

Enhancing Outcomes Through Community Collaboration:
Is There a Lawyer in the House?

North Carolina Asthma Summit 2017

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Medical-Legal Partnership Program
Legal Aid of North Carolina

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Objectives

1. Offer a (very quick) introduction to Legal Aid of North Carolina
2. Help participants to:
 - Recognize the roles that legal advocates can play in collaborative, community-based efforts to address social determinants of health
 - Better understand the relationships between poor housing conditions and lack of affordable housing
 - Learn about the basic legal framework shaping landlord/tenant responsibilities related to rental housing conditions and evictions
 - And how that relates to availability of affordable housing

Objectives – Continued

2. Help participants to:
 - **Provide information** to patients/families about
 - Where to get information about their legal rights
 - How to request assistance from local code enforcement
 - Other community agencies and resources
 - How to apply for assistance from Legal Aid of North Carolina

3. Provide opportunity for questions, discussion, reflections

****Disclaimer: This presentation is for educational purposes only. The information contained in these slides is intended to provide general, background information for this particular audience.****

Legal Aid of North Carolina

Mission

- A statewide, non-profit law firm
- that provides free legal assistance
- in civil matters
- to low-income people
- in order to ensure equal access to justice
- and to remove legal barriers to economic opportunity



Legal Aid of North Carolina

Program Areas

Housing
Domestic Violence
Public Benefits
Education
Consumer Law
Employment
Community Economic Development

Statewide and Regional Projects

Medical-Legal Partnership Program
Advocates for Children's Services
Farm Worker Unit
Outreach and Enrollment for Coverage Under Affordable Care Act
Domestic Violence Prevention Initiative and Battered Immigrant Project
Mortgage Foreclosure Project
Fair Housing Project
Senior Law Project
Low-Income Tax Clinic
Second Chance Project

Legal Aid of North Carolina

Eligibility Criteria for Clients*

- Income (typically ≤125% FPL) and assets
- Legal status for most types of services
- Exceptions
 - Domestic Violence Protective Orders
 - VISA Assistance for Battered Immigrants
 - Human Trafficking

* As established by our federal funding agency, Legal Services Corporation

“Level” or “Dose” of Service**

- Advice and Information
- Brief Service
- Litigation
- Administrative Hearings

** Established for each client

Social Determinants of Health → Legal Remedies

Access to safe, affordable housing

- rental homes
- Prevent or stop illegal evictions and improper terminations of housing subsidies
- Challenge discrimination through fair housing claims
- Prevent mortgage foreclosure

Income security

- Appeal of denials of income support programs
- Supplemental Security Income (SSI) for persons with disabilities
- Work First for Families
- Veteran's Benefits
- Unemployment benefits
- Remove barriers to employment and other services for persons with certain criminal records
- Assist with certain tax matters
- Enforce consumer protection laws

Social Determinants of Health → Legal Remedies

Access to health insurance

- Appeal of eligibility and service denials for Medicaid (adults and children) and for NC Health Choice for Children
- Coverage through ACA Market

Food security

- Appeal of denial of SNAP/ Food Stamps

Personal safety and family stability

- Domestic violence protective orders
- Immigration assistance for victims of domestic violence, human trafficking

Access to educational services

- Enforcement of special education rights
- Challenge improper school disciplinary actions

Examples of Links Between Poor Housing and Health

- Rodent, cockroach, bedbug infestations
- Water leaks and resultant mold
- Peeling paint, contaminated water and wells
- Improper wiring, exposed wires, lack of smoke detectors, use of space heaters, uncovered radiators
- Unaffordable housing and utilities, including utility costs, lack of heat, etc.
- Asthma, allergies, bug bites
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- Lead poisoning, exposure to other dangerous chemicals, etc.
- Injuries, fires
- "Heat or eat or treat" choices

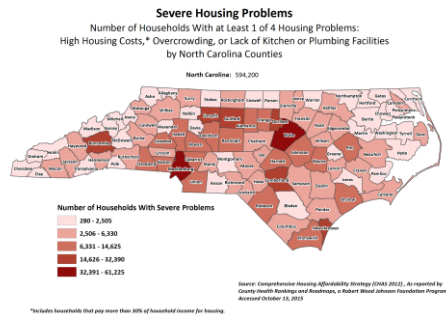
Two Families – What's Likely to Happen? What Other Outcomes Are Possible?

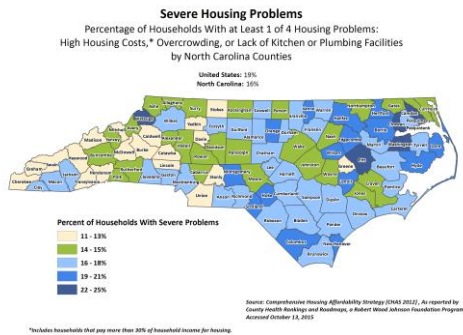
Yolanda has two children, including a daughter with severe asthma. The landlord knows their apartment has a cockroach infestation, but won't pay an exterminator to treat their apartment. She can't afford to pay the bill. The landlord threatened to evict her family if she asks him for help again.

Sam is a father of four whose landlord has refused to repair leaking roof. After Sam complained to the landlord, a maintenance man came, but he only painted over the stains in the ceiling. The following month, the landlord raised the rent by \$300. Last month, Sam's refrigerator stopped working and he had to throw out the meat, eggs, milk, and other items that had spoiled. He couldn't afford to pay last month's rent, and now the landlord has filed court eviction action.

Housing Affordability and Instability In North Carolina

Indicators	
Number of people living in poverty (<100% FPL)	1,669,147
Number of people living in extreme poverty (<50%FPL)	728,777
Number of people living in HUD-subsidized housing	264,019
Number of HUD-subsidized units	133,727
Ave. # of months on waiting list for subsidized housing	19
% of renter-occupied HHs spending > 50% of income on rent	23.3%
Median monthly housing cost for renter-occupied housing	\$744
Hourly wage required to be able to pay those costs	\$14.31





Legal Framework for Rental Housing - Sources of Law

- Contracts
- Statutes – Federal and State
- Regulations – Federal and State
- Case Law
- Local Ordinances
 - E.g., housing codes
- Program Rules
 - E.g., Section 8, Public Housing, Rural Housing, Tax Credit Properties, etc.

Legal Framework for Rental Housing – Five Take-Home Messages

1. Unhealthy housing conditions may violate state law, local ordinance, other rules.
2. Timing and documentation are critical elements to protecting a tenant's rights and legal remedies.
3. Usually, tenants can't be evicted without notice, court process.
4. Tenants should:
 - Review their lease;
 - Notify the landlord *in writing* about necessary repairs;
 - Keep receipts and notes about contact(s) with landlords;
 - (In some cases) request inspections by local housing code officials; and,
 - Seek legal assistance if unsafe conditions are not promptly remedied or if at imminent risk of eviction, loss of housing subsidy, or foreclosure.

Housing Conditions: Tenants' Responsibilities and Rights

Tenants Shall

- Keep the premises as clean and safe as possible
- Notify the landlord of needed repairs
- Not deliberately or negligently destroy or damage the premises, nor render inoperable smoke alarms or CO monitors provided by LL
- Be responsible for damages inside dwelling in T's exclusive control, unless such damages are due to:
 - Ordinary wear and tear
 - Acts of LL, including defective products or repairs authorized by LL
 - Acts of third parties who are not T's invitees
 - Natural forces

Tenants are not liable for accidental damage

- A tenant shall not be liable for damage occurring on the premises accidentally, and notwithstanding reasonable diligence on the tenant's part, unless he so contract.

Housing Conditions: Tenants' Rights and Responsibilities (cont.)

Notice to Landlord of Defects

- Lack of written notice commonly asserted as a "defense" by landlords
 - **Written notice is required** for certain statutory claims, **but not** if it is an **emergency** or if defect rendered premises not fit and habitable
 - **Written notice not required** for common law claim of breach of warranty of habitability
 - **Constructive notice** if defect pre-dated tenancy
 - Lease provisions that require Ts to provide written notice of defects cannot diminish Ts' rights to damages arising under the Act

Duty to Pay Rent

- T's duty to pay rent is mutually dependent on LL's duty to provide fit premises
- While statute provides that a "tenant may not unilaterally withhold rent," this does not preclude a tenant from using defense for rent abatement.

Housing Conditions: Landlords' Responsibilities

A Landlord SHALL:

- **Make all repairs and do whatever is necessary to put and keep** the premises in **fit and habitable** condition
 - This duty includes pest extermination
- Comply with applicable building and housing codes
- Maintain electrical, plumbing, sanitary, heating, ventilation, air conditioning, and other appliances in good and safe working order
- Install / provide working smoke detectors, carbon monoxide detectors
- Keep common areas safe
- Repair or remedy an "**imminently dangerous condition**"
 - Within a reasonable period of time
 - Based on the severity of the condition
 - After acquiring actual knowledge or receiving notice
 - However, LL may recover from the tenant actual and reasonable costs of such repairs that are the fault of the tenant

Housing Conditions: Landlords’ Responsibilities (cont.)

A Landlord Shall (cont.)

- Repair or remedy an “imminently dangerous condition” (cont.)
- 12 “Imminently Dangerous Conditions”**

 1. Unsafe wiring
 2. Unsafe flooring or steps
 3. Unsafe ceilings or roofs
 4. Unsafe chimneys or flues
 5. Lack of drinkable (potable) water
 6. Lack of operable locks on all doors to outside
 7. Broken windows or lack of operable locks on all windows on ground floor
 8. Lack of heat for all living areas
 9. Lack of an operable toilet
 10. Lack of an operable bathtub or shower
 11. Rat infestation as a result of defects in structure
 12. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation and mold

Housing Conditions: What if Repairs Are Not Made?

- Tenant may sue landlord and, if prevails, may:
 - Obtain Order requiring Landlord to make repairs
 - Recover money damages, such as
 - Future rent reduction until repairs made
 - Rent abatement
 - The difference between fair market rental value (FMV) “as warranted” and Actual FMV in defective condition
 - Special and consequential damages like repair costs, higher utility bills, etc.
 - Also recover For Unfair and Trade Practices
 - Treble damages
 - Attorneys’ fees
- Tenant actions may be asserted affirmatively or as defenses or counterclaims or as recoupment or setoff

Let’s Return to Yolanda ...
What Are Her Rights? What’s Likely to Happen?

Yolanda has two children, including a daughter with severe asthma. The landlord knows their apartment has a cockroach infestation, but won’t pay an exterminator to treat their apartment. She can’t afford to pay the bill. The landlord threatened to evict her family if she asks him for help again.

Retaliatory Evictions Are Prohibited

- Applies to eviction actions filed substantially in response to T’s good faith efforts to secure repairs or other rights to decent, safe, and sanitary housing within 12 months prior to filing
- **Tenants cannot be evicted for:**
 - Asking for repairs
 - Complaining to a government agency about LL’s alleged violations
 - Issuance of formal complaint by a government agency to the LL
 - Trying to exercise, secure, or enforce any right under the law
 - Organizing, joining, or becoming involved with any organization promoting or enforcing tenants’ rights
- However, LL may prevail if T has breached the lease or failed to pay the rent.

Only Four Grounds for Eviction

1. Nonpayment of rent and proper notice given
2. Staying after the lease has ended and proper notice given
3. Breach of lease term that specifically allows for repossession
4. Certain criminal activities

Self-Help Evictions Are Prohibited

- Examples of self-help evictions:
 - Disconnection of water, gas, electricity;
 - Changing locks;
 - Padlocking;
 - Removing doors;
 - Using threats; or
 - Any other way besides the Summary Ejectment process through the courts
 - Landlord must follow court process & obtain court order
 - Landlord & tenant cannot agree to not use court process

Self-Help Eviction: Potential Causes of Action for Tenants

- Breach of covenant of quiet enjoyment
- Wrongful eviction - actual damages
- Conversion
- Trespass to dwelling or personal property
- Unfair and deceptive trade practice—treble damages
- Unfair debt collection—up to \$2,000 civil penalty

Let's Return to Sam ...
What Are His Rights? What's Likely to Happen?

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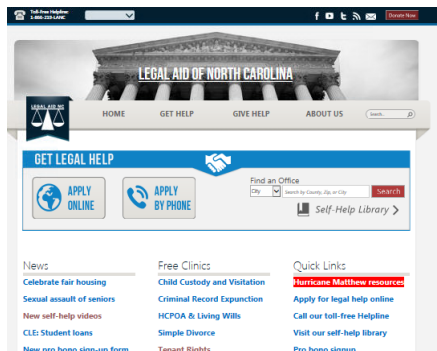
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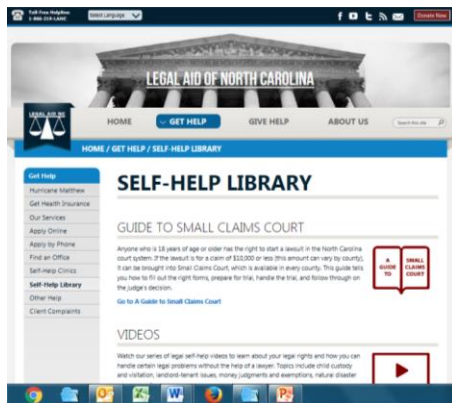
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What Can You Do to Help Patients/Families Struggling with
Unsafe Housing Conditions?

Provide information and assist patients/families

- Where to get information about their legal rights
- How to request assistance from local code enforcement
- Identify other community agencies and resources
- How to apply for assistance from Legal Aid of North Carolina





Does Your Patient/Family Live in a Community with a Minimum Housing Code?

- Enabled by state statutes
- Where to find it?
 - City / County websites
 - Municode <https://www.municode.com/>
- What does it include? ("Minimum" standards)
 - In general: addresses disrepair of structure, materials, or systems
 - Leaks and other sources of moisture
 - Ventilation – window minimums, bathroom fans
 - Sanitation
 - Infestation (roaches and other insects, rodents, rats, etc.)
 - If mold not directly addressed, look for provisions about the conditions that create and/or contribute to mold

Enforcement of Minimum Housing Codes – How Does It (Typically) Work?

- Usually, complaint-driven
 - Inspector views premises, access to interior requires occupant permission
 - Inspector issues report to owner and occupant (30-day Complaint and Notice)
 - Hearing is scheduled
 - If repairs not made, owner receives new notice (30-day Finding of Fact)
 - If violations remain unresolved, a criminal summons is issued for the owner to appear in District Court
 - Enforcement sanctions may include closure of rental premises, fines
- ❖ If occupant moves out, violations must be cured before renting to new tenants

Information about Other Community Agencies or Resources

- Emergency Assistance
- Disaster Assistance?
- Affordable Housing Options
- What Else?

Legal Aid of North Carolina

How to Apply for Assistance?

1. Legal Aid Help Line: Statewide, toll-free numbers

- <http://www.legalaidnc.org/get-help/Pages/apply-for-help/Apply-by-Phone.aspx>

2. On-Line applications

- <http://www.legalaidnc.org/get-help/Pages/apply-for-help/Apply-Online.aspx>

3. Direct referrals from specific, selected community partners to local LANC offices

- Domestic violence agencies
- Medical-Legal Partnership clinics and hospitals

Legal Aid of North Carolina's Medical-Legal Partnership Program

- Brings together physicians, nurses, social workers, care managers, other health care professionals, attorneys, paralegals, and other community partners
- To address the social and environmental conditions that influence patient and population health, including:
 - Food, income, and housing insecurity;
 - Improper denials of Medicaid and other public benefits;
 - Substandard housing conditions;
 - Domestic violence; and
 - Failure to provide children with educational services to which they are entitled.

Wrap Up, Questions, Reflections

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