
Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant “Hoarding” Under the Fair Housing Act

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“The patient considered all objects in her possession, even the most insignificant ones, such as burnt out matchsticks, cigarette butts, or candy wrappers, as parts of her ego, and discarding them as tantamount to weakening of her ego integration. Giving them away was like giving away parts of herself.”¹

I. INTRODUCTION

While the phenomenon of hoarding² is not new,³ the media scrutiny accompanying it has reached heights undreamt of even in 1947, when the living

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1. Janna Koretz & Thomas G. Gutheil, “I Can’t Let Anything Go:” *A Case Study with Psychological Testing of a Patient with Pathologic Hoarding*, 63 AM. J. PSYCHOTHERAPY 257, 258 (2009) (quoting E.A. Gutheil, *Problems of Therapy in Obsessive-Compulsive Neurosis*, 13 AM. J. PSYCHOTHERAPY 793, 799 (1959)).

2. This article will not address the issue of animal hoarding as that includes additional legal concerns, such as animal cruelty, beyond the scope of this article. See generally RANDY O. FROST & GAIL STEKETEE, *STUFF: COMPULSIVE HOARDING AND THE MEANING OF THINGS* (2010) (discussing classifications and examples of animal hoarding); Megan L. Renwick, Note, *Animal Hoarding: A Legislative Solution*, 47 U. LOUISVILLE L. REV. 585 (2009) (providing overview of animal hoarding and suggestions for legislative solutions).

3. See Susan Lepselter, *The Disorder of Things: Hoarding Narratives in Popular Media*, 84 ANTHROPOLOGICAL Q. 919, 920-21 (2011). This article, written from an anthropological perspective, describes hoarding narratives as “the discourse of addiction and its management bleed[ing] into a story of phantasmagoric consumption in neoliberal capitalism, offering a nightmare image of normative consumption and a grotesque shadow of ordinary, unmarked commodity fetishism.” *Id.* at 921. Reference to the unnecessary accumulation of materials has been remarked upon as far back as Dante’s *Inferno*. FROST & STEKETEE, *supra* note 2, at 1, 61 (describing, in addition and subsequent to Dante, works by Charles Dickens, Honoré de Balzac, and Nikolai Gogol). Randy Frost, one of the preeminent researchers in this field, contends that this also has to do with the increasing commercialization of our society. *Id.* at 263. A particularly persuasive part of this argument is that forty years ago, virtually no self-storage facilities existed, whereas now eleven million households rent storage space totaling 2 billion square feet in over forty-five thousand facilities. *Id.*

situation of the famous Collyer brothers became front-page news.⁴ Along with numerous recent newspaper and magazine accounts of the problem,⁵ and an increased focus from the medical community,⁶ the term “hoarding” has burrowed into popular culture through ubiquitous reality shows⁷ as one of those amusing extreme behaviors to which the human experience occasionally gravitates.⁸ However, in discussing hoarding, it is surprising how commonly we find that we know “hoarders,” either as neighbors, friends, parents of friends, coworkers, or even family members. It seems that everyone knows someone or knows someone who knows someone who could become a reality television star if only they bared their secret shame to an insatiable television audience.

The shame of hoarding behavior is one of the prominent aspects of the disorder; one that keeps the behavior hidden, prevents treatment, keeps individuals in a state of isolation, leads to a regression of social interaction, and eventually reinforces the behavior itself.⁹ In hoarding literature, the sense of

4. See generally Kenneth J. Weiss, *Hoarding, Hermitage, and the Law: Why We Love the Collyer Brothers*, 38 J. AM. ACAD. PSYCHIATRY L. 251 (2010) (for perspective on media attention surrounding Collyer brothers); see also FROST & STEKETEE, *supra* note 2, at 1-8 (detailing Collyer brothers' story).

5. These articles are incredibly varied and cover a wide variety of perspectives, from the legal to the religious. See, e.g., Liana Grey, *Apartment Owners and Managers Lift Lid on Growing Problem*, REAL EST. WKLY, Jan. 4, 2012, <http://www.thefreelibrary.com/Apartment+owners+and+managers+lift+lid+on+growing+problem.-a0276999699>; Heidi Schlumpf, *Hoarding: A Psychological or Spiritual Problem?*, NAT'L CATH. REP., June 24, 2011, <http://ncronline.org/print/news/hoarding-psychological-or-spiritual-problem>; Brigid Schulte, *Fighting to Remain Engulfed in Junk*, WASH. POST, June 18, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/17/AR2006061700905.html>; Kayla Webley, *Hoarders Purge with Help from Community Groups*, TIME, Jul. 19, 2010, <http://www.time.com/time/printout/0,8816,2002516,00.html>; see also *Hoarding in the News Media: San Francisco Bay Area Internet Guide for Extreme Hoarding Behavior*, HOARDERS.ORG, <http://www.hoarders.org/news.html> (last visited Nov. 26, 2012) (providing links to additional articles on hoarding). This media attention is not just an American phenomenon, but is prevalent across western cultures. See, e.g., Usman Azad, *Hoarding Breaches Tenancy Rule*, KALGOORLIE MINER (Austl.), Nov. 15, 2010, at 5; Alexandra Zabjek, *When Collecting Crosses the Line*, EDMONTON J. (Can.), Nov. 22, 2010, at A3; Steve Johnson, *Pensioner Booted Out over Rubbish*, BIRMINGHAM MAIL (Eng.), Aug. 7, 2008, <http://www.thefreelibrary.com/Pensioner+booted+out+over+rubbish%3B+NUISANCE%3A+Eviction+notice+after...-a0182391870>; see also CHRISTIANA BRATIOTIS ET AL., *THE HOARDING HANDBOOK: A GUIDE FOR HUMAN SERVICE PROFESSIONALS* 5 (2011) (not yet clear from studies whether prevalent in nonwestern cultures).

6. See *infra* Part II.A (discussing medical community's treatment of hoarding as disorder).

7. The television show *Hoarders* premiered on A&E in 2009 and has remained on the air as of November 2012. With the success of *Hoarders*, additional shows following hoarders have debuted and been successful including *Hoarding: Buried Alive* on TLC, *Extreme Clutter* on OWN, and the BBC shows, *A Life of Grime* and *Gutted*, that also air in the United States on Planet Green. *Gutted*, in classic reality television tradition, introduces a new angle—the auctioning off of the subject's possessions. Lepselter, *supra* note 3, at 927-29. In addition, compulsive hoarders have been featured on the talk shows of both Oprah and Dr. Phil. Lepselter, *supra* note 3, at 920.

8. See Lepselter, *supra* note 3, at 927-28, 944 n.1 (explaining spectacle provided by shows as voyeuristic freakshow and describing hoarding behavior as “marked by disgust in contemporary popular culture”).

9. See BRATIOTIS ET AL., *supra* note 5, at 22-24 (describing isolation of hoarders); FROST & STEKETEE,

shock at discovering a hoarder is palpable, whether displayed by a landlord, family member, or social worker.¹⁰ And such shock is not altogether inappropriate. Because of the very nature of hoarding, the individual often goes to great lengths to hide the problem, or at the very least, the extent of it. Furthermore, disgust and even anger are not unreasonable considering the serious health and safety risks severe hoarding can pose, not just to the hoarder, but also to those around them.¹¹

These health and safety risks have legal implications. And as in so many areas, the issue of mental illness and independent living in safe and affordable housing must be weighed against the needs of housing providers, whether private landlords or housing authority administrators. As touched upon above and explained more fully below, the needs of these housing providers are not just economic, they do not involve merely rents or the diminution of value in a property—instead, numerous local health laws may be implicated and the safety of other tenants may also be at risk.¹² This creates a conflict above and beyond the already difficult process of finding housing for the psychiatrically disabled, a population already subject to stereotypes often as disabling as their condition.¹³

This article will discuss the legal implications of hoarding behavior by providing a general overview of current psychiatric understanding of hoarding disorders,¹⁴ explaining the impact of tenant hoarding on local housing laws and safety concerns,¹⁵ surveying the Fair Housing Act (FHA) reasonable accommodation case law on eviction because of hoarding or other psychiatric disabilities,¹⁶ analyzing how reasonable accommodations can be used to prevent unnecessary evictions and homelessness of this population,¹⁷ and concluding by suggesting the use of collaborative services, such as those provided by local hoarding task forces, in creating reasonable accommodation

supra note 2, at 15 (describing hoarding as an “agonizing stigma”); Carolyn Rodriguez et al., *Personalized Intervention for Hoarders at Risk of Eviction*, 61 PSYCHIATRIC SERVICES 205, 205 (2010).

10. BRATIOTIS ET AL., *supra* note 5, at 17 (describing “strong reactions” of even professionals when first encountering hoards).

11. *See infra* notes 43-46 and accompanying text (discussing dangers and health risks of hoarding).

12. *See infra* Part II.B.

13. NAT’L ASS’N OF STATE MENTAL HEALTH PROGRAM DIRS., AFFORDABLE HOUSING: THE ROLE OF THE PUBLIC BEHAVIORAL HEALTH SYSTEM 5 (2011), available at http://www.nasmhpd.org/docs/Policy/PolicyBrief_Housing2011.pdf (“[N]on-elderly adults with disabilities are more likely than those without disabilities to have very low incomes and to experience worst case housing needs—meaning that they pay more than one-half of their income for rent and/or have other serious housing problems, such as living in inadequate or overcrowded housing.”); Michael Allen, *Separate and Unequal: The Struggle of Tenants with Mental Illness to Maintain Housing*, 30 CLEARINGHOUSE REV. 720, 720-23 (1996); Meghan P. Carter, Note and Comment, *How Evictions from Subsidized Housing Routinely Violate the Rights of Persons with Mental Illness*, 5 NW. J. L. & SOC. POL’Y 118, 119 (2010).

14. *See infra* Part II.A.

15. *See infra* Part II.B.

16. *See infra* Part III.

17. *See infra* Part IV.A-C.

plans.¹⁸

II. THE CURRENT MEDICAL UNDERSTANDING OF COMPULSIVE HOARDING AND THE CONFLICT OF HOARDING AND RELEVANT HOUSING LAWS

This section surveys the medical understanding of compulsive hoarders and how their behavior conflicts with local laws related to health and public safety. Any understanding of the Fair Housing Act's application to hoarding must begin with the issue of whether hoarding is a medically recognized impairment. Further, this section seeks to explain how hoarding behavior conflicts with federal, state, and local laws and regulations regarding health and cleanliness.

A. *The Proper Medical Classification of Compulsive Hoarders*

Compulsive hoarding as a medical impairment has only recently gained any form of widespread recognition. No "hoarding disorder" appears in the current Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR), although such a disorder has been proposed for inclusion in the next version of this Manual, DSM-V.¹⁹ Current debate continues between those who believe hoarding is a symptom of another disorder such as Obsessive Compulsive Disorder (OCD),²⁰ or is either a completely separate disorder or at least a subgroup of OCD.²¹ Psychologists have found that roughly one quarter of OCD patients also suffer from compulsive hoarding symptoms.²² Overall, epidemiological studies have found that between two to five percent of all adults suffer from compulsive hoarding symptoms.²³

18. See *infra* Part IV.C.1-2.

19. *DSM-5 Development*, AM. PSYCHIATRIC ASS'N, <http://www.dsm5.org/Pages/Default.aspx>. The rationale for this proposed revision is, in part, the failure of many compulsive hoarders to meet the criteria for OCD. See BRATIOTIS ET AL., *supra* note 5, at 8-10; James F. Leckman & Michael H. Bloch, *A Developmental and Evolutionary Perspective on Obsessive-Compulsive Disorder: Whence and Whither Compulsive Hoarding?*, 165 AM. J. PSYCHIATRY 1229, 1231 (2008) ("[E]xperts in the field are beginning to consider that . . . those with prominent hoarding symptoms are fundamentally different from other OCD patients."); Arline Kaplan, *Hoarding: Studies Characterize Phenotype, Demonstrate Treatment Efficacy*, PSYCHIATRIC TIMES, May 1, 2007, at 1 (describing mounting evidence that hoarding is subtype of OCD or separate disorder simply related to OCD).

20. Hoarding tendencies have also been observed in patients suffering from schizophrenia, dementia, eating disorders, autism, and mental retardation. Sanjaya Saxena et al., *Cerebral Glucose Metabolism in Obsessive-Compulsive Hoarding*, 161 AM. J. PSYCHIATRY 1038, 1038 (2004).

21. See Daniel S. Van Grootheest & Danielle C. Cath, Letter to the Editor, *Compulsive Hoarding and OCD: Two Distinct Disorders?*, 164 AM. J. PSYCHIATRY 1435, 1435 (2007); Sanjaya Saxena, Letter to the Editor, *Dr. Saxena Replies*, 164 AM. J. PSYCHIATRY 1435, 1435-36 (2007); Jack Samuels, Letter to the Editor, *Dr. Samuels Replies*, 164 AM. J. PSYCHIATRY 1435, 1436 (2007); see also Saxena et al., *supra* note 20 ("Frost and colleagues have argued persuasively that hoarding and saving symptoms are part of a discrete clinical syndrome." (citations omitted)).

22. Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 CLEARINGHOUSE REV. 427, 427 (2007); Kaplan, *supra* note 19, at 1.

23. BRATIOTIS ET AL., *supra* note 5, at 5; Jessica R. Grisham & Melissa M. Norberg, *Compulsive Hoarding: Current Controversies and New Directions*, 12 DIALOGUES CLINICAL NEUROSCIENCE 233, 235

The clinical definition of hoarding, developed in the mid-1990s, is widely accepted as consisting of three main features: “(1) the acquisition of, and failure to discard a large number of possessions that appear to be useless or of limited value; (2) living spaces sufficiently cluttered so as to preclude activities for which those spaces were designed; and (3) significant distress or impairment in functioning caused by the hoarding.”²⁴ This ineffective use of space results in the compulsive hoarder being unable to use entire rooms and interferes with basic activities such as cooking, cleaning, sleeping, and moving throughout the home.²⁵

While hoarding may be related to other conditions such as depression and anxiety disorders,²⁶ hoarding is also, in some ways, more complicated to treat, as studies have shown that selective serotonergic medications (SSRIs) do not help hoarders as much as others suffering from mental illnesses like OCD.²⁷ In addition, cognitive-behavior therapy alone does not always have a successful outcome.²⁸ The strength of an individual hoarder’s feelings of attachment to his or her possessions cannot be overemphasized. Multiple sources describe the feelings of hoarders, to whom the discarding of unnecessary items is “equivalent to a part of oneself dying or abandoning a loved one.”²⁹ While this is clearly an objectively unreasonable feeling, it is equally clear that subjectively, these feelings carry great weight for the individuals.³⁰

(2010) (estimating two to five percent of population suffer from compulsive hoarding); Jesse Edsell-Vetter, *Compulsive Hoarding, Housing Stabilization and Fair Housing: A Model for Intervention*, METRO. BOS. HOUS. P’SHIP, at slide 9, <http://www.ilru.org/html/training/webcasts/handouts/2009/05-20-DBTAC-JEV/> (download presentation slides) (stating emerging research has shown between three and five percent of population—approximately fifteen million people—hoard).

24. Randy O. Frost & Tamara L. Hartl, *A Cognitive-Behavioral Model of Compulsive Hoarding*, 34 BEHAV. RES. & THERAPY 341, 341 (1996).

25. BRATIOTIS ET AL., *supra* note 5, at 4; Cobb et al., *supra* note 22, at 427.

26. David F. Tolin et al., *The Economic and Social Burden of Compulsive Hoarding*, 160 PSYCHIATRY RES. 200, 200-01 (2008); Edsell-Vetter, *supra* note 23, at slide 8 (stating that ninety-two percent of individuals with hoarding have one or more other mental health issues such as depression, social phobia, or anxiety disorder).

27. See BRATIOTIS ET AL., *supra* note 5, at 67; Jordana Muroff et al., *Treatment for Hoarding Behaviors: A Review of the Evidence*, 39 CLINICAL SOC. WORK J. 406, 418-19 (2011); Walter A. Brown & Zsuzsa Meszaros, *Hoarding*, PSYCHIATRIC TIMES, Nov. 1, 2007, at 50. Such conclusions, however, have been called into question recently by a study in which SSRIs combined with cognitive behavior therapy showed promising results. Kaplan, *supra* note 19. *But see* Grisham & Norberg, *supra* note 23, at 238 (questioning some aspects of this study).

28. See FROST & STEKETEE, *supra* note 2, at 271 (quoting therapist who stated that hoarders not included in her OCD studies because “[t]hey make my therapy look bad”). Others are more optimistic about therapy for compulsive hoarding. FROST & STEKETEE, *supra* note 2, at 271-72; Grisham & Norberg, *supra* note 23, at 238 (describing slow but encouraging success of “Frost and Hartl’s cognitive-behavioral model.”); Muroff et al., *supra* note 27, at 420-21.

29. Tamara L. Hartl & Randy O. Frost, *Cognitive-Behavioral Treatment of Compulsive Hoarding: A Multiple Baseline Experimental Case Study*, 37 BEHAV. RES. & THERAPY 451, 460 (1999); *see also* M. Kyrios et al., *Cognitions in Compulsive Buying and Acquisition*, 28 COGNITIVE THERAPY & RES. 241, 244 (2004) (“[H]oarders often report that discarding possessions becomes akin to losing a loved one.”).

30. BRATIOTIS ET AL., *supra* note 5, at 20-21.

Like many who suffer from psychiatric illness, those engaging in hoarding behavior are often thought of or portrayed as suffering from some sort of character flaw or weakness, rather than a recognized disorder.³¹ Admonitions that such persons should “get over it” or “just clean up” may even be counterproductive.³² For this reason, when housing laws are implicated, it is difficult for any landlord to confront a tenant regarding hoarding behaviors and reach an effective solution. Too often the intersection of housing and hoarding leads inevitably to eviction.³³

B. Federal, State, and Local Laws and Regulations Implicated by Hoarding

In most cases, compulsive hoarding behavior will create conditions that violate federal, state, or local laws. While this issue typically arises in apartment buildings or other rental housing, hoarding behavior by individuals who own their own homes also may lead to fines or even nuisance proceedings.³⁴ The terms of rental housing, landlord tenant laws, as well as private leases, impose certain responsibilities or duties upon tenants. Typically, these include disposing of waste in a timely manner, not defacing, destroying, or impairing any part of the premises, not disturbing the peaceful enjoyment of neighbors, and abiding by all building and housing codes.³⁵ Furthermore, state public-health codes that apply to rental housing make unsanitary conditions, as defined by those codes, an offense.³⁶ In most cases, these codes consider unsanitary conditions to include improper storage of garbage, presence of pests,

31. *Id.* at 11 (“Uninformed observers can jump to the conclusion that hoarding results from laziness or some moral defect.”).

32. *Id.* at 20 (“[T]elling the person how to feel (e.g., ‘Calm down, there’s no reason to be upset’) often has quite the opposite effect!”). Even referring to the issue as “hoarding” is not advisable according to a handbook for human service professionals. *Id.* at 18.

33. See Tolin et al., *supra* note 26, at 209 (stating as many as one in eight hoarders evicted or threatened with eviction). A study of tenants seeking help from Eviction Intervention Services Housing Research Center, a nonprofit organization in New York City, showed that of those who met the criteria for hoarding, thirty-two percent were currently threatened with imminent eviction, forty-four percent had been through previous eviction proceedings and twenty percent had been evicted from a home on one or more occasions. Carolyn I. Rodriguez et al., *Prevalence of Hoarding Disorder in Individuals at Potential Risk of Eviction in New York City: A Pilot Study*, 200 J. NERVOUS & MENTAL DISEASE 91, 92 (2012).

34. See Cobb et al., *supra* note 22, at 429-31 (describing legal challenges hoarders face). Those owning private homes obviously have greater control over the access of public health and safety officials who, generally, cannot enter a home uninvited without a warrant. See BRATIOTIS ET AL., *supra* note 5, at 90-91.

35. See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 3.101 (1972) (describing tenant’s duties). Alaska, Arizona, Florida, Hawaii, Iowa, Kansas, Kentucky, Montana, Nebraska, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, and Virginia have adopted this Act. Legal Information Institute, *Uniform Commercial Code Locator*, CORNELL UNIV. LAW SCH. (Apr. 2003), <http://www.law.cornell.edu/uniform/vol7.html#lndtn>. Even states that have not adopted the Uniform Residential Landlord and Tenant Act impose tenant obligations to keep units clean and sanitary and to properly dispose of trash. See e.g., CAL. CIV. CODE ANN. § 1941.2 (West 2012); COLO. REV. STAT. § 38-12-504 (2012); DEL. CODE ANN. tit. 25, § 5503 (2012); IND. CODE ANN. § 32-31-7-5 (West 2012); N.Y. REAL PROP. LAW § 235-b (McKinney 2012); WASH. REV. CODE ANN. § 59.18.130 (West 2012).

36. BRATIOTIS ET AL., *supra* note 5, at 134.

and fire hazards such as blocking access to and storing large amounts of material near stoves or heaters.³⁷ In addition to an eviction action, hoarding behavior can lead to fines or even condemnation of property.³⁸

Furthermore, most forms of subsidized housing, whether publicly or privately owned, have similar requirements relating to health and safety. This issue is especially important because subsidized housing is often last-chance housing—the only thing standing between individuals or families and homelessness.³⁹ Federal regulations require such provisions be included in leases between the tenant and the housing provider,⁴⁰ and for some forms of subsidy, require annual inspections to make sure the unit meets Housing Quality Standards.⁴¹ Violations of these provisions are grounds for lease termination, and can lead to termination of assistance.⁴²

37. *Id.* at 10-11, 134 (describing squalor and resultant legal consequences).

38. Cobb et al., *supra* note 22, at 430; Cristina Sorrentino Schmalisch, *Hoarding and the Legal System*, INT'L OCD FOUND., http://www.ocfoundation.org/hoarding/legal_issues.aspx (last visited Nov. 27, 2012). In Massachusetts, for example, condemnation can result from “obstruction of any exit, passageway or common area caused by any object, including garbage or trash, which prevents egress in case of an emergency” as well as “accumulation of garbage, rubbish, filth or other causes of sickness which may provide a food source or harborage for rodents, insects or other pests or otherwise contribute to accidents or to the creation or spread of disease.” 105 MASS. CODE REGS. 410.750 (G), (I) (2012).

39. See Cobb et al., *supra* note 22, at 439; Carter, *supra* note 13, at 121-22; see also BRATIOTIS ET AL., *supra* note 5, at 129 (“Low-income individuals and families living in subsidized housing may become permanently homeless due to hoarding, usually because they lose their housing voucher or cannot obtain affordable housing after being evicted.”). Even in determining eligibility for public housing, housing authorities can perform applicant screening based on “housekeeping habits at prior residences.” 24 C.F.R. § 960.203(c)(2) (2012).

40. 24 C.F.R. § 966.4(f)(6)-(7), (11). The regulation provides that in public housing, tenants violate their obligations to the public housing authority if the unit is not kept in a “clean and safe condition,” if the tenant does not “dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner,” and if the tenant refuses to behave in a manner “conducive to maintaining the project in a decent, safe and sanitary condition.” *Id.* Also, leases entered into between private housing providers and housing-choice voucher holders must include an addendum stating that in addition to destruction of property, “living or housekeeping habits resulting in damage to the unit or premises” is good cause for termination of the tenancy. *Id.* § 982.310(d)(ii). Other government housing programs have similar restrictions. See *Model Lease for Subsidized Programs*, U.S. DEP’T OF HOUS. & URBAN DEV. (Dec. 2007), <http://portal.hud.gov/hudportal/documents/huddoc?id=90105a.pdf> (stating that tenant obligations include “keep[ing] the unit clean” and “remov[ing] garbage and other waste from the unit in a clean and safe manner”); Office of Pub. & Indian Hous., *Tenancy Addendum Section 8 Project-Based Voucher Program*, U.S. DEP’T OF HOUS. & URBAN DEV. (2010), <http://www.hud.gov/offices/adm/hudclips/forms/files/52530c.pdf> (specifying housekeeping requirements in project-based Section 8 program); Office of Pub. & Indian Hous., *Tenancy Addendum Section 8 Tenant-Based Assistance Housing Choice Voucher Program*, U.S. DEP’T OF HOUS. & URBAN DEV. (Aug. 2009), <http://www.hud.gov/offices/adm/hudclips/forms/files/52641-a.pdf>; see also 24 C.F.R. § 982.310(a) (stating grounds upon which termination of lease by owner may occur to include serious or repeated lease violations and other good cause).

41. 24 C.F.R. § 982.405(a). See generally *Housing Choice Voucher Program Guidebook*, U.S. DEP’T OF HOUS. & URBAN DEV. ch. 10, http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35620.pdf (last visited Nov. 27, 2012) (explaining Housing Quality Standards and policies and procedures for conducting inspections).

42. See 24 C.F.R. § 982.551(e) (terminating assistance for housing-choice voucher holders based on serious or repeated lease violations); *id.* § 966.4(l)(2)(i)(B) (terminating public housing leases); *id.* §

These legal provisions are based on legitimate health and safety concerns. First responders must be able to gain access for themselves and necessary medical equipment, and, naturally, blocked egress is a substantial recurring issue in many hoarding situations.⁴³ Furthermore, rotting or moldy food—and resulting insect or rodent infestations—create unhealthy conditions not just for the hoarder but also for other tenants in the building.⁴⁴ In addition to fines, evictions, and possible condemnation, such violations can prevent tenants from escaping a burning building or first responders from being able to locate tenants who need medical assistance.⁴⁵ Furthermore, the general filth resulting from hoarding conditions can permanently affect the hoarder's health, the health of his or her family, and even the health of other tenants in a multifamily building.⁴⁶

III. FAIR HOUSING ACT BACKGROUND

The preceding discussion makes clear that hoarding behavior by tenants—while a disorder in its own right or a symptom of another mental illness—creates unsafe, unsanitary conditions that impact both the tenant and other tenants in the building while also risking significant damage to the housing provider's property.⁴⁷ Both housing providers and mental health advocates have struggled with precisely how to satisfactorily balance the housing needs of the mentally ill with the needs of neighbors and landlords. While stable housing is an essential prerequisite to education and employment, it is especially vital for the mentally ill, as these individuals must maintain close contact with physicians, social services, and other treatment professionals.⁴⁸ Thus, the acquisition of stable, quality housing is one of the most serious challenges facing the psychiatrically disabled.⁴⁹

982.404(b)(3) (regarding termination of assistance for housing choice voucher holders based on housing-quality inspections); *id.* § 982.551(c) (terminating based on family causing breach).

43. BRATIOTIS ET AL., *supra* note 5, at 75 (“Hoarding commonly impedes the provision of emergency medical services.”). The dangers and challenges posed by hoarding may be especially prominent with children and the elderly. See Keith P. Ronan, Note, *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 RUTGERS L. REV. 235, 249-53 (2011).

44. See Weiss, *supra* note 4, at 253.

45. See BRATIOTIS ET AL., *supra* note 5, at 75-76; Tolin et al., *supra* note 26, at 201 (describing health department report citing hoarding as posing increased risk of house fire).

46. Tolin et al., *supra* note 26, at 201 (describing chronic and severe medical condition from which hoarders disproportionately suffer); see also BRATIOTIS ET AL., *supra* note 5, at 78 (regarding risks to neighbors). See generally David F. Tolin et al., *Family Burden of Compulsive Hoarding: Results of an Internet Survey*, 46 BEHAV. RES. & THERAPY 334 (2008) (regarding impact of hoarding on family members).

47. BRATIOTIS ET AL., *supra* note 5, at 78-79.

48. See generally Allen, *supra* note 13; Arlene S. Kanter, *A Home of One's Own: The Fair Housing Amendments Act of 1988 and Housing Discrimination Against People with Mental Disabilities*, 43 AM. U. L. REV. 925 (1994).

49. Carter, *supra* note 13, at 119-20.

A. Framework for Reasonable Accommodation Under the Fair Housing Act

Reasonable accommodations from a housing provider's policy or practice are required when medically necessary⁵⁰ under the Fair Housing Amendments Act (FHAA).⁵¹ The FHAA was passed and signed into law in 1988, amending Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act,⁵² to include disability protections.⁵³ Housing providers are required to grant such accommodations when the request is made by a disabled individual, the provider knows or should have known of the disability, the request may be necessary to provide the tenant with an equal opportunity to enjoy her property, and the request is reasonable.⁵⁴

As a preliminary matter, to qualify as disabled, individuals must show that they suffer from a physical or mental impairment and the impairment impacts a major life activity.⁵⁵ While the impairment prong of this definition is quite broad and expressly includes mental or psychiatric disabilities,⁵⁶ the concept of major life activities is less clearly defined. Courts have held that major life activities include: working,⁵⁷ sleeping,⁵⁸ concentrating,⁵⁹ self-care (including grooming and household maintenance),⁶⁰ and interacting with others.⁶¹ Requests must also meet the necessity and reasonableness requirements. Necessity does not need to be strict necessity. The requirement is only a

50. See 42 U.S.C. § 3604(f)(3)(B) (2006). This reasonable accommodation provision was meant to mirror the reasonable accommodation framework developed by courts interpreting the Rehabilitation Act. See Robert L. Schonfeld, "Reasonable Accommodation" Under the Federal Fair Housing Amendments Act, 25 FORDHAM URB. L.J. 413, 418-20 (1998) (summarizing legislative history of Amendments Act); Gretchen M. Widmer, Note, *We Can Work It Out: Reasonable Accommodation and the Interactive Process Under the Fair Housing Amendments Act*, 2007 U. ILL. L. REV. 761, 764-66 (2007). This framework for reasonable accommodations was later used in the Americans with Disabilities Act of 1990. See 42 U.S.C. §12112(b)(5)(A); Widmer, *supra*, at 766.

51. See 42 U.S.C. § 3604.

52. *Id.* § 3601-3614.

53. Fair Housing Amendment Act, Pub. L. No. 100-430, §§ 5-6, 102 Stat. 1619 (1988).

54. See ROBERT G. SCHWEMM, HOUSING DISCRIMINATION LAW AND LITIGATION § 11D:8 (2011), available at Westlaw (citing, among others, *Overlook Mut. Homes, Inc. v. Spencer*, 415 F. App'x 617, 621 (6th Cir. 2011); *Dubois v. Ass'n of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006)).

55. 42 U.S.C. § 3602(h)(1).

56. See *id.* (defining handicap to include physical and mental impairments); 24 C.F.R. § 100.201(a)(2) (2012) (defining handicap to include mental and emotional illness); Erin O. Millar, *Hoarding and Fair Housing Law*, LIFESPAN NETWORK, <http://www.lifespan-network.org/docs/Hoarding-and-Fair-Housing-Law.pdf> (last visited Nov. 27, 2012).

57. See *DeMar v. Car-Freshner Corp.*, 49 F. Supp. 2d 84, 90 (N.D.N.Y. 1999); see also 24 C.F.R. § 100.201(b) (including working as example of major life activity).

58. See *Pack v. Kmart Corp.*, 166 F.3d 1300 (10th Cir. 1999).

59. *DeMar*, 49 F. Supp. 2d at 90.

60. 24 C.F.R. § 100.201(b) (considering caring for one's self major life activity); see also Bryan P. Stephenson, Comment, *I'm So Lonesome I Could Cry . . . But Could I Sue?: Whether 'Interacting with Others' Is a Major Life Activity Under the ADA*, 31 PEPP. L. REV. 773, 792 & n.136 (2004) (clarifying courts' definitions of "caring for oneself").

61. *LaBella v. N.Y.C. Admin. for Children's Servs.*, No. 02-CV-2355(KAM), 2005 WL 2077192, at *11-12 (E.D.N.Y. Mar. 28, 2005); see Stephenson, *supra* note 60.

“showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects of the disability.”⁶²

It is well accepted that reasonable accommodation law does not require a housing provider to do everything humanly possible to accommodate the tenant.⁶³ Typically, requests are reasonable unless they would result in a fundamental alteration of the housing provider’s program or entail an undue financial or administrative burden.⁶⁴ A fundamental alteration changes the nature of a provider’s operation.⁶⁵ For instance, a request that a tenant be driven to the supermarket or to doctor’s appointments by building staff would be a fundamental alteration because the landlord did not already provide transportation services.⁶⁶ Undue burden analysis usually focuses on the financial costs of a request to the housing provider and involves factors such as the cost to the housing provider, the financial resources of the housing provider, the benefits to the requestor, and the possibility of less expensive options that would still meet the disability-related need.⁶⁷

In addition, housing providers may reject a reasonable accommodation where, even with the accommodation, the tenant poses a direct threat to the health or safety of other residents or when the tenancy would result in substantial physical damage to the property of others.⁶⁸ While there is currently a circuit split regarding whether the plaintiff or defendant has the burden of proving reasonableness, it is clear that the burden of proving that a tenant or her behavior constitutes a direct threat rests squarely upon the housing provider.⁶⁹

Accommodation requests need not be in any specific form, may be written or oral, and do not need to use any specific language.⁷⁰ There is also no

62. *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995).

63. See Susan B. Eisner, *There’s No Place Like Home: Housing Discrimination Against Disabled Persons and the Concept of Reasonable Accommodation Under the Fair Housing Amendments Act of 1988*, 14 N.Y.L. SCH. J. HUM. RTS. 435, 445-46 (1998) (“[T]he affirmative obligation [the Fair Housing Act] imposes on landlords to accommodate disabled tenants is not without limitation. There is no requirement that all that is ‘humanly possible’ be done . . .”).

64. See SCHWEMM, *supra* note 54, § 11D:8.

65. *Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act*, U.S. DEP’T OF HOUS. & URBAN DEV. 8 (May 17, 2004), <http://www.hud.gov/offices/theo/library/huddojstatement.pdf> [hereinafter *Joint Statement*].

66. *Id.*

67. *Id.* at 8-9; see Jennifer L. Dolak, Note, *The FHAA’s Reasonable Accommodation & Direct Threat Provisions as Applied to Disabled Individuals Who Become Disruptive, Abusive, or Destructive in Their Housing Environment*, 36 IND. L. REV. 759, 775-78 (2003) (describing how many courts use balancing test weighing burden to housing provider against benefit to disabled person).

68. 24 U.S.C. § 3604(f)(9) (2006); *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1125-26 (D.C. Cir. 2005) (explaining under well-established federal Fair Housing Act case law, direct threat must be such that no possible reasonable accommodation would protect health, safety, and property of neighbors).

69. See SCHWEMM, *supra* note 54, § 11D:3; *Groner v. Golden Gate Gardens Apartments*, 250 F.3d 1039, 1044-45 (6th Cir. 2001).

70. See *Joint Statement*, *supra* note 65, at 10.

particular timing requirement. In eviction cases, for instance, reasonable accommodation requests can be made at any time prior to the actual physical eviction of the tenant.⁷¹ Reasonable accommodation requests are not analyzed in a vacuum—courts have held that these requests are fact-specific inquiries that lend themselves to case-by-case determinations.⁷² Housing providers may not reject accommodation requests out of hand. Instead they are instructed to engage in an interactive process with tenants requesting reasonable accommodations.⁷³ If a tenant requests a reasonable accommodation that the housing provider is unwilling to grant, the landlord should engage in a dialogue with the tenant to determine what other options might be available and acceptable to the landlord while also providing the tenant with an accommodation that meets the disability-related need.⁷⁴ However, Department of Justice guidance is clear that in determining whether a proposed accommodation meets the tenant's need, the disabled individual understands her disability and needs better than any landlord.⁷⁵ Therefore, the final determination on this issue is heavily influenced by the disabled individual's view of the accommodation.⁷⁶

Reasonable accommodations have been granted in a variety of circumstances. An apartment building may be required to allow emotional-support animals for tenants with post-traumatic stress disorder (PTSD) or

71. *Douglas*, 884 A.2d at 1121 (citing *Radecki v. Joura*, 114 F.3d 115, 116 (8th Cir. 1997)).

72. *See Lyons v. Legal Aid Soc'y*, 68 F.3d 1512, 1516 (2d Cir. 1995); *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1418 (9th Cir. 1994); *Allen*, *supra* note 13, at 732; *Joint Statement*, *supra* note 65, at 7 (explaining that decisions of reasonableness made on “case-by-case basis”).

73. Unlike Title VII of the Civil Rights Act of 1968, which governs employment discrimination, the FHA makes no direct mention of the interactive process in the statute or its implementing regulations. However, the DOJ-HUD Joint Statement suggests such a process for landlords receiving a reasonable accommodation request. *Joint Statement*, *supra* note 65, at 7-8, 9. Such an interpretation by the two Agencies tasked with enforcing the Fair Housing Act is entitled to deference from the courts. *See generally Auer v. Robbins*, 519 U.S. 452 (1997). Still, it is far from clear whether the failure to engage in the interactive process could violate the FHA. *See Douglas*, 884 A.2d at 1122 n. 22. *But see Huberty v. Wash. Cnty. Hous. & Redev. Auth.*, 374 F. Supp. 2d 768, 775-76 (D. Minn. 2005) (discussing interactive process required by FHAA). The court in *Huberty* concluded, rather puzzlingly, that the question does not need to be answered, as the accommodation requested was unreasonable. *Id.* In *Rodriguez v. Morgan*, the court explained that if there is no independent cause of action for failure to engage in the interactive process, a landlord's failure to do so still has a bearing on the reasonable accommodation analysis. CV 09-8939-GW (CWx), 2012 WL 253867, at *8 (C.D. Cal. Jan. 26, 2012). One commentator has made the case for amendments to more clearly reflect that the interactive process is required in the fair housing context. *Widmer*, *supra* note 50, at 764.

74. *Joint Statement*, *supra* note 65, at 7-8. One commentator has gone so far as to propose that such an interactive process should be a precondition of any housing provider filing for the eviction of a tenant. *Carter*, *supra* note 13, at 145-46.

75. *Joint Statement*, *supra* note 65, at 8 (“[P]roviders should be aware that persons with disabilities typically have the most accurate knowledge about . . . limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation . . . if she believes it will not meet her needs and her preferred accommodation is reasonable.”).

76. *See id.*; *see also Schonfeld*, *supra* note 50, at 417 (Act's legislative history “suggests that the statute be construed liberally in favor of housing for people with disabilities”).

anxiety-related disorders,⁷⁷ grant unit transfers to first floor apartments,⁷⁸ provide an assigned parking space for a tenant with a mobility disability,⁷⁹ allow a live-in-aide,⁸⁰ delay or prevent termination of assistance,⁸¹ grant excess payment standards in subsidized housing,⁸² or postpone an eviction to give a tenant the opportunity to cure a lease violation relating to her disability.⁸³ The failure of a housing provider to make a reasonable accommodation can lead to a court awarding economic damages, such as the cost of finding new housing⁸⁴ or the difference in rent between the tenant's current unit and the one he or she was evicted from or denied,⁸⁵ as well as emotional distress damages,⁸⁶ and punitive damages or penalties.⁸⁷

B. Survey of Fair Housing Act Case Law Regarding Hoarding

Few cases involving reasonable accommodations and hoarding behaviors have been published. Most often these issues are handled at the housing court level, where cases are not published, and where, in some areas, rubber-stamp evictions are quite common.⁸⁸ While a few cases involving hoarding have been published, typically focusing on nuisance actions⁸⁹ or judicial sales,⁹⁰ cases directly implicating the Fair Housing Act and hoarding are rarer and their

77. See *Overlook Mut. Homes, Inc. v. Spencer*, 415 F. App'x 617, 622-23 (6th Cir. 2011).

78. *Bentley v. Peace & Quiet Realty 2 LLC*, 367 F. Supp. 2d 341, 349 (E.D.N.Y. 2005).

79. 24 C.F.R. 100.204(b) (2012); see also *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 335 (2d Cir. 1995).

80. 24 C.F.R. 982.316(a). See generally *Live In Aides as Reasonable Accommodations Under the Fair Housing Act and Related Laws*, BAZELON CTR. FOR MENTAL HEALTH LAW (February 2005), http://www.bazelon.org/LinkClick.aspx?fileticket=ia4B_4cy1OI%3D&tabid=245.

81. See *Huberty v. Wash. Cnty. Hous. & Redev. Auth.*, 374 F. Supp. 2d 768, 771-72 (outlining facts that may lead to delay or prevention of termination of benefits).

82. 24 C.F.R. § 982.503(c)(2)(ii).

83. See *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1127-28 (D.C. Cir. 2005) (strongly rebutting defendant's argument that postponement of eviction can be reasonable accommodation); see also *Groner v. Golden Gate Gardens Apartments*, 250 F.3d 1039, 1045 (6th Cir. 2001) (such as counseling and medication for mental illness whose symptoms disturbed neighbors). See generally *Bos. Hous. Auth. v. Bridgewater*, 898 N.E. 2d 848 (Mass. 2009).

84. *Krueger v. Cuomo*, 115 F.3d 487, 492 (7th Cir. 1997).

85. See *Morgan v. Sec'y of Hous. & Urban Dev.*, 985 F.2d 1451, 1458 (10th Cir. 1993).

86. See SCHWEMM, *supra* note 54, § 25:6 (explaining while impossible to gauge how such intangible damages calculated, two important factors include egregiousness of defendant's conduct and plaintiff's reaction). A review of the relevant cases shows that depending on these factors, including the willfulness of defendant's behavior and the proof of distress by complainant, awards can vary from nominal damages to over \$100,000. See *id.*

87. 42 U.S.C. § 3612(g)(3) (2006); *id.* § 3613(c)(1) (discriminatory housing provision regarding punitive damages in federal court); 24 C.F.R. § 180.671(a) (2012) (implementing regulation's civil money penalty provisions).

88. *Carter*, *supra* note 13, at 119-20, 134 (describing rubber-stamp evictions in housing court, specifically allegations that housing court judges in Chicago do not routinely ask tenants about defenses to eviction proceeding).

89. *5th & 106th St. Assocs. v. Rodriguez*, 875 N.Y.S.2d 820 (N.Y. Civ. Ct. 2008).

90. *4215 Harding Road Homeowners Ass'n. v. Harris*, 354 S.W.3d 296 (Tenn. Ct. App. 2011).

record, as set forth below, is mixed.

In *Roffman v. Knickerbocker Plaza Associates*, a tenant claimed that forced entry into her apartment by landlord-defendants was an act of discrimination, a different term and condition of rental, based on her disability.⁹¹ However, the court found that because the plaintiff proffered no evidence of disparate treatment, and the defendant had ample reason for the forced entry—specifically, numerous complaints from neighbors about a strong odor—there was no violation of the Act.⁹² Furthermore, plaintiff’s claims of intimidation, coercion, and interference also failed as the defendants had legitimate reasons for their inquiries about plaintiff’s behavior and for entry into her unit.⁹³

In a class action suit, *Blatch v. Hernandez*, a group of tenants with various mental disabilities brought claims against the New York City Housing Authority under the Fair Housing Act and related state laws.⁹⁴ This case involved a tenant suffering from chronic paranoid schizophrenia who engaged in significant hoarding activity.⁹⁵ However, because the plaintiff refused to consent to a clean up of his apartment, the reasonable accommodation request of his representative failed.⁹⁶ While the court was sympathetic to the issue that not all disabled individuals will consider themselves as such, the court held that it could not force a reasonable accommodation on a landlord when the tenant not only failed to request the accommodation, but also actively resisted the accommodation.⁹⁷

Douglas v. Kriegsfeld Corporation is the case most on point.⁹⁸ In this case, a landlord sought to evict a tenant who failed to keep her apartment in a safe and sanitary condition.⁹⁹ The appeals court held that her accommodation request was reasonable as it gave “adequate assurance” that the premises would

91. No. 04 Civ. 3885 (PKC), 2008 WL 919613, at *10-15 (S.D.N.Y. Mar. 31, 2008).

92. *Id.* at *14-15.

93. *Id.* at *15. Interestingly, part of this intimidation claim was the fact that a firefighter called the plaintiff a “Collyer” when he saw the apartment. *Id.*; see Weiss, *supra* note 4. Intimidation, coercion, or interference violates 42 U.S.C. § 3617 (2006) when impacting an individual’s right to or assertion of a fair housing right under 42 U.S.C. § 3603-3606.

94. 360 F. Supp. 2d 595, 600 (S.D.N.Y. 2005).

95. *Id.* at 619-20.

96. *Id.* at 634-35.

97. *Id.*

98. 884 A.2d 1109 (D.C. Cir. 2005). While some cite *McGary v. City of Portland* as an example of another case regarding hoarding because the issue involved a failure to abate a nuisance (trash and debris) in a front yard, the disability at issue was AIDS, and the plaintiff’s inability to comply with zoning rules resulted from his hospitalization for meningitis, which the court described as an exacerbation of his disabling condition. 386 F.3d 1259, 1260 (9th Cir. 2004). While there is no question that this is the type of nuisance typical of hoarding and that the request for additional time is typical of reasonable accommodation requests based on hoarding disorders, the need for accommodation was not based on any type of hoarding disorder. The court’s ruling never tied the plaintiff’s failure to clean his yard to any hoarding condition, but relied on the fact that he was hospitalized for much of the time between the deadline for cleaning up the yard and his notice of this deadline. *Id.* at 1267.

99. See *Douglas*, 884 A.2d at 1115.

be cleaned and “offered a reasonable prospect for its staying clean.”¹⁰⁰ The reasonable accommodation request specified that the tenant was now receiving treatment, a governmental organization would undertake the cleaning, the tenant only asked for a brief stay to accomplish this cleaning, and conceded that eviction would be warranted if the apartment fell into a state of disrepair again.¹⁰¹ Furthermore, the court held that to the extent the housing provider found the requested accommodation vague or confusing, it should have engaged in the interactive process.¹⁰²

C. Survey of Fair Housing Reasonable Accommodation Case Law Involving Evictions of Mentally Ill Tenants for Disruptive Behavior

While not involving hoarding, a line of cases exists examining the ability of housing providers to evict tenants when there is disruptive or threatening conduct to other tenants. Typically, these cases involve tenants with severe mental illnesses, such as bipolar disorder, who attempt to treat their condition but who, almost inevitably, relapse and violate their lease or the law. In the leading cases of *Roe v. Housing Authority of Boulder* and *Roe v. Sugar River Mills Associates*, federal courts have held that before eviction housing providers must attempt to reasonably accommodate a tenant in such a way that allows continued residency, while eliminating or minimizing the threat or disruption to other tenants.¹⁰³

In *Sugar River*, the tenant allegedly directed physical threats towards another tenant using obscene and offensive language on a number of occasions, which eventually led to a criminal conviction for disorderly conduct.¹⁰⁴ While defendants argued that the tenant’s behavior directly threatened other tenants, plaintiffs argued that these outbursts were a result of a psychiatric disability and requested a reasonable accommodation.¹⁰⁵ Defendants rejected the argument that the Fair Housing Act required them to consider an accommodation because the tenant posed a direct threat and moved for summary judgment.¹⁰⁶ The court, without describing the disability of the tenant or the requested accommodation, denied summary judgment as defendants were required to “demonstrate that no ‘reasonable accommodation’ [would] eliminate or acceptably minimize the risk he poses to other residents . . . before they [could]

100. *Id.* at 1126.

101. *Id.* at 1118, 1121, 1124. One is a bit taken aback by plaintiff’s counsel’s “unequivocal” statement that if the apartment became filthy again, an eviction would be justified. *See id.* at 1118.

102. *Id.* at 1122-23.

103. *Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814, 822-23 (D. Colo. 1995); *Roe v. Sugar River Mills Assocs.*, 820 F. Supp. 636, 640 (D.N.H. 1993).

104. 820 F. Supp. at 637-38.

105. *Id.* at 638.

106. *Id.* at 637.

lawfully evict him.”¹⁰⁷ For this opinion, the court relied upon Rehabilitation Act precedent¹⁰⁸ and upon the approval of this precedent in the House Judiciary Committee’s Report on the Fair Housing Amendments Act.¹⁰⁹

Roe v. Housing Authority of Boulder followed *Sugar River*’s reasoning rejecting the eviction of a tenant with bipolar disorder and a history of severe mental health issues dating from the 1940s.¹¹⁰ Despite verbally and physically abusive behavior, including striking and injuring another resident,¹¹¹ the court, relying on much the same precedent as *Sugar River*, held that if the tenant’s “obscene outbursts, paranoia, and confusion” were found to be a disability, such a disability would require an attempt to accommodate before eviction.¹¹²

Other federal courts have followed this precedent,¹¹³ most recently, in *Sinisgallo v. Town of Islip Housing Authority*.¹¹⁴ The court applied the requirement that the housing provider cannot evict a tenant for actions related to his mental disability—a violent assault—without a determination that a reasonable accommodation would not minimize or eliminate the tenant’s problematic behavior.¹¹⁵ The court concluded that the defendant failed to make a sufficient showing that an accommodation for a probationary period to allow treatment and adjustments to the tenant’s medication would be ineffective.¹¹⁶

State court cases applying the Fair Housing Act have reached similar results. As one example, in *Boston Housing Authority v. Bridgewater*, the Massachusetts Supreme Judicial Court held that the eviction from public housing of a tenant with bipolar disorder who severely assaulted his brother¹¹⁷ was not proper without a showing that no reasonable accommodation could eliminate the risk to other tenants.¹¹⁸ As a counterexample, the Supreme Court

107. *Id.* at 640.

108. *Sugar River*, 820 F. Supp. at 640; *see supra* note 50.

109. *Roe v. Sugar River Mills Assocs.*, 820 F. Supp. 636, 639-40 (D.N.H. 1993) (quoting H.R. Rep. No. 711 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2190) (“A dwelling need not be made available to an individual whose tenancy can be shown to constitute a direct threat *If a reasonable accommodation could eliminate the risk*, entities covered under this Act are required to engage in such accommodation.”). For an in-depth discussion of this case, the precedent it relied upon, legislative history, and the problem of evictions for disruptive behavior of mentally ill tenants, *see Dolak, supra* note 67, at 776.

110. *Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814, 822-23 (D. Colo. 1995).

111. *Id.* at 816-17. In fact, the behavior was so severe that Meals on Wheels refused to service the tenant’s building, presumably because of his behavior. *Id.* at 817.

112. *Id.* at 817, 822-23.

113. *See Scialabba v. Sierra Blanca Condo. No. One Ass’n*, No. 00 C 5344, 2001 WL 803676, at *6 (N.D. Ill. July 16, 2001); *see also Groner v. Golden Gate Gardens Apartments*, 250 F.3d 1039, 1044 (6th Cir. 2001); *Laflamme v. New Horizons, Inc.*, 605 F. Supp. 2d 378, 392-93 (D. Conn. 2009).

114. No. 12-CV-1733 (ADS) (AKT), 2012 WL 1888140 (E.D.N.Y. May 23, 2012).

115. *Id.* at *1-3, *31.

116. *Id.* at *31.

117. *See* 898 N.E.2d 848, 851-52 (Mass. 2009); *see also City Wide Assocs. v. Penfield*, 564 N.E.2d 1003, 1005 (Mass. 1991) (under Rehabilitation Act); *Cornwell & Taylor LLP v. Moore*, C8-00-1000, 2000 WL 1887528, at *5 (Minn. Ct. App. Dec. 22, 2000); *RCG-UA Glenwood, LLC v. Young*, 801 N.Y.S.2d 481, 482 (N.Y. App. Div. 2005).

118. *See Bridgewater*, 898 N.E.2d at 853-56. While this case dealt with public housing, and public

of South Dakota, in *Arnold Murray Construction, L.L.C. v. Hicks*, applied the same framework, but found that the defendant proved that no reasonable accommodation would effectively eliminate the threat posed by the tenant.¹¹⁹ While the proposed eviction was based on both the tenant's violation of parking rules and the tenant's abusive and harassing conduct,¹²⁰ the tenant only proposed a reasonable accommodation regarding parking and failed to propose any action related to his "emotional outbursts, verbal threats, nude appearance and other offensive conduct."¹²¹

IV. THE APPLICATION OF THE FAIR HOUSING ACT REASONABLE ACCOMMODATION PROVISION TO HOARDING BEHAVIOR

It should be apparent from the sections above that tenant hoarders might be able to use and benefit from the reasonable accommodation provision of the Fair Housing Act. But, in specific cases, the stage at which the accommodation may be requested and the components of an effective reasonable accommodation plan may vary. First, this article will discuss whether a tenant exhibiting compulsive hoarding behavior, by itself and without any concurrent diagnosis of OCD, would qualify for the protections of the Fair Housing Act.¹²² Second, this article will briefly discuss the use of reasonable accommodations when an individual applies for housing and would otherwise be rejected for a previous history of hoarding.¹²³ Lastly, this article will discuss the use of reasonable accommodations to prevent eviction and which of these reasonable accommodations not only prevent eviction, but also help to minimize the chance of recidivism and assist the tenant in maintaining long-term housing.¹²⁴

A. *Compulsive Hoarding as a Disability Under the Fair Housing Act*

Proving disability should not be an issue in most cases of compulsive hoarding. While a specific hoarding disorder has not yet gained full medical acceptance, the commonality of the concurrence of hoarding and other mental illnesses, such as OCD, makes it very likely that a tenant with access to a physician can be diagnosed with a disorder of some kind. However, where such a diagnosis has not been made—after all, transportation options and financial constraints may limit the medical care necessary for a diagnosis—a

housing regulations made this requirement more express than the Act does, the same conclusion can be reached under the Fair Housing Act's provisions.

119. 621 N.W.2d 171, 175-76 (S.D. 2001). In this case, the tenant suffered from a brain injury, which helped the court determine he was disabled under the FHA. *Id.* at 172-73.

120. *Id.* at 173.

121. *Id.* at 176.

122. *See infra* Part IV.A.

123. *See infra* Part IV.B.

124. *See infra* Part IV.C.

housing provider could argue that no impairment exists.¹²⁵ Furthermore, many hoarders, while realizing they live differently from others, do not view their hoarding as a problem that requires professional help.¹²⁶ And in still other cases, while recognizing that they need help, the hoarder's sense of shame and embarrassment keeps her from seeking out services that are available.¹²⁷ In many of the situations described above, unlike some other mental illnesses, diagnosis will not have occurred when a landlord discovers the problem and serves notice of eviction. In addition to problems of convincing the individual to seek treatment and in getting a diagnosis, an advocate's task becomes understandably harder when trying to litigate a reasonable accommodation case for a person who refuses to acknowledge she is actually impaired.¹²⁸

While there are no cases on record holding that hoarding is not an impairment or does not affect a major life activity, the proposed inclusion of "hoarding disorder" in the 2013 DSM-V would eliminate any fear that hoarding will not be given the same protections as other disabling psychiatric conditions. And despite lack of a particular diagnosis, commentators find it unlikely that any judge would deny that a tenant has some mental impairment, regardless of what the impairment is called, when shown evidence of hoarding behavior.¹²⁹ Surely, even the housing provider bar would recognize that a person filling her apartment to the extent that she cannot have visitors, cannot use her kitchen, or cannot even traverse from one room to the next, has some sort of impairment affecting major life activities, regardless of the name of the diagnosis.

In addition, it would be wise for advocates to argue that the Americans with Disabilities Amendments Act (ADAA) definition of disability¹³⁰ should be applied to the Fair Housing Act. The Amendments Act was intended to shift legal battles away from whether a person was disabled and towards the reasonable accommodation request.¹³¹ These amendments specifically emphasized that the Americans with Disabilities Act (ADA) was meant to provide "broad coverage" and that Supreme Court decisions had interpreted the class of persons considered disabled too narrowly.¹³² For many years, the

125. See Millar, *supra* note 56 ("It is unclear under the case law . . . whether hoarding is considered a disability or mental impairment that substantially limits one or more of the tenant's major life activities.").

126. BRATIOTIS ET AL., *supra* note 5, at 21.

127. See Weiss, *supra* note 4, at 253 (describing how interventions often relieve anxious, ashamed hoarders); Carter, *supra* note 13, at 133-34 (discussing how those with mental illnesses often hide disability to avoid stigma).

128. See *supra* notes 94-97 and accompanying text (discussing class action lawsuit in which members had mental illness and refused reasonable accommodations).

129. See Cobb et al., *supra* note 22, at 434 (explaining advocate's strategy to label hoarding as mental impairment).

130. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553.

131. Emily A. Benfer, *The ADA Amendments Act: An Overview of Recent Changes to the Americans with Disabilities Act* 3, AM. CONST. SOC'Y (Sept. 2009), http://www.acslaw.org/files/Benfer%20ADAAA_0.pdf (citing H.R. Rep. No. 110-730, at 21 (2008)).

132. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553.

identical definitions of disability in ADA and FHA case law on disability were used interchangeably.¹³³ While an advocate may use pre-ADAA case law regarding the definition of disability, because the Amendments Act did not specifically alter the definition of disability under the FHA, it is unclear how much weight post-ADAA decisions will be given in FHA cases.¹³⁴ Based on the prior interchangeable use of these definitions, however, advocates can argue that Congress intended to eliminate legal battles over who is disabled to the substance of claims.¹³⁵

Therefore, proving disability for a compulsive hoarder should not be a difficult task in most cases. While the proposed disorder in the DSM-V and arguments based on the ADAA will be useful—even where no other concurrent mental illness has been diagnosed—it is still likely that courts will conclude that hoarding constitutes a disability, based on the behavior and the obvious impact on an individual's major life activities.

*B. The Use of Reasonable Accommodation Requests at the Time of Application for Tenants with a Previous History of Hoarding*¹³⁶

While the majority of this article focuses on the use of reasonable accommodations in situations where tenants engaging in hoarding behaviors face imminent eviction, accommodation under the Fair Housing Act could also be requested at the time of application. This raises the question of whether a landlord can refuse to rent to a person with a history of disability-related lease violations. Nothing prohibits or impedes a landlord from asking about a prospective tenant's qualifications by asking for landlord references or asking about the applicant's criminal history, credit, or income, and from rejecting a tenant on one of these bases as long as the landlord asks these questions of all

133. See *Astralis Condo. Ass'n v. Sec'y, U.S. Dept. of Hous. & Urb. Dev.*, 620 F.3d 62, 66 (1st Cir. 2010); *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 922–23 (4th Cir. 1992); SCHWEMM, *supra* note 54, § 11D:2 (“Thus, it is also appropriate to use ADA law as a guide to interpreting the Fair Housing Act’s definition of ‘handicap.’”); Widmer, *supra* note 50, at 766–67.

134. *McKivitz v. Twp. of Stowe*, 769 F. Supp. 2d 803, 821 n.15 (W.D. Pa. 2010) (“There is no need for the Court to consider whether, in the aftermath of the ADA Amendments Act, some individuals who are ‘disabled’ within the meaning of the ADA and the Rehabilitation Act may not be ‘handicapped’ within the meaning of the FHA.”).

135. See *Franchi v. New Hampton Sch.*, 656 F. Supp. 2d 252, 258 n.4 (D.N.H. 2009) (acknowledging defendant and court do not question plaintiff’s contention that new definition of disability from ADAA applies to FHA).

136. The situations described in this section could also qualify as a refusal to rent based on disability under 42 U.S.C. § 3604(f)(1) (2006). Typically, these claims would be based on direct evidence, but if not, a plaintiff can make a prima facie case under *Obi*, by showing (1) membership in a protected class; (2) an inquiry or attempt to rent a unit; (3) defendant refused to negotiate or made the unit unavailable; and (4) defendant displayed a willingness to rent to someone not of the plaintiff’s protected class. HUDALJ 03-93-0313-8, 1995 WL 326736, at *5 (June 2, 1995). At this point the *McDonnell Douglas Corporation v. Green* burden-shifting test would apply. See 411 U.S. 792 (1973); *Selden Apartments v. U.S. Dep’t of Hous. & Urb. Dev.*, 785 F.2d 152, 160 (6th Cir. 1986) (applying this test to FHA); Bradford, HUDALJ 05-94-0845-8, 1996 WL 638029, at *16 (Oct. 25, 1996) (finding housing provider liable under this theory).

applicants and applies these requirements to all applicants.¹³⁷

While a housing provider could argue that a rejection based on a negative landlord reference was justified as the tenant's previous hoarding behavior showed them to be unqualified for the housing, a prospective tenant could request a reasonable accommodation arguing that the hoarding is under control and that a reasonable accommodation from the housing provider's normal qualifications is needed.¹³⁸ In this case, a landlord would most likely rely on the direct threat defense. The Fair Housing Act makes clear that persons who are a direct threat to the health and safety of others or whose tenancy may cause substantial damage to the property of others may be rejected.¹³⁹ Congress, however, specifically rejected an exception from this section to allow refusal based on a "history of antisocial behavior or tendencies."¹⁴⁰ Where specific prior actions of the tenant in the near past, rather than generalized stereotypes regarding the disabled, give housing providers concrete evidence of a threat to health, safety, or property, the housing providers may argue that they are able to reject the prospective tenant on direct threat grounds.¹⁴¹ However, to so hold would lead to almost complete inability for such a tenant to find housing outside of institutionalization. While the requirement to attempt a reasonable accommodation before relying on a direct threat classification is described above as a way to prevent eviction rather than obtaining housing, there is no reason that the same rationale would not apply at the time of application. In

137. 24 C.F.R. § 100.202(c) (2012) (explaining that housing providers may ask questions regarding "applicant's ability to meet the requirements of ownership or tenancy"); see *Schanz v. Vill. Apartments*, 998 F. Supp. 784, 789 (E.D. Mich. 1998) (upholding income and credit requirements).

138. Courts have not been sympathetic to the argument that housing providers should overlook previous criminal records because these are disability related. See *Evans v. UDR Inc.*, 644 F. Supp. 2d 675, 681-84 (E.D.N.C. 2009) (holding housing provider could deny applicant based on previous criminal record, even where that previous criminal record related to plaintiff's disability). However, reasonable accommodation requests based on a tenant's finances or credit report have a more mixed record of success. See *id.* at 694 (citing multitude of cases rejecting any connection between disability and financial condition). But see *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1155 (9th Cir. 2003) (finding reasonable accommodation allowing cosignor of lease when disabled tenant, by virtue of his disability, did not qualify on his own); *Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 678 F. Supp. 2d 576, 583 (E.D. Mich. 2009) (arguing that cases such as *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998) and *Schanz* erroneously ignored or misapplied Supreme Court's disability discrimination precedent in *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002)). In addition, an interesting dissent in a federal appeals court case raised the possibility of whether a rejection of a disabled-housing-choice-voucher holder could be considered disability discrimination if the link between the disability and financial condition (need for the voucher) of the applicant was clear. *Salute*, 136 F.3d at 302 (Calebresi, J., dissenting).

139. 42 U.S.C. § 3604(f)(9).

140. Implementation of the Fair Housing Amendments Act of 1988, 54 Fed. Reg. 3247 (Jan. 23, 1989) (codified at 24 C.F.R. pts. 14, 100, 103-06, 109-10, 115, 121).

141. See *Fair Housing Information Sheet #5: Disability Discrimination in the Housing Application and Screening Process*, BAZELON CTR. FOR MENTAL HEALTH LAW, <http://bazelon.org/LinkClick.aspx?fileticket=ftg2oguJbkQ%3d&tabid=245> (last visited Nov. 27, 2012); see also *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1503 (10th Cir. 1995) (holding public safety concerns may be used as legal basis to deny housing).

this situation, housing providers should, at the very least, be required to engage in the interactive process¹⁴² to determine if any proposed accommodation could be reasonable.¹⁴³ If the issue involves a poor landlord reference based on hoarding behavior, housing providers should discuss the reference problem directly with the applicant, who can then provide assurances relating to her current control of the problem and her agreement to abide by the terms of the lease.¹⁴⁴ Otherwise, by rejecting a prospective tenant based on a past symptom of a psychiatric disability, housing providers have discriminated based on disability and may be exposed to significant liability for such actions.¹⁴⁵

*C. Reasonable Accommodations to Prevent the Eviction of Hoarders
Under the Fair Housing Act*

The issue of reasonable accommodations for hoarders will most often arise once eviction papers have been served. At this point, the housing provider may have just found out about the hoarding and is proceeding to evict for a lease violation, or the landlord has previously given notice to the tenant that the hoarding is a violation of her lease (if not state and local law), and the tenant has failed to clean the unit in a timely manner.¹⁴⁶ Even when state law requires an opportunity to cure before eviction, these time limits are typically short periods, usually a matter of days or weeks, and must be extended by means of a reasonable accommodation to have a realistic chance to begin the process of cleaning, and in many cases, connecting the tenant with necessary social or medical services for the first time.¹⁴⁷ As this article argues, the goal of the tenant's attorney in seeking further time as a reasonable accommodation is not just to postpone or prevent eviction, but to "postpone or prevent eviction in

142. See *supra* notes 73-76 and accompanying text (discussing how interactive process would benefit tenant).

143. See DeMizzo, HUDALJ 09-99-0004-8, 2001 WL 56377, at *7 (Jan. 22, 2001). In this case, the court held that the housing providers failed to reply to a bipolar prospective tenant's request for a reasonable accommodation based on a poor landlord reference and held there to be liability of over \$38,000. *Id.*

144. BAZELON CTR. FOR MENTAL HEALTH LAW, WHAT "FAIR HOUSING" MEANS FOR PEOPLE WITH DISABILITIES 6 (2011), available at <http://www.bazelon.org/LinkClick.aspx?fileticket=bdk6FSfUBOQ%3d&tabid=104> [hereinafter BAZELON CENTER] (describing approach suggested by Housing Occupancy Task Force made up of landlords, tenant advocates, mental health professionals and others in report to HUD and Congress). A landlord may ask about credit or housing history in the same manner he asks all applicants, but should not ask directly if a tenant has a disability. 24 C.F.R. § 100.202(c)(1) (2012). In response to questions about a poor reference or other matter, a tenant may provide evidence of mitigating circumstances relating to her disability, which the landlord must consider. BAZELON CENTER, *supra*.

145. See *Joint Statement*, *supra* note 65, at 5 (acknowledging that application of prospective tenant may be rejected if direct threat in near past *and evidence that threat has not been eliminated*); see also Laflamme v. New Horizons, Inc., 605 F. Supp. 2d 378, 393 (D. Conn. 2009) (stating refusal to let resident back into housing after hospitalization for mental illness constituted violation of FHA).

146. BRATIOTIS ET AL., *supra* note 5, at 131-32. Additionally, this issue may arise when the failure of the apartment to meet Housing Quality Standards threatens an individual's tenancy. See *supra* notes 41-42 and accompanying text.

147. Cobb et al., *supra* note 22, at 432.

order to allow clients to participate in mental health treatment . . . and [contact] social services or community organizations [to] provide immediate assistance.”¹⁴⁸

1. The Reasonableness of Accommodations to Prevent the Eviction of Hoarding Tenants

As explained above, a request for accommodation may be rejected if it is deemed unreasonable. Requests to permit the occupant to continue to live in hoarding conditions that violate the lease or provisions of state or local law will clearly be found unreasonable.¹⁴⁹ However, such requests may serve to trigger the interactive process in which the housing provider would be required to engage in a dialogue with the tenant regarding the need for a clean and sanitary environment and whether any other accommodation could be provided.¹⁵⁰

Requests are also considered unreasonable when they would impose on the housing provider undue financial or administrative costs or when they would fundamentally alter the services provided by the housing provider.¹⁵¹ Usually, a request for an extension of time, the most common accommodation to be requested for hoarding tenants, will not be considered unreasonable.¹⁵² As long as the tenant or her representative is organizing and paying for cleaning the unit, there is no administrative or financial burden. At most, the landlord will be obligated to inspect the unit after such cleanup has occurred, but no other use of the housing provider’s time or money would be at issue.¹⁵³ Furthermore, because landlords are not being asked to do the cleanup, the proposed accommodation is not a fundamental alteration, such as if the tenant asked the landlord for cleanup services.¹⁵⁴ Despite the dearth of case law on hoarding behavior, it is apparent that when a reasonable accommodation is made based on a tenant’s disability and a specific, reasonable time period¹⁵⁵ is given in

148. *See id.* at 441.

149. *Wiesner v. 321 W. 16th St. Assocs.*, 00 CIV. 1423(RWS), 2000 WL 1191075, at *7 (S.D.N.Y. Aug. 22, 2000) (stating accommodation request not reasonable when requiring landlord to tolerate public nuisance); *see Hubbard v. Samson Mgmt. Corp.*, 994 F. Supp. 187, 190 (S.D.N.Y. 1998) (explaining that requests unreasonable if undermining basic purpose of requirement at issue).

150. *See BRATIOTIS ET AL.*, *supra* note 5, at 132.

151. *See supra* notes 64-67 and accompanying text (discussing further considerations when evaluating reasonableness of accommodation requests).

152. *See Cobb et al.*, *supra* note 22, at 433 (discussing validity of tenant’s request for additional time); *see also BRATIOTIS ET AL.*, *supra* note 5, at 132; *Edsell-Vetter*, *supra* note 23, at slide 18.

153. *Millar*, *supra* note 56 (“While frequent inspections may increase the landlord’s administrative burden, it is unlikely that a court would consider inspections to be an unreasonable burden on the landlord . . .”).

154. *See Joint Statement*, *supra* note 65, at 8 (giving classic example of fundamental alteration as mobility impaired resident requesting that housing provider drive him to and from errands).

155. Where it is clear that the hoarding problem is severe and constitutes a direct threat to health and safety of the tenant and others in the building, it is possible that little more than an immediate cleanup will be reasonable. *See Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1126 (D.C. Cir. 2009) (explaining that if cleanup

which the tenant assures the housing provider the lease violations will be cured, the accommodation must be granted.¹⁵⁶ If the housing provider fails to grant such an accommodation, he has violated the reasonable accommodation provision of the Act and should be found liable to the tenant for any resulting compensatory or emotional distress damages. If found to have violated the Act, in addition to any expenses incurred in searching for and obtaining new housing, housing providers may also be liable for emotional distress—damages that could be significant considering the psychic injury to compulsive hoarders suddenly evicted and forcibly stripped of their possessions.¹⁵⁷

2. *Recidivism and the Legal Advocate's Role in Representing Tenant Hoarders*

Under the cases cited above regarding the eviction of mentally ill tenants, the first reasonable accommodation request from a compulsive hoarder will almost always be considered reasonable, or at the very least initiate the interactive process—under which the housing provider must make an objective determination supported by evidence that the accommodation has no chance of success in order to reject the accommodation.¹⁵⁸ Unfortunately, it is clear from our medical understanding of compulsive hoarding that the first reasonable accommodation request is unlikely to be the tenant's final one. Even if a reasonable accommodation request actually results in the decluttering of an apartment, there is no guarantee that the problem will not arise again in the future.¹⁵⁹ One of the most difficult aspects of hoarding is that there is no magic pill to cure a hoarding compulsion, and hoarders may struggle with their compulsion for their whole life.¹⁶⁰ A typical reasonable accommodation request by a compulsive hoarder or his attorney may only cure the first-level problem—imminent eviction.¹⁶¹ To ignore the fact that such behavior is, by the

does not occur promptly it may result in conditions constituting direct threat and justifying eviction). Nevertheless, usually the danger to health and safety will be more remote and less urgent and a balance can be struck between the needs of the housing provider and the time in which it is feasible to have the unit cleaned.

156. Dolak, *supra* note 67, at 782 (“Where time to receive treatment, compliance with a prescribed course of medication, or behavior modification can reduce the nature of the threat, the accommodation is generally deemed reasonable and does not place an undue burden on the property manager or other residents.”). Even where a tenant is alleged to pose a direct threat to the health and safety of neighbors, the tenant must still be given an opportunity to cure the behavior through the use of a reasonable accommodation. *See supra* Part III.C.

157. *See generally* SCHWEMM, *supra* note 54, §25:5 (discussing injuries in typical fair housing cases and calculation of damages for intangible injury); Victor M. Goode & Conrad A. Johnson, *Emotional Harm in Housing Discrimination Cases: A New Look at a Lingering Problem*, 30 FORDHAM URB. L.J. 1143 (2003); *see infra* notes 171, 207 and accompanying text (describing possible emotional effects on tenants of cleanup efforts by landlords without consent).

158. *See supra* Part III.C.

159. *See* BRATIOTIS ET AL., *supra* note 5, at 131 (describing “backsliding” as common); *see* FROST & STEKETEE, *supra* note 2, at 272-73.

160. *See* FROST & STEKETEE, *supra* note 2, at 272-73 (describing need for “considerable effort over a long period of time” to control hoarding impulses).

161. *Id.* at 187 (describing this solution as short-term fix).

nature of the disability, likely to reoccur would be for the legal advocate, like the ostrich, to plant his head firmly in the sand.

While the attorney's duty to his client may only be to prevent eviction by any means necessary, to ignore the legitimate problems faced by housing providers with hoarding tenants and the likelihood of the behavior continuing, ignores a point of view that any housing court judge will readily identify. Furthermore, such a narrow approach may also ignore the best interests of clients. The simple acknowledgement of a disability-related hoarding compulsion and promise to clean the unit should suffice as reasonable—the first time it is requested—but is likely be found unreasonable when requested again and again in the future.¹⁶² While the Fair Housing Act has not been interpreted to categorically deny subsequent reasonable accommodation requests, courts may look at such repeated requests as evidence that even the accommodation previously requested by the tenant was not effective in solving the violation. While not unreasonable, this point of view fails to comprehend the nature of psychiatric disabilities, in which it is not uncommon for relapses that require adjustments to treatment, changes in medication, or further support from other social service organizations. Such relapses do not always signal a failure of the tenant to stick to the reasonable accommodation plan, but are rather to be expected when dealing with serious mental illness.

In these circumstances, further reasonable accommodations are likely necessary, and the tenant's attorney should be able to argue that a future accommodation will be more effective due to additional treatment, medication adjustments, further support, or other factors. Otherwise, the tenant risks a housing court finding that such an accommodation would not provide "adequate assurance" under *Douglas*¹⁶³ or "eliminate or minimize the risks"¹⁶⁴ caused by the behavior under the *Roe* cases.

Here, the most persuasive reasonable accommodation requests, especially subsequent requests, will be those that present a credible plan for the tenant to address and manage the disability. Particularly for subsequent requests, an important factor impacting the reasonableness of an accommodation proposal is the plausibility of the tenant's plan for decluttering.¹⁶⁵ If the requested

162. Dolak, *supra* note 67, at 782 & n.138 ("A limit must be set on how many times this failure to take medication can occur before eviction will result. If attempts at reasonable accommodation were to start anew every time that residents fail to take their necessary medication, then the property manager and other residents would be subjected to the threatening conduct indefinitely."). Dolak cites two cases in which failures by plaintiffs to continue taking medication led to eviction despite further reasonable accommodation requests. *Hous. Auth. of Lake Charles v. Pappion*, 540 So. 2d 567, 570 (La. Ct. App. 1989); *Frank v. Park Summit Realty Corp.*, 175 A.D.2d 33, 34-35 (N.Y. App. Div. 1991).

163. *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1126 (D.C. Cir. 2009).

164. *Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814, 822-23 (D. Colo. 1995) (citing *Roe v. Sugar River Mills Assocs.*, 820 F. Supp. 636, 640 (D.N.H. 1993)).

165. See *Douglas*, 884 A.2d at 1126 ("[U]nless the requested accommodation gave adequate assurance that the apartment would be cleaned up promptly—and offered a reasonable prospect for its staying clean—the

accommodation is not likely to result in an abatement of the conditions creating the need for eviction, the plan may be considered unreasonable or fail to eliminate the direct threat¹⁶⁶—and as discussed above, a direct threat can lead to immediate eviction once a reasonable accommodation has already failed.¹⁶⁷ A landlord has the right to demand that health or safety hazards under the lease or under state or local law be remedied. A tenant's continual requests for further time will likely be considered unreasonable by the landlord and by courts.¹⁶⁸ To develop a persuasive and credible reasonable accommodation plan, especially after one reasonable accommodation request has already failed, more expertise is required than any lawyer can provide. Therefore, such a reasonable accommodation plan should be based on a collaborative intervention model.

i. Use the Collaborative Intervention Model in Crafting Plausible Reasonable Accommodation Plans

In many cases, it will be necessary for legal advocates to take the lead in obtaining the necessary support structure for the tenant.¹⁶⁹ To succeed, the reasonable accommodation plan must be a collaborative approach involving mental health professionals, social workers, the housing provider, the tenant, and the tenant's attorney.¹⁷⁰ As stated above, the success of a reasonable accommodation plan in this situation is not defined just as convincing a landlord to grant an accommodation for more time before eviction or for a judge to rule in favor of an evicted client. Instead, "success" in crafting a reasonable accommodation plan encompasses not just those goals, but develops a plan that will give clients the best chance to maintain housing, not just now, but for the foreseeable future.¹⁷¹

Crafting a one-size-fits-all reasonable accommodation plan for hoarders is impossible. Regardless of whether the tenant is before a judge or a landlord, the most persuasive accommodation plans will be those that emphasize the treatment the tenant is undergoing with mental health professionals (showing

health and safety exception would likely justify the tenant's eviction."); *Matarese v. Archstone Pentagon City*, 761 F. Supp. 2d 346, 364 (E.D. Va. 2011) ("If the proposed accommodation does not provide direct amelioration of a disability's effect, it does not qualify as necessary.").

166. See *Douglas*, A.2d at 1126; *Groner v. Golden Gate Apartments*, 250 F.3d 1039, 1047 (6th Cir. 2001).

167. See *supra* Part III.C.

168. *Groner*, 250 F.3d at 1045; *Millar*, *supra* note 56, at 2-3.

169. See *BRATIOTIS ET AL.*, *supra* note 5, at xvi.

170. See *Edsell-Vetter*, *supra* note 23, at slide 53.

171. *BRATIOTIS ET AL.*, *supra* note 5, at 130 ("An emerging role of the legal system is to intervene effectively with hoarding, addressing the underlying problem and establishing enduring change."). For this reason, medical and social workers disfavor cleanup efforts that are immediate and involuntary as the invasion of a cleanup crew without the tenant's consent or approval may serve to exacerbate the mental problems involved and fail to address the core issue of hoarding. *Id.* at 129-30; *Cobb et al.*, *supra* note 22, at 430; *Webley*, *supra* note 5.

the tenant's recognition of the problem and acceptance of responsibility), social workers or human service professionals, and the assistance of friends and/or relatives in the cleanup process (if no professional cleaners or organizers are involved).¹⁷² By setting out this support system as part of a reasonable accommodation plan, housing providers will be unable to challenge the request as unreasonable, as the tenant is making an effort to address the underlying problem and prevent recidivism.

Further, an effective reasonable accommodation plan must include a time-limit element.¹⁷³ This should be based upon the size of the area to be cleaned, the amount of built-up clutter, and whether the tenant is already under medical care. As one source states, the "key part of this process is creating an explicit plan that clarifies necessary changes in the home and establishes a time-line to reach mandated benchmarks."¹⁷⁴ For any type of large cleanup, the process may be broken down by stages, where goals are specified and set to be met by certain dates.

In addition, where an individual engaging in hoarding behavior is amenable to psychiatric treatment, and landlords are skeptical, a reasonable accommodation plan could also include a treatment plan as a component. This would specify what the tenant agrees to do in the way of treatment, whether that is cognitive-behavior therapy, medication, or other forms of treatment.¹⁷⁵ While this disclosure of the tenant's treatment may go beyond what a housing provider may, in almost all cases, legally ask about,¹⁷⁶ the tenant is free to give permission for these details to be shared as part of crafting a reasonable accommodation plan.¹⁷⁷

To bring these moving parts together, and to create a reasonable accommodation plan based on a collaborative model, advocates should look to the housing task force model.

172. Cobb et al., *supra* note 22, at 436; *see* *Huberty v. Wash. Cnty. Hous. & Redev. Auth.*, 374 F. Supp. 2d 768, 774 (D. Minn. 2005) (rejecting reasonable accommodation request for lack of specificity in amount of time needed for proper treatment plan).

173. *See* Cobb et al., *supra* note 22, at 435-36; Edsell-Vetter, *supra* note 23, at slide 52.

174. Schmalisch, *supra* note 38.

175. *See Joint Statement*, *supra* note 65, at 5-6 (describing example that contemplates reasonable accommodation for tenant with psychiatric disability who threatens other tenants where accommodation is only reasonable if it includes "satisfactory assurance that [the tenant] will receive appropriate counseling and periodic medication monitoring . . .").

176. 24 C.F.R. § 100.202 (2012) ("It shall be unlawful to make an inquiry to determine whether an applicant . . . has a handicap or to make inquiry as to the nature or severity of a handicap of such a person."); *see also* *Overlook Mut. Homes, Inc. v. Spencer*, 666 F. Supp. 2d 850, 856 (S.D. Ohio 2009) ("[T]he provider of housing is entitled to obtain only that information necessary to determine whether the requested accommodation is necessary because of a disability.").

177. In so doing, the tenant would be disclosing more than perhaps required by reasonable-accommodation law in hopes of avoiding protracted litigation with her housing provider. On the other hand, requests for accommodation without specific details of treatment may still pass the reasonableness threshold. Therefore, this is a fact-specific decision that any representative of the tenant should discuss fully with the client and weigh carefully.

ii. The Rise of the Joint Task Force Model

As is apparent from the above, no lawyer, doctor, or social worker has the time or necessary expertise to take on these responsibilities alone.¹⁷⁸ Recognizing this, groups and individuals from different professional fields have come together to create joint task forces to address local hoarding cases. Through these organizations, experts from legal, medical, and human services organizations can combine their separate specialized expertise to craft real solutions that can work for the disabled tenants engaged in hoarding. While there is no single model, typically task forces like those discussed below receive referrals from landlords, lawyers, or family members of compulsive hoarders, begin the process with an assessment of the hoarding problem, and work through strategies to eliminate the problem.¹⁷⁹

The Joint Task Force Model is relatively new. Therefore, there are no post implementation studies regarding the long-term impact of hoarding task forces.¹⁸⁰ But this model has continued to grow due to the recognition that no single governmental agency or discipline (be it social services, law enforcement, or medical) can provide the necessary intervention and support for compulsive hoarders.

The first hoarding task force was created in 1989 for Fairfax County, Virginia, in response to four homeless persons dying as a result of fire in a cluttered residence.¹⁸¹ This task force still operates and brings together representatives from the Department of Code Compliance, Protective Services, Law Enforcement, the Health Department, the Department of Community Services, the County Attorney's Office, the Fire Department, and various other agencies to "consolidate[] resources and ensure[] an integrated approach to the physical, emotional, health, and safety issues associated with hoarding."¹⁸² This Task Force has monthly meetings to deal with various identified hoarding cases within its jurisdiction.¹⁸³ As one of its annual report states:

Each case involves numerous hours of staff time to investigate the complaint, document the event, develop a plan of action, institute the plan, and see the plan to its final disposition. Each agency expends varying amounts [of] time depending on the agency focus and available resources. Safety and the eventual return of the resident to the dwelling are the primary goals.¹⁸⁴

178. BRATIOTIS ET AL., *supra* note 5, at 169.

179. *See id.* at 37-40.

180. *Id.* at 30, 40.

181. *Id.* at 32; FAIRFAX CNTY. HOARDING TASK FORCE, ANNUAL REPORT (2009), <http://www.fairfaxcounty.gov/code/hoarding/hoarding-annual-report.pdf> [hereinafter FAIRFAX COUNTY].

182. FAIRFAX COUNTY, *supra* note 181, at 2, 7.

183. *Id.* at 8.

184. *Id.* at 18.

Today there are over seventy-five task forces spread throughout the United States and Canada, from large urban areas, to smaller, more rural communities.¹⁸⁵ There is no single way to set up a hoarding task force, as the structure and purpose can vary.¹⁸⁶ In Newton, Massachusetts, the hoarding task force is composed of police, fire, public health, social services, and inspectional services divisions of city government.¹⁸⁷ The task force has monthly meetings, tracking known hoarding cases and the progress being made.¹⁸⁸ Newton also provides a grant to the Task Force to perform cleanup operations costing up to \$5000 per dwelling.¹⁸⁹ A similar type of task force is San Francisco's Task Force on Compulsive Hoarding, which has recently set forth a number of strategies for task forces and municipalities dealing with hoarding issues.¹⁹⁰

Massachusetts alone had twenty local hoarding task forces as of March 2012¹⁹¹ and a massive collection of online resources, such as intervention models, "dos and don'ts" for intervention, links to state housing court information, support groups, questionnaires, and information on related organizations like professional organizers and nurses.¹⁹² Massachusetts is not alone in its recognition of this problem.¹⁹³ Overall, nineteen different states have at least one local task force devoted to hoarding.¹⁹⁴ In addition, the International OCD Foundation, based in Boston, Massachusetts, has a specific Hoarding Center, listing eighty-six current task forces¹⁹⁵ and providing resources on the issue.¹⁹⁶

Perhaps the greatest benefit of the task force model is avoiding the problem of lack of coordination. By involving law enforcement and public health

185. BRATIOTIS ET AL., *supra* note 5, at 32. See generally Webley, *supra* note 5.

186. BRATIOTIS ET AL., *supra* note 5, at 34.

187. *Id.* at 32; see Webley, *supra* note 5; *Task Force Members*, CITY OF NEWTON, MA, <http://www.newtonma.gov/gov/health/humansvcs/hoarding/members.asp> (last visited Nov. 27, 2012). In addition to governmental agents, many task forces involve nongovernmental actors including private as well as nonprofit and for-profit businesses as partners. BRATIOTIS ET AL., *supra* note 5, at 33.

188. BRATIOTIS ET AL., *supra* note 5, at 32-33.

189. *Massachusetts Local Hoarding Task Forces*, MASSHOUSING (Oct. 2, 2012), https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_2_2697_0_0_18/hoarding_task_forces.pdf.

190. S.F. TASK FORCE ON COMPULSIVE HOARDING, BEYOND OVERWHELMED: THE IMPACT OF COMPULSIVE HOARDING AND CLUTTERING IN SAN FRANCISCO AND RECOMMENDATIONS TO REDUCE NEGATIVE IMPACTS AND IMPROVE CARE 37-38 (2009), available at <http://www.sfaa.org/pdf/hoarding-report-2009.pdf>.

191. *Massachusetts Local Hoarding Task Forces*, *supra* note 189.

192. *Hoarding Resources*, MASSHOUSING, <https://www.masshousing.com/portal/server.pt?mode=2&uuID=%7BF6E398E9-46E7-4D28-A1A8-9566981ADA20%7D#general> (last visited Nov. 27, 2012).

193. Although no other state has near a comparable number of established task forces.

194. Christiana Bratiotis, *Hoarding Task Forces*, INT'L OCD FOUND., http://www.ocfoundation.org/hoarding/task_forces.aspx (last visited Nov. 27, 2012).

195. *Id.*

196. See generally *IOCDF Hoarding Center*, INT'L OCD FOUND., <http://www.ocfoundation.org/hoarding/> (last visited Nov. 27, 2012).

officials with social workers and tenant advocates as early as possible in a case of compulsive hoarding, the possibility that these agencies will act independently of each other is lessened, and the risk of dramatic, unexpected consequences, such as condemnation or eviction, is minimized.¹⁹⁷ Such a model is invaluable in linking all the services needed to provide adequate legal, social, and medical support to compulsive hoarders.¹⁹⁸ However, in addition to the support they provide to individuals and their advocates, these task forces also serve a substantial and important role by increasing awareness of the mental health issues confronting hoarders.¹⁹⁹ In providing real information about compulsive hoarding that goes beyond the “reality television” triangulate of shock-laugh-blame, these providers serve to help reduce the stigma associated with hoarding and give housing providers, as well as other members of the public, an understanding of mental illnesses and the time and effort necessary to intervene and prevent the loss of housing.²⁰⁰

While these task forces seek to intervene as soon as possible after learning of a hoarding situation—in an effort to prevent the situation from reaching the eviction stage—legal advocates should also take advantage of the responsiveness of these organizations in putting together a reasonable accommodation plan. Where such task forces do not exist, advocates for compulsive hoarders may have to attempt to put them together on ad hoc bases, so as to develop a successful reasonable accommodation plan.²⁰¹ This will necessarily involve reaching out to the local department of social services, and determining what kind of services, especially in the medical field, can be provided to a tenant who is not yet in treatment. Forging such connections may not be easy initially, but as recognition of hoarding as a mental illness grows and joint task force models continue to expand, this should become easier for the advocate. Furthermore, each instance will create a greater network and further expertise in this field.²⁰²

The final step in such a collaborative process for an attorney may take place before a housing court judge. While this can be avoided through granting a request for a reasonable accommodation, there is no doubt that, especially in private housing, some of these issues will result in litigation, and much of the

197. BRATIOTIS ET AL., *supra* note 5, at 31-32. In addition to avoiding independent action by local agencies with different priorities, this coordination also allows the attention to stay on the tenant who is not besieged by various agencies attempting to coordinate care. *Id.* at 34. Instead, the task force can speak with one voice. *Id.*

198. FAIRFAX COUNTY, *supra* note 181, at 12 (“To provide a reasonable chance that intervention will benefit the owner/occupant and the community; a compassionate, professional, and coordinated approach must be developed.”).

199. BRATIOTIS ET AL., *supra* note 5, at 34-35; *see* Bratiotis, *supra* note 194.

200. *See* BRATIOTIS ET AL., *supra* note 5, at 34-35, 175.

201. Cobb et al., *supra* note 22, at 440-41 (discussing importance of attorneys partnering with mental health and social service organizations and suggesting “ad-hoc relationships to facilitate effective advocacy”).

202. BRATIOTIS ET AL., *supra* note 5, at 34.

advocate's job will consist of explaining the disorder, its disabling effects, and the specifics of the accommodation sought. In the process, the support, explanations, and even evidence from the social workers and mental health professionals will be invaluable to a court in navigating a difficult situation with multiple competing interests and pressures.²⁰³

V. CONCLUSION

The simple fact is that if reasonable accommodation of a hoarding tenant in last-chance housing fails, the tenant will end up being forcibly evicted, will have many of his or her possessions lost or destroyed without necessary psychiatric treatment,²⁰⁴ and may well end up on the street or in a shelter.²⁰⁵ For mental health advocates this is a scenario that would be the ultimate failure of the system and must be avoided at all costs.²⁰⁶ As one author put it:

While eviction from one's home can be devastating to any tenant, it can be truly catastrophic to those who hoard. The mental and physical conditions that produce hoarding and cluttering behavior typically also render such persons incapable of coping with the consequences of sudden homelessness. That is to say nothing of the severe effects—both economic and psychological—that hoarders experience from the massive deprivation of their personal belongings.²⁰⁷

Even for landlords, the eviction of a hoarding tenant is not ideal as the housing provider is likely to be stuck with the cost of cleaning the apartment—

203. There is hope that judges will be receptive to these arguments:

A growing number of judges and lawyers across the country are becoming aware that the legal system can play a key role in effecting enduring change in hoarding cases with appropriate interventions that reflect understanding of hoarding as a social and personal problem, respect for the rights of individuals, and protection of those who are affected. Officers of the court are working together with social service providers to implement a more sophisticated approach that coordinates both pressure on the individual to change and support in making necessary changes.

Schmalisch, *supra* note 38.

204. BRATIOTIS ET AL., *supra* note 5, at 19 (describing dramatic impact of sociological change when individual forcibly relocated to clean environment); FROST & STEKETEE, *supra* note 2, at 175.

205. See BRATIOTIS ET AL., *supra* note 5, at 129 (“[F]amilies living in subsidized housing may become permanently homeless due to hoarding, usually because they lose their housing voucher or cannot obtain affordable housing after being evicted.”). See generally Rachel Rubey, Notes, *There's No Place Like Home: Housing for the Most Vulnerable Individuals with Severe Mental Disabilities*, 63 OHIO ST. L.J. 1729 (2002) (explaining difficulty of obtaining private or public housing for those with severe psychiatric disabilities).

206. See Cobb et al., *supra* note 22, at 430 (finding eviction truly catastrophic for hoarders).

207. *Id.* (citing Randy O. Frost et al., *The Threat of the Housing Inspector: A Case of Hoarding*, 6 HARV. REV. PSYCHIATRY 270, 272 (1999)); see BRATIOTIS ET AL., *supra* note 5, at 19, 130 (describing emotional crises brought on by involuntary cleanups).

which may total thousands of dollars.²⁰⁸ It is unlikely that a tenant evicted for hoarding—especially a tenant evicted from last-chance subsidized housing—will be able to pay the costs associated with such an extensive cleaning.²⁰⁹ Furthermore, homelessness comes at great financial and social cost as “it places enormous demands on a community’s social and welfare apparatus, including shelters, medical providers, and the police.”²¹⁰

While no strategy will have a 100% success rate,²¹¹ a multifaceted intervention as part of the reasonable accommodation process has the best chance of success by combining the sense of urgency associated with the proposed loss of housing with the provision of needed services that might not otherwise be available. While using the eviction process as a motivator may be frowned upon as a form of coercion,²¹² it is also an opportunity for the intersection of legal, social, and medical services to come together to help persons with mental illness.²¹³

Furthermore, embracing the joint task force model for developing reasonable accommodation plans for compulsive hoarders creates the best chance for helping compulsive hoarders with mental illness while also preventing the loss of one of the most fundamental prerequisites for a happy and successful life—housing. It is true that by intervening only once an eviction has already been proposed, a great deal of pressure is put on the individual to make significant changes in her life in a very short period of time. To the extent the medical,

208. BRATIOTIS ET AL., *supra* note 5, at 8 (citing one small town in Massachusetts for spending \$16,000 to de-clutter home only to find that process necessary again in 18 months); Cobb et al., *supra* note 22, at 440 (describing cost of returning hoarder’s home to habitable condition as much as \$50,000 and citing Massachusetts town as spending approximately 75% of Department of Health budget to clean one home).

209. Webley, *supra* note 5 (noting “a forced cleanout can top \$50,000, and that money is rarely recouped from the hoarder . . .”).

210. Cobb et al., *supra* note 22, at 439.

It is noteworthy that 14% of hoarding participants report that their medical expenses were paid by public aid programs, suggesting that the cost to society is high.

....

... [T]he available data suggest that the impact of compulsive hoarding on a per-person basis exceeds those of many psychiatric disorders. High costs appear likely to affect not only individuals, but also society as a whole in terms of lost work productivity, mental health service utilization, non-psychiatric medical costs, and community agency involvement.

Tolin et al., *supra* note 26, at 209.

211. See Cobb et al., *supra* note 22, at 436 (“[I]n the long term, some compulsive hoarders are unable to benefit from even the best legal advocacy.”).

212. See generally Michael Allen, *Waking Rip van Winkle: Why Developments in the Last 20 Years Should Teach the Mental Health System Not to Use Housing as a Tool of Coercion*, 21 BEHAV. SCI. & L. 503 (2003) (discussing debate surrounding use of housing as tool of coercion by mental health advocates); Allen, *supra* note 13 (assessing current law and arguing for full tenancy rights).

213. BRATIOTIS ET AL., *supra* note 5, at 31-32 (explaining carrot/stick approach in which enforcement agency and social agency work together to make sure hoarding individual receives motivation necessary to avoid enforcement action).

social, or legal community can identify and seek assistance for hoarders before such a drastic and calamitous event as an eviction notice, these opportunities should not be missed. Nevertheless, because of the very nature of compulsive hoarding, such opportunities for intervention may be lacking. In that case, legal advocates for tenants must do what they have always done—argue vigorously for the client facing eviction due to mental illness. And if that advocate has a rolodex filled with social workers, organization experts, and mental health professionals that may be just as important as the most well-intentioned argument in court.