

Eviction Defense 2.0: Challenging Issues Facing Older Tenants at Risk of Eviction

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NHLP

- The National Housing Law Project's mission is to advance housing justice for poor people and communities. We achieve this by strengthening and enforcing the rights of tenants, increasing housing opportunities for underserved communities, and preserving and expanding the nation's supply of safe and affordable homes by providing technical assistance, trainings, and publications to assist legal services attorneys and tenant advocates and engaging in public policy and impact litigation.
- NHLP.org
- [HJN Network](#)
- [The Greenbook](#)



Agenda

- Introduction to NHLHP
- The relationship between elderly homelessness and housing instability and disabilities.
- Overview of laws that protect people with disabilities.
- How to use these laws to prevent evictions.
- Questions

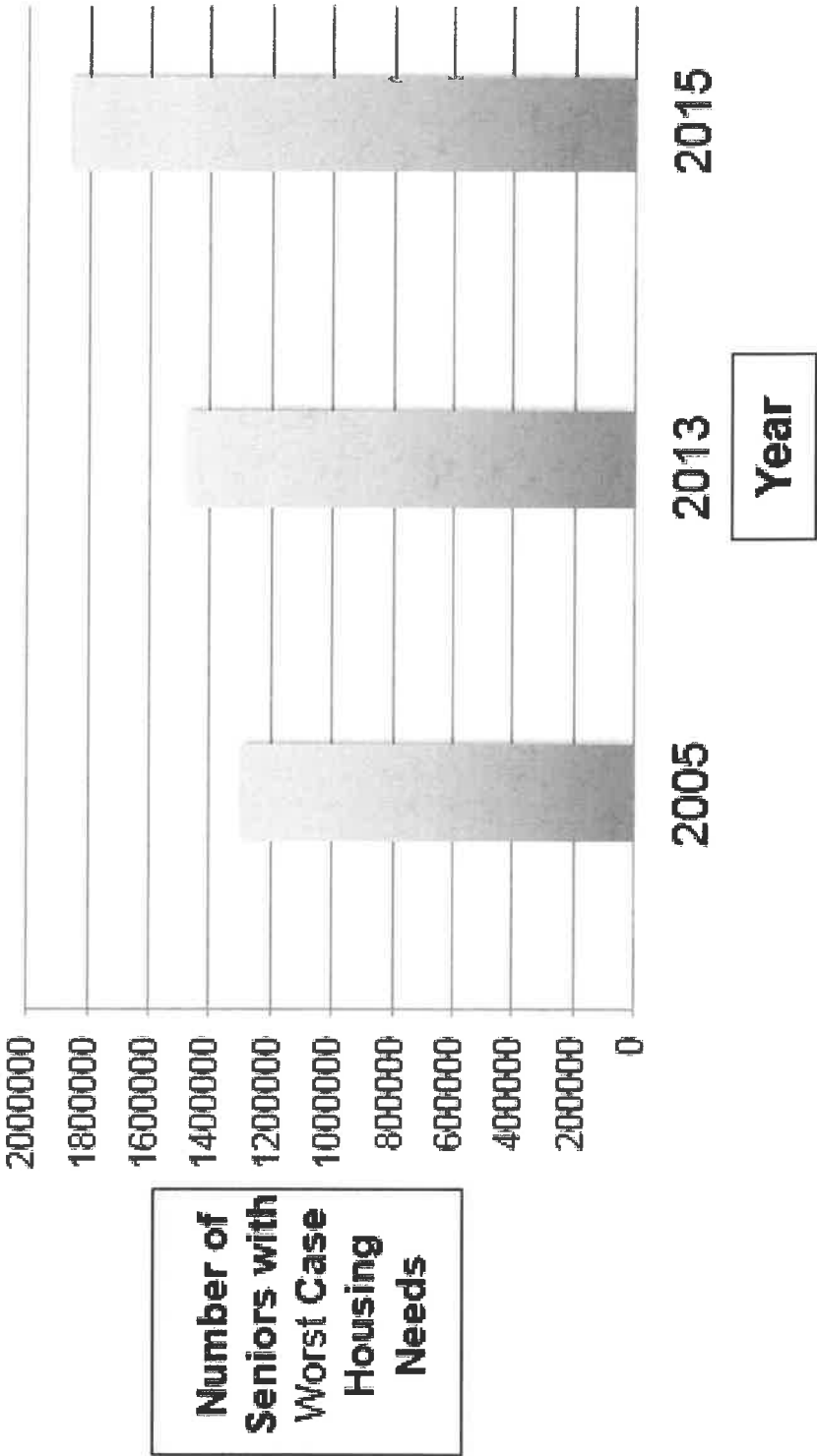
Housing Instability and the Elderly (1 of 2)

- Seniors have been hit particularly hard by the affordable housing crisis. In 2016, 9.7 million households aged over 65 spent more than 30% of their incomes on housing and 4.9 million of those households spent more than 50%.*
- Number of elderly people with “worst case housing needs” (renters with very low incomes who do not receive government housing assistance and pay more than one-half of their income for rent, live in severely inadequate conditions, or both, is increasing rapidly.**

*Joint Ctr. for Hous. Studies of Harvard University, Housing America’s Older Adults (2018)

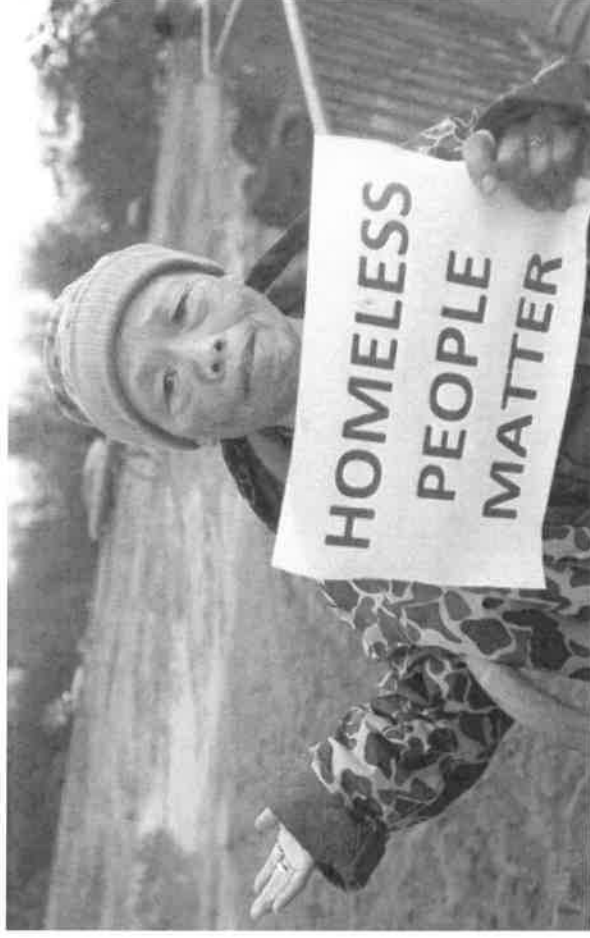
**Dept. of Hous. & Urban Dev., HUD Worst Case Housing Needs, 2017 Report to Congress

Housing Instability and the Elderly (2 of 2)



Homelessness and the Elderly

- Between 2007 and 2014, the number people over the age of 50 who are homeless increased by 20%, growing to over 306,000.*
- Older adults now make up 31% of the nation's total homeless population.



*Adam Nagourney, Old and on the Street: The Graying of America's Homeless, New York Times, May 31, 2016.

Disabilities and the Elderly

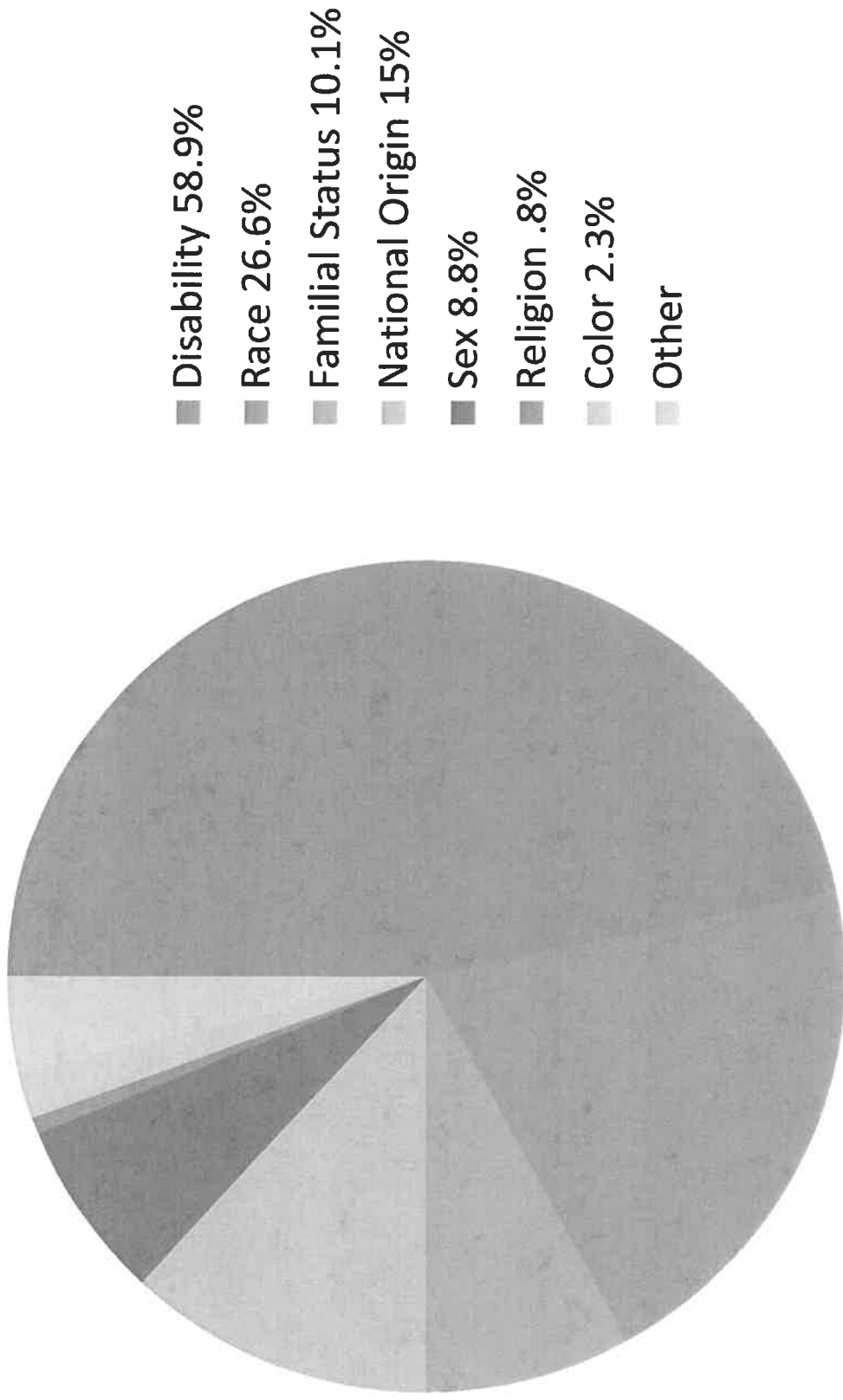
- More than 1/3 of people in the U.S. over the age of 65 have a disability.
- 45% of people over the age of 75 have a disability.*
- One quarter of the total homeless population is reported to have a disability.**
- One in three people who are chronically homeless have a mental health disability.***

*U.S. Census Bureau, American Community Survey. National Center for Health Statistics, National Health Interview Survey.

**U.S. Interagency Council on Homelessness, Homelessness in America: Focus on People With Disabilities Experiencing Chronic Homelessness

*** Center for American Progress, Lack of Housing and Mental Health Disabilities Exacerbate One Another

Housing Discrimination: Reasons for HUD Complaints 2017



The Fair Housing Act

- Signed into law in the wake of Dr. King's assassination
- Prohibits discrimination in housing-related transactions (including housing authorities, banks that make home loans), including the sale, rental, or financing of dwellings
- Applies to all housing providers public and private
- Discrimination includes treating someone differently or excluding them because they are a member of a protected class:
 - Race
 - Color
 - Religion
 - Sex
 - Familial status (includes families with minor children; pregnant women)
 - National origin
 - Disability



Section 504 and the ADA

- **Section 504 of the 1973 Rehabilitation Act**
 - Applies to federally funded housing – enforced by HUD
 - no qualified individual with a disability shall “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”
..
 - Does not apply to private housing or housing providers who accept Section 8 vouchers.
- **Americans with Disabilities Act (ADA) (42 U.S.C. §12132)**
 - Applies to state or local government housing.

What is a Reasonable Accommodation?

- Change to a rule, policy, practice, service or procedure when such accommodations are necessary to afford a disabled person equal opportunity to use or enjoy the dwelling or program.
- Housing Discrimination includes “a refusal to make reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling . . .” -24 CFR § 100.204



Examples of Reasonable Accommodations

- Allowing a tenant to have an emotional support animal despite a no-pets policy.
- Giving a tenant more time to vacate a property due to mobility issues.
- Re-assigning a parking space or making a unit available so it is more accessible.
- Allowing a live-in caregiver to move in.
- Giving a tenant until after their disability check comes to pay rent.
- Removing carpet from a unit of a person with a chemical sensitivity.

Request for RA's

- Requestor must show:
 - They experience a **disability**.
 - The accommodation is **necessary**.
 - The accommodation is **reasonable**.
- Does not have to be made in writing or with a particular form.

Federal Definition of a Person with a Disability

- Has a physical or mental impairment that substantially limits one of more of the major life activities (“major life activities” include, but not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working) of an individual, or
- Has a record of such impairment, or
- Is regarded as having such an impairment

(24 CFR 100.201)

Verification of the Disability

- If obvious or readily apparent or known to the housing provider, no verification is necessary.
- Can only ask for as much information as is necessary to verify the need and relationship to the request.
- Cannot ask for medical history or specific diagnosis.
- Doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability.
- In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.
- Can usually be provided by the individual (e.g., proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits or a credible statement by the individual).

When is an Accommodation Necessary?

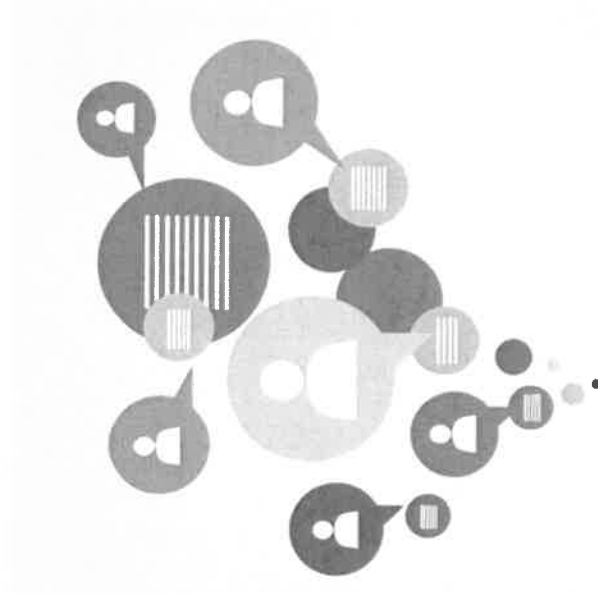
- When it would free the tenant from a rule, policy, or practice that interferes with the person's right to use and enjoy the dwelling.
- Must be a nexus between requested accommodation and the disability.
- Nexus: Enhances the person's quality of life by lessening the negative effects of the disability.

When is the Accommodation Reasonable?

- Considered reasonable unless:
 - It causes an undue financial or administrative burden OR
 - Can cause some financial burden. (United States v. Cal. Mobile Home Park Mgmt. Co., 29 F.3d 1413, 1417 (9th Cir. 1994)-housing provider may have to incur some financial burden)
 - Considerations: 1) benefit to tenant 2) Costs 3) financial resources 4) availability of less expensive accommodation.
 - Cannot fundamentally alter the nature of the program.
- Must be assessed on a case by case basis.

The Interactive Process

- Primary consideration is given to the RA request as made by the person with disability.
- If the provider wants to deny the request, they must engage in an interactive process to determine if an alternative, less-burdensome accommodation would offer equally effective.
- Delay/failure to engage may be considered a denial.



Example: Allan

Allan has a mental health disability that makes it impossible for him to work. He receives \$788 a month in Social Security Disability on the fourth of each month. Allan's monthly rent is \$550 and is due on the first of the month. If rent isn't paid by the third of the month, he is charged a late fee of \$25. Allan has a balance of \$300 in late fees and his landlord is threatening to evict him if he doesn't start paying the rent on time.

- He comes to you for help? What do you advise him?

Allan Continued

- Allan can request a reasonable accommodation to pay his rent late on the fourth of each month. He receives his benefits because of his disability and the accommodation is necessary to allow him to stay in his home.
- See Fair Housing Rights Center in Southeastern Pennsylvania v. Morgan Properties Management Company, LLC, 2017 WL 1326240 (2017) (holding that a RA request to pay rent late because SSDI benefits were disbursed later in the month was reasonable: “Even though granting SSDI recipients more time to pay their rent may provide them with preferential treatment, such accommodation may be necessary because a disabled person may have to wait until she receives her SSDI check to afford housing policy to charge people with disabilities late charges because they receive their benefits after the first of the month.”)

Example: Janice

Janice is 76 years old and lives by herself in a one-bedroom apartment. She has become more and more forgetful and has been having a hard time keeping track of some of her belongings. One afternoon, Janice decides to take a bath and turns on the water in the bathtub. She walks away and forgets about the bathtub and takes a nap on the couch. She wakes up to a loud knock on her door from the apartment manager. Water has leaked all over the bathroom and is dripping into the downstairs apartment. When Janice's daughter learns about the flood, she convinces Janice to get evaluated by a doctor. She is diagnosed with dementia. The doctor suggests Janice get an in-home support worker to assist her.

- The flood causes \$8K worth of damage and the owner is furious. He gives Janice an eviction notice as a result. She comes to you for help. How can you advise her?

Janice was responsible for the flood. Can you work on Requirements.

Janice Continued

- Janice can request a reasonable accommodation because dementia is a disability.
- She can argue that the risk of further damage will be reduced because if she will be getting in-home supportive services. Other support available?

Direct Threat

A reasonable accommodation may be denied if:

- It creates a direct threat to the health or safety of other tenants; or results in substantial physical damage to the property of others.
- Housing Provider must make an individualized assessment based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain:
 1. the nature, duration, and severity of the risk;
 2. the probability that the potential injury will actually occur; and
 3. whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(24 C.F.R. § 9.131)

Direct Threat Cases: Roe v. Housing Authority of City of Boulder

- Tenant with severe mental health disabilities struck another tenant requiring stitches; harassed meals on wheels volunteers resulting in discontinuing services whole building.
- Landlord served tenant with eviction notice and tenant requested an RA
- Landlord refused the RA and to engage in interactive process.
- Tenant filed affirmative discrimination case and court held for tenant in motion for summary judgment holding that they were unable to show that no reasonable accommodation would eliminate or acceptably minimize any risk the Plaintiff posed to other residents.

Direct Threat Cases: Roe. v. Sugarmills Assoc.

- Tenant struck and severely harmed another resident
- Court determined that the housing provider had to make efforts to reasonably accommodate before taking action to evict him

Example: Renee

Renee has schizophrenia which causes her to be paranoid, fearful of others, and to hear voices. She controls the symptoms of her disability with medication and therapy. Due to a clerical error, her medical benefits are terminated and she can't fill her medication. She goes several weeks without medication and decompensates. She starts yelling at herself and at other tenants in the common areas of her apartment complex. This eventually results in a physical confrontation where Renee hits another resident several times and runs away.

With the assistance of her social worker, she gets back on her medical benefits, starts taking medication, and is stabilized. However, she receives an eviction notice as a result of the confrontation.

- She comes to you for help. What can you do to advise her?

Renee Continued

- **Request RA based on Renee's disability:**
 - Probationary tenancy
 - Finite amount of time
 - Agreement to stay with additional rules
- **Reasonable due to changed circumstances:**
 - Back on medication and stable
- **Is she an imminent threat?**

Example: Francis

Francis is a veteran with PTSD. He treats his condition with medication and other services. Francis lives in a building with a “no pets” policy but he has a reasonable accommodation for an emotional support dog named Oso. Francis has had Oso for two years and counts him as one of the main elements of his support system. One of the things that attracted Francis to Oso is that the dog also had a traumatic past. This causes Oso to become aggressive and defensive around other animals and some people. As a result, Francis cannot take Oso out without putting him on a strong leash.

One day Oso gets loose and runs out of the apartment. He approaches a neighbor, growls, and bears his teeth. The neighbor begins to run and Oso grabs his pant leg with his teeth and holds on until Francis is able to intervene.

- Later that day, Francis receives a letter from the landlord saying that his reasonable accommodation is “revoked” and that he can no longer have any pets-especially Oso. How can you advise Francis?

Francis Continued

- Can Francis' landlord "revoke" the reasonable accommodation? *No. Maybe DSO, but not all emotional supports animals (ESA).*
- What possible alternatives can you suggest?
 - Training for DSO
 - get another ESA
 - use muzzle

Hoarding Disorder

- DSM5 includes Hoarding Disorder as a disability.
- *Douglas v. Kriegsfeld*, 884 A.2d 1109 (D.C. App. 2005)
- RA Request can be made at any time
- Landlord may be required to give tenant time to clean even if code violation issued
- See also *Pine Valley Court Apts. v. Bowe*, 2007 N.J. Super. Unpub. LEXIS 1604 (2007); *Lebanon County Housing Auth. v. Landeck*, 2009 PA Super. 37 (2009); *Rutland Court Owners, Inc. v. Taylor*, 997 A.2d 706 (D.C. App. 2010)

Hoarding

Clutter Image Rating: Bedroom

Please select the photo that most accurately reflects the amount of clutter in your room.



Facts to Consider for Reasonableness in a Hoarding Case

- **PLAN**
 - Does the client's proposal have specific indicia of a plan to completely cure the alleged violations?
 - Has the client offered specific assurances that the housing unit will be restored to and maintained in a sanitary condition?
- **TIME**
 - How much time has the client already had before coming to you? How much time does the client ultimately need?
- **ASSISTANCE**
 - Does the client have help? Is the client willing to obtain help if they cannot do the work themselves? Can the client afford to hire the necessary help or pay for storage?
- **HAZARDS**
 - How serious are the alleged hazards?
- **LAW**
 - Violations of local State, Federal laws/regulations

Example: Joe

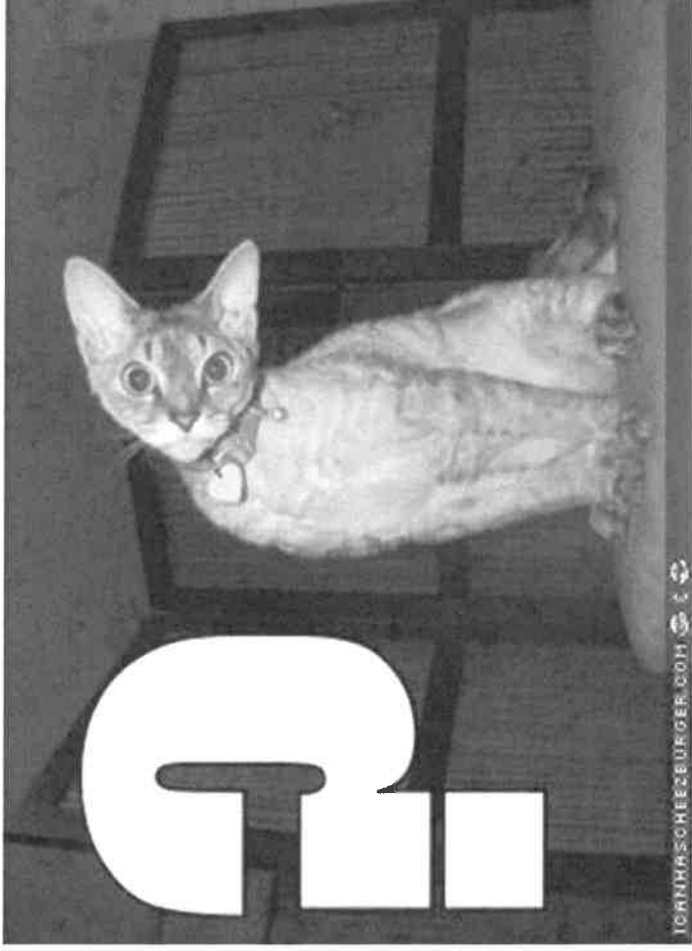
Joe and his former partner Ramon were together for 25 years. They wanted to get married but same sex marriage was illegal in California at the time. Ramon passed away 8 years ago and Ramon's family, who inherited all of Ramon's estate, refused to give Joe most of Ramon's possessions because they didn't approve of the relationship. This caused Joe to fall into a deep depression where he became extremely attached to all of his possessions and went on shopping binges. Joe's apartment is packed from top to bottom with stuff. Joe has to scale several feet of boxes to get out of the door and he has even run out of space to sleep. His landlord serves him with a 10 day notice to clean his unit or they will file for an eviction. The landlord says Joe's unit is a fire hazard and puts everyone in the building at risk.

- Joe knows there is no way he can clean his unit in time and he comes to you for help.

Joe Continued

- RA Request: Hoarding is a Disability
- Probationary tenancy
- Changed Circumstances:
 - Therapy/Medication
 - Organizer
 - APS or other City/County agency
- **What is the minimum to be safe:**
 - Pathway the width of a gurney to provide ingress and egress
 - Nothing stored in or near oven/burners
 - Abate odors
 - No other fire hazards
 - Trip/Crush Hazards
- Reasonable Timeline
- Don't use your (or landlord's) personal judgment as to how clean should be
- Be aware of Stigma

Questions?



Thank You!

- kbrodfuehrer@nhlp.org
- For more information go to NHLP.org

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