

# NYC Office of Civil Justice 2016 Annual Report

June 2016

## Acknowledgments

This report was prepared by the Office of Civil Justice, New York City Human Resources Administration, and the Office of Evaluation and Research, New York City Department of Social Services.

We wish to gratefully acknowledge the following for their contributions to this report:

- The Honorable Fern Fisher, Deputy Chief Administrative Judge for New York City Courts; the Honorable Jean Schneider, Supervising Judge for New York City Housing Court; and the State Office of Court Administration
- The Honorable City Councilmembers Melissa Mark-Viverito, Speaker; Vanessa Gibson; Rory Lancman; Stephen Levin; Mark Levine; and staff of the New York City Council
- Commissioner Vicki Been of the New York City Department of Housing Preservation and Development and staff of HPD
- Commissioner Nisha Agarwal of the Mayor’s Office of Immigrant Affairs and staff of MOIA
- Helaine Barnett and the staff of the New York State Judiciary’s Permanent Commission on Access to Justice

Special thanks to Ryan Ahern, Edith Kealey and Kinsey Dinan of the Office of Evaluation and Research, John Gergely of the Human Resources Administration’s Homelessness Prevention Administration and Jaclyn Moore of the Office of Civil Justice for their invaluable assistance.

And we also want to express our gratitude to our legal services contractors and their staffs who are on the front lines every day providing legal assistance to prevent evictions and homelessness and preserve affordable housing.

## About the Human Resources Administration/Department of Social Services

The New York City Human Resources Administration (HRA)/Department of Social Services (DSS) is the nation’s largest social services agency assisting over three million New Yorkers annually through the administration of more than 12 major public assistance programs, including:

- Economic support and social services for families and individuals through the administration of major benefit programs (Cash Assistance, Supplemental Nutritional Assistance Program benefits [food stamps], Medicaid, and Child Support Services);
- Homelessness prevention assistance, educational, vocational and employment services, assistance for persons with disabilities, services for immigrants, civil legal assistance, and disaster relief; and
- For the most vulnerable New Yorkers: HIV/AIDS Services, Adult Protective Services, Home Care, and programs for survivors of domestic violence.

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## Main Findings

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- **For the first time, New York City’s overall investment in civil legal services for low-income City residents will exceed \$100 million in Fiscal Year 2017.** In the coming year, Mayoral programs exceeding \$83 million and City Council awards of nearly \$28 million will fund free legal services for low-income New Yorkers in areas including housing, immigration, benefits access, domestic violence and other areas of civil legal needs. As federal funding for civil legal services has declined over the last several years, the City and the New York State Judiciary have dramatically increased funding for these services. In particular, Mayoral funding for tenant legal services in Fiscal Year 2017 is ten times the level in Fiscal Year 2013.
- **Even before the new City housing legal assistance programs are implemented fully in Fiscal Year 2017, more than one in four tenants in court facing an eviction case in New York City - 27% - is now represented by a lawyer,** a marked increase compared to findings that in calendar year 2013 only 1% of tenants in New York City housing court were represented by attorneys. An analysis of recent data shows that more than half of in-court representation for tenants is provided by non-profit legal services organizations for low-income New Yorkers. Only 1% of landlords in eviction proceedings appeared in court without counsel.
- **Clients of anti-eviction legal services are typically facing eviction after living for years in their homes.** The median length of tenancy for the clients of tenant legal services providers was five years, and over 30% of tenants had lived in their homes for ten years or longer when they faced the eviction.
- **The average anti-eviction legal services client is 43 years old and resides in a household of three.** 6% of tenants represented by City-funded legal services providers are seniors 65 years old or older.

- **Increases in housing legal services investment are already having an impact.** Residential evictions by city marshals declined 24% in 2015 compared to 2013, a period during which New York City substantially increased funding for legal services for low-income tenants. During 2015, orders to show cause – motions by tenants to reverse a court’s order of eviction – also declined nearly 14%, while the volume of residential eviction cases filed remained largely stable, suggesting increased efficiency in the courts with the increase in legal representation.

## Introduction

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In June of 2015, with the signing of City Council Intro 736-A into law by Mayor Bill de Blasio, New York City's Office of Civil Justice (OCJ) was created as a part of the New York City Human Resources Administration (HRA)/Department of Social Services (DSS) (see Appendix A). OCJ shares HRA's mission of fighting poverty, addressing income inequality and reducing homelessness in New York City. OCJ is tasked with advising and assisting the Mayor in understanding and meeting the civil legal service needs of low-income New Yorkers.

The creation of the Office of Civil Justice accompanies New York City's unprecedented investment in civil legal services programs for low-income New Yorkers over the past two years. After years of limited funding for legal services in areas like assistance for low-income tenants and immigration legal services, the de Blasio Administration as well as the City Council, led by Speaker Melissa Mark-Viverito, have established and enhanced an array of legal services programs to meet the civil legal needs of New Yorkers involving both specific categories of assistance (e.g., housing, immigration, unemployment) and for discrete populations with specific legal needs (e.g., survivors of domestic violence, veterans).

As of New York City's Fiscal Year 2017, City funding for civil legal services - free or low-cost assistance and advice by lawyers for people with legal problems that are not criminal in nature,<sup>1</sup> involving basic necessities such as housing, health care, government benefits and immigration status - will exceed \$100 million annually. This includes over \$82 million in funding for Mayoral programs for civil legal assistance for low-income tenants facing eviction or harassment by landlords (as discussed in greater detail in this report) for services directed at immigrant New Yorkers in need and for connecting eligible low-income New Yorkers with federal benefits programs.

### **Civil Legal Services for Low-Income New Yorkers**

In New York City, civil legal services are supported by a diverse mix of funding streams, including both public and private sources. Local and state support for these services has grown substantially in recent years, while federal funding has declined over time.

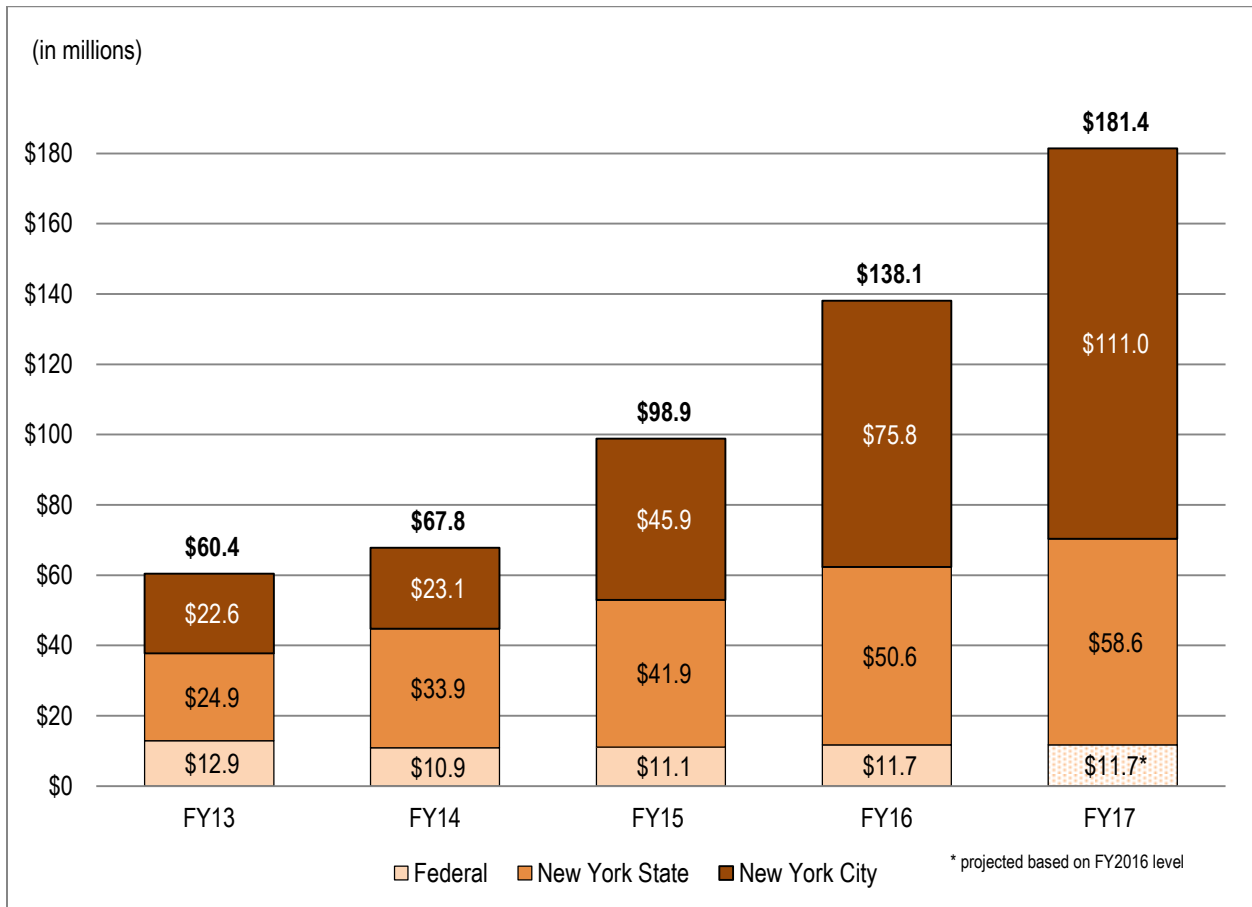
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<sup>1</sup> In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the United States Supreme Court unanimously ruled that states are required to provide attorneys to criminal defendants who are unable to afford counsel. Under New York State County Law Article 18-b, access to counsel for the indigent is guaranteed in certain other circumstances, including, but not limited to, cases alleging abuse or neglect of children against parents or guardians in the New York City Family Court.



Although overlapping fiscal years for different levels of government make it challenging to calculate total funding by calendar year, it is clear that public funding for civil legal services has more than doubled in the past few years, including a 10-fold increase in funding for housing-related legal assistance in the Mayor’s baseline budget over the past two years (see Figure 1).

**Figure 1: Public Funding for Civil Legal Services in New York City, FY2013-FY2017**



**Sources:** Data on NYC funding compiled by HRA Office of Civil Justice. NY State funding compiled from data supplied by Office of Court Administration and published data on the NY State Interest on Lawyers Account (IOLA) Fund: (2012, 2014 Annual Reports, 2015-17 grant schedule), retrieved from [www.iola.org](http://www.iola.org). Federal funding taken from Legal Services Corporation Grantee Data, retrieved from <http://www.lsc.gov/grants-grantee-resources/grantee-data>.

**Note:** Amounts reflect the fiscal year for the relevant government entity: federal Fiscal Year starts October 1; state Fiscal Year starts April 1; and city Fiscal Year starts July 1.

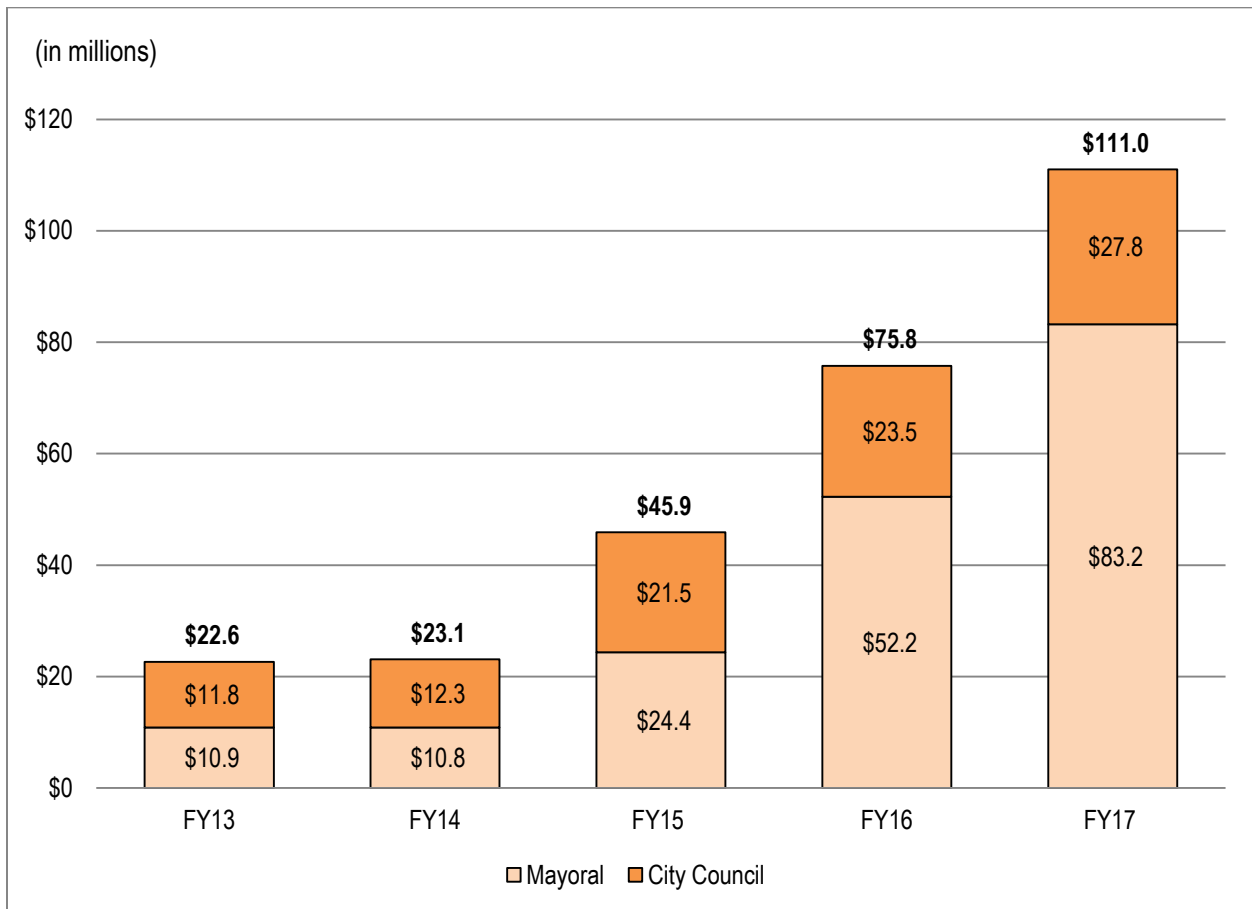
### New York City Funding

City funding for civil legal services is primarily allocated through contracts currently administered by HRA encompassing baselined programs supported through the Mayoral budget as well as discretionary grants provided to non-profit organizations by members of the City Council, as discussed further below.

As shown in Figure 2, New York City invested a total of \$75.8 million in civil legal services in FY2016, more than triple the spending levels on these services in FY2013. For comparison, New York City’s funding for civil legal services in FY2016 exceeded the *combined total* of New York City, New York State and federal funding for civil legal services in New York City in FY2013.

Both Mayoral and Council discretionary funds have increased substantially since FY2013, with Mayoral program funding representing almost two-thirds of total City investment in civil legal services in FY2016 (see Figure 2). In FY2017, civil legal services funding by New York City will exceed \$100 million for the first time (\$111.0 million), with funding for Mayoral programs that provide civil legal assistance to low-income New Yorkers exceeding \$83 million for the fiscal year.

**Figure 2. New York City Funding for Civil Legal Services, FY2013-FY2017**



Source: HRA Office of Civil Justice.

## New York State Funding Allocated by the Judiciary and the Interest On Lawyer Account Fund

New York State funds to support civil legal services are allocated through two grant programs: Judiciary Civil Legal Services (JCLS) awards administered by the State Office of Court Administration (OCA), and the Interest On Lawyer Account (IOLA) Fund of the State of New York. Total annual Judiciary and IOLA funds for civil legal services granted to providers in New York City more than doubled in the past four years, from \$24.9 million in FY2013 to \$50.6 million in FY2016 (see Table 1). This is as a result of increased civil legal services funds in the Judiciary budget allocated by Chief Judge Jonathan Lippman and Chief Judge Janet DiFiore.

Total Judiciary and IOLA funding for New York City for the coming year is projected to reach \$58.6 million, largely through a 21 percent increase in OCA’s JCLS funding from \$37.3 million to \$45.3 million.

**Table 1. New York State Funding Awarded to Civil Legal Service Providers in New York City, FY2013 – FY2016**

	<b>FY2013</b>	<b>FY2014</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY2017*</b>
<b>JCLS*</b>	\$14.1 million	\$21.3 million	\$29.3 million	\$37.3 million	\$45.3 million
<b>IOLA**</b>	\$10.8 million	\$12.5 million	\$12.5 million	\$13.2 million	\$13.2 million
<b>Total***</b>	<b>\$24.9 million</b>	<b>\$33.9 million</b>	<b>\$41.9 million</b>	<b>\$50.6 million</b>	<b>\$58.6 million</b>

\* FY2017 JCLS grants will not be awarded until January 2017, although state FY2017 ends in March; figure in table reflects intended funding level.

\*\* IOLA awarded 15-month grants for the period January 1, 2012 through March 31, 2013; amount reported for FY2013 has been pro-rated to reflect 12 months. For the period FY2014 through FY2017, IOLA funds were distributed through two-year contracts. Annual amounts reported here represent 50 percent of the total contract value.

\*\*\* Amounts may not add up to totals due to rounding.

Sources: NY State funding compiled from data supplied by Office of Court Administration and published data on the NY State Interest on Lawyers Account (IOLA) Fund: (2012, 2014 Annual Reports, 2015-17 grant schedule), retrieved from [www.iola.org](http://www.iola.org).

### OCA’s Judiciary Civil Legal Services Grants

OCA’s JCLS grants to non-profit legal services organizations fund assistance for low-income residents with civil legal matters involving four so-called “essentials of life” categories—housing, family matters, access to health care and education, and subsistence income. These grants are the major component of the State Judiciary’s \$100 million commitment to address the civil legal needs of low income New York State residents. Per-county funding levels are determined based on the distribution of

the states' low-income residents (those with income at or below 200% FPL) across New York State's counties. Based on this method, approximately half of JCLS funding is awarded to providers in New York City, where approximately half of New York State's low-income population resides.

JCLS funding for New York City-based legal services providers more than doubled between FY2013 and FY2016, from \$14.1 million to \$37.3 million (see Table 1). JCLS grantees in New York City include a diverse group of legal providers and community-based organizations, with some supporting a broad range of legal services and others targeting specific domains or populations. A list of JCLS grantee organizations for 2015-2016 is included at Appendix B.

In the coming year, JCLS funding is expected to reach a total of \$85 million statewide; based on the distribution of the state's low-income population, we anticipate that approximately \$45.3 million will be awarded to New York City providers. This funding, combined with financial support for the IOLA fund (see following section), amounts to a full realization of the State Judiciary's \$100 million commitment to civil legal assistance in New York State.

### **Interest on Lawyer Account Fund**

The Interest on Lawyer Account (IOLA) Fund supports non-profit organizations that provide legal assistance to low-income people throughout New York State. The IOLA Fund receives money through interest earned on a statewide escrow account. Attorneys in private practice routinely receive funds from clients to be used for future representation. If these funds are substantial, or are intended to be kept for long periods of time, they are customarily deposited in an attorney trust account. However, small or short-term funds are typically held in a statewide, centralized escrow account. Interest income generated by the statewide account is then competitively awarded to civil legal service providers throughout the state via the IOLA Fund.

IOLA grantees serve clients in a range of civil legal areas, including housing, immigration, public benefit advocacy, family law, education and consumer law. These organizations provide direct representation, as well as brief advice and *pro bono* administration.

Because the amount of revenue generated by the IOLA account varies year to year as a result of fluctuations in interest rates and economic conditions (for example, the Fund decreased from \$32 million in 2008 to \$9 million in 2013<sup>2</sup>), in recent years the

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<sup>2</sup> *Task Force to Expand Access to Justice to Civil Legal Services in New York. (2014). Report to the Chief Judge of the State of New York. (2014). Retrieved from <https://www.nycourts.gov/accesstojusticecommission/PDF/CLS%20TaskForce%20Report%202014.pdf>.*

Judiciary has provided \$15 million annually to stabilize the IOLA Fund. Annual IOLA funding levels for civil legal services awarded to New York City-based providers have thus remained roughly constant in recent years, with funding equivalent to \$12.5 million in FY2015 and \$13.2 million in FY2016. IOLA grant funding for New York City providers is expected to remain steady at \$13.2 million for FY2017.

## **Federal Funding**

The Legal Services Corporation (LSC) was established by Congress in 1974 as a mechanism for federal funding of civil legal services for low-income Americans. LSC awards several categories of grants, supporting access to justice in areas including housing, health, income maintenance, employment, education, and consumer finance. To be eligible for LSC funding, providers must offer a full range of legal aid in a specified service area; the five counties of New York City constitute one service area. Grantees must serve clients whose household income is at or below 125 percent of the Federal Poverty Level.

In FY2016, LSC had a total budget of \$385 million for the entire country – in contrast to New York City’s allocation of more than \$100 million for Fiscal Year 2017. Beginning in 1980, LSC funding awarded in the New York City service area through its “Basic Field Grant” program has decreased, including from \$17.6 million in 2010 to \$11.7 million in 2016.

Federal funding for civil legal services has decreased dramatically over the past two decades. In FY1994, LSC had a total national budget of \$400 million, which was slashed by over 30 percent in 1996. Despite increases in the years since, after accounting for inflation, current federal funding for civil legal services is roughly 40 percent lower than the FY1994 allocation.<sup>3</sup>

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<sup>3</sup> Legal Services Corporation Grantee data. Retrieved from <http://www.lsc.gov/grants-grantee-resources/grantee-data>. Analyzed by NYC Department of Social Services, Office of Evaluation and Research, July 2016.

## Civil Legal Services for Tenants

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As discussed above, beginning in 2014 overall funding for civil legal services in New York City has grown dramatically, driven by increases in Mayoral, City Council and OCA allocations. The de Blasio Administration has made new and expanded initiatives to provide access to legal assistance for low-income tenants facing eviction and other housing-related legal issues one of the main focuses of these additional resources.<sup>4</sup>

Addressing issues of affordable housing and providing New York City tenants with the tools they need to fight eviction and avoid homelessness are key priorities for New York City, and with ample reason. New York City stands in the midst of an affordable housing emergency, with many New York renters spending a significant portion of their income on housing. This is particularly true for low-income renters. Data from the U.S. Census Bureau's American Community Survey indicate that among "extremely low income" New Yorkers (with income less than 30 percent of median income), nearly 90 percent are "rent burdened," defined as spending more than 30 percent of income on rent and utilities, and 70 percent are "severely rent burdened," spending more than half their income on rent.<sup>5</sup>

Frequently, these burdens can become unmanageable, leading to destabilizing effects. According to a 2015 survey of New York City residents, among low-income New Yorkers (income below 200 percent of the federal poverty line [FPL]<sup>6</sup>), nearly *one in four* fell behind on their rent or mortgage in the prior year.<sup>7</sup> As a result, many New Yorkers find themselves facing eviction from their homes resulting in more unstable housing situations, some doubling up with family or friends and others turning to the homeless shelter system.

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<sup>4</sup> Available data on New York State and federal funding for civil legal services do not allow us to determine the amount of those resources used to support housing-related legal services in particular. That said, we know that housing-related issues are a major focus of many of their grantees. For example, FY2014 data show that housing-related legal issues constituted the largest category of direct assistance provided by IOLA grantees statewide, representing approximately 30 percent of individuals benefiting from assistance. Interest on Lawyer Account Fund of the State of New York (n.d.). *Annual Report 2014*, Retrieved from [https://www.iola.org/board/Grantee%20Annual%20Report%202014-15/Annual%20Report%202014\(final\).pdf](https://www.iola.org/board/Grantee%20Annual%20Report%202014-15/Annual%20Report%202014(final).pdf).

<sup>5</sup> Analysis based on 5-year ACS data, 2010-2014. Source: NYU Furman Center. (2016). *State of New York City's housing and neighborhoods in 2015*.

<sup>6</sup> The Federal Poverty Level, or Federal Poverty Line (FPL) is a measure of income issued every year by the United States Department of Health and Human Services. The 2016 FPL income numbers are: \$11,880 for individuals; \$16,020 for a family of two; \$20,160 for a family of three; \$24,300 for a family of four; \$28,440 for a family of five; \$32,580 for a family of six; \$36,730 for a family of seven; and \$40,890 for a family of eight.

<sup>7</sup> Community Service Society. (2016). *Getting ahead – an upward mobility agenda for New Yorkers in 2016*. Retrieved from [http://b3cdn.net/nycss/a10b6c21ce43bbff3c\\_z8m6bedcr.pdf](http://b3cdn.net/nycss/a10b6c21ce43bbff3c_z8m6bedcr.pdf)

Compounding these factors is a lack of affordable housing, coupled with a legal regime which can incentivize those landlords who are unscrupulous to encourage tenants to vacate affordable units through illegal and improper means. As of 2014, the New York City rental vacancy rate stood at 3.5 percent—less than the five percent threshold enabling the City to declare a “housing emergency” and thus trigger rent regulation.<sup>8</sup> The situation is especially challenging for low-income renters, as vacancy rates are even more restricted at lower rent levels.<sup>9</sup> In addition, while rent regulation laws help to preserve affordable housing in New York City, these laws can also create financial advantages for some landlords to displace current residents, especially when market rates are rising quickly. For example, between 1994 and 2012, there was a net loss of roughly 150,000 rent stabilized units throughout the City.<sup>10</sup>

The loss of affordable housing is not restricted to the regulated housing stock. A recent analysis of U.S. Census Bureau data found that between 2002 and 2011, there was a 39 percent drop in the total number of homes renting at a level affordable to a family with income at 200 percent of the federal poverty level—which translates to 385,000 units lost.<sup>11</sup> Similarly, census data analysis by the NYC Comptroller’s Office showed that between 2000 and 2012, there were approximately 400,000 fewer apartments renting for \$1,000 or less.<sup>12</sup>

There are a number of ways in which landlord-tenant interactions can compromise housing stability. New York’s system of rent regulation, including rent stabilization and rent control, protects tenants by giving them (and their co-resident family members) an entitlement to continued lease renewals with limited rent increases. Citywide, approximately *half of all rental units*—more than 1 million residencies—are covered by these provisions. In addition, there are 180,000 public housing units operated by the New York City Housing Authority (NYCHA), in which tenant rent contribution is generally limited to 30 percent of household income. There are also more than 150,000 tenant-based Section 8 vouchers in New York City; with vouchers, tenants pay 30 percent of their income towards rent and federal Section 8 funds cover

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<sup>8</sup> Emergency Tenant Protection Act of 1974 (EPTA) Chapter 576 of 1974 as Last Amended

<sup>9</sup> Gaumer, E. and West, S. (2015). *Selected initial findings of the 2014 New York City housing and vacancy survey*. NYC Department of Housing and Preservation Development. Retrieved from <https://www1.nyc.gov/assets/hpd/downloads/pdf/2014-HVS-initial-Findings.pdf>

<sup>10</sup> Glen, Alicia. (2015). *Housing New York: A five-borough, ten-year plan*. The City of New York. Retrieved from [http://www.nyc.gov/html/housing/assets/downloads/pdf/housing\\_plan.pdf](http://www.nyc.gov/html/housing/assets/downloads/pdf/housing_plan.pdf)

<sup>11</sup> Community Service Society. (2014). *What New Yorkers want from the new mayor: An affordable place to live*, Retrieved from [http://b3cdn.net/nycss/27ccd4d075e4ff7b10\\_fwm6b9i60.pdf](http://b3cdn.net/nycss/27ccd4d075e4ff7b10_fwm6b9i60.pdf)

<sup>12</sup> Office of the New York City Comptroller. (2014). *The Growing Gap: New York City’s Affordability Challenge*. Retrieved from [https://comptroller.nyc.gov/wp-content/uploads/documents/Growing\\_Gap.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/Growing_Gap.pdf)

the difference up to the Section 8 maximum rent. The majority of voucher holders live in rent-regulated units.<sup>13</sup>

On the other hand, in non-regulated units, landlords are not obligated to offer lease renewals or are free to impose a rent increase of any size at the time of lease renewal. Tenants generally have no legal recourse against these measures when they are done properly, but a legal review may find deficiencies in compliance with legal procedures, evidence of discrimination or other violations.

Even in rent-regulated units, tenants can find themselves under pressure to vacate their homes, in part because rising market rents create a strong financial incentive for some landlords to displace current residents. Under rent stabilization rules, rent increases for existing tenants are strictly curtailed; under the current guidelines issued in October of 2015 by the New York City Rent Guidelines Board, no increase is allowed for one-year leases, and rent increases on two-year leases are capped at one percent. For new tenants in rent-regulated units, however, rent levels can be legally increased by up to 20 percent (based on the vacancy allowance provision). The Rent Guidelines Board voted on June 27, 2016 for a zero percent increase on one-year lease renewals for rent-stabilized apartments and an increase of two percent on two-year leases for rent-stabilized apartments for leases executed on or after October 1, 2016. In addition, landlords are permitted to increase rent on rent-regulated units through Individual Apartment Improvements (IAIs) and Major Capital Improvements (MCIs), legal provisions which allow owners to apply for permission to raise rents to reflect investments in building improvements or installations.<sup>14</sup>

To be sure, the great majority of the City's landlords are law-abiding, treating tenants with respect and providing safe places to live at legally compliant rents. The unfortunate reality, however, is that a small number of landlords abuse the law and use tactics that constitute tenant harassment, often intended to pressure tenants to vacate their homes or otherwise give up important rights. These actions can include withholding repairs, rent overcharges or even overt threats or vandalism. Without an understanding of applicable tenants' rights, renters may endure dangerous housing conditions or simply leave their homes in response to harassment and pressure. Some landlords may also try to persuade tenants to leave with buy-out offers, but given the low vacancy rates for affordable housing described above, leaving an affordable home can seriously jeopardize tenants' future housing stability. Tenants facing pressure by unscrupulous landlords can take a variety of steps to maintain

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<sup>13</sup> U.S. Census Bureau, 2014 New York City Housing Vacancy Survey, analyzed by NYC Department of Social Services, Office of Evaluation and Research, July 2016

<sup>14</sup>New York State Department of Homes and Community Renewal (NYSHCR). (2015). *Fact Sheet #26: Guide to rent increases for rent stabilized apartments in New York City*. Retrieved from <http://www.nyshcr.org/Rent/FactSheets/orafac26.pdf>.



their housing, but the starting point is a solid understanding of tenant's rights and available legal options—and access to legal assistance and representation when they need it.

To address these challenges, the de Blasio Administration's *Housing New York: A Five Borough, 10 Year Plan* details a comprehensive strategy for building and preserving 200,000 units of affordable housing by the year 2024. The plan is designed to promote housing stability through strategies to stimulate new housing construction; enhanced building code enforcement, which ensures that existing affordable units are healthy and safe places to live; a range of rental assistance programs; and, notably, expanded access to eviction prevention services so that tenants living in affordable units can stay in their homes.

As detailed in this Report, over the past two years the City has made an unprecedented investment in civil legal services to assist low-income tenants facing eviction, displacement and harassment. To complement these legal services, HRA created the Homelessness Prevention Administration in 2014 to house and streamline the agency's work in homelessness prevention, rental assistance and early intervention. HRA has always provided homelessness prevention services, but the agency consolidated all of its homelessness prevention programs into a single unit as part of a comprehensive effort to prevent and alleviate homelessness within the City, which has built up over many years. During this same time, the Administration restored rental assistance programs that had been eliminated in 2011 in the State budget in order to increase services to prevent and alleviate homelessness. Since June of 2014 through Fiscal Year 2016, these rental assistance programs and other permanent housing efforts have enabled over 40,000 children and adults in almost 14,000 households to avert entry into or move out of Department of Homeless Services (DHS) and HRA shelters. HRA has also helped more people with emergency rent assistance, keeping thousands of New Yorkers in their homes. In Fiscal Year 2016, for example, HRA provided rent arrears to nearly 53,000 households.

Starting in 2015, HRA's Tenant Support Unit (TSU) has gone door-to-door in neighborhoods across the City, informing tenants of their rights, documenting building violations, receiving complaints related to harassment and eviction, and making referrals to free legal services to help them avert eviction, displacement and homelessness.

In December of 2015, Mayor de Blasio ordered a 90-day review on how homeless services were delivered in the City. As a result of this review of more than two decades of homeless policies and procedures, in April of 2016 a comprehensive plan that included 46 recommendations focused on prevention, rehousing, street homelessness outreach and improved shelter conditions was put in place. The plan also calls for an

integrated management structure with both HRA and the Department of Homeless Services (DHS) reporting to a single Commissioner of Social Services (DSS). The reforms are intended to eliminate duplicative administrative operations, streamline management and deliver services, including prevention services, more effectively.

As stated earlier, a key component of the City’s strategy to address issues of housing and homelessness is the expansion and enhancement of civil legal services for low-income New Yorkers facing eviction, the main focus of this Annual Report. In this Report, we detail a large and growing investment in New York City in civil legal services generally, and in particular services to assist low-income New Yorkers facing eviction and other housing-related legal issues, and we seek to answer some of the most critical questions faced by providers, policymakers, other stakeholders and of course litigants themselves – *the availability of legal assistance for tenants in the City’s housing courts, and the unmet needs for legal services that remain.*

For insight into the prevalence of legal assistance for tenants today, we partnered with the state Office of Court Administration and the Judges and staff of the New York City Housing Court to conduct an analysis of Housing Court and OCJ administrative program data pertaining to thousands of cases. This is an update to earlier research on this issue, which could not take into account the substantial increase in funding and services this Administration, the Judiciary and others have invested in this area over the last few years.

To understand the needs of the unrepresented, HRA’s Office of Evaluation and Research conducted surveys in Housing Courts across the City, interviewing hundreds of tenants who lacked the assistance of legal counsel and developing a detailed analysis of this population. In addition to the analyses, we conducted a qualitative assessment of these legal services and gaps, based on conversations with stakeholders including lawyers, judges, elected officials, advocates, researchers and tenants themselves.

## New York City Funding for Tenant Civil Legal Services

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Table 2 below identifies New York City allocations for legal services for low-income tenants, showing recent trends in funding levels. City spending has dramatically increased both within existing programs and as the result of new initiatives. In FY2017, city support for tenant legal services will grow to its highest level yet, with Mayoral initiatives alone budgeted at approximately \$62 million for this year. With these expansions, Mayoral funding is expected to provide over 33,000 low-income

New York City households - a projected 113,000 New Yorkers - with housing-related legal services in the coming year. Legal services providers participating in programs described in this section are listed in Appendix D.

**Table 2. New York City Funding for Tenant Civil Legal Services, FY2013-FY2017**

	Funding (in millions)				
	FY13	FY14	FY15	FY16	FY17
<b>Mayoral Programs</b>	<b>\$ 6.4</b>	<b>\$ 6.4</b>	<b>\$ 16.6</b>	<b>\$ 40.6</b>	<b>\$ 61.7</b>
Homelessness Prevention Law Project	\$ 4.9	\$ 4.9	\$ 12.1	\$ 19.6	\$ 25.8
Housing Help Program	\$ 1.5	\$ 1.5		\$ 3.0	\$ 3.0
Anti-Harassment Tenant Protection	\$ -	\$ -	\$ 4.6	\$ 18.0	\$ 32.9
<b>City Council Discretionary Awards</b>	<b>\$ 3.3</b>	<b>\$ 3.3</b>	<b>\$ 7.7</b>	<b>\$ 8.3</b>	<b>\$ 8.7</b>
Anti-Eviction and SRO Legal Services	\$ 2.0	\$ 2.0	\$ 5.4	\$ 5.4	\$ 5.0
Citywide Task Force on Housing Court	\$ 0.5	\$ 0.5	\$ 0.6	\$ 0.7	\$ 0.7
Stabilizing NYC	\$ -	\$ -	\$ 1.0	\$ 1.3	\$ 2.0
Mortgage Foreclosure Prevention Program	\$ 0.8	\$ 0.8	\$ 0.8	\$ 1.0	\$ 1.0
<b>Total New York City Funding</b>	<b>\$ 9.7</b>	<b>\$ 9.7</b>	<b>\$ 24.3</b>	<b>\$ 48.9</b>	<b>\$ 70.4</b>

Source: HRA Office of Civil Justice

## Anti-Eviction Legal Services

A keystone of the City’s civil legal services initiatives is the provision of quality legal representation for thousands of the City’s low-income tenants who are facing eviction from their homes.<sup>15</sup> HRA’s Homelessness Prevention Law Project (HPLP) is the primary vehicle for these services. Under HPLP, HRA contracts with non-profit legal services providers to provide free legal representation and advice to low-income tenants at risk of homelessness because of eviction. Through this program, legal service providers in each borough provide assistance and in-court representation of tenants in Housing Court eviction proceedings, Housing Part actions, proceedings following illegal lockouts or evictions, and administrative hearings in cases involving other agencies (such as NYCHA’s Division of Housing and Community Renewal, or the Department of Housing Preservation and Development [HPD]) that may result in the loss of tenancy or de-regulation of the rental unit. Casework primarily consists of full legal representation, with services that include legal research, preparation and filing of court papers such as motions, representation at hearings, evaluation of rent levels and apartment conditions, and actions to retain or restore housing subsidies, but providers may also deliver “brief legal services” in certain cases where

<sup>15</sup> An overview of the New York City Housing Court is included at Appendix C.

appropriate. Brief services generally consist of legal advice and consultation including housing counseling, benefits advocacy or assistance with other issues (e.g. repairs) that promote housing stability, and can be provided in some cases by a paralegal. HPLP primarily targets low-income<sup>16</sup> families with children who are at risk of eviction, with households without children making up a small portion of the caseload.

HPLP was funded at approximately \$4.9 million in FY2013, but starting with the de Blasio Administration's first budget in FY2014, and continuing through the consolidation of civil legal services programs at HRA in FY2015 and the establishment of the Office of Civil Justice in FY2016, funding for this program has substantially increased. In FY2017, HPLP will be funded at \$25.8 million, providing legal services for low-income tenant respondents in eviction cases in the City, and additional expanded legal services targeting specific high-need neighborhoods.

The Expanded Legal Services (ELS) component of the HPLP program is intended to essentially provide universal legal representation for low-income tenants facing eviction from their homes in ten zones across the City, targeted because they include the most at-risk households facing eviction and homelessness as reflected in rates of shelter entry. The ELS zones are identified by ZIP code; a list of the target ZIP codes and neighborhoods, along with HPLP/ELS legal services providers, is included at Appendix D. HPLP, including ELS, is expected to serve over 17,000 households in FY2017.

Whereas HPLP providers usually receive referrals of tenants from judges and court staff, internal referrals from other units and community outreach, the ELS component is more targeted and resembles a court-based "public defender" model. Also, unlike HPLP, the ELS program targets families with children and single adults alike. In Housing Court, all tenants whose eviction cases involve a residence in one of the target zones are offered the opportunity to meet with HRA OCJ staff on site for an initial screening and determination of income eligibility upon their first appearance at court. Eligible tenants are in turn referred to one of the contracted legal services providers for immediate screening and intake (in most cases also at the courthouse), where, barring a conflict of interest or other extraordinary factor, the tenant is provided free legal defense on the eviction case.

## **Housing Help Program**

HRA's tenant legal services initiatives also include the Housing Help Program (HHP). HHP was designed to address both the legal and human service needs of families facing homelessness. In this program, the Legal Aid Society, the sole provider that was selected through a competitive bidding process, employs a court-

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<sup>16</sup> To qualify for services under HPLP, a tenant's household income must be at or below 200% of FPL.

based “open door” model and offers full representation and brief legal services coupled with social work services that include assessment, counseling, referrals, and benefits advocacy. The Legal Aid Society’s HHP work is funded by HRA at \$3 million for FY2017 and is also supported by grant funding from the Robin Hood Foundation.

Eligibility for HPP services is limited to low-income clients who reside in a “high risk” ZIP code (as determined by rates of shelter entry in these areas) in the Bronx, Brooklyn, or Queens. A list of the target ZIP codes and neighborhoods is included at Appendix D. HHP is expected to serve approximately 2,400 households in FY2017.

### **Anti-Harassment and Tenant Protection Program**

The Anti-Harassment and Tenant Protection (AHTP) legal services program was launched at HRA by the de Blasio Administration in January of 2016. Whereas the anti-eviction legal services programs target tenants who are already involved in housing court proceedings, AHTP provides resources for tenant outreach and pre-litigation services with the goal of *preventing* eviction and displacement. In addition to full representation and brief legal assistance for Housing Court and administrative proceedings, AHTP legal services providers offer community education, landlord-tenant mediation, and counsel on cooperative tenant actions and building-wide lawsuits.

Currently, AHTP services are targeted to seven neighborhoods across the City (as in HPLP, the neighborhoods are identified by ZIP code; a list of the target ZIP codes and neighborhoods, along with AHTP legal services providers, is included at Appendix D) which have been identified as posing a high risk for landlord harassment and/or tenant displacement. Providers generally serve households at or below 200 percent of FPL, in cases on behalf of individual tenants, groups of tenants or entire buildings. AHTP providers work closely with the Tenant Support Unit to assist households identified through TSU’s outreach campaigns as in need of legal assistance.

AHTP was launched in FY2015 with a \$4.6 million initial startup allocation, was funded at \$18 million in FY2016 and will grow to \$32.9 million in FY2017. The program is expected to serve approximately 13,000 households in FY2017.

In total, the de Blasio Administration is investing nearly \$62 million in tenant legal services in FY2017, essentially a ten-fold increase compared to FY2013.

### **City Council-Funded Housing-Related Civil Legal Services**

Each year, New York City Council discretionary funds have been granted to various non-profit legal services providers to support civil legal service programming in the

areas of housing and eviction prevention. Through its Anti-Eviction/SRO Legal Services and Citywide Task Force on Housing Court initiatives, the Council funds legal service providers for anti-eviction and Single Room Occupancy (SRO) legal services and other housing court services (including support for Housing Court Answers to provide information tables and tenant education services) intended to assist low-and moderate-income families and SRO tenants facing eviction or poor housing conditions. Stabilizing NYC is a citywide coalition which seeks to prevent the loss of affordable housing at the hands of predatory equity companies and defend low-income tenants in predatory equity buildings from harassment and eviction through a combination of legal and organizing resources. The Mortgage Foreclosure Prevention Program supports the Center for New York City Neighborhoods, an independent nonprofit entity that coordinates the work of organizations providing technical services citywide, legal services providers, and community-based organizations working to assist homeowners who are in danger of losing their homes due to mortgage foreclosure.

### **Other Housing-Related Legal Assistance**

While public funds are the major source of legal assistance for low-income tenants in New York City, several other programs have been implemented through public-private partnerships and solely private funding sources to address specific service gaps and needs. Notably, unlike the City's initiatives, some of these programs use non-lawyers to offer guidance and advice to tenants in need. A few examples are discussed below.

#### *Housing Court Navigators*

The Housing Court Navigators program was launched in the Brooklyn Housing Court in 2014, as a partnership between Housing Court Answers, University Settlement, HRA and the State Judiciary's Access to Justice program, and now operates in all boroughs but Staten Island. "Navigators" are non-lawyer volunteers who provide free assistance to litigants with eviction cases. Court Navigators provide general information about court rules and procedures, assist in filling out court paperwork, and help in procuring interpretation services. In addition, Court Navigators are able to play a more proactive role in identifying clients who need assistance by, for example, approaching clients in the "answer" line and offering to help. Furthermore, certain Court Navigators have been granted legal standing to accompany respondents into the court room and answer factual questions from the judge. Training for the Court Navigators is provided by attorneys working through authorized non-profit organizations.

### *Legal Hand Program*

The Legal Hand program, started in 2015 by the Center for Court Innovation, uses a community-based storefront model to provide legal information and referrals to low-income New Yorkers with a variety of civil legal issues, including housing. Offices are staffed by volunteers trained and supervised by attorneys. The Legal Hand model is designed to promote community empowerment, identify opportunities to resolve issues prior to litigation and support access to justice. Legal Hand offices currently operate in Brooklyn (Crown Heights and Brownsville) and Queens (Jamaica) and to date have handled approximately 2,300 visits by New Yorkers seeking legal guidance. The program is funded through private philanthropy, and both OCA and the Permanent Commission on Access to Justice provide administrative support.

### *Poverty Justice Solutions*

The Poverty Justice Solutions program was launched in 2015 as a partnership between the Robin Hood Foundation, the state court system and the Center for Court Innovation. The program places twenty law school graduates in two-year fellowships with New York City civil legal service providers to work exclusively on Housing Court cases. In addition to serving over 3,000 families each year, the program aims to increase the pool of attorneys with experience in housing law. Funded mainly by the Robin Hood Foundation, Poverty Justice Solutions also enjoys administrative support from OCA and the OCA Permanent Commission on Access to Justice, and leverages available housing legal assistance funding from HRA.

### *Pro Bono Service by Private Attorneys*

Low-income tenants may benefit from *pro bono* activities carried out by lawyers in private practice. New York City has a long tradition of volunteer service organized through local bar associations or in collaboration between non-profit legal service providers and their colleagues in private practice. For example, OCA's *Attorney Emeritus* program enlists retired attorneys to carry out a minimum of 60 hours of annual *pro bono* work under the auspices of an established non-profit legal service provider.

As of 2012, aspiring attorneys are required to provide 50 hours of *pro bono* service in order to be licensed to practice in New York State; in 2014, OCA's *Pro Bono Scholars Program* began offering students who provide one semester of *pro bono* service the opportunity to sit for the bar exam prior to graduation. In some instances, administration for *pro bono* activities is supported by state funds through the state JCLS and IOLA grants described above.

In addition, the Housing Court runs the Volunteer Lawyers for the Day (VLFD) Housing Program in the Manhattan and Brooklyn Housing Courts through which volunteer attorneys provide *pro bono* assistance to tenants in rent-regulated apartments facing nonpayment eviction cases. In Brooklyn, the program operates in partnership with the CUNY School of Law's Community Legal Resource Network. Under the VLFD Housing Program, attorneys provide advice to tenants in rent-stabilized housing to assist in navigating the processes of answering a petition and pursuing a settlement that preserves their homes and sets themselves up for an affordable payment plan, or in the alternative to prepare for a trial. The Program provides training to volunteer attorneys. VLFD Housing Program attorneys represented approximately 525 litigants in 2015.

## Patterns and Trends in Housing Court Petitions and Evictions

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Cases in housing court generally fall into one of three categories: non-payment, holdover, and housing part (HP) proceedings.<sup>17</sup> Non-payment petitions are initiated by the landlord when the tenant owes rent; holdover petitions are generally initiated by the landlord in situations where the tenant is alleged to be in violation of the lease for reasons other than non-payment of rent or is alleged to remain in the residence after the expiration of a lease. Both non-payment and holdover proceedings may eventually lead to a warrant of eviction issued by the court. By contrast, HP actions are initiated by tenants to obtain repairs or other corrections to building violations.<sup>18</sup> An understanding of the patterns and trends in the volume and geographical distribution of these actions is important to determining the legal service needs of low-income tenants facing eviction in Housing Court.

The Civil Court of the City of New York, of which the Housing Court is a part, releases citywide and borough-level data on filings, warrants, and other court activities.<sup>19</sup> Data on evictions carried out by marshals are tracked by the New York City Department of Investigations, and annual reports are made available by the

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<sup>17</sup> While non-payment and holdover cases can occur in both residential and commercial buildings, this report focuses only on residential cases.

<sup>18</sup> HP cases are also commenced by HPD; however, this report focuses on tenant-initiated cases.

<sup>19</sup> These reports are available on the New York City Housing Court website at <https://www.nycourts.gov/COURTS/nyc/housing/statistics.shtml> and on the Housing Court Answers website at <http://cwtfhc.org/case-filings-documents/>. Housing Court Answers is a nonprofit organization partnered with the courts to make general information about housing court practice and procedure available to litigants, researchers and stakeholders.



New York City Housing Court and Housing Court Answers.<sup>20</sup> Data for this section come primarily from the reports available on the Housing Court Answers website to distinguish residential from commercial proceedings. We focus in particular on the past five years (2011-2015) in order to capture trends both before and during the current mayoral administration.

More than 200,000 residential eviction petitions are filed annually in New York City. The vast majority of petitions are for non-payment, although these petitions have been trending down over the past few years while holdover petitions have increased. Overall, there has been a slow but steady decline in total eviction petitions. Analysis by borough shows that eviction petitions are concentrated in the Bronx and Brooklyn, with nearly two-thirds of the city's petitions filed in those two boroughs. Moreover, despite declines in petitions citywide, the Bronx has seen a small but steady increase in recent years.

A review of Housing Court data suggests that *approximately half of all eviction petitions* are “resolved” without the issuance of a warrant of eviction; that is, a court warrant authorizing a City marshal to remove the tenant from the residence at a date certain.<sup>21</sup> The data further show that after a warrant is issued, many cases are resolved before an eviction is actually implemented by the agency tasked with that duty, the City Marshals subject to the oversight of the New York City Department of Investigation.

Altogether, there were approximately 22,000 marshals' evictions in New York City in 2015. This figure reflects a striking two-year decline of nearly 24 percent, from more than 28,000 in 2013. Like eviction petitions, most implemented residential evictions occur in the Bronx and Brooklyn, but both boroughs have seen notable declines in recent years (see Figure 3).

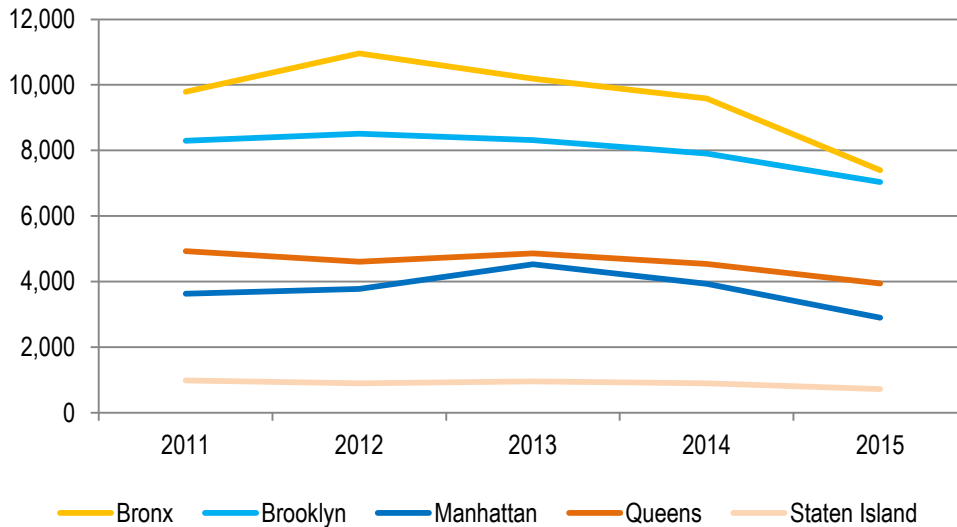
On the other hand, approximately 7,000 HP petitions are filed by tenants against landlords each year, alleging outstanding repairs or building code violations. These petitions are also concentrated in the Bronx and Brooklyn, and in some cases are filed in response to an eviction proceeding. The volume of HP petitions over the past few years has been relatively flat.

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<sup>20</sup> See the New York City Housing Court website at <https://www.nycourts.gov/COURTS/nyc/housing/statistics.shtml> and the Housing Court Answers website at <http://cwtfhc.org/evictions-marshals-documents/>. Note that while both sheriffs and marshals are authorized to carry out evictions, according to the New York City Department of Finance website most evictions resulting from landlord-tenant cases are handled by marshals.

<sup>21</sup> Cases can span calendar years, so we do not know the precise proportion of petitions initiated in a given year that led to a warrant. During the period 2011-2015, on average 122,000 warrants of eviction were issued each year compared to an annual average of 244,000 eviction petitions.

**Figure 3. Borough Trends in Residential Evictions, 2011-2015**



Source: Data reported by New York City Marshals as released by the New York City Department of Investigations and published on the Housing Court Answers website, available at <http://cwffhc.org/for-researchers/>.

Importantly, among tenants in the vast majority of evictions petition cases that do *not* lead to a marshal’s eviction, some cases are resolved through tenant-landlord agreements that may or may not keep tenants in place; others end with an “informal” eviction (including cases in which tenants mistakenly believe they are legally required to vacate the unit) or other outcome.

### **Eviction Proceedings - Housing Court Petitions**

In 2015, a total of 236,212 residential eviction petitions were filed in New York City Housing Court (see Table 3). This represents a 1.4 percent decline compared to the 2014 total and a 5.2 percent decrease relative to the 2011 total. At the borough level, approximately one-third of all petitions are filed in the Bronx and just over one-quarter in Brooklyn, with most of the remainder divided between Manhattan and Queens. Staten Island accounts for just 2 percent of petitions, with approximately 5,000 per year. Over time, the proportion of the city’s Housing Court petitions filed in the Bronx has increased from 32.5 percent in 2011 to 36.4 percent in 2015. This reflects an increase in the number of petitions in the Bronx from 80,938 in 2011 to 85,945 in 2015, a 6.2 percent rise, even as the citywide number fell. The rate of growth in the Bronx did slow in recent years, to 0.9 percent from 2014 to 2015.

By contrast, the volume of petitions decreased in all other boroughs between 2011 and 2015, with Manhattan registering the largest proportional decline over this four-year

period (-10.1 percent). In just the most recent year - 2014 to 2015 - the largest decline is in Brooklyn (-6.8 percent), with Queens registering a small increase (0.4 percent).

**Table 3. Petitions Filed in New York City Housing Court, 2011-2015**

	2011		2012		2013		2014		2015		% change 2011-15	% change 2014-15
	n	%	n	%	n	%	n	%	n	%		
Total Petitions, NYC	249,236		246,460		248,732		239,473		236,212		-5.2	-1.4
Bronx	80,938	32.5	82,696	33.6	83,452	33.6	85,138	35.6	85,945	36.4	6.2	0.9
Brooklyn	70,706	28.4	69,169	28.1	70,349	28.3	68,141	28.5	63,531	26.9	-10.1	-6.8
Manhattan	49,171	19.7	46,782	19.0	47,294	19.0	41,185	17.2	40,622	17.2	-17.4	-1.4
Queens	38,740	15.5	37,970	15.4	37,916	15.2	36,446	15.2	36,577	15.5	-5.6	0.4
Staten Island	5,460	2.2	5,710	2.3	5,202	2.1	5,079	2.1	4,957	2.1	-9.2	-2.4

Source: Data reported by New York City Civil Court, as reported on the “Statistical Report of Activity of L & T Clerk’s Office, ST-30” published on the Housing Court Answers website, available at <http://cwtfhc.org/for-researchers/>.

### *Non-Payment Petitions*

By far the greatest number of petitions in New York City Housing Court involve non-payment proceedings—a pattern that holds true both across time and across boroughs (see Table 4). In 2015, there were 203,119 Housing Court petitions citywide for non-payment proceedings, a decline of 8.2 percent since 2011 and a decline of 2.4 percent from 2014. Over this same period, there was a slight decline in the *proportion* of non-payment petitions among total petitions in Housing Court—from 88.7 percent in 2011 to 86.0 percent in 2015.

Trends at the borough level have varied over this period in terms of the number and proportion of non-payment petitions. Notably, while most boroughs saw a decline in the number of non-payment petitions, the Bronx saw an increase of 5.4 percent from 2011 to 2015. Viewed as a proportion of all petitions, the Bronx also has the highest rate: as of 2015, the proportion of non-payment petitions ranged from a low of 75.2 percent in Queens to a high of 92.8 percent in the Bronx. While the proportion of non-payment petitions has remained roughly similar in recent years in the Bronx, Manhattan and Staten Island, in the period 2011-2015 it decreased from 86.9 percent to 81.4 percent in Brooklyn and from 81.1 percent to 75.2 percent in Queens (as will be discussed below, this corresponds to the increase in holdover petitions in these boroughs, reflecting shifting patterns in housing actions initiated by landlords).

**Table 4. Non-Payment Petitions Filed in New York City Housing Court, 2011-2015**

	2011		2012		2013		2014		2015		% change 2011-15	% change 2014-15
	<i>n</i>	% of Total Petitions	<i>n</i>	% of Total Petitions	<i>n</i>	% of Total Petitions	<i>n</i>	% of Total Petitions	<i>n</i>	% of Total Petitions		
	Non-Payment Petitions, NYC	221,182	88.7	217,914	88.4	218,400	87.8	208,158	86.9	203,119		
Bronx	75,687	93.5	77,384	93.6	78,111	93.6	79,694	93.6	79,778	92.8	5.4	0.1
Brooklyn	61,431	86.9	59,631	86.2	59,323	84.3	56,254	82.6	51,709	81.4	-15.8	-8.1
Manhattan	44,306	90.1	41,551	88.8	42,189	89.2	36,488	88.6	35,919	88.4	-18.9	-1.6
Queens	31,419	81.1	30,678	80.8	30,285	79.9	28,322	77.7	27,498	75.2	-12.5	-2.9
Staten Island	4,423	81.0	4,809	84.2	4,275	82.2	4,141	81.5	3,864	78.0	-12.6	-6.7

Source: Data reported by New York City Civil Court, as reported on the “Statistical Report of Activity of L & T Clerk’s Office, ST-30” published on the Housing Court Answers website, available at <http://cwfthc.org/for-researchers/>.

### *Holdover Petitions*

Holdover proceedings are brought by landlords against tenants (or, more rarely, by tenants against other residents such as roommates) for all situations that do not involve rent arrears. Data on holdover petitions filed in New York City Housing Court are shown in Table 5. While the volume of holdover cases is small relative to non-payment cases, the number of holdover cases rose over the past several years as the number of non-payment proceedings fell. In 2015, there were 31,151 holdover petitions brought in New York City Housing Court, an increase of 18.9 percent compared to 26,204 in 2011. During this same period, as overall petitions have declined slightly, holdover petitions have accounted for a growing share of Housing Court activity, up from 10.5 percent of all petitions in 2011 to 13.2 percent in 2015.

At the borough level, there are substantial differences in the prevalence of holdover petitions as a proportion of housing court actions filed. As of 2015, the proportion of holdover petitions in 2015 ranged from just 4.8 percent in the Bronx to 23.0 percent in Queens. Recent trends have also differed by borough, with the most striking increase from 2011 to 2015 in Brooklyn (29.2 percent), and increases nearly as large in Queens and the Bronx (22.3 percent and 20.2 percent, respectively). By contrast, Staten Island saw just a 3.8 percent increase, while Manhattan saw a decline in holdover petitions filed. In the most recent year, 2014 to 2015, the increase was again in the double digits in the Bronx and Queens while in Brooklyn there was a small decrease (-0.7 percent).

**Table 5. Holdover Petitions Filed in New York City Housing Court, 2011-2015**

	2011		2012		2013		2014		2015		% change 2011-15	% change 2014-15
	n	% of Total Petitions	n	% of Total Petitions	n	% of Total Petitions	n	% of Total Petitions	n	% of Total Petitions		
	Holdover Petitions, NYC	26,204	10.5	26,609	10.8	28,464	11.4	29,481	12.3	31,151		
Bronx	4,763	6.6	4,813	6.1	4,895	6.0	4,976	5.9	5,725	4.8	20.2	15.1
Brooklyn	8,768	12.4	8,962	13.0	10,489	14.9	11,405	16.7	11,328	17.8	29.2	-0.7
Manhattan	4,505	9.2	4,895	10.5	4,771	10.1	4,405	10.7	4,414	10.9	-2.0	0.2
Queens	6,884	17.8	6,819	18.0	7,156	18.9	7,602	20.9	8,420	23.0	22.3	10.8
Staten Island	1,005	18.4	868	15.2	884	17.0	888	17.5	1,043	21.0	3.8	17.5

Source: Data reported by New York City Civil Court, as reported on the “Statistical Report of Activity of L & T Clerk’s Office, ST-30” published on the Housing Court Answers website, available at <http://cwfthc.org/for-researchers/>.

## Warrants of Eviction

Once a non-payment or holdover petition is filed in Housing Court, there are several ways the case can proceed, determined in part by whether the tenant responds to (answers) the petition. Holdover petitions include a court date, but court dates for non-payment cases are only assigned once the tenant answers the petition. Court statistics indicate that just over half of all non-payment cases receive a court date, suggesting that in the remainder of cases, the tenants do not respond.

Table 6 presents data on the number of warrants of eviction entered in the period 2011 through 2015, with the caution that this captures only formal evictions and may not reflect the full picture of housing instability associated with housing court proceedings. In 2015, there were 111,666 warrants issued citywide – less than half of the number of eviction petitions filed that year, though in some instances warrants may be issued more than once in the same case.

The number of eviction warrants issued in 2015 represents *the lowest point in several years*. From 2011 to 2013, warrants of eviction ticked up, reaching 132,734 in 2013; in the two years since then, there has been a marked decline in warrants of eviction of -15.9 percent.

As would be expected given the distribution of housing court petitions (which are concentrated in the Bronx and Brooklyn), the proportion of warrants by borough is consistently the highest in the Bronx followed by Brooklyn (37.9 percent and 29.3

percent respectively in 2015). The number of warrants issued decreased from 2011 to 2015 in all boroughs, with the largest percent drops occurring in Manhattan and Staten Island (-25.0 percent and -26.4 percent respectively) and smaller percent decreases in Brooklyn (-6.0 percent) and the Bronx (-4.3). However, comparing just the latest year of 2014 to 2015 reveals small increases of 3.5 percent in Brooklyn and 5.6 percent in Queens, suggesting the possibility of changing trends in these boroughs.

**Table 6. Warrants of Eviction Issued in New York City Housing Court, 2011-2015**

	2011		2012		2013		2014		2015		% change 2011-15	% change 2014-15
	n	%	n	%	n	%	n	%	n	%		
Total Warrants, NYC	124,766		124,970		132,734		116,059		111,666		-10.5	-3.8
Bronx	44,189	35.4	49,893	39.9	49,197	37.1	46,432	40.0	42,287	37.9	-4.3	-8.9
Brooklyn	34,875	28.0	34,059	27.3	34,884	26.3	31,670	27.3	32,770	29.3	-6.0	3.5
Manhattan	18,512	14.8	17,636	14.1	20,893	15.7	15,991	13.8	13,875	12.4	-25.0	-13.2
Queens	22,449	18.0	18,417	14.7	23,325	17.6	18,204	15.7	19,220	17.2	-14.4	5.6
Staten Island	3,141	2.5	3,048	2.4	2,823	2.1	2,759	2.4	2,311	2.1	-26.4	-16.2

Source: Data reported by New York City Civil Court, as reported on the “Statistical Report of Activity of L & T Clerk’s Office, ST-30” published on the Housing Court Answers website, available at <http://cwtfhc.org/for-researchers/>.

## Evictions

A warrant of eviction is issued by the court to a City Marshal or sheriff and authorizes the removal of tenants from the premises.<sup>22</sup> Tenants who receive an eviction notice can submit an Order to Show Cause in court to delay the eviction and possibly raise defects in procedure; tenants may also vacate their residences before a formal eviction takes place.

Data on evictions carried out by New York City Marshals are shown below in Table 7. The number of evictions has been falling in recent years, outpacing the declines (discussed above) in petitions and warrants of eviction over the same period. They have also been declining across all five boroughs - including the Bronx, despite the uptick in eviction petitions in that borough.

The number of evictions carried out in New York City fell slightly from 27,636 in 2011 to 26,857 in 2014, with a steeper decline to 21,988 in 2015. This represents a 20.4

<sup>22</sup> Technically, “eviction” refers to removals in which the tenants’ belongings are removed and stored at a private warehouse, while “legal possession” indicates that the landlord maintains control of the tenants’ belongings until the tenant arranges for their transfer. While these are reported separately by marshals, for the purpose of this report we combine both categories under the general heading of evictions.

percent decrease from 2011 to 2015, a 23.8 percent decrease from 2013 to 2015 and an 18.1 percent decrease from 2014 to 2015.

At the borough level, approximately one-third of all evictions took place in the Bronx and another one-third took place in Brooklyn. Evictions fell in all boroughs from 2014 to 2015, with the largest percent decrease occurring in Manhattan (-26.3 percent) followed by a 22.7 percent decrease in the Bronx. The smallest decline was in Brooklyn (-15.3 percent).

**Table 7. Residential Evictions Conducted by New York City Marshals, 2011-2015**

	2011		2012		2013		2014		2015		% change 2011-15	% change 2014-15
	n	%	n	%	n	%	n	%	n	%		
Total Evictions, NYC	27,636		28,743		28,849		26,857		21,988		-20.4	-18.1
Bronx	9,792	35.4	10,956	38.1	10,194	35.3	9,580	35.7	7,401	33.7	-24.4	-22.7
Brooklyn	8,300	30.0	8,514	29.6	8,313	28.8	7,908	29.4	7,033	32.0	-15.3	-11.1
Manhattan	3,633	13.1	3,775	13.1	4,525	15.7	3,933	14.6	2,898	13.2	-20.2	-26.3
Queens	4,928	17.8	4,605	16.0	4,862	16.9	4,542	16.9	3,939	17.9	-20.1	-13.3
Staten Island	983	3.6	893	3.1	955	3.3	894	3.3	717	3.3	-27.1	-19.8

Source: Data reported by New York City Marshals as released by the New York City Department of Investigations and published on the Housing Court Answers website, available at <http://cwtfhc.org/for-researchers/>.

## Housing Part (HP) Proceedings

As described above, Housing Part (HP) actions involve issues of repair or building violations and are not landlord-initiated actions seeking eviction of a tenant. They are, however, an important mechanism for protecting tenants' rights and preserving affordable housing. In addition, HP actions may be brought by tenants involved in non-payment or holdover eviction proceedings in circumstances where the landlord has not maintained the building. While HP actions are also brought by HPD, this Report focuses on HP actions initiated by tenants in Housing Court.

The relatively small number of HP actions means that small differences in the number of actions from year to year can result in large percentage changes; data should therefore be interpreted with some caution.

HP actions fell from 7,312 in 2011 to 6,802 in 2015, a 7.0 percent decrease (see Table 8). However, the 2015 number represented a slight (0.8 percent) increase over the prior year (2014) total of 6,747. Approximately one-third of HP actions are filed in the Bronx and just over one-quarter in Brooklyn. Borough-level trends over time

show decreases in the period 2011-2015 in Queens (-23.2 percent), Staten Island (-21.5 percent) and Brooklyn (-11.4 percent), while Manhattan was flat and the Bronx registered a 2.0 percent increase.

However, the most recent data suggest that 2014 to 2015 witnessed different patterns from previous years: Manhattan and Staten Island both experienced increases in the number of HP actions filed, while the Bronx saw a modest decrease.

**Table 8. Housing Part (HP) Actions Filed by Tenants in New York City Housing Court, 2011-2015**

	2011		2012		2013		2014		2015		% change 2011-15	% change 2014-15
	n	%	n	%	n	%	n	%	n	%		
Total HP Actions by Tenants, NYC	7,312		6,751		6,998		6,747		6,802		-7.0	0.8
Bronx	2,331	31.9	2,265	33.6	2,216	31.7	2,428	36.0	2,377	34.9	2.0	-2.1
Brooklyn	2,089	28.6	1,832	27.1	1,990	28.4	1,873	27.8	1,850	27.2	-11.4	-1.2
Manhattan	1,289	17.6	1,238	18.3	1,391	19.9	1,095	16.2	1,289	19.0	0.0	17.7
Queens	1,307	17.9	1,191	17.6	1,135	16.2	1,141	16.9	1,004	14.8	-23.2	-12.0
Staten Island	158	2.2	105	1.6	106	1.5	104	1.5	124	1.8	-21.5	19.2

Source: Data reported by New York City Civil Court, as reported on the “Statistical Report of Activity of L & T Clerk’s Office, ST-30” published on the Housing Court Answers website, available at <http://cwtfhc.org/for-researchers/>.

## Civil Legal Needs for Tenants in Housing Court

Growing public investment has greatly expanded low-income tenants’ access to legal assistance with Housing Court cases. At the same time, resources are not unlimited. This section of the report examines the question of “unmet need,” seeking to understand the composition of unrepresented tenants in Housing Court—and particularly of those who are low-income. We begin with a review of prior research regarding tenant representation in NYC Housing Court. This section then turns to analysis of two new datasets produced for this report: 1) a two-day sample of case-level Housing Court and OCJ program data with particular attention paid by the Housing Courts to tenant counsel information, conducted in April of 2016, and 2) a May 2016 survey conducted in Housing Court of approximately 500 tenants regarding legal representation, income, and household composition.



## Prior Research

In 2014, the Chief Judge’s Task Force to Expand Access to Civil Legal Services in New York compiled statements from multiple NYC Housing Court Judges and other experts regarding the majority of tenants lacking counsel in court. The Task Force report included data from the New York State Unified Court System indicating that of 273,216 landlord-tenant cases disposed in 2013, *just 1 percent of all defendants (i.e., tenants) had representation*, as compared to 95 percent of plaintiffs (i.e., landlords).<sup>23</sup> This figure was cited most recently in the 2015 report of the OCA Permanent Commission on Access to Justice.<sup>24</sup>

Over the past few decades there have been different efforts to better understand the unmet need for legal assistance in housing court. These studies have used varying approaches to come to their estimates including surveys, observations of court proceedings, and case file and administrative data reviews.

In 1986, the City-Wide Task Force on Housing Court—a tenants’ rights advocacy coalition comprised of over 100 non-profits, foundations and individuals created to initiate reform in New York City’s housing courts through comprehensive study—used two methods to estimate the representation rate among tenants with calendared court cases.<sup>25</sup> Researchers conducted roughly 3,000 structured court observations in November 1983 and February 1984 of court proceedings and pretrial conferences before judges and mediators in the four largest NYC Housing Courts: the Bronx, Brooklyn, Manhattan, and Queens. This count was supplemented with an analysis of a random sample of 200 cases for non-payment from the nearly 3,000 court cases observed. Court observations indicated two-thirds of cases were petitions of eviction for non-payment and another 19 percent were holdover evictions. Among all the cases observed, 79.2 percent of tenants lacked representation. Without the benefit of the court data available to the Chief Judge’s Task Force to Expand Access to Civil Legal Services in New York nearly two decades later, this case review found that 80.3 percent of tenants appearing in non-payment petitions lacked counsel.

The 1986 study also included some limited data on tenant characteristics based on the structured observations during trials, mediation, and pretrial meetings. While data on

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<sup>23</sup>The Chief Judge’s Hearing on Civil Legal Services, Third Dep’t, Oct. 6, 2014 (statement of Hon. A. Gail Prudenti, Chief Administrative Judge, New York State Unified Court System, at 6, Exhibit B at 3). In *Permanent Commission on Access to Justice, Appendices to Report to the Chief Judge of the State of New York, 2014*, page 609. Retrieved from

[https://www.nycourts.gov/accesstojusticecommission/PDF/2014%20CLS%20Report\\_Appendices\\_Vol%20.pdf](https://www.nycourts.gov/accesstojusticecommission/PDF/2014%20CLS%20Report_Appendices_Vol%20.pdf)

<sup>24</sup>*Permanent Commission on Access to Justice, Report to the Chief Judge of the State of New York*. (2015). Retrieved from [http://www.nycourts.gov/accesstojusticecommission/PDF/2015\\_Access\\_to\\_Justice-Report-V5.pdf](http://www.nycourts.gov/accesstojusticecommission/PDF/2015_Access_to_Justice-Report-V5.pdf)

<sup>25</sup>The Monitoring Subcommittee of the City-Wide Task Force on Housing Court. (1986). *Five minute justice. "Ain't nothing going on but the rent."*

income were not available, half of tenants who were recorded as present in court on the observation days and who were asked if they were on public assistance, answered that they receive public assistance. A small proportion - 4.5 percent - were “elderly,” defined as ages 60 and above.

The 1993 study “Housing Court, Evictions, and Homelessness: The Costs and Benefits of Establishing a Right to Counsel,” published by the Community Training and Resource Center and the City-Wide Task Force on Housing Court used a Housing Court survey (as opposed to in-court observations) and case file review.<sup>26</sup> Specifically, 12 summer interns and law clerks from the law firm of Skadden Arps Slate Meagher & Flom administered a survey to 1,930 tenants waiting to file answers and receive a court date in the Bronx, Brooklyn, Manhattan, and Queens Housing Courts in June of 1990. The survey asked respondents about legal representation and tenant and household income and demographic characteristics. They also reviewed 2,772 randomly selected case files from residential non-payment and holdover cases from those four courts, with calendared court dates in 1988 (this year was chosen to ensure that the cases had been resolved at the time of review).

As in the 1986 report, the two research methods yielded very similar findings with both suggesting a growth in the unmet need for legal representation since the previous study. Among tenants surveyed – and again without the court data available to the Chief Judge’s Task Force – 90.6 percent were unrepresented, while the case file review found 88.1 percent of tenants unrepresented. The study further estimated that between 50 and 60 percent of surveyed tenants had income below 125 percent of FPL, the income eligibility threshold for free legal services at the time. In terms of household composition, 6.7 percent of households included a senior ages 62 or older, 37.8 percent included a child under age 18, and 12.0 percent of respondents indicated that a disabled person lived in the home.

The 1993 survey was later used as the basis for a similar survey implemented in 2005 and 2006 by the Center for Human Environments at the City University of New York Graduate Center<sup>27</sup> focusing on patterns of legal representation and tenant household characteristics among tenants 62 years and older. In the study’s most comprehensive phase, researchers surveyed 1,787 tenants across all five boroughs totaling and approached a response rate of 75.3 percent. Seniors were purposefully oversampled in this effort; while they still made up only a small proportion of the sample (11.5 percent), results of a related survey in the study suggested that the “actual” proportion of seniors was 6.4 percent.

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<sup>26</sup> Community Training & Resource Center & City Wide Task Force on Housing Court, Housing Court. (1993). *Evictions & Homelessness: The Costs and Benefits of Establishing a Right to Counsel*.

<sup>27</sup> Krenichyn, K and Schaefer-McDaniel, N. (2007). *Results from three surveys in New York City Housing Courts*. Center for Human Environments, Graduate Center of the City University of New York.

This survey found a somewhat higher representation rate as compared to the 1986 and 1993 studies: of tenants surveyed, 76.2 percent reported that they did *not* have a lawyer, 22.2 percent had their own lawyer, and another 1.6 percent indicated that they shared a lawyer with their landlord suggesting some confusion about lawyer allegiance (see more on this issue in the stakeholder comments discussed in Section 6). These somewhat higher representation rates may in part reflect the oversampling of seniors, who were more likely to have legal counsel than their younger counterparts. Of the 405 tenants who indicated that they had representation, nearly two-thirds (64.4%) were represented by a legal aid or legal services lawyer, with just over a third retaining private counsel.

On average there were 2.9 people per household ranging from one to eleven people with 60.8 percent including at least one child under 18 years old. Relatively fewer respondents had a household income below \$15,000 than in the 1993 survey, 43.6 percent versus 57.6 percent—not surprising given the 15 year difference between survey administrations for the two reports. Finally, one in four respondents reported receiving public assistance, while 10.1 percent reported receiving disability payments and 14.5 percent reported social security as a source of income. Again, the oversampling of the elderly means that these figures would likely be somewhat different in the full population.

### **Studying the Represented – An Analysis of Housing Court and Program Data**

Building on the information provided earlier in this Report, OCJ in partnership with DSS’s Office of Evaluation and Research and the State Office of Court Administration undertook a new analysis to assess the current prevalence of legal representation among tenants in court for eviction cases and the needs for counsel that remain after substantial investments in tenant legal resources by the City and the Judiciary. The data discussed below indicate that a substantially higher proportion of tenants in court for eviction cases have legal representation than has ever before been determined. The data further indicate that among tenants *with* representation, more than half are low-income tenants served through not-for-profit legal assistance programs, although a sizable minority has private representation.

### **Legal Assistance for Tenants Facing Eviction Cases**

A two-day focused data collection effort was conducted in all of the City’s Housing Courts. Over two weekdays in April of 2016, Housing Court clerks across the five boroughs recorded tenant counsel information for all cases in which the tenant appeared on those days. The court data analyzed included information about

whether the tenant appeared *pro se* (“self-represented”) or with legal counsel in 2,169 cases.<sup>28</sup>

**Table 9. Legal Representation for Tenants Facing Eviction in Housing Court, 2-Day Sample of Housing Court Data, April 2016**

	Eviction Petitions In Which Tenant Appeared in Court	Tenant Appeared With Counsel		Tenant Appeared With Legal Services Provider Counsel		Tenant Appeared Without Counsel	
	<i>n</i>	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Bronx	869	148	17.0%	101	11.6%	721	83.0%
Brooklyn	600	228	38.0%	131	21.8%	372	62.0%
Manhattan	491	140	28.5%	57	11.6%	351	71.5%
Queens	109	35	32.1%	13	11.9%	74	67.9%
Staten Island	100	42	42.0%	33	33.0%	58	58.0%
<b>Citywide</b>	<b>2169</b>	<b>593</b>	<b>27.3%</b>	<b>335</b>	<b>15.4%</b>	<b>1576</b>	<b>72.7%</b>

Source: NYS Office of Court Administration; HRA Office of Civil Justice

Of the cases in this sample, counsel for the tenant was indicated for 593 cases in which the tenant (or her attorney) appeared in court on those days - or 27.3 percent of the total. Put another way, the data indicate that tenants who appeared in court were “self-represented” (i.e., lacked counsel) in 72.7 percent of cases.

A review of counsel information in these 593 cases furthermore showed that over half of these tenants —335, or 56.5 percent of those appearing with counsel—were represented by free or low-cost legal services provider organizations, while the remaining 258 tenants with counsel appeared to have private representation (43.5 percent), as set forth in Table 10 below.

In all, this suggests that, prior to the full Fiscal Year 2017 expansion of the City’s housing legal assistance program, tenants in court facing eviction received legal assistance in *more than one in four* cases in comparison to the 1% representation level for calendar year 2013 cited in the Chief Judge’s 2014 and 2105 reports. Notably, this analysis does *not* take into account cases in which tenants received legal advice and assistance but not full legal representation in court; in many of these cases, lawyers consult with tenants and provide guidance and assistance outside of court but do not appear in court alongside tenants as their legal representative, and therefore this analysis would not capture that representation. In a match to city-funded legal

<sup>28</sup> The analyzed court data indicated that 3,654 cases were scheduled for appearances on the subject days. Of these, data for 2,169 cases included information confirming the tenant’s appearance and whether or not the tenant appeared with counsel. The remainder of 1,485 cases contained inconclusive information about whether the tenant had appeared in court on the petition for eviction on the scheduled date.

service provider lists of cases handled under HRA contract, OCJ found another 46 cases calendared for appearance over this two-day period - or 2.1 percent of the total sample of tenant appearances – in which legal services providers delivered services and that were marked “tenant self-represented” in the court data.

Borough-level analysis finds notable variation in appearance with counsel and the proportion of representation through free/low-cost legal services providers. Altogether, the two-day sample data suggest that representation rates are lowest in the Bronx and highest in Staten Island and Brooklyn. They further indicate that free/low-cost legal service providers account for the majority of tenant lawyers in the Bronx, Brooklyn, and Staten Island, while private representation accounts for more than half of tenant counsel in Manhattan and Queens (see Table 10).

**Table 10. Tenant Legal Representation by Borough, 2-Day Sample of Housing Court Data, April 2016**

	<i>Of tenants who appeared in court, % with counsel</i>	<i>Of those appearing with counsel, % with legal services provider counsel</i>
Bronx (n=869)	17.0%	68.2%
Brooklyn (n=600)	38.0%	57.5%
Manhattan (n=491)	28.5%	40.7%
Queens (n=109)	32.1%	37.1%
Staten Island (n=100)	42.0%	78.6%
<b>Citywide (n=2,169)</b>	<b>27.3%</b>	<b>56.5%</b>

Source: NYS Office of Court Administration; HRA Office of Civil Justice

These same court data bear out the conventional wisdom that the overwhelming majority of landlords in eviction cases are represented by attorneys. The average rate of landlord representation across the five boroughs in these cases was nearly 99 percent, with Queens featuring the lowest rate at 96.3 percent, and Manhattan showing universal representation for landlords at 100.0 percent (see Table 11).

**Table 11. Landlord Legal Representation by Borough, 2-Day Sample of Housing Court Data, April 2016**

	<i>Of landlords who appeared in court, % with counsel</i>
Bronx (n=868 <sup>29</sup> )	99.2%
Brooklyn (n=600)	98.2%
Manhattan (n=491)	100.0%
Queens (n=109)	96.3%
Staten Island (n=100)	99.0%
<b>Citywide (n=2,168)</b>	<b>98.9%</b>

Source: NYS Office of Court Administration; HRA Office of Civil Justice

### **Characteristics of Represented Tenants**

Although individual income data about tenants in the analyzed cases were not available, address data allowed for a neighborhood-level analysis to explore relative rates of representation by income among the 2,169 cases with appearances recorded in the two-day sample. Specifically, tenant addresses were matched to their “neighborhood tabulation area” (NTA), and then U.S. Census Bureau American Community Survey (ACS) data were used to calculate median income by NTA (based on 5-year ACS data, 2009-2013, to ensure sufficient sample size). Developed by the NYC Department of City Planning, NTAs are aggregations of Census tracts that are large enough for reliable income analysis based on ACS data, yet small enough to meaningfully capture local conditions. There are 188 NTAs in NYC, with an average of approximately three NTAs per NYC Community District.

Neighborhood income analyses revealed patterns that suggest that tenants in low-income neighborhoods appear with counsel less frequently than those in high- or middle-income neighborhoods. The data showed that of 539 cases in which tenants lived in NTAs with median income below \$28,500 per year, 105 tenants appeared with representation—or just 19.5 percent. By contrast, among 583 cases in which tenants lived in NTAs with median income above \$45,000 per year, 207 tenants (35.5%) were represented. In other words, before the full expansion of the City’s housing legal assistance program in Fiscal Year 2017, tenants facing eviction in lower-income neighborhoods experience legal representation in court at approximately one half of the rate of tenants in middle- to higher-income neighborhoods.

An analysis of OCJ program data produced by contracted legal services providers in the HPLP and HHP programs since October of 2015 was also conducted in order to

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<sup>29</sup> The landlord’s appearance in court could not be confirmed through court data in one case in which the tenant’s appearance was recorded.

shed additional light on the represented. A total of 7,389 case-level data reports were reviewed, each of which included information about the tenant/client's age, household composition, the monthly rent due on the residence which was the subject of the eviction action and the length of the tenant/client's tenancy at the time of the legal service provider's case intake (which in most cases was at or shortly after the initiation of the eviction action).

As presented in Table 12, most tenants represented by legal services providers in eviction cases had lived in their homes for several years before facing the eviction case (an average of nine years and a median of five years). 30.2 percent of the tenants had lived in their homes for ten years or longer at the time of the filing of the eviction action.

The average anti-eviction legal services client was 43 years old and resided in a household of three. Although the largest share of represented tenants were between 35 and 44 years old (28.8 percent) 6 percent of tenants represented by legal services providers were seniors 65 years old or older.

**Table 12. Characteristics of Tenant Households Served by HRA Anti-Eviction Legal Services (HPLP/ELS/HHP), October 2015-May 2016**

Household Characteristic	n=7389	%
<b>Borough</b>		
Bronx	2,926	39.6%
Brooklyn	2,272	30.8%
Manhattan	865	11.7%
Queens	1,055	14.3%
Staten Island	232	3.1%
<b>Age of head of household (average) 43 years</b>		
19 – 24	217	2.9%
25 – 34	1,904	25.8%
35 – 44	2,125	28.8%
45 – 54	1,745	23.6%
55 – 64	893	12.1%
65 or more	429	5.8%
<b>Household size (average) 3.2 people</b>		
1 person	1,064	14.4%
2 people	1,606	21.7%
3 people	1,909	25.8%
4 people	1,413	19.1%
5 or more people	1,343	18.2%
<b>Length of tenancy (average) 9 years</b>		
<b>Length of tenancy (median) 5 years</b>		
1-2 years	1,845	25.0%
3-5 years	1,840	24.9%
6-9 years	1,116	15.1%
10 years or more	2,230	30.2%
<b>Household composition</b>		
Children <18	5,585	75.6%
Senior (=or > 65 yo) is head of household	429	5.8%

Source: NYS Office of Court Administration; HRA Office of Civil Justice

## Studying the Unrepresented – A Survey in Housing Court

To gain greater insight into the current characteristics of unrepresented tenants in Housing Court - including an estimate of the proportion that is low-income and thus might qualify for one of the city-funded legal assistance programs - DSS's Office of



Evaluation and Research (OER) conducted a survey in the Housing Courts. The survey tool was reviewed and edited by OCJ and approved by the Office of Court Administration. It consisted of 11 short-answer questions and took roughly 3 minutes to complete. The primary aim of the survey was to learn more about the demographics and household composition of unrepresented tenants in housing court, including family size, income, and the presence of vulnerable household members such as children, seniors, and Supplemental Security Income (SSI) recipients (a proxy for low-income people with disabilities in households without seniors). The survey also assessed tenants' perspectives on the value of legal representation; those results are discussed later in this Report.

The survey captured household income in three categories: 1) at or below 200 percent of FPL, the current income limit for most publicly-funded civil legal assistance; 2) greater than 200 percent but at or below 300 percent of FPL, to capture low-income families who do not currently qualify for assistance but are close to the eligibility limit; and 3) greater than 300 percent of FPL. The survey was conducted via mobile tablets, and to account for differences in poverty thresholds by family size, income ranges dynamically adjusted to reflect reported family size. Survey responses were logged directly into the online survey tool during administration.

Because the Manhattan, Queens, Brooklyn and Bronx housing courts accounted for 96 percent of citywide housing court filings in 2015, Staten Island and the community courts which hear housing cases were omitted from this survey effort. Teams of two OER staff members administered the survey at the Manhattan, Queens, Brooklyn and Bronx Housing Courts over 7.5 days between May 2 and May 12, 2016. Survey administration days were distributed among the courts in rough proportion to their share of eviction cases: two days were spent in the Bronx, two days in Brooklyn, 1.5 days in Manhattan, and one day in Queens.

The majority of surveys were conducted while tenants were waiting in the "answer" line to speak with a clerk; others were conducted in the hallways outside of the court parts. Potential respondents were informed of the purpose and length of the survey as well as the fact that responses were voluntary, anonymous and would not affect their court cases in any way. Landlords and lawyers without their clients present were excluded. The resulting sample is not representative of all housing court litigants as many tenants who have lawyers may not need to show up at the court building at all, but it was sufficient to learn about the characteristics of unrepresented tenants in housing court.

In all, researchers approached 664 people in the four housing courts and the participation rate was high; 544 (81.9%) consented to participate. Sixteen of those who agreed to be surveyed were ineligible: they were in court on behalf of someone

else (12) or were tenants trying to evict a roommate or family member from their apartment (4). Thus, results reported below represent 528 tenants who were at Housing Court between May 2 and May 12, 2016. Most surveys (91.3%) were completed in English, with the remainder in Spanish; researchers also observed that among many of the English-speaking respondents, English appeared to be a second language. As described above, researchers spent more time in the Bronx and Brooklyn Housing Courts to reflect the greater volume of cases heard in those boroughs, with proportionate results in the number of respondents recruited: 35.0 percent in Brooklyn and 33.7 percent in the Bronx, with the remaining third recruited in Manhattan (17.2%) and Queens (14.0%).

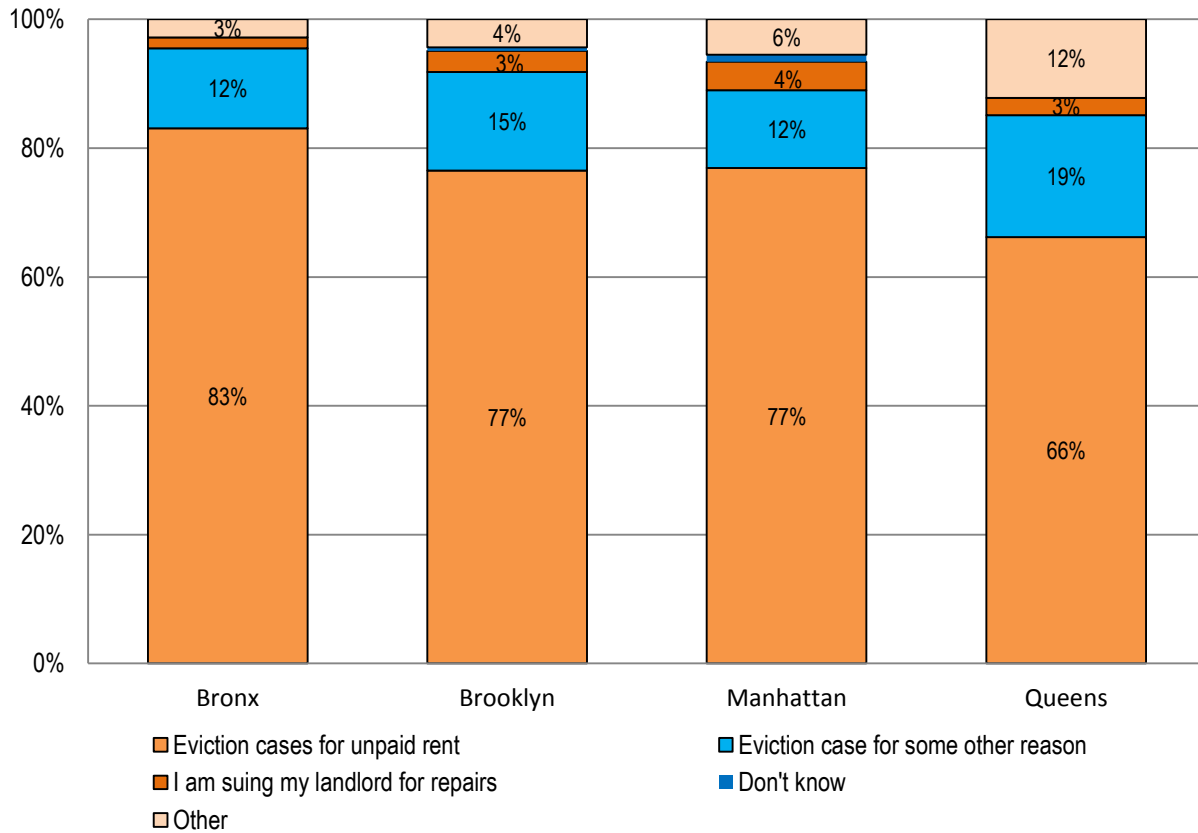
### *Case Type, Tenant Income, and Representation Rates*

Overall, more than 9 out of 10 tenants who responded to the survey were in Housing Court because of an eviction case. The vast majority of tenants (77.4%) stated that they were in court to answer a petition of non-payment in which, in most cases, a landlord alleges that the tenant owed rent arrears. Another 14.3 percent of tenants reported being there because they received an eviction notice for some reason other than non-payment (i.e., holdover action). More than 5 percent of tenants reported that they were at court for a reason other than an eviction notice (although in some cases these reasons were related to eviction matters), such as: the tenant was owed their security deposit (claims which are not heard in Housing Court); a “lease transfer” (which is technically a holdover proceeding specific to tenants in rent-regulated apartments in which a family member seeks to succeed to the tenancy of a departed or deceased leaseholder); “rent overcharges” (which are in fact claims by tenants heard as defenses or counterclaims in nonpayment cases); or illegal lockouts. A small group of tenants (2.8%) were there to sue their landlord (i.e., Housing Part, or HP, action), usually to complete neglected repairs and apartment upkeep, and 0.4 percent of respondents did not know why they were there.

At the borough level, the Bronx had the highest proportion of tenants responding to a petition of eviction at 95.5 percent of tenants; this was also the dominant reason in the other three boroughs—91.8 percent of tenants in Brooklyn, 89.0 percent in Manhattan, and 85.1 percent of tenants in Queens. By far the most common reason for an eviction was for non-payment. In the Bronx, 83.1 percent of tenants were at the court to respond to an eviction for a non-payment, compared to 76.9 percent of tenants in Manhattan, 76.5 percent of tenants in Brooklyn and 66.2 percent of tenants in Queens (see Figure 4). Conversely, cross-borough analysis shows that tenants in Queens were the most likely to receive eviction notices for reasons other than non-payment; 18.9 percent of Queens tenants were there to respond to a holdover eviction petition compared to 15.3 percent in Brooklyn, 12.4 percent in Manhattan and 12.1 percent in the Bronx. This reflects patterns found in the number

of petitions filed in each of the courts: both court data and survey respondents show that the proportion of evictions for non-payment cases is highest in the Bronx and lowest in Queens, while eviction cases for other reasons (holdovers) are most common in Queens and least common in the Bronx.

**Figure 4. Tenant Reasons for being in Housing Court by Borough. HRA Housing Court Survey, May 2016 (n=526)**



Source: Office of Evaluation and Research Housing Court Survey, May 2016

Among all survey participants, 62.7 percent had an annual family income of less than 200 percent FPL. Another 22.8 percent of tenants who responded fell between 200 and 300 percent FPL, and 14.5 percent of respondents had an annual family income of more than 300 percent FPL. While the poverty thresholds applied in this survey differ from income criteria used in earlier studies, these findings are generally in keeping with prior research showing that a majority of tenants in housing court are low-income.

The majority of tenants surveyed in housing court did not have legal representation and furthermore reported that they had not received *any* advice from a lawyer on their case prior to arriving in court that day. Altogether, 18.6 percent of respondents

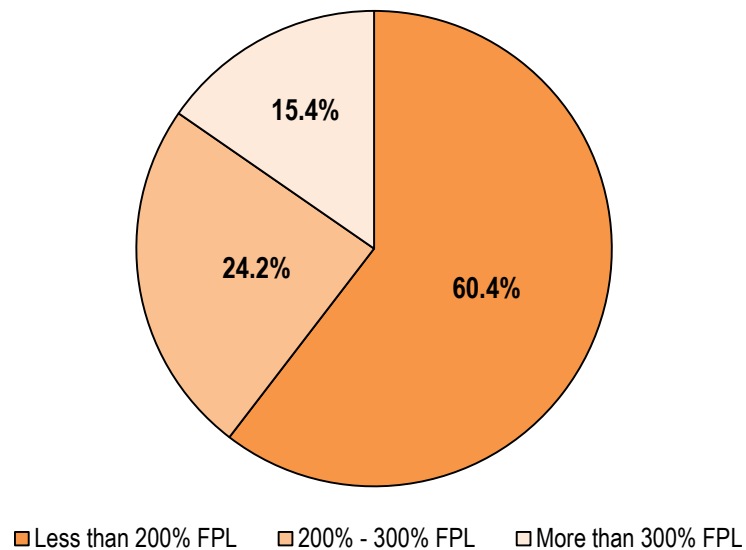
reported receiving at least some legal assistance prior to the day of the survey; 1.1 percent of respondents declined to answer the legal representation questions.

The following analysis focuses on the 424 tenants (80.3 percent of the sample) who reported *no* legal assistance in relation to their case prior to being in court on the day of the survey—referred to throughout as “unrepresented tenants.”

### *Characteristics of Unrepresented Tenants*

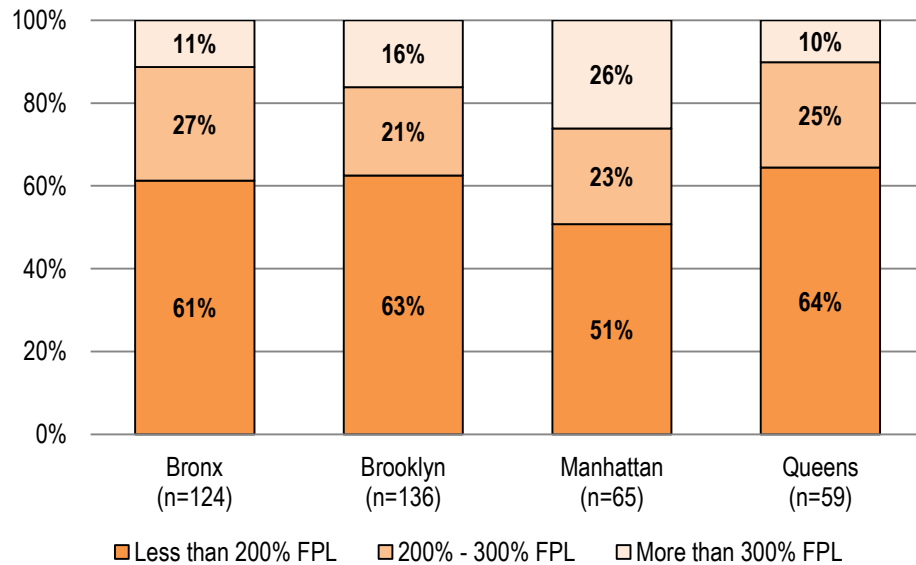
The income breakdown among unrepresented clients was similar to the breakdown among the full sample: 60.4 percent reported family income at or below 200 percent FPL, with another 24.2 percent between 200 and 300 percent FPL (see Figure 5). Consistent with prior studies, this suggests that a majority of unrepresented tenants in Housing Court are income-eligible for publicly-funded legal assistance. Income patterns differed somewhat by borough: just 50.8 percent of unrepresented respondents in Manhattan were low-income, as compared to over 60 percent in each of the other boroughs (see Figure 6).

**Figure 5. Annual Family Income among Unrepresented Respondents, HRA Housing Court Survey, May 2016**



Source: Office of Evaluation and Research Housing Court Survey, May 2016  
Note: n=384 due to missing data.

**Figure 6. Annual Family Income by Borough among Unrepresented Respondents, HRA Housing Court Survey, May 2016**



Source: Office of Evaluation and Research Housing Court Survey, May 2016.

As seen in Table 13, the overall distribution of unrepresented clients by borough in our sample reflects the distribution of survey days, which were, in turn, designed to reflect the distribution of court volume: approximately one third of respondents were in the Bronx, another third in Brooklyn, and the remaining third divided between Manhattan and Queens. Respondent ages were an average age of 44 years, and varied widely, from 19 to 96 years. More than three-quarters of respondents (77.0%) were fairly evenly distributed between their mid-20s and mid-50s; another 14.5 percent were “near-elderly” (55 to 64 years). At the ends of the spectrum, young adults under age 25 made up only a small fraction of respondents (2.8 percent), and 6.1 percent were seniors ages 65 and older. Including both respondents and other family members, 11.3 percent reported living in households that included a senior ages 65 or older. Altogether, more than one in five unrepresented respondents received (or lived with someone who received) Supplemental Security Insurance (SSI), a means-tested benefit for the aged and disabled. Since most of these tenants did *not* live with an elderly household member, this suggests that 19.0 percent of tenants surveyed lived in households with limited resources and a family member with a disability.<sup>30</sup> Survey results indicate that approximately two-thirds of unrepresented tenants who appear in Housing Court are women.

<sup>30</sup> A proxy for disability was calculated using SSI receipt and the absence of a person 65 or over living in the home.

**Table 13. Household Characteristics of Unrepresented Tenants by Annual Family Income, HRA Housing Court Survey, May 2016**

	All Unrepresented		Unrepresented <200%		Unrepresented >200%	
	n=424	%	n=232	%	n=152	%
<b>Borough</b>						
Bronx	139	32.8%	76	32.8%	48	31.6%
Brooklyn	150	35.4%	85	36.6%	51	33.6%
Manhattan	72	17.0%	33	14.2%	32	21.1%
Queens	63	14.9%	38	16.4%	21	13.8%
<b>Gender</b>						
Female	268	66.2%	164	71.3%	86	56.6%
Male	137	33.8%	66	28.7%	66	43.4%
<b>Age of respondent (average)</b>						
	44.1 years		44.3 years		43.2 years	
19 – 24	12	2.9%	6	2.6%	5	3.3%
25 – 34	91	22.3%	53	22.8%	33	21.9%
35 – 44	118	28.9%	64	27.6%	49	32.5%
45 – 54	103	25.2%	58	25.0%	39	25.8%
55 – 64	59	14.5%	35	15.1%	19	12.6%
65 or more	25	6.1%	16	6.9%	6	4.0%
<b>Household size (average)</b>						
	2.7 people		3.0 people		2.2 people	
1 person	105	25.6%	46	19.8%	50	32.9%
2 people	98	23.9%	43	18.5%	48	31.6%
3 people	101	24.6%	69	29.7%	29	19.1%
4 people	60	14.6%	39	16.8%	19	12.5%
5 or more people	46	11.2%	35	15.1%	6	3.9%
<b>Household composition</b>						
Children <18	207	50.9%	139	60.2%	57	37.7%
Seniors	48	11.3%	27	11.6%	16	10.5%
SSI receipt	91	22.4%	71	30.7%	15	9.9%
SSI-disabled (no elderly)*	77	19.0%	64	27.7%	10	6.6%

\*Reflects households reporting receipt of SSI with no senior present as a proxy for disability. Note, however, that SSI is means-tested, so higher income families would be ineligible regardless of disability.

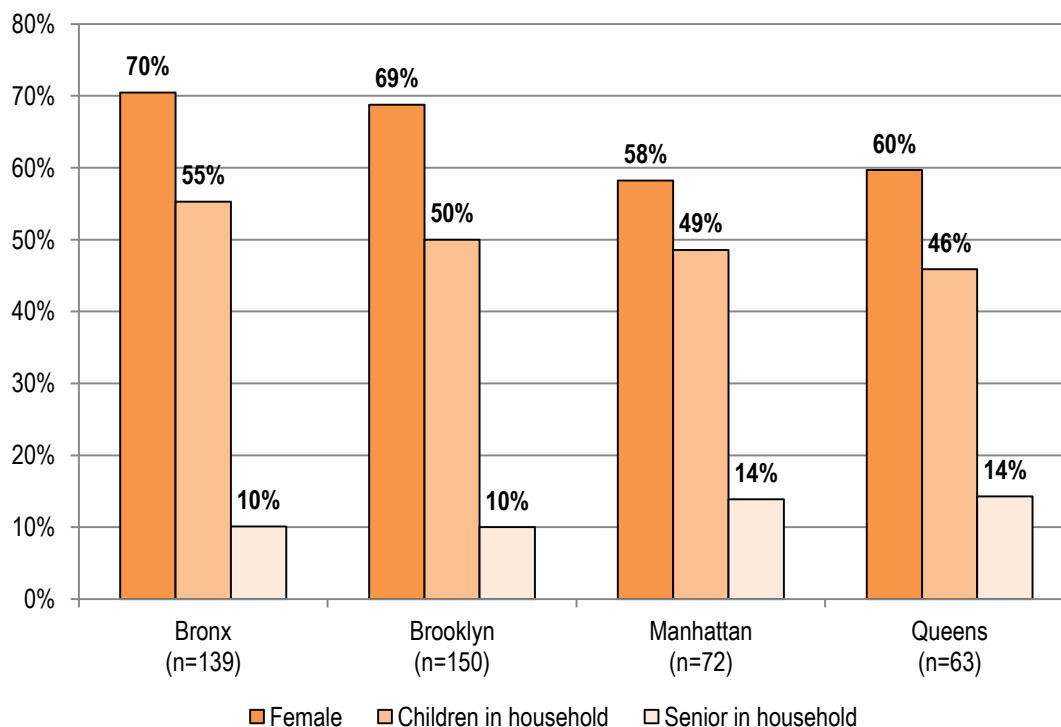
Source: Office of Evaluation and Research Housing Court Survey, May 2016

Note: Totals by income sum to less than the full sample due to missing data.

Data on household composition indicates a fairly even division between tenants living with and without minor children. Average household size was just under 3 members. Approximately 1 in 4 tenants lived on their own, with a similar number living in two-person households, three-person households, and households of four or more; the largest reported household size in the sample was nine. Analysis of tenant characteristics and household composition by borough suggests more similarity than

difference, although respondents in the Bronx and Brooklyn were notably more likely to be women as compared to Manhattan and Queens (see Figure 7).

**Figure 7. Tenant Characteristics and Household Composition by Borough, HRA Housing Court Survey, May 2016**



Source: Office of Evaluation and Research Housing Court Survey, May 2016

### *Characteristics of Low-Income Unrepresented Tenants*

The profile of *low-income* unrepresented clients differed from the full unrepresented population in some important ways (see Table 13 above). As compared to their higher-income counterparts (with income over 200 percent of FPL), low-income respondents were substantially more likely to be women (71.3 percent versus 56.6 percent), and more than one and half times more likely to have minor children in the home (60.2 percent versus 37.7 percent). In addition, while the proportion of households with seniors was similar across the two income groups, low-income tenants were far more likely to be receiving SSI.

Moreover, 27.7 percent of low-income tenants reported household receipt of SSI although no household member was over age 65, suggesting relatively high rates of disability among the low-income unrepresented group. In higher-income households, SSI receipt was far lower, but it is unclear whether this represents lower rates of

disability or simply higher income (such that families do not pass the SSI income-eligibility test).

There was little difference in the average age of tenants without legal representation across income brackets. Those with family income less than 200 percent FPL were 44.3 years on average, or roughly one year older than tenants whose family income was above 200 percent FPL. Finally, low-income tenants reported larger family sizes. Nearly one-third of low-income tenant households had four or more members, compared to just 16.4 percent of their higher income counterparts. Conversely, nearly two-thirds of households with income above 200 percent FPL had just one or two members, compared to just 38.3 percent of low-income households. This pattern at least in part reflects the fact that the poverty threshold rises with family size: for example, a household of two with income above \$32,040 per year would be above 200 percent FPL, while a household of four does not exceed 200 percent FPL until income rises above \$48,600.

Analysis by borough finds some differences in age, household size, and family characteristics among unrepresented low-income tenants, although small sample sizes at this level mean that results should be interpreted with caution. With that caveat in mind, over three-quarters of low-income, unrepresented survey participants in the Bronx and Brooklyn were women, almost 20 percentage points higher than in Queens (57.9 percent); this may reflect wider borough-level differences in family composition. Unrepresented, low-income respondents in Brooklyn were more likely to be older (average age of 47.3) and live in households with at least one senior (15.3 percent), while those Queens had the largest households (average size of 3.2 people.) A majority of low-income, unrepresented respondents in each borough reported a minor child in the household, with the highest prevalence in the Bronx (64.5 percent) and the lowest prevalence in Queens (56.8 percent). Unrepresented, low-income tenants in the Bronx and Brooklyn were more likely to indicate the presence of someone with a disability in the household (30.3 percent and 28.2 percent respectively), based on report of SSI receipt without an elderly household member.



**Table 14. Characteristics of Unrepresented Low-Income Tenants by Borough (n=232)**

	Bronx (n=76)		Brooklyn (n=85)		Manhattan (n=33)		Queens (n=38)	
	n	%	n	%	n	%	n	%
<b>Female</b>	58	76.3	64	76.2	20	62.5	22	57.9
<b>Age (average)</b>	42.3 years		47.3 years		40.4 years		44.5 years	
<b>Household size (average)</b>	3.0 people		2.9 people		2.8 people		3.2 people	
<b>Household composition</b>								
Children <18	49	64.5	49	57.6	20	60.6	21	56.8
Senior	8	10.5	13	15.3	2	6.1	4	10.5
SSI receipt	25	32.9	28	32.9	8	25.0	10	26.3
SSI-disabled (no elderly)*	23	30.3	24	28.2	7	21.9	10	26.3

\*Reflects households reporting receipt of SSI with no senior present as a proxy for disability. Note, however, that SSI is means-tested, so higher income families would be ineligible regardless of disability.

Source: Office of Evaluation and Research Housing Court Survey, May 2016

Note: Totals by income sum to less than the full sample due to missing data.

## Impact of Civil Legal Services for Tenants

In this section, we explore the potential benefits and limitations of civil legal services in Housing Court based on a literature review and stakeholder interviews. We also offer insight into tenant perspectives based on a tenant survey conducted in Housing Court. The considerable interest nationwide in civil legal services has been accompanied by a modest but increasing body of evidence documenting the outcomes and impact of such services. Both experimental and observational studies have found that represented tenants generally are less likely to be evicted and more likely to obtain other benefits (such as rent abatements or repairs) than non-represented tenants.

We complement our review of published research with a qualitative analysis of stakeholder interviews that explored the role, benefits, and limitations of legal services in housing court specifically in the New York City context. Stakeholders described a number of ways in which attorneys use their knowledge of the law, of the court system, and of other available resources to support tenants in court and address the historical power imbalance between unrepresented tenants and represented landlords. They also noted the constraints of legal representation in addressing issues of poverty, limited rights available to tenants in market-rate units, and informal evictions that do not involve the courts. Finally, we report on the perspective of tenants surveyed in NYC Housing Court regarding the potential impact of legal assistance; over 90 percent of low-income tenants without representation agreed that

lawyers were generally helpful for tenants in housing court; more than 80 percent felt a lawyer would be helpful in their specific case.

## Literature Review

The sharp decline of 24 percent in residential evictions by City marshals over the last two years, occurring as the City substantially increased its commitment to anti-eviction and other tenant legal services, is an encouraging sign that providing tenants in need with access to free legal advice and representation makes a palpably positive difference. While the evidence is limited, a review of available literature indicates that legal representation leads to better outcomes for tenants in housing court. One of the first experimental evaluations of legal representation for eviction cases took place in New York City's Manhattan Housing Court.<sup>31</sup> The Pro Bono Project against Homelessness recruited 268 legal assistance-eligible tenants who had been served with nonpayment petitions between September 1993 and June 1994, and randomly assigned them to receive *pro bono* legal counsel or to a control group. Tenants with legal counsel had substantially and statistically better outcomes than unrepresented tenants in a number of important ways.

Perhaps most importantly, unrepresented tenants were *more than four times as likely* to have a warrant of eviction issued in their case compared to represented tenants (44.1 percent of unrepresented compared to 10.0 percent of represented). Other positive outcomes for represented tenants included:

- far fewer defaults (6.3 percent of represented compared to 28.8 percent of unrepresented) and judgments against the tenant (21.5 percent of represented compared to 50.6 percent of unrepresented);
- more than ten times as many stipulations requiring rent abatements (31.3 percent of represented compared to 2.3 percent of unrepresented); and
- far more stipulations requiring repairs (63.8 percent of represented compared to 25.4 percent of unrepresented).

Of note is that the volunteer lawyers providing services were largely *pro bono* attorneys from corporate law firms (under supervision by the Legal Aid Society); thus, results may *underestimate* the potential impact of legal services provided by counsel with more training and experience with housing court law and procedure. Although represented cases on average took somewhat longer to resolve (132 days compared to 82 days for unrepresented tenants), court process measures also

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<sup>31</sup> Seron, C., Frankel, M., Van Ryzin, G. & Kovath, J. (2001). The impact of legal counsel on outcomes for poor tenants in New York City's Housing Court: Results of a randomized experiment. *Law & Society Review*, 35(2), 419-434.

suggested that representation may improve the court’s efficiency by decreasing the number of motions filed in a case.

Further evidence on the efficacy of legal representation in housing cases comes from two Boston-area pilot projects conducted in 2009-2010.<sup>32</sup> The target population for both pilots was defined as tenants in eviction cases that involved either disability or criminal misconduct, or in which lack of counsel could lead to substantial injustice. Results from one of the pilots, implemented in the District Court, indicated a strong positive impact from access to representation.<sup>33</sup> The pilot included 129 participants, all of whom first attended either an instructional clinic or received some limited assistance in completing court forms and were then randomly assigned to full legal representation or the control group. As in the New York study, representation was associated with far better outcomes. Tenants in the treatment group were five times less likely to have an eviction writ issued in their case compared to tenants in the control group (12 percent compared to 60 percent) and half as likely to have actually lost possession of their home (34 percent compared to 62 percent). Study findings further indicate that those in the treatment group “saved” the equivalent of 9.4 months’ rent compared to 1.9 months’ rent for the control group. Finally, while cases for the treatment group took on average 117 days to resolve compared to 69 days for the control group, other measures found no significant burden associated with representation on court processes. In the second Massachusetts pilot, conducted in one of the state’s designated Housing Courts, 184 participants were randomly assigned to full representation or a control group; however, tenants in the control group were referred to an existing court-based program offering same-day representation—a “lawyer for a day”—for hallway negotiations and mediation talks. No significant differences in outcomes were found between these two groups, both of which received some legal assistance.<sup>34</sup>

Experimental research designs such as those used in the studies described above are not always feasible in a legal context—for example, screening and randomization protocols can be difficult to implement. Evaluations using observational methods can provide valuable insight into the potential benefits and challenges of legal services,

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<sup>32</sup> Boston Bar Association Task Force on the Civil Right to Counsel. (2012). *The Importance of Representation in Eviction Cases and Homelessness Prevention*. Retrieved from <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>. Note that in Massachusetts, housing cases are heard in both specialized Housing Courts and in District Courts; where there is overlapping jurisdiction, tenants can transfer their case to Housing Court. One pilot was conducted in a District Court and one in a Housing Court.

<sup>33</sup> Greiner, D. J., Pattanayak, C. W., & Hennessy, J. (2012). Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future, *The Harvard Law Review*, 126, 901.

<sup>34</sup> Greiner, D. J., Pattanayak, C. W., & Hennessy, J. (2012). How effective are limited legal assistance programs? A randomized experiment in a Massachusetts Housing Court. *SSRN Working Paper*. Retrieved from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1880078](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1880078)

although results may not be solely attributable to representation (or lack thereof). In addition, study findings may not apply to other contexts (a limitation that also applies to experimental studies). Three such studies are described below.

A retrospective review of 421 residential eviction cases in San Mateo County, California dating largely from 2009 compared outcomes for tenants who received full legal representation, those who received “unbundled” (or brief) legal services, and those with no record of any legal assistance.<sup>35</sup> Results are in line with other research in that represented tenants were more likely to retain possession of their home, have a longer move-out period for cases that ended in eviction, and make smaller payments to landlords. While tenants receiving brief legal services experienced some procedural benefits compared to tenants with no legal assistance—they were much less likely to receive a default judgment and more likely to raise a defense—they did not obtain better ultimate outcomes. However, since groups were not randomly assigned they are likely to differ in important ways, and outcomes in this study cannot be solely ascribed to the presence or type of legal representation.

Another observational study describes San Francisco’s Right to Civil Counsel Pilot Program, which ran from October 2012 through September 2013. The pilot largely focused on increasing *pro bono* services for tenants facing eviction, with 117 cases receiving full representation and 683 cases receiving limited representation (primarily during settlement negotiations). Outcomes reported by volunteer attorneys to the pilot’s coordinating staff suggest that tenants with full representation were more likely to retain possession of their homes; however, the report acknowledges that cases referred for full representation were those most likely to benefit from legal assistance, which likely skews results.

Finally, a report on New York City’s Housing Help Program (HHP) in its pilot phase (2005-2008) documents outcomes associated with this court-based, geographically-targeted program designed to provide legal assistance and social services to low-income families facing eviction for non-payment of rent.<sup>36</sup> Of the 1,059 clients for whom data are available, 35 percent received full legal representation and the remaining 65 percent received brief legal services. The HHP model differs from other legal service programs in that the merits of the client’s case did not play a role in determining eligibility for the program; in fact, an estimated 30 percent of HHP clients did not have a clear legal defense at the beginning of their eviction case. In addition, since the primary goal of HHP was to prevent homelessness, brief legal

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<sup>35</sup> Steinberg, J. (2011). In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services. *Georgetown Journal on Poverty Law Policy*, 18(3), 453. Twenty eviction cases receiving full representation between September 2007 – May 2009 were identified through Legal Aid records, and the remaining cases were identified through a review of evictions filed between May 19, 2009 – August 7, 2009.

<sup>36</sup> Seedco. (2012). *Housing Help Program: Homelessness Prevention Pilot Final Report*. Retrieved from <http://seedco.org/wp-content/uploads/2011/11/Housing-Help-Program.pdf>.

services that would provide a “soft landing” in the form of additional time in the unit, receipt of public benefits, or reduced rent arrears were seen as important even if the client was ultimately evicted. The report indicates that 85.6 percent of clients with a known housing court outcome avoided eviction, although the lack of a comparison group means that we cannot predict with confidence what the outcomes would have been absent the HHP program. Comparing known outcomes for clients receiving brief legal services to those with full representation, approximately the same proportion (80 percent) in each group avoided eviction; however, twice as many clients in the brief services group had unknown outcomes as did those receiving full representation, and thus results may over- or understate positive outcomes for the brief services cohort.

### **Insights from Stakeholders**

Given the limited published data on the impact of legal services in housing court, as well as the unique factors at play in New York City, for this Annual Report we conducted extensive interviews with New York City stakeholders to explore the role and impact of legal services providers in housing court. Interviews furthermore probed for stakeholder perspectives on cases and clients that can benefit the most from legal representation, on the challenges or constraints in providing legal services to tenants and on the role of educational and other community-based services in supporting tenants. We spoke with organizations that provide direct legal services to clients, tenant advocates, Housing Court judges and other housing court officials, elected representatives and other relevant public officials, and policy experts. In addition, while our focus was primarily on the role of legal services in impacting tenant experience, we also invited input from the largest trade association representing a wide range of residential property owners to obtain insight on eviction proceedings from a landlord perspective. In all, 20 interviews were conducted between March and June 2016; the list of stakeholders is included at Appendix E.

Stakeholders acknowledged the value of having representation for anyone in housing court, and almost all commented on difficulties faced by self-represented tenants in understanding the law, understanding the process and asserting rights in court, even in “simple” non-payment cases. Legal service providers cited the cumbersome and time-consuming process of identifying potentially meritorious defenses as critical to protecting tenants’ rights—and as difficult for tenants to carry out themselves. Examples included determining whether a unit is stabilized, the legal amount of rent (which is based on both previous rents as well as improvements associated with the unit), and whether the condition of the unit breaches rules regarding the warrant of habitability.

In addition to providing the specific legal knowledge required to manage a housing court case, attorneys play a role in helping tenants navigate an unfamiliar,

overwhelming, and stressful court process. Regardless of the type of petition, legal service providers, policy experts, and housing court officials emphasized the complexity of the series of actions involved in a Housing Court case (e.g., answering the petition, filing orders to show cause, negotiating settlements, and allocating stipulations before a judge). These actions furthermore take place in a crowded and fast-moving environment.

Housing court judges noted that tenants sometimes assume the court follows procedures similar to that of other bureaucratic environments such as the Department of Motor Vehicles. Whereas tenants might ask “to reschedule their appointment,” an attorney understands the process. Lawyers can help tenants use the right language and can use the tools of litigation, such as the process to file motions, to buffer pressure on a tenant to move a case quickly to resolution.

Multiple stakeholders explained that even the roles of the respective actors in court can be highly confusing to someone new to the process. In particular, legal service providers reported that it not uncommon for tenants to take the landlord’s attorney for a neutral party or even a court representative who is looking out for their interests.

Stakeholders similarly indicated a strong and unmet need for representation in Housing Part (HP) actions. Tenant advocates commented that HP actions to require repairs are burdensome on tenants and that it can be hard to enforce those rights without a lawyer. A public official explained that there are simple cases, in which many tenants could bring an HP action and successfully obtain a needed repair from their landlord without benefit of representation, but that there are some tenants who need help navigating the court system even without complicating factors.

Moreover, in complex cases - and particularly the cases in which some landlords are purposely failing to make repairs as a tactic designed to pressure tenants into leaving - a lawyer can be essential to aggressively pursuing a remedy for the tenant. While HPD is a party on HP actions and, like tenants, argues for repairs to be completed, HPD lawyers do not represent the tenant or her specific rights or interests. One stakeholder noted that many tenants in HP cases mistakenly take HPD lawyers to be their lawyers and are then frustrated when HPD does not argue for the remedies they seek. HPD lawyers cannot, for example, argue for tenant relief such as rent abatements in compensation for poor housing conditions, and they are also limited in their ability to pursue enforcement of ordered repairs when the tenant does not return to court to advise whether the repairs have been completed.

More generally, the court system relies on an adversarial approach in which two opposing parties argue the case in front of a judge as neutral arbiter. Almost all stakeholders observed that the imbalance between (generally) represented landlords

and (generally) unrepresented tenants constitutes a significant power differential with marked implications for fair process. Legal service providers reported that this power differential between landlords and tenants occurs in a context where most tenants are low-income, many are from immigrant communities, and few have had positive experiences with the court system. Tenant advocates and legal service providers noted that some immigrants come from countries where litigants have a subservient relationship to the court and that the undocumented population in particular is very reluctant to go to court to assert rights. A housing court judge pointed out that landlord attorneys have a duty to advocate for their client's interest, and it is difficult for people without legal training to resist such pressure. While judges want the process to be fair for both sides, their role in the legal system prohibits an active role in advising either party, which can leave unrepresented tenants at a disadvantage. Taken together, these factors can contribute to broader perceptions of unfairness.

Several stakeholders also mentioned the important role that lawyers play in bringing group actions against landlords (whether in Housing Court or other venues) to address building-wide repairs issues, discrimination, and other systematic patterns of illegal activity. For example, one legal service provider recently brought a source of income discrimination suit against a landlord for illegally refusing to accept Section 8 vouchers.

Stakeholders observed that representation can mitigate the challenges identified above, with benefits to both clients and the court system more generally. In many cases, a lawyer is able to keep a tenant in her home, and even when she cannot remain, the lawyer can often negotiate a “soft landing” that benefits the client in other ways. Lawyers may, for example, be able to negotiate more time for tenants to identify other housing, thus avoiding a stay in shelter and maintaining stable, albeit different, housing. They may also help to avoid a formal eviction on a tenant's record, which can act as an obstacle for someone to get a lease with another landlord. Furthermore, all stakeholders agreed that increasing legal representation for tenants is likely to contribute to more efficient court operations.

Both tenant advocates and legal service providers noted that lawyers can play an important role in identifying potential defenses for a case, which in turn influences how the tenant answers the petition. Stakeholders noted that, absent legal advice, many tenants confuse Housing Court petitions with eviction notices and may “voluntarily” vacate the apartment without answering the petition—so-called “informal evictions.”

Since it is difficult to rescind or change a stipulation once it is signed, legal services providers consistently emphasized how critical it is to have counsel during the settlement negotiations stage. Tenant lawyers can advocate for more favorable terms

to be included in the stipulations, including increased time to pay and any needed repairs to the unit. One policy expert commented that counsel can help negotiate for more time, which is often a tenant's highest priority. Tenant attorneys also can ensure that the amount of arrears and current rent specified in the stipulation are correct, and that timeframes for payment are aligned with the tenant's ability to pay. Legal service providers, housing court judges, tenant advocates and policy experts particularly emphasized that unrepresented tenants are far more likely to sign stipulations that include consents to quick judgments if the tenant fails to meet the specified requirements. In the case of a possessory judgment, the landlord can apply for a warrant of eviction as soon as the tenant fails to comply; money judgments become part of the tenant's credit record, which can negatively affect the client's future ability to secure credit, employment or housing. Having a lawyer advise on the terms of the stipulation can ensure that tenants take such considerations into account before signing.

Stakeholders consistently noted that in addition to guiding clients through the court process and advising on legal considerations, attorneys can connect tenants with public benefits and resources, including rent arrears and housing subsidies provided by HRA/DSS, since the resolution of housing issues almost always involves a review of income supports. The property owners trade association representative suggested that a recent decline in the number of cases calendared in Housing Court (even as the number of petitions has held steady) could reflect assistance being provided earlier in the court process as tenant representation increases. Legal service providers and housing court judges described how lawyers advocate for clients with public agencies regarding benefit issues such as late or incorrect subsidy payments that can affect housing status.

Even in cases that close with an eviction or other tenant displacement, tenants with representation are generally better off. Policy experts and tenant advocates emphasized the importance of such "soft landings," which can include reduced arrears owed, more time to vacate the apartment, or (as described above) the absence of judgments against the clients—all factors that can potentially make it easier for the client to find new housing.

Finally, multiple stakeholders suggested that representation for tenants would benefit the operations and culture of the court itself. For example, orders to show cause are required to modify a stipulation or suspend eviction proceedings—in other words, these occur later in the housing court process. Both a housing court judge and the trade association representative suggested that having more tenants represented in court could result in fewer orders to show cause; as the judge put it, more work would be done on the "front end" of the case, rather than on the "back end."



In fact, OCA data from Housing Court show a *13.6 percent decline* in the number of orders to show cause filed in 2015 compared to 2014. Policy experts and tenant advocates also hypothesized that increased tenant representation might change the landlord-tenant dynamic and eventually lead to fewer cases in court. This could alleviate the court's workload and overcrowding and contribute to a less harried environment—in addition to improving tenant outcomes.

Several stakeholders also suggested that having more tenant attorneys could potentially change the broader culture of housing court as well. Tenant advocates foresaw that tenants would be treated with more respect, and a housing court judge proposed that judges could focus on interpreting the law instead of uneasily balancing that role with concerns about fairness. Several stakeholders also emphasized the potential spillover effects of an increased focus on anti-harassment cases, noting that a rise in group actions filed against landlords would likely deter other landlords from engaging in illegal efforts to displace tenants.

Stakeholders also indicated that there are certain categories of cases and certain types of tenants that potentially stand to gain the most—and others whose challenges are difficult to address through the legal system.

Legal service providers identified the type of housing stock or subsidy as key considerations in determining which cases have the most merit and thus strategically allocating limited resources. One legal service provider commented that their top priority is to protect tenants in rent-stabilized apartments. The tenant protections built into rent regulations means that those tenants typically have the most to gain from an effective defense, as they have a *right* to continued lease renewal with limited rent increases. Rent-regulated tenants with Section 8 vouchers have perhaps even more to lose (and thus more to gain through legal representation): if evicted, they risk losing not only their apartment, but their voucher as well, as recipients who lose their apartment have only a limited time period to find a new apartment before the subsidy is terminated. Moreover, stakeholders explained that landlords seeking to displace Section 8 recipients from a regulated unit can ironically achieve that goal by failing to bring apartments up to code—and thus losing their certification to receive Section 8 funds. At that point, the tenant must either forfeit the subsidy and take over the full rent or seek new housing. Finally, keeping rent-regulated tenants in their homes is critical to preserving New York City's stock of affordable housing units, as it prevents vacancy increases in rent and potential deregulation of the unit following eviction.

By contrast, legal service providers and housing court judges cautioned that it is harder to effectively defend tenants in market-rate units. These tenants have fewer legal protections; for example, unlike rent-stabilized tenants (who have the right to

renewal of their leases), tenants in unregulated units can be required to move out at the end of their lease even if there are no arrears

Other considerations in targeting legal services assistance include the type of case and amount of money owed. Although legal service providers, housing court judges, and policy experts agreed that holdover cases are difficult to defend without a lawyer and thus stand to benefit from representation, lawyers are often unable to prevent eviction in these cases; sometimes the best outcome is more time for the tenant to move out. Tenant advocates observed that lawyers are also less able to help tenants who owe substantial arrears.

Several stakeholders further noted the importance of considering tenant characteristics in targeting legal service assistance, focusing on seniors and those with mental or physical disabilities as who may face challenges in communicating the facts of their case and following through on the required court processes and thus deserving of high priority in the allocation of services. Providers also noted that immigrants and young people are particularly underserved by existing legal services and targeted efforts may be needed in order to reach them.

Finally, although our study focused on tenant representation, the owners' trade association representative pointed out that access to representation is an important issue for small landlords, such as those in two-family houses, seeking to evict non-paying tenants. He noted that preserving their ability to rent to low-income tenants with the ability to pay is another means of preserving affordable housing.

Stakeholders were generally supportive of efforts to educate tenants about their rights, but cautioned that broad-based community initiatives were not a substitute for legal representation. Housing court officials, legal service providers, policy experts and tenant advocates all agreed that tenants do not know their rights, and that public education campaigns could address important issues such as the availability of rent freeze programs for senior citizens and persons with disabilities; what to do if a tenant is served with court papers (including informing tenants of the availability of free and low-cost legal services); and proactive steps that tenants can take (such as maintaining heat logs to document problems with the unit). A policy expert observed that tenants need to know that they are not required to leave their homes solely at the direction of a landlord. One legal service provider suggested that tenant education could help address informal evictions by improving tenant understanding of the eviction process and reducing defaults that may occur when tenants are wary of or unfamiliar with the court. Another proposed that "upstream" tenant education could help resolve some issues prior to litigation, thus decreasing the burden on the court system.

## Tenant Perspectives

As part of a larger survey of tenants in housing court (described in more detail above), we asked respondents for their opinion about the benefits of representation. Specifically, we asked tenants to rate their level of agreement with the following two statements: “*Tenants do better in housing court with a lawyer,*” and “*Having a lawyer would help my case.*” While almost all respondents provided answers to the second (more specific question), just over 10 percent declined to answer the more general question; of those who volunteered a reason for their refusal, most indicated that it was their first time in court and they did not know enough about the process to answer.

Results are presented in Table 15 below comparing three groups of tenants: those with a lawyer (note that this group is small and likely not representative given the limits on surveying represented tenants in court, as described above), those without a lawyer whose family income was above 200 percent of FPL (i.e., above the income for city-funded legal services), and those without a lawyer whose family income was at or below 200 percent of FPL. Across all three groups, substantial majorities (70 percent or more) agreed that lawyers were both generally helpful in housing court cases, and would be helpful in the tenant’s particular case. Tenants with representation and low-income tenants without representation tended to feel somewhat more positively about legal assistance compared to tenants without representation whose family incomes were above 200 percent of poverty. For example, 95.6 percent of represented tenants and 90.6 of low-income unrepresented tenants agreed that tenants do better with lawyers, compared to 86.8 of unrepresented tenants who were not low income.

Interestingly, within each group, respondents were somewhat less likely to agree that a lawyer would be helpful for their particular case compared to the more general question. This was particularly true among unrepresented tenants with income above 200 percent of poverty: among these respondents, just 71.1 percent agreed that a lawyer would be helpful for their case, although far more felt a lawyer was helpful to tenants in general. While we did not probe for specific reasons why tenants felt lawyers would or would not be helpful, some respondents commented that their need was limited to finding a way to pay off the rent, while others had been in housing court before and indicated that they knew what they needed to do without the assistance of counsel.

**Table 15. Perceptions of Lawyer Helpfulness among Tenants in New York City Housing Court**

	Tenants with representation (%)	Tenants without representation, family income above 200% FPL (%)	Tenants without representation, family income at or below 200% FPL (%)
<i>Tenants do better in housing court with a lawyer</i>			
	(n=90)	(n=136)	(n=204)
Strongly agree	70.0	58.1	62.3
Somewhat agree	25.6	28.7	28.4
Somewhat disagree	3.3	9.6	7.4
Strongly disagree	1.1	3.7	2.0
<i>Having a lawyer would help my case</i>			
	(n=92)	(n=152)	(n=229)
Strongly agree	69.6	46.1	58.5
Somewhat agree	18.5	25.0	22.7
Somewhat disagree	5.4	20.4	10.0
Strongly disagree	6.5	8.6	8.7

Source: Office of Evaluation and Research Housing Court Survey, May 2016.

Note: the number of respondents varies by category due to missing data.

## Civil Legal Services for Immigrants

Immigration legal services are also an area of specific focus for the de Blasio Administration as well as the City Council. In New York City, approximately 37 percent of the population is foreign born<sup>37</sup>; more than one in three residents is an immigrant. With arrival in the United States comes a host of civil legal needs for immigrants and their families, including but not limited to assistance with achieving status and naturalization; protection from workplace exploitation; navigation of the family court system; and defense counsel in cases of removal (deportation) of City residents that may be brought by federal immigration authorities.

In response to these needs, the Administration, the Council, philanthropies and other entities have built a network of legal services available to low-income immigrant New Yorkers. In Fiscal Year 2017, the City will dedicate an unprecedented level of

<sup>37</sup>U.S. Census Bureau, American Community Survey, 2010-2014 Five Year Estimates, analyzed by NYC Department of Social Services, Office of Evaluation and Research, July 2016

funding for immigration legal services. Some key Mayoral and Council programs include:

**ActionNYC**, a citywide program, administered by the New York City Mayor's Office of Immigrant Affairs (MOIA), HRA and the City University of New York (CUNY). Mayor de Blasio first announced ActionNYC in December 2015 as a program that would expand capacity in the field of immigration legal assistance in NYC. Funded at \$8.4 million for FY2017, the initiative provides immigration legal services to New York City residents, as well as programming that supports the provision of legal services, including outreach, navigation, technology and education services. The ActionNYC network is composed of trusted community-based partners and legal service providers that conduct outreach, community navigation and legal services, including free comprehensive legal screenings, application assistance for straightforward cases, and linkages for complex cases and to relevant social services. As part of the program, in FY2016 ActionNYC also convened large-scale weekend clinics that provided screenings for immigration benefits and referrals for up to 150 individuals per clinic. Clinics occurred about once a month in different immigrant-rich neighborhoods throughout the City. In addition, in the spring of 2016, ActionNYC began partnering with the Department of Education's (DOE) Office of Community Schools to bring free and confidential immigration legal services directly onsite to 25 Community Schools in immigrant-rich neighborhoods across the city. Foreign-born students and students of foreign-born parents represent approximately 46 percent of the Community Schools' student population. A list of FY2016 ActionNYC grantees is included at Appendix F. In FY2017, ActionNYC will add an educational component to offer immigrants otherwise eligible for Deferred Action for Childhood Arrivals (DACA) the opportunity to enroll in high quality classes, qualify for DACA, and get legal help and case management support to apply for relief. ActionNYC will also begin to offer services at New York City Health and Hospitals facilities and will partner with providers funded through the Immigrant Opportunity Initiative to create a direct pipeline between the two programs. ActionNYC is expected to provide immigration legal services to approximately 10,000 individuals in FY2017.

The **Immigrant Opportunity Initiative (IOI)**, which consists of a variety of legal service programs available to immigrant New Yorkers, was first established through the award of discretionary funding by the City Council and now is largely in the Mayoral baseline budget. Through IOI, service providers offer low-income immigrant New Yorkers access to legal assistance with citizenship and lawful permanent residency applications, as well as with legal representation in complex immigration matters and case management services in support of legal counsel. In FY2017, these legal services programs will be funded through a combination of Mayoral and City Council funding totaling approximately \$8.5 million. This includes \$2.7 million in new Mayoral

funding for legal representation in 1,000 complex immigration cases. The IOI program is expected to serve approximately 5,000 individuals in FY2017.

**Community Service Block Grants**, administered by HRA in partnership with the Department of Youth and Community Development (DYCD), support immigration legal services programs. For FY2017, these grants total approximately \$2.1 million and fund direct legal services for low-income immigrant New Yorkers. Specifically, citywide and community-based legal services organizations provide a range of services such as legal assistance to help immigrant adults and youth attain citizenship and lawful immigration status; legal and social services for immigrant survivors of domestic violence and human trafficking; and services designed to provide information, education, advocacy and legal services to protect low-wage immigrants from exploitation and violations of their employment rights. These services are expected to serve approximately 2,000 individuals in FY2017.

**NYCitizenship** is a citywide program administered by MOIA that provides citizenship legal services and financial counseling at twelve public library branches alongside services available at select HRA sites. In this program, New Yorkers receive free services that include appointments with an attorney for help with citizenship applications, information sessions about the citizenship process and its benefits and free and confidential financial counseling. Additionally, as part of the NYCitizenship initiative, through FY2017, MOIA and HRA are partnering on a pilot program to provide citizenship legal assistance to a targeted subset of recipients of public assistance. NYCitizenship is funded in the amount of approximately \$750,000 by Citi Community Development, Carnegie Corporation, and the Robin Hood Foundation. The program is expected to serve 2,800 individuals in FY2017.

**The New York Immigrant Family Unity Project (NYIFUP)** is funded by a City Council discretionary grant and is the first government-funded legal representation program for detained immigrants in the United States. This initiative provides in-court legal representation to immigrant New Yorkers in detention facing deportation who cannot afford an attorney. NYIFUP attorneys carry a full caseload of deportation defense cases, and provide services including: master calendar, bond and individual merits hearings, appeals, and social work services. NYIFUP is funded at \$6.2 million for FY2017 and is expected to serve approximately 1,250 individuals in FY2017.

**The Unaccompanied Minors Initiative (UMI) / Immigrant Children Advocates Relief Effort (ICARE)** was developed by the City Council in partnership with the Robin Hood Foundation and the New York Community Trust to provide legal and social services to address the surge of immigrant children living in New York City. The program provides unaccompanied immigrant and refugee children in New York City with counsel, the opportunity to apply for relief from removal, and the opportunity to

receive much-needed social, medical and mental health services. Many of these children are eligible for a range of statutory protections, including asylum, for those fleeing past and future persecution; Special Immigrant Juvenile Status (SIJS) for children who have been abused, neglected, or abandoned; U or T visas for those who have been victims of certain crimes or human trafficking and the favorable exercise of prosecutorial discretion resulting in administrative closure. With \$1.5 million in funding for FY2017, the program is expected to serve approximately 700 individuals.

## Looking to Future Reports

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This represents the first look by the Office of Civil Justice at the civil legal needs of low-income New Yorkers and the legal services available to them. In the coming year, OCJ is tasked with completing both a new Annual Report and a five-year plan for the provision of civil legal services in New York City. We will reexamine questions around representation in the City’s housing courts to assess the effect of further implementation of the City’s tenant legal services programs throughout FY2017. The City’s anti-eviction and anti-harassment tenant legal services programs will continue to ramp up over the course of FY2017, which we expect will be reflected in representation rates in the Housing Courts. We will also be studying the impact that legal representation has on outcomes in eviction cases for low-income New Yorkers – for example, to what extent case dispositions are affected by the presence of tenant’s counsel and to what extent positive case results affect indicators such as entry into the homeless shelter system and preservation of affordable housing stock.

In addition, we will be partnering with the Chief Judge’s Permanent Commission on Access to Justice to coordinate our research efforts and identify civil legal access issues to investigate that are of import to the City as well as the Judiciary.

We also intend to take a deeper look into legal representation and unmet needs among New York City homeowners facing foreclosure. Although New York City is often considered a “city of renters,” private homeowners comprise a significant portion of the residential landscape of the City. The homeownership rate in New York City was over 30% in 2015.<sup>38</sup> Homeownership and the consumer borrowing usually necessary to purchase can lead to a risk of foreclosure.

A 2015 analysis by the Office of the State Comptroller found that while the striking increase in foreclosures that occurred in the wake of the Great Recession has leveled off, particularly in New York City, foreclosure rates remain elevated. The report

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<sup>38</sup> NYU Furman Center. (2016). *State of New York City’s housing and neighborhoods in 2015*.

found that in New York City there were approximately 30,000 pending foreclosure cases as of 2015, down slightly since 2013.<sup>39</sup>

As shown in Table 16, recent analysis by the NYU Furman Center similarly found that while foreclosure filings have fallen in New York City since 2009, they remained above pre-recession levels.<sup>40</sup>

**Table 16. Residential Foreclosure Notices by Borough, 2010-2015**

	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Citywide
<b>2000</b>	837	2,785	356	2,632	743	7,353
<b>2006</b>	1,220	3,601	212	3,692	988	9,713
<b>2010</b>	1,974	6,240	842	6,246	1,729	17,031
<b>2014</b>	1,878	4,607	379	5,071	1,619	13,554
<b>2015</b>	1,868	3,927	312	5,035	1,535	12,677

Source: Furman Center. (2016). *State of New York City's Housing and Neighborhoods in 2015*.

Methods note: These data were compiled based on *lis pendens* filings tallied by the Public Data Corporation, a private vendor. Furman Center researchers screened these data using text string searches to isolate those filings related to a residential foreclosure. Properties that had multiple filings within 90 days were counted once to avoid duplicate reporting.

Whereas cases involving tenants facing eviction are heard in Housing Court (a unit of the New York City Civil Court), residential foreclosure cases are heard in the state Supreme Court, and in fact account for nearly 30 percent of that court's annual caseload statewide.<sup>41</sup> 2015 continued recent decreases in foreclosure filings in New York State. 41,675 foreclosure cases were filed in New York State in 2015, down from 43,868 in 2014 (-4.9 percent) and 46,696 in 2013 (-10.7 percent).<sup>42</sup> New foreclosure actions are still above their levels in 2006 (26,706 filings) and 2007 (33,508 filings) but are below the most recent peak of 47,824 filings in 2009, in the midst of the foreclosure crisis sparked by the Great Recession. Furthermore, as filings decreased during this

<sup>39</sup> New York State Office of the State Comptroller. (2015). *Local Government Snapshot: The Foreclosure Predicament Persists*. Retrieved from <https://www.osc.state.ny.us/localgov/pubs/research/snapshot/foreclosure0815.pdf>.

<sup>40</sup> NYU Furman Center. (2016). *State of New York City's Housing and Neighborhoods in 2015*.

<sup>41</sup> Marks, L. K. (2015). *2015 Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009*. State of New York Unified Court System. Retrieved from <http://www.nycourts.gov/publications/pdfs/2015ForeclosureReport.pdf>.

<sup>42</sup> The annual foreclosure caseload statistics provided are collected according to the judicial term schedule and cover roughly year-long periods between October of one year through October of the next. *2015 Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009*, Retrieved from <http://www.nycourts.gov/publications/pdfs/2015ForeclosureReport.pdf>.



period, the number of pending cases also declined. The state court system ended 2015 with 89,365 pending foreclosure cases, down 3.2 percent from 92,339 in 2014.<sup>43</sup>

The last several years have seen a steady increase in the number of homeowners represented by legal counsel in New York State. For the 2015 reporting period, 61 percent of New York State homeowners were represented by counsel in foreclosure settlement conferences in court. The rate of representation for homeowners in foreclosure cases in New York State has been steadily and substantially rising since 2011, as reflected in Table 17.

**Table 17. Foreclosure Settlement Conference Appearances in New York State Courts Represented Defendants and Unrepresented Defendants, 2011-2015**

	Defendants Represented by Counsel (%)	Defendants Unrepresented by Counsel (%)
2011	33%	67%
2012	51%	49%
2013	54%	46%
2014	58%	42%
2015	61%	39%

Source: 2015 Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009, available at <http://www.nycourts.gov/publications/pdfs/2015ForeclosureReport.pdf>.

This dramatic shift - from courts where more than two in three homeowners in foreclosure *lacked a lawyer*, to courts where almost two in three *had a lawyer* - is largely attributable to the Judiciary’s substantial investments in efforts to create access to civil legal services statewide and the Attorney General’s special foreclosure defense funding. As discussed previously, the Judiciary is committing \$85 million in the coming fiscal year to civil legal services for New York State residents in need, which combined with the Judiciary’s IOLA Fund support amounts to a full realization of the Judiciary’s \$100 million commitment to civil legal assistance in New York State.

<sup>43</sup>Marks, L. K. (2015). *Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009*. State of New York Unified Court System. Retrieved from <http://www.nycourts.gov/publications/pdfs/2015ForeclosureReport.pdf>.

## Conclusion

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This inaugural Annual Report is respectfully submitted to establish a solid foundation for discussions about the future of civil legal assistance for low-income people in New York City. Our City has made an investment in civil legal services larger than any other municipality, reflecting a firm commitment to a fair and accessible justice system.

## APPENDICES

**Appendix A: New York City Charter, Chapter 1, Section 13-b. *Office of civil justice.***

- a. The mayor shall establish an office of civil justice. Such office may, but need not, be established in the executive office of the mayor and may be established as a separate office, within any other office of the mayor or within any department, the head of which is appointed by the mayor. Such office shall be headed by a coordinator who shall be appointed by the mayor or the head of such department. For the purposes of this section only, "coordinator" shall mean the coordinator of the office of civil justice.
- b. Powers and duties. The coordinator shall have the power and the duty to:
  1. advise and assist the mayor in planning and implementing for coordination and cooperation among agencies under the jurisdiction of the mayor that are involved in civil justice programs;
  2. review the budget requests of all agencies for programs related to civil justice, and recommend to the mayor budget priorities among such programs and assist the mayor in prioritizing such requests;
  3. prepare and submit to the mayor and the council an annual report of the civil legal service needs of low-income city residents and the availability of free and low-cost civil legal services to meet such needs, which shall include but not be limited to (i) an assessment of the civil legal service needs of such residents, as well as the type and frequency of civil legal matters, including but not limited to matters concerning housing, health insurance, medical expenses and debts relating thereto, personal finances, employment, immigration, public benefits and domestic and family matters, (ii) identification and assessment of the efficacy and capacity of free and low-cost civil legal services available for such residents, (iii) identification of the areas or populations within the city in which low-income residents with civil legal service needs reside and (iv) identification of areas or populations within the city that have disproportionately low access to free and low-cost civil legal services;
  4. study the effectiveness of, and make recommendations with respect to, the expansion of (i) free and low-cost civil legal services programs, (ii) mediation and alternative dispute resolution programs and (iii) mechanisms for providing free and low-cost civil legal services during and after emergencies; provided that the coordinator shall, to the extent practicable, prioritize the study of, and making of recommendations with respect to, the expansion of free and low-cost

civil legal services programs intended to address housing-related civil legal service needs of low-income city residents;

5. serve as liaison for the city with providers of free and low-cost civil legal services and coordinate among such providers to (i) maximize the number of low-income city residents who obtain free and low-cost civil legal services sufficient to meet the needs of such residents and (ii) ensure that such residents have access to such services during and after emergencies;
  6. provide outreach and education on the availability of free and low-cost civil legal service programs; and
  7. perform other duties as the mayor may assign.
- c. Five-year plan. Within one year after the completion of the first annual report required by paragraph three of subdivision b of this section, and in every fifth calendar year thereafter, the coordinator shall prepare and submit to the mayor and the council a five-year plan for providing free and low-cost civil legal services to those low-income city residents who need such services. Such plan shall also identify obstacles to making such services available to all those who need them and describe what additional resources would be necessary to do so.

## **Appendix B. New York City-Based Recipients of Judicial Civil Legal Services (JCLS) Grants, 2015-16**

Advocates for Children of New York  
Asian American Legal Defense and Education Fund  
Association of the Bar of the City of New York Fund Inc  
Bronx Defenders  
Brooklyn Bar Association Volunteer Lawyers Project  
Brooklyn Defender Services  
Brooklyn Legal Services Corporation A  
CAMBA  
Catholic Migration Services  
Center for Family Representation  
Central American Legal Assistance  
Day One  
Family Center, Inc.  
Goddard Riverside Community Center  
Her Justice  
Housing Conservation Coordinators  
Jewish Association of Services for the Aged  
Latino Justice PRLDEF  
Legal Action Center  
Legal Information for Families Today  
Legal Services NYC  
Lenox Hill Neighborhood House  
Make the Road New York  
MFY Legal Services  
Neighborhood Defender Services  
New York Center for Law and Justice  
New York City Gay and Lesbian Anti Violence Project  
New York Law School  
New York Lawyers for the Public Interest  
New York Legal Assistance Group  
New York Legal Assistance Group (VLFD)  
Northern Manhattan Improvement Corp  
Part of the Solution  
Partnership for Children's Rights  
Queens Volunteer Lawyers Project  
Richmond County Bar Association Volunteer Lawyers  
Ridgewood Bushwick Senior Citizens Council  
Safe Horizon

Sanctuary for Families  
The Door A Center for Alternatives  
The Legal Aid Society  
Touro College  
Urban Justice Center  
Vera Institute of Justice  
Volunteers of Legal Services  
Youth Represent

## Appendix C. Overview of the Housing Court Process

### Eviction Proceedings

New York City’s Housing Court is a component of the city civil court system devoted to landlord-tenant matters. Any landlord wishing to evict a tenant in New York City must first fulfill requirements set out in the lease and/or by law. Examples of such requirements include a verbal or written demand to the tenant for rent if rent has not been paid (prior to initiating a non-payment case), or a Notice to Quit for someone who is staying in a property without permission or otherwise violating their lease (prior to initiating a holdover case). Once these requirements have been met, the landlord can start an eviction case by filing a Petition and related documents in court.<sup>44</sup> The petition, received in the mail or delivered in person, notifies tenants that they are being sued in Housing Court. The majority of petitions are for non-payment, meaning that a landlord is attempting to recoup rental arrears and evict a tenant from a unit for failure to pay rent. Alternatively, tenants can be summoned to housing court through a “holdover” petition. A holdover case is brought to evict a tenant for reasons other than rent non-payment, such as having a pet in violation of the lease, being a nuisance to other tenants, or staying in an apartment after the lease has expired. Holdover proceedings can also be initiated by tenants (for example, to evict a roommate), although this is less frequent.

After receiving a non-payment petition, a tenant has five days to come to court to *answer*. In answering, a tenant can acknowledge the receipt of the petition or challenge the service of the legal papers, and provides a legal defense against a landlord’s claims. After answering the petition, cases are added to the court’s calendar, and a trial date in court is set. Unlike non-payment cases, tenants do not answer holdover petitions. Instead, a holdover petition already includes a calendared date and time for a trial.

On the calendared date, cases are assigned to a specific court room, known as a court *part*. Typically, landlords and tenants will initially appear in a *resolution part*, giving parties the opportunity to negotiate an agreement, known as a *stipulation*. In most cases, stipulation agreements are negotiated in the hallways outside of court rooms before being presented to a Housing Court Judge in the court room. In most cases, these negotiations involve the tenant and the landlord’s attorney, as most tenants lack representation while most landlords have counsel. In the example of a non-payment case, a stipulation would include an agreement about the amount of past rent due, a schedule for repayment and for any needed repairs and sometimes license for eviction should repayment terms not be met. After signing a stipulation

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<sup>44</sup> A “petition” is one of the legal forms required to start a case in Housing Court; this Report follows the convention used in the data released by the Civil Court and use the term to signify the initiation of a case.



agreement, a tenant and a landlord appear before a judge for final review and sign-off. The stipulation terms are then generally codified by the judge through *judgments*. In non-payment cases, these can include *money judgments*, indicating repayment terms, as well as *possessory judgments*, authorizing a landlord to gain possession of property through the issuance of a warrant of eviction. Holdover cases typically involve possessory, but not money judgments.

If parties cannot come to agreement in the resolution part, their case can go to trial. In housing court trials, after hearing arguments from landlords and tenants, a housing court judge will issue a final decision. Outcomes of the trial can include a judgment, a *dismissal* (a termination of the proceeding), or an *adjournment* (a temporary postponement of proceedings until a future date).

If a tenant fails to answer a petition, or if they do not appear at the calendared court date, they forfeit their opportunity to argue their case in court or negotiate with their landlord. A landlord can then apply for a *default judgment* with a clerk at housing court. After applying, a clerk will schedule an *inquest hearing* to verify the landlord's legal claims. Upon the award of a default judgment, a landlord can seek to recoup rental arrears; they may also apply for a warrant of eviction.

After a warrant of eviction is issued by the court, a landlord can hire a NYC marshal or sheriff to execute it. These officers verify the case details with court clerks and then present tenants with a *Notice of Eviction*. A marshal (or sheriff) can execute an eviction on the fourth business day after delivery of the notice, if it was delivered personally. If the notice was not served personally (i.e., it was left on apartment door, or left with someone else in the apartment), the eviction can be carried out six business days later.

After being served with a Notice of Eviction, a tenant can return to Housing Court to file an *Order to Show Cause*. This action provides tenants the opportunity to provide a legally valid reason why an eviction should be halted. Tenants might claim that rent has been fully paid, or in the case of a default, that they never received the petition. A judge will review the validity of a tenant's claims, and either sign the Order to Show Cause and grant *stay* (delaying or halting an eviction) or not sign them, authorizing the eviction to proceed.

### **Housing Part (HP) Proceedings**

While most Housing Court actions are brought by landlords, tenants can also bring "Housing Part," or HP, actions against landlords for outstanding repairs or building violations. HP proceedings can be brought by individuals or by groups of tenants in buildings with widespread violations. These cases are typically brought when less

involved strategies (e.g. written demands to landlords, 311 complaints) fail to bring about repairs.

To file an HP action, tenants go to their borough Housing Court where they file paperwork that describes and documents violations and needed repairs. An HP Judge then reviews the petition and, if it's deemed valid, authorizes the action and sets a hearing date. At this point tenants can also schedule an inspection from the NYC Department of Housing Preservation and Development (HPD) to investigate alleged housing code violations. When an HP petition is filed, tenants are responsible for serving HP papers to both the respondent (landlord) and to HPD, as the government agency charged with maintaining building codes in NYC. Papers can be served in person or by certified mail.

As a party to the case, HPD lawyers are generally present in HP proceedings, representing the City. Although technically the action is filed *against* HPD, HPD's interests are generally closer to those of the tenant than the landlord, as both HPD and the tenants seek to obtain repairs and remedy code violations. That said, in many cases, HPD and tenant interests are not fully aligned. For example, since HPD lawyers represent the City (not tenants), they seek to remedy violations of the NYC Housing Maintenance Code and Multiple Dwelling Law, under threat of civil or criminal penalty if mandated repairs are not made in a timely fashion. Penalties resulting from these cases are payable solely to HPD, and HPD lawyers do not seek rent abatements or other remedies specifically for tenants.

As in eviction proceedings, many HP actions are settled through negotiation. Such an agreement, codified through a consent order or a stipulation, would include dates during which a landlord can access the property to conduct repairs and dates by which the said repairs need be completed; in very rare cases these stipulations may also include rent abatements. If parties cannot come to an agreement, then the case will progress to trial.

Note that in addition to being named on tenant HP petitions, HPD initiates approximately half of the city's HP actions each year, in an effort to compel landlords to address housing code violations such as the presence of lead-paint or heat and hot-water conditions. As in the tenant-initiated cases, HPD's goals tend to be similar to tenants' in terms of obtaining building repairs, but the remedies they seek often differ.

## **Appendix D. Legal Services Providers Participating in New York City Civil Legal Services Programs, by Program**

### **Homelessness Prevention Law Project (HPLP) Legal Services Providers and Expanded Legal Services (ELS) Targeted Neighborhoods**

Brooklyn Legal Services Corporation A  
Bronx AIDS Services (Boom!Health)  
Bronx Defenders  
CAMBA Legal Services  
Housing Conservation Coordinators  
Legal Services NYC  
Neighborhood Association for Inter-Cultural Affairs  
New York Legal Assistance Group  
Northern Manhattan Improvement Corporation  
Ridgewood Bushwick Senior Citizens Council  
The Legal Aid Society  
Urban Justice Center

10026 (Harlem, Manhattan)  
10027 (Harlem, Manhattan)  
10302 (Port Richmond, Staten Island)  
10303 (Mariners Harbor, Staten Island)  
10457 (Tremont, Bronx)  
10467 (Williamsbridge, Bronx)  
11216 (Bedford-Stuyvesant/Crown Heights, Brooklyn)  
11221 (Bushwick/Bedford-Stuyvesant, Brooklyn)  
11433 (Jamaica, Queens)  
11434 (South Jamaica, Queens)

### **Housing Help Program (HHP) Targeted Neighborhoods**

10452 (Highbridge, Bronx)  
10456 (Morrisania, Bronx)  
11212 (Brownsville, Brooklyn)  
11207 (East New York, Brooklyn)  
11226 (Flatbush, Brooklyn)  
11432 (Jamaica, Queens)  
11691 (Far Rockaway, Queens)  
11692 (Arverne, Queens)

## **Anti-Harassment and Tenant Protection (AHTP) Program Legal Services Providers and Targeted Neighborhoods**

### **LEAP**

**Boom!Health**  
**Bronx Defenders**  
**Brooklyn Defender Services**  
**Brooklyn Legal Services Corporation A**  
**CAMBA**  
**Catholic Migration Services**  
**Jewish Association for Services for the Aged**  
**Lenox Hill Neighborhood House**  
**Make the Road New York**  
**MFY Legal Services**  
**New York Lawyers for the Public Interest**  
**Northern Manhattan Improvement Corporation**  
**Urban Justice Center (lead)**

**Legal Aid Society**  
**Legal Services NYC**

**10029 (East Harlem, Manhattan)**  
**10034 (Inwood, Manhattan)**  
**10035 (East Harlem, Manhattan)**  
**10301 (Bay Street, Staten Island)**  
**10304 (Stapleton, Staten Island)**  
**10452 (Highbridge, Bronx)**  
**10453 (Morris Heights, Bronx)**  
**11207 (East New York, Brooklyn)**  
**11208 (East New York, Brooklyn)**  
**11212 (Brownsville, Brooklyn)**  
**11233 (Ocean Hill, Brooklyn)**  
**11101 (Long Island City, Queens)**  
**11354 (West Flushing, Queens)**  
**11358 (Flushing, Queens)**

## **Legal Hand Program Legal Services Providers**

Legal Aid Society

Legal Services NYC/Queens Legal Services

New York Legal Assistance Group

## **Poverty Justice Solutions Legal Services Providers**

Brooklyn Legal Services Corporation A

CAMBA

Center for Family Representation

Jewish Association for Services for the Aged

Legal Aid Society

Legal Services NYC

Lenox Hill Neighborhood House

Make the Road NY

MFY Legal Services

Neighborhood Defender Services of Harlem

New York Legal Assistance Group

Sanctuary for Families

Urban Justice Center

## **Appendix E. List of Stakeholders Interviewed**

CASA

Center for Court Innovation

Flatbush Tenant Coalition

Furman Center for Real Estate and Urban Policy, New York University

Housing Court Answers

Legal Aid Society

Legal Services NYC

New York City Council: Office of the Honorable City Council Speaker Melissa Mark-Viverito; the Honorable Council Member Rory Lancman; the Honorable Council Member Stephen Levin; the Honorable Council Member Mark Levine

New York City Department of Housing Preservation and Development: Assistant Commissioner Deborah Rand

New York City Housing Court: the Honorable Jean Schneider, Citywide Supervising Judge; the Honorable Michael L. Weisberg, Judge

New York Legal Assistance Group

Permanent Commission on Access to Justice: Helaine Barnett, Chair

Rent Stabilization Association: Mitchell Posilkin, General Counsel

Robin Hood Foundation

New York Law School: Andrew Scherer, Policy Director, Impact Center for Public Interest Law

Urban Justice Center

## **Appendix F. ActionNYC 2015-16 Grantees**

Arab American Association of New York  
Asian-Americans for Equality  
Atlas DIY  
BronxWorks  
CAMBA  
Catholic Charities New York  
Center for Family Life  
Center for Popular Democracy  
Desis Rising Up & Moving (DRUM)  
LSA Family Health Services  
Lutheran Social Services of New York  
Make the Road New York  
New York Immigration Coalition  
New York Legal Assistance Group  
Northern Manhattan Improvement Corporation





