such a report

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<sup>3</sup> See HUD Public Housing Occupancy Guidebook, Chapter 19 (June 2003) (hereinafter "HUD Guidebook"). The HUD Guidebook is available on the HUD web page at <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm>, (last visited April 6, 2005).

<sup>4</sup> See, e.g., Naomi S. Stern, *Housing, Homelessness and Domestic Violence*, in *The American Bar Ass'n Comm'n on Domestic Violence, THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE* 409 (2d ed. 2004) (citing U.S. Conf. of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* 72 (Dec. 2003); Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 *CLEARINGHOUSE REV.* 420 (Special Ed. 1991).

<sup>5</sup> HUD Guidebook, 19.2 Types of Evidence Required as Proof of Domestic Violence (emphasis added).

<sup>6</sup> *Id.*

should include details about when the incident(s) occurred, whether the individual was injured, and the impact of the violence on family members.

Statements from shelters. In addition to a victim's report, NYCHA should consider information from battered women's shelters, namely, statements from workers at battered women's shelters as to the length of time an individual spent in a shelter and any information about the abuse that individual suffered.

Other forms of proof. In addition to the examples above, proof of domestic violence can include: medical records; records of criminal court proceedings involving the arrest of the batterer for assault or destruction of the victim's property; and reports from domestic violence advocates and providers, medical professionals, counselors, clergy or others to whom the victim has reported the abuse.<sup>7</sup>

The Association urges NYCHA not to require domestic violence victims to obtain a civil or criminal order of protection in order to earn a housing preference. Although landlords and PHAs may first learn that a tenant is a victim of domestic violence when she seeks the assistance of the police or the courts for an order of protection, requiring a victim of domestic violence to obtain an order of protection or a restraining order in order to qualify for a housing preference may prevent her from obtaining the assistance she needs and may be unsafe. It may anger the perpetrator and may give him additional opportunities to find her, when they go to court.

Civil orders of protection may be difficult to obtain because a victim of domestic violence may be unable to serve her abuser with court papers. Some victims may be precluded from obtaining a civil order of protection under New York law. Additionally, domestic violence victims who report abuse to law enforcement may face retaliatory violence by their abuser. The fear of retaliation may discourage victims from reporting violence and obtaining an order of protection.

In addition to proof requirements, the Association is concerned that "serious abuse," a term that refers to a single incident of abuse on the basis of which NYCHA deems a domestic violence victim eligible for a housing preference, is defined too narrowly to refer to six felonies. In keeping with a broad approach to eligibility for housing preferences for domestic violence victims, NYCHA should consider any felony offense to be "serious abuse."

### **Zip Code Zones of Exclusion**

The Association is concerned that NYCHA's policy of prohibiting domestic violence victims from relocating to specified zip codes includes an overly broad geographical area, and unduly restricts a domestic violence victim's ability to move to seek adequate housing. We understand that NYCHA historically has excluded a victim's new residence from the borough where the violence occurred, and applaud its efforts in changing this policy. However, the new policy appears to restrict her

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<sup>7</sup> *Id.*

transfer more than the old policy did. We are concerned that NYCHA is trading one arbitrary policy for another, and urge NYCHA to adopt a more flexible policy.

We share NYCHA's concern that victims find safe homes. However, the zip code "zone of exclusion" policy fails to take into account that excluding such large areas of the city may separate a victim from her community, her family, and from areas where adequate, viable housing exists. In some cases, it may be necessary for a victim to move a distance from her abuser. However, in instances where the abuser does not live near the victim, the victim may be provided with sufficient protection by simply moving to another neighborhood. In lieu of excluding areas, the Association urges NYCHA to encourage all domestic violence victims to receive safety counseling prior to moving and to receive support in making the decision about where to move.

### **Evictions and Domestic Violence**

Under federal and state fair housing laws prohibiting sex discrimination, NYCHA, like any other landlord, may not maintain policies or practices that discriminate against residents or applicants because they are victims of domestic violence. Courts and administrative agencies have begun to recognize that evicting a resident simply because she has been abused may constitute illegal sex discrimination. For example, HUD charged an Oregon landlord with sex discrimination in violation of federal law when it threatened a tenant with eviction solely because she had been the victim of domestic violence.<sup>8</sup> The New York State Attorney General similarly has advised that such discrimination against domestic violence victims violates New York State's fair housing law.<sup>9</sup> In its Public Housing Occupancy Guidebook, HUD has acknowledged and affirmed that PHAs have the discretionary authority to allow the victim to remain in occupancy of the unit when violence occurs on the premises.<sup>10</sup> It has also encouraged PHAs to review carefully circumstances in which domestic violence victims are threatened with eviction for reasons beyond their control. NYCHA should take appropriate action against the perpetrator of the violence, but not the victim, when domestic violence occurs on the premises. NYCHA may not legally evict a victim of domestic violence for seeking the assistance of the police or courts, and its policies should make clear that it will not attempt to do so.

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<sup>8</sup> *United States v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001).

<sup>9</sup> 1985 N.Y. Op. Att'y Gen. 45 (1985); *see also Bouley v. Jacqueline Young-Sabourin*, No. 1: 03CV 320 (D. Vt. Mar. 10, 2005) (upholding claim that landlord's termination of domestic violence victim's lease was due to sex discrimination).

<sup>10</sup> HUD Guidebook, 19.5 Eviction and Termination.

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**Conclusion**

For the foregoing reasons, we urge NYCHA to continue and strengthen its efforts to promote domestic violence victims' safety by taking the steps urged in this letter. Please feel free to contact us if you have any questions or would like additional information.

Sincerely,

Leslie A. Rubin