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Section 8: New York's Legal Landscape

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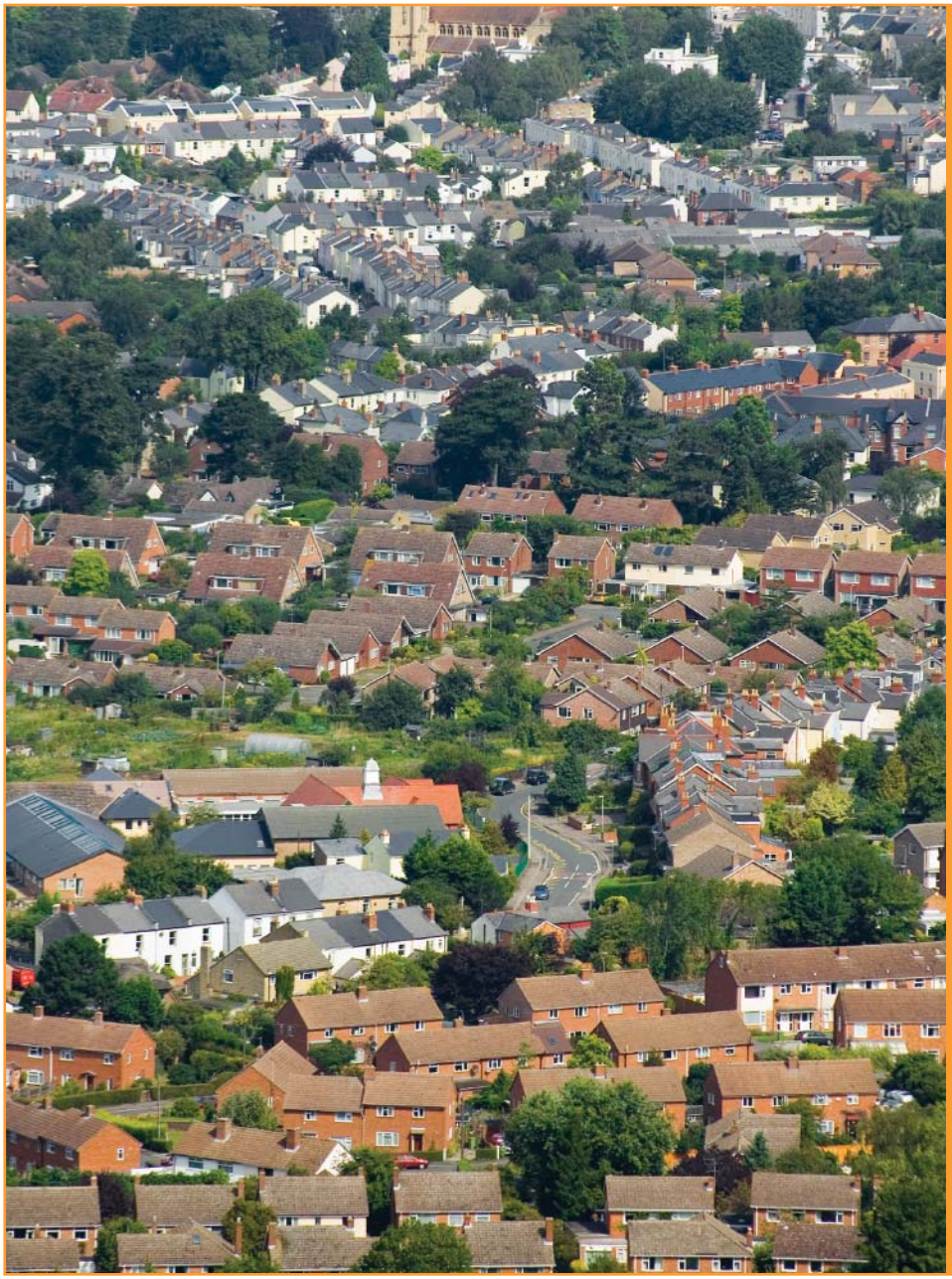

Inside

- Changes in Low-Income Housing Priorities
- Model Intercreditor Agreement
- Whatever Happened to Article 78?
- Section 8: New York's Legal Landscape
- Modifying Building Loan Contracts
- Protecting a Commercial Sublandlord from Its Subtenant's Holdover

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Section 8: New York's Legal Landscape

By Gerald Lebovits, Sateesh Nori, and Jia Wang

I. Introduction

The Section 8 housing program enables almost a million low-income families to obtain safe, decent, and affordable housing nationwide. Yet the program remains a quagmire for landlords, tenants, and advocates. Governed by federal, state, and local laws as well as by reams of regulations particular to the administering public-housing authorities, the program is bureaucratic and legally complicated. Some landlords are unwilling to accept Section 8 because of its myriad requirements and obligations, while tenants feel discriminated against by potential landlords because of the tenants' status as Section 8 voucher holders.[1] On the other hand, Section 8 expands the affordable housing options for poor households while guaranteeing a stream of rent income to landlords. Section 8, while expensive for taxpayers and burdensome for participants, encourages free private enterprise and reduces the demand for public housing.

In New York State, the intersection of federal Section 8 laws with rent-regulatory schemes, local tax laws, and other provisions has left a web of rules and exceptions. Recent developments in Section 8 law have added to this jumble. This article attempts to capture the landscape of Section 8 in New York City.

II. Section 8: The Evolution

Public housing in the United States began as a response to the Depression. The United States Housing Act of 1937 created local Public Housing Authorities, or PHAs, which are established by individual states.[2] PHAs became the administrative building blocks for most federal housing programs, including Section 8 and public housing.[3] Initially, and for a period of approximately 30 years, PHAs, operating by the Depression Era philosophies of job creation and slum elimination, built and operated public-housing projects as the primary source of housing assistance for low-income families.

In the years that followed, the U.S. Housing Act was widely criticized as costly, its housing ugly, and its policies segregationist.[4] In response, the federal government tried to encourage the private sector to create and operate low-income housing. In 1965, Congress introduced the Section 23 Leased Housing Program, which amended the U.S. Housing Act to allow and encourage PHAs to contract with private landlords to lease vacant properties.[5] Under Section 23, PHAs paid market-value rent directly to private landlords, and the low-income tenants paid a reduced rent directly to the PHA.[6] PHAs selected eligible families from their waiting lists, placed them in housing from a master list of available units, and determined the rent that tenants would pay. PHAs also agreed to perform regular building maintenance for Section 23 tenants. Eventually, most Section 23-assisted units became Section 8 participants.[7] In 1965, the Department of Housing and Urban Development (HUD) was created as a cabinet-level agency to develop and execute policy on housing and cities.[8]

Before Section 23 was phased out, but before the inception of Section 8, Congress experimented with what later became the Housing Choice Voucher Program, a key element of Section 8. In 1971, Congress authorized the Experimental Housing Allowance Program, or EHAP.[9] EHAP tested the feasibility of providing housing allowances to eligible families and was conducted in 12 locations between 1971 and 1980.[10] During the EHAP experiment, nearly 50,000 households received cash assistance for housing. Participants leased units directly from private owners. Homeowners as well as renters were able to participate at two of the demonstration sites. The EHAP experiment demonstrated the following: (1) a housing-allowance program could preserve existing housing stock by encouraging owner repairs and maintenance; (2) allowing families mobility allowed them to select better neighborhoods; (3) families did not select expensive units; and (4) most tenants were able to pay their share of the rent for the selected units.[11]

The federal Section 8 program was born out of the Housing and Community Development Act of 1974, which amended the U.S. Housing Act of 1937 to create housing-voucher and housing-certificate programs.[12] This initiative cemented a shift in the federal housing strategy: More emphasis was placed on involving privately owned rental housing.[13] The term "Section 8" referred to the new section of the U.S. Housing Act that the 1974 amendments added.[14] At the outset, Section 8 was a rental certificate program modeled after the still-running EHAP, but it differed in two key respects. First, after a tenant selected an apartment, the PHA would make the subsidy payments directly to the landlord rather than to the family. The government's rent contribution would be such that the families paid 25% of their adjusted income toward the rent.[15] (This was changed to 30% in 1983.) Second, the gross rent of a unit leased could not exceed a fair-market value that HUD determined.[16]

A decade after the Housing and Community Development Act of 1974, the Housing and Community Development Act of 1987 further expanded the federal public-housing regime by adding a rental-voucher program to Section 8. This program was similar to Section 8's existing rental-certificate program, but it expanded the options available to recipients. With rental vouchers, the government's contribution to an eligible family's rent was pre-determined based on the family's need. Unlike

the certificate program, families could pay more than 30% of their adjusted income toward rent, depending on the cost of housing they chose. The government voucher payment would be fixed; thus, a fair-market-rent limitation was unnecessary. By the 1990s, the federal housing regime still included publicly provided housing projects, but Section 8's certificate and voucher programs involved private-property owners in providing much housing for low-income families.

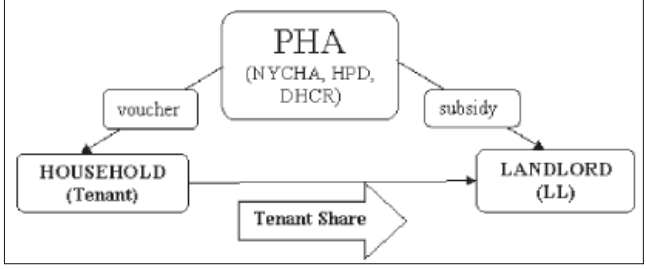
Over the next decade, HUD issued three "conforming rules" to combine and conform the rental-certificate and rental-voucher programs. In July 1994, the first part of the conforming scheme established unified admissions rules. The next year, in 1995, several administrative and leasing activities between certificate and voucher became standardized. The next conforming rule, in June 1998, dealt with rent reasonableness and determining housing-assistance payments.

Shortly after the third HUD amendment, Congress took a more direct approach by enacting, in October 1998, the Quality Housing and Work Responsibility Act. This act once again amended Section 8 of the U.S. Housing Act of 1937 and merged the certificate and voucher programs into a single program called the Housing Choice Voucher Program. The Housing Choice Voucher Program is colloquially called "Section 8," even though it is only a portion of Section 8 of the Housing Code. In May 1999, HUD issued an interim rule to implement the merger by phasing out the certificate program. From October 1, 1991, when the new regime took effect, all existing rental-voucher-program participants became subject to the requirements of the new Housing Choice Voucher Program. Those still under the rental certificate program would switch to the Voucher Program when they moved into a new home with assistance, renewed a lease, or received their second annual reexamination after October 1, 1991.[17]

III. Section 8: The Nuts and Bolts

The current Housing Choice Voucher Program is similar to its predecessor, the rental-voucher program. PHAs pay subsidies directly to landlords. Tenants pay landlords the difference between the subsidy and the actual rent charged. This assistance is considered "tenant based" because the voucher is tied to the tenant, not the dwelling unit.[18] Tenants are free to choose their homes. The voucher stays with them if they remain eligible.[19]

Figure 1: The Workings of the Housing Choice Voucher Program



The program is funded by the federal government through HUD and administered locally by about 2,500 PHAs across the country.[20] PHAs are usually run by state or local governments, although some are independent.[21] Each PHA is allocated a limited number of vouchers to administer. Congress annually allocates funding for each PHA's voucher and may in its discretion provide for additional vouchers.[22] Because vouchers are limited, about one in every four qualifying families who seek assistance actually receives it.[23]

In New York City, three different PHAs administer the Section 8 Housing Choice Voucher Program: (1) the New York City Housing Authority (NYCHA); (2) the New York City Department of Housing Preservation and Development (HPD); and (3) the Subsidy Services Unit of the New York State Division of Housing and Community Renewal (DHCR).

NYCHA administers vouchers to approximately 83,000 families in the five boroughs, making NYCHA's Section 8 program the largest in the United States.[24] HPD's program serves special categories of New Yorkers and provides assistance to an additional 26,000 households.[25] DHCR administers the Housing Choice Voucher Program across New York State.[26]

Although NYCHA is New York City's primary voucher-administering PHA, DHCR's Subsidy Services Unit administers another 7,200 vouchers in the five boroughs and Westchester County.[27] HUD has appointed DHCR and the New York State Housing Trust Fund Corporation (HTFC) the administrators of Section 8's project-based contracts in New York State.[28] According to DHCR, DHCR/HTFC's contracted private sector partner CGI-AMS, Inc., currently administers 999 contracts covering 91,967 units.[29]

A. Eligibility

To be eligible to receive assistance from the Section 8's Housing Choice Voucher Program, all applicants must satisfy HUD eligibility requirements. First, the family applying must fall within HUD's income guidelines.[30] To qualify, a family must be a "very low-income" household.[31] A very low-income household is a household whose annual income is at or below 50% of the median annual income of a household of that size living in a chosen county or area.[32] HUD estimates and annually publishes the very low-income limitation for each area.[33] The entire New York metropolitan area is considered a single area for the purposes of these published income limits.[34]

Although only very low-income households are eligible for Section 8 voucher assistance, HUD requires all PHAs to provide 75% of its vouchers to "extremely low-income" applicants—households whose incomes are no more than 30% of the area's annual median income.[35]

In limited circumstances, HUD allows households to receive Section 8 assistance even if their income is no greater than 80% of the area's annual median.[36] These households are

known as "low income" households. PHAs are also granted discretion to award assistance to low-income applicants if doing so is an essential local housing policy. For example, a financially strapped PHA might try to lower subsidy costs by allowing two very low-income sisters to live together if their combined annual income exceeds the very-low-income level but not the low-income level.[37] Assistance to a single two-bedroom apartment would be less than that paid to two one-bedroom apartments.[38]

As a second eligibility requirement, HUD calls for all applicants to meet a local PHA's definition of a family.[39] PHAs are given a fair amount of flexibility in setting this definition.[40]

As a third eligibility requirement, every Section 8 applicant must be a United States citizen, national, or permanent resident by immigration.[41] Those granted asylum or who have refugee status are also eligible, as are those lawfully present in the United States with the Attorney General's approval.

The fourth requirement is that voucher applicants must not have been evicted from public housing or any Section 8 program for drug-related criminal activity.[42]

If a family has both eligible and ineligible members, the family is considered a mixed family, and its subsidy is prorated.[43] The ineligible persons are not counted for the subsidy level.[44] PHAs conduct a criminal background check on each member of the household 16 years and older. Family composition is restricted to family members listed as household members. Before adding a family member (other than a newborn baby), the family must request permission from the PHA.

Applicants might also be subject to additional eligibility requirements depending on where they live. This is because HUD has granted PHAs substantial flexibility under the federal guidelines to address the area's needs.[45] PHAs may, for example, favor certain types of families or housing needs. In New York City, the high demand for housing assistance has strained the three PHAs' ability to accept new applications. The PHAs have been forced to exercise this flexibility to restrict the applications they accept.

i. NYCHA

As of May 15, 2007, the New York City Housing Authority stopped accepting general applications. It accepts Section 8 housing assistance applications only from those in the following three emergency categories:[46] (1) applicants referred by the District Attorney's Office to the Intimidated Witness Program; (2) applicants referred by the Administration for Children's Services (ACS) Family Unification and Independent Living programs; or (3) victims of domestic violence. Further, applicants must meet NYCHA's definition of a family. To qualify as an eligible family, applicants must fall into one of three categories:[47] (1) two or more persons related by blood, marriage, registered domestic partnership, adoption, guardianship, or court-awarded custody; (2) two or more unrelated persons living together as a cohesive household group in a sharing relationship; or (3) a single person, with preference given to the elderly or disabled.

The applying family must also be a very low-income household. NYCHA does not accept low-income applicants.[48]

ii. HPD

As of July 2008, HPD serves only three categories of applicants.[49] First, the homeless are eligible for HPD vouchers. The second category covers persons affected by an HPD-funded renovation. Some buildings owned by or transferred to New York City (or an entity the City designates to achieve its housing goals) need renovation. HPD offers funds in the form of loans or grants to renovate these buildings and may provide voucher assistance to tenants to locate permanent, alternate housing.[50] Third, HPD can issue vouchers to residents currently living in buildings constructed or renovated with HPD financial assistance. Applicants in this last category must be referred by HPD program staff.[51]

HPD also administers "enhanced," or "sticky," vouchers to protect residents of rent-regulated apartments when the private-property owner opts out of a project-based contract to convert the property to market-rate housing.[52] Enhanced vouchers have higher income limits (up to 95% of the area's median income) and provide more help to pay the now-higher market rent.[53]

iii. DHCR

As of July 2008, DHCR is not accepting any new applications. It has closed its waiting list due to the large number of families already in line for DHCR vouchers.[54]

B. Rent-Setting

The amount of PHA assistance a voucher is worth to a household depends on three factors: (1) the household's adjusted income; (2) the selected dwelling's monthly rent; and (3) a PHA-determined "payment standard."[55] In determining the amount of rent a voucher covers, a household's income is adjusted, with deductions granted for children, students, elderly family members, and family members with disabilities.[56] The payment standard is a benchmark value that measures the amount needed to rent a moderately priced dwelling in a local housing market.[57] PHAs must set payment standards between 90% and 110% of the HUD-estimated "fair market rent."[58]

If the rent of the dwelling unit selected by voucher recipients is at or below the payment standard, recipients pay 30% of their adjusted income toward the rent. The voucher covers the rest.[59] Families are free to choose dwellings with rent above the payment standard, but the voucher will not cover any extra rent. Any rent the voucher does not pay must be met by an increase in the family's contribution.[60] When the family first enters the

voucher program, either by moving into a new unit or by signing its first voucher-assisted lease, it may not select a dwelling with a rent that would make the family's contribution greater than 40% of its adjusted monthly income.[61] Therefore, vouchers (with a few exceptions explained below) pay an amount equal to the payment standard less 30% of a family's adjusted monthly income, and the family pays between 30% and 40% of its adjusted monthly income toward rent.

Some exceptions apply to the rule above. HUD requires PHAs to set a minimum rent value between $0 and $50.[62] Families must pay at least this minimum contribution, even if it exceeds 40% of their adjusted monthly income.[63] NYCHA has no minimum dollar value. It instead requires a minimum contribution of 10% percent of gross income if the family's rent contribution according to the 30%-to-40% standard falls below 10% of gross income.[64] HPD requires tenants to pay the higher of 30%-to-40% of adjusted monthly income, 10% of gross income, or $50.[65] In addition, for dwellings in which the tenants pay utility costs directly to the landlord, a tenant's rent contribution will be reduced by a PHA-determined utility allowance.[66]

PHAs reexamine the family's income and composition at least annually to ensure continuing eligibility.[67] Payment amounts may be adjusted as a result of these recertifications based on changed income or increased rent.[68]

Once accepted into the Housing Choice Voucher Program, tenants are free to move with their vouchers to anywhere in the United States.[69] Families looking to move within a PHA's jurisdiction or to another jurisdiction might be subject to restrictions and must apply to their local PHA.[70]

C. The Landlord's Obligations

Before approved voucher recipients may move into a dwelling they have selected, the local PHA must inspect it to ensure that it complies with HUD's minimum Housing Quality Standards (HQS).[71] If the PHA approves the dwelling, the landlord enters into a lease with the tenant for at least one year, after which the landlord may initiate a new lease or allow the family to remain in the unit on a month-to-month basis.[72] The landlord simultaneously enters into a housing assistance payments (HAP) contract with the PHA.[73] Under this contract the landlord agrees to maintain both the minimum HQS as well as services agreed to as part of the tenant's lease. The PHA inspects the unit annually to ensure compliance. A landlord's failure to correct HQS violations after a failed inspection can result in the PHA's terminating or suspending the housing assistance paid to the landlord.[74]

D. Project-Based Assistance

Assistance provided under the Housing Choice Voucher Program may also be "project based." Project-based assistance is tied to a particular building rather than a particular family. Under a project-based HAP contract, the owner agrees to build or rehabilitate certain dwellings, and the PHA agrees to subsidize those dwellings upon the owner's satisfactory completion of rehabilitation or construction.[75] With project-based vouchers, PHAs can support the development of affordable housing. In return, the project owner is assured a steady stream of tenants and revenue.

HUD does not provide a separate funding allocation for project-based vouchers. Rather, PHAs are authorized to spend up to 20% of their Housing Assistance Voucher Program funds on project-based vouchers.[76] Further, there is no separate application for project-based vouchers. Instead, PHAs offer project-based assistance to families that apply for tenant-based assistance when eligible dwellings become vacant.[77] The family may then accept if it is interested or wait for a tenant-based voucher to become available. After a year under a project-based voucher, a family may transfer to a tenant-based voucher if one is available. Before the PHA approves that transfer, the voucher remains project-based, and the family loses the assistance if it moves.[78]

Project-based vouchers are part of the Housing Choice Voucher Program and are different from the project-based Section 8 program.[79] The latter, which is not funded through PHAs, refers to the remnants of the Section 23-style subsidy contracts with private building owners initially established during the 1970s and 1980s when the Section 8 program took over these operations.[80]

IV. Section 8 Litigation: The Long and Winding Road

Litigation has shaped many of the key elements of Section 8 in New York City. While tenants have sued to maintain procedural due process, landlords have fought to ease the program's restrictions and requirements.

A. *Williams* Consent Judgments and their Progeny

NYCHA settled several landmark class-action lawsuits with agreements that established and strengthened procedural safeguards for tenants. The most important of these is *Williams v. New York City Housing Authority*.[81] The case began on March 26, 1981, in the United States District Court for the Southern District of New York at a time when the older rental-certificate and rental-voucher programs were still in effect. The class-action plaintiffs represented "all families who are or will be assisted under the Section 8 Existing Housing or Voucher program."[82] They sued NYCHA and Section 8 landlords, challenging the existing termination and eviction procedures as violating their due process.

The parties entered into their first partial consent judgment—sometimes called "decree"—on October 4, 1984.[83] This initial settlement established procedures under which Section 8 tenants could challenge a NYCHA decision to terminate their Section 8 subsidy payments.[84] Under this settlement, tenants must first receive a warning notice from NYCHA and have an opportunity to correct

conditions that form the basis for the proposed termination.[85] If the tenant does not remedy the situation or otherwise disagrees with the allegations, a second notice is then sent. Tenants can then request a hearing before a NYCHA impartial hearing officer, who renders a determination. Subsidy payments continue while a determination is pending.

The hearing officer can order outright termination, termination unless certain conditions are corrected, or the continuation of the subsidy.[86] The NYCHA board reserves the right to review the hearing officer's ruling. If the NYCHA board chooses to issue a ruling less favorable to the tenant, the board must give an explanation. If the hearing officer or the NYCHA board orders a termination, the tenant is entitled to seek judicial review in a CPLR Article 78 proceeding in Supreme Court. Tenants are unable to continue receiving assistance if they are found to have defrauded the Section 8 program.[87] A tenant who does not respond to a second notice is sent a default notice. The tenant's subsidies are automatically terminated after 45 days if the default is not challenged. NYCHA must send all notices in English and Spanish by regular and certified mail.

On April 27, 1994, the district court approved a second partial consent judgment that resolved the remainder of the plaintiffs' claims.[88] This agreement set out new procedures for landlords who sought to evict Section 8 tenants in nonpayment cases. Before *Williams*, federal law allowed landlords to evict Section 8 tenants "for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause."[89] Before the *Williams* settlement, a landlord's eviction proceeding had to be preceded only by "written notice to the tenant specifying the grounds for such action."[90]

The second *Williams* partial consent judgment added procedural safeguards for tenants. Landlords seeking to evict a NYCHA Section 8 tenant must now give both the tenant and NYCHA 25 days' notice before commencing eviction proceedings.[91] The notice must contain specific factual allegations. The tenant is given 10 days to respond, after which NYCHA has 20 days to accept or object to the basis advanced for eviction.[92] NYCHA may object, for example, if it finds that the facts in the landlord's 25-day notice fail to set forth a good cause to evict even if the facts are proven. NYCHA may also object if a landlord alleging nonpayment of rent seeks to recover more than the tenant's actual share of the rent.[93] If NYCHA objects to the eviction proceeding, the landlord must name NYCHA as a respondent in the proceeding.[94]

The defendant-landlords argued that the additional procedures in the second *Williams* partial consent judgment, when added to the time required to serve a demand and a petition, would cost them several extra months of lost rent even in legitimate eviction proceedings.[95] The court found, however, that "[t]he proposed settlement, while less than perfect, is fair, reasonable, and adequate."[96] The court reasoned that although NYCHA was providing a service to the tenants, "the fact that Section 8 tenants receive a portion of their rent from the government should not deprive them of the right to feel secure in their dwellings, without concern of being unjustly evicted."[97] The court also praised the opportunity for NYCHA to object and be involved in the case, stating that "[f]or the Section 8 program to function effectively and equitably, [NYCHA] must maintain a monitoring role in the process."[98] The court further approved of giving tenants time to find out their rights, seek assistance, and determine how they want to proceed.

The procedures set out in the second *Williams* partial consent judgment initially applied only to nonpayment cases.[99] On September 29, 1994, the district court approved an extension of the agreement to include holdovers that "arise out of or are related to the termination or suspension of the Section 8 subsidy."[100] For all other holdover proceedings, the landlord may proceed as if the tenant were not subsidized, although a copy of the petition must be sent to NYCHA.[101]

Importantly, the second *Williams* partial consent judgment made it clear that nonpayment proceedings may not be brought against tenants solely to recover unpaid Section 8 subsidies. A nonpayment proceeding can be brought against a tenant only if the tenant's share of rent is outstanding.[102]

The *Williams* consent judgments apply only to NYCHA. They do not bind federal agencies or other PHAs.[103] Although *Williams* was settled before the Housing Choice Voucher Program replaced the older certificate and voucher programs, the procedures outlined in the consent judgment are still in effect.[104]

In *McNeil v. New York City Housing Authority*, tenants again filed a class-action lawsuit against NYCHA and Section 8 landlords over what they believed were NYCHA's inadequate procedures and policies when subsidies were suspended or terminated over Housing Quality Standards violations.[105] Tenants demanded notice, advice, and assistance when HQS violations were found in their apartment.[106] Tenants were often sued for nonpayment when subsidies were withheld, and tenants were often unclear about their rights. As long as their apartment contained HQS violations, it was ineligible for Section 8 assistance. Thus, tenants also demanded help to find alternative housing when violations are found and not remedied.[107]

In a settlement agreement dated April 29, 2002, NYCHA agreed to provide new and existing Section 8 landlords with notices explaining that landlords cannot seek judgments from Section 8 tenants for the subsidy portion of the rent.[108] In addition, NYCHA agreed to inform tenants if it found HQS violations in the tenant's apartment. NYCHA also agreed not to terminate subsidy contracts with the landlord for HQS violations. Instead,

NYCHA would "suspend" the subsidy, allowing the tenant to be eligible for the protections guaranteed to voucher recipients.[109] If the landlord did not correct the HQS violations, tenants would be granted transfer vouchers to find alternative housing.

In *Frunzescu v. Martinez*, tenants sued NYCHA over the timely provision of transfer vouchers.[110] Tenants complained that NYCHA's slow response to transfer requests caused Section 8 tenants to be evicted because their leases would expire in the interim. Under the stipulated settlement, if a Section 8 tenant request a transfer, NYCHA would respond within two weeks with a decision. This agreement was in effect for only three years—through 2004.

Williams's impact on holdover proceedings commenced against Section 8 tenants is less significant than its impact on nonpayment proceedings. Holdover proceedings may be commenced against Section 8 tenants at the expiration of the lease term[111] or if the tenant triggers a conditional limitation in a lease. A conditional limitation is a clause in a lease that provides for its automatic expiration a certain number of days after a contingency occurs.[112]

Tenants in breach-of-lease clauses and terms that are not conditional limitations must be given ten days to correct the violation. The lease is not automatically terminated. A landlord may not bring a holdover proceeding against a tenant while a lease is still in effect.[113] This opportunity to cure is statutorily guaranteed to Section 8 tenants.[114]

HUD provides a cause of action in a holdover against tenants if there is a finding of fraud in the tenant's income recertification. The HUD Housing Handbook requires that the landlord first notify the tenant in writing of the allegedly fraudulent act.[115] The tenant then has 10 days to meet with the landlord to discuss the allegations before the landlord makes a final decision.[116] Although the *HUD Handbook* is not formally published in the *Federal Register*, the courts have found that the *HUD Handbook* is binding and properly sets forth procedures to be followed under the Section 8 program.[117]

A landlord's failure to comply with the above procedures may provide the tenant with a complete defense in a nonpayment or holdover proceeding. In *433 West Associates v. Murdock*, the Appellate Division held that compliance with the *Williams* consent judgments as well as the clear mention of the tenant's Section 8 status as required by RPAPL 741 were "essential elements" to the landlord's case.[118] The *Williams* requirements of course still apply only to NYCHA Section 8, but the requirement to plead the tenant's Section 8 status applies to actions against all Section 8 tenants. Defenses based on a failure to meet these requirements are not jurisdictional; they are waived if a tenant fails to raise them.[119] Recently, though, some courts have held that failure to plead regulatory status is a flaw that can be remedied, as long as the tenant is not prejudiced by the initial failure.[120]

B. Housing Quality Standards and the Warranty of Habitability in Section 8 Units

As *McNeill* and its settlement provisions suggest, a possible termination of subsidy payments for HQS violations is controversial. In *Nichols v. Drake*, a New York City court held that a landlord's failure to pass an HQS inspection and the cessation of Section 8 subsidy payments do not automatically bar a landlord's eviction proceeding if the tenants do not pay their share of the rent.[121] As in *Nichols*, landlords may proceed with a nonpayment case if they can show that a tenant caused the violations by neglecting to maintain the dwelling or by interfering with the landlord's good-faith attempts to repair.[122] The court acknowledged that a landlord's failure to repair creates problems for Section 8 tenants, who often must move to another eligible apartment if they want to continue receiving assistance.[123] The court added, however, that enhanced due-process rights for tenants cannot come at the complete expense of the landlord's due-process rights.[124]

In *Cashmere Realty Corp. v. Hersi*, a landlord argued that because it failed to make repairs that NYCHA and HPD ordered its HAP contract with NYCHA was terminated and it was no longer bound by the *Williams* consent judgments.[125] The court disagreed. It found that if a subsidy is suspended or terminated after a failed inspection, the landlord still must comply with the *Williams* consent judgments.[126] NYCHA's Policy Memorandum LHD # 04-43 provides that *Williams* must be followed even if the tenant is no longer a voucher holder, provided that the subsidy was suspended because of the landlord's HQS violations.[127] According to the *Hersi* court, Section 8 landlords cannot escape their contractual obligations by failing to repair. The landlord's failure in *Hersi* to notify NYCHA of the eviction proceeding resulted in the dismissal of the petition.

Further repair-related legal problems arise because Section 8 voucher arrangements involve three parties, not two. When assessing a tenant's abatement claim for the landlord's violation of the warranty of habitability, compensation is determined using the fair market value of the premises.[128] The tenant is entitled to recover the difference between the fair market rent and the reduced value of the premises as a result of inadequate conditions.[129] In *Committed Community Associates v. Croswell*, a King's County nonpayment case, the tenant asserted a counterclaim alleging breach of the warranty of habitability and sought an abatement. The landlord argued that the abatement should be calculated according to the tenant's share of the rent and not the full contract rent. The trial court held that the proper measure of the fair market rent is the contract rent—the subsidy and the tenant's share combined.[130] The court reasoned that the total amount the landlord collected reflected the value of services pro-

vided to the tenant and that the HUD Housing Handbook, 4350.3, section 3-23, supported this.[131]

The Appellate Term affirmed.[132] The Appellate Term found that if the monthly rent of an apartment is $1,000, and the tenant's share is $300, a warranty of habitability violation that reduced the value of the apartment by one-fifth should entitle the tenant to an abatement of $200. It would be unjust to use the tenant's share to calculate damages; doing so would give the tenant in the above example only a $60 abatement even though the landlord provided only $800 worth of housing.[133] However, the Appellate Term added that because recovery from a breach of the warranty of habitability depends on paying rent, Section 8 tenants receiving vouchers cannot recover damages that exceed their share of the rent.[134] With the Appellate Term's cap, if the landlord's violations in the above example reduced the value of the apartment by one-half, the tenant's recovery would be capped at $300 even though the violations reduced the value of the apartment by $500.[135] The Appellate Division affirmed this decision.[136]

C. Challenging the Termination of a Section 8 Subsidy

Issues surrounding termination of subsidies provide grist for the Section 8 litigation mill. To maintain eligibility for NYCHA's Section 8 program, participants must be reviewed each year to ensure that their income and household composition continue to meet eligibility requirements.[137] Should NYCHA determine that a tenant is no longer eligible for the program or should a tenant somehow fail to comply with the eligibility requirements, subsidy payments might be terminated.[138] A subsidy might also be terminated if a tenant does not grant access to PHA inspectors to verify the landlord's continuing compliance with Housing Quality Standards.[139]

A key procedural due-process safeguard for tenants is the right to challenge an administrative determination in an Article 78 proceeding. Article 78 proceedings, derived from the corresponding CPLR article, are rooted in the common-law writs of *mandamus, certiorari*, and prohibition. Courts have upheld tenants' right to assert in an Article 78 proceeding all the procedural safeguards set out in the first *Williams* consent judgment.[140] Section 8 tenants can prevail in a Supreme Court Article 78 proceeding if the court finds that NYCHA's termination of their Section 8 benefits was arbitrary or capricious.[141] A failure to comply with the procedures in the *Williams* consent judgments might be arbitrary or capricious.[142]

New York courts have been strict about the notice requirements set out in the first *Williams* consent judgment. In *Baldera v. Hernandez*, the court found that a Brooklyn tenant's subsidy was improperly terminated when NYCHA's records showed that the default notice sent by certified mail had never been claimed and when NYCHA had no evidence that the notice was sent by regular mail.[143] Courts have also ruled that boilerplate notices in English and Spanish are insufficient to satisfy *Williams*'s notice requirements.[144] In *Almieda v. Hernandez*, the court restored a tenant's subsidy when NYCHA sent notices in English and Spanish but the specific claims against the tenant were filled out only in English.[145] The court found that this violated *Williams*'s requirement that the tenant be made aware of the grounds for termination.[146] The courts have also strictly scrutinized other mailing and language requirements as set out in *Williams*.[147]

A tenant must commence an Article 78 action within four months of the administrative agency's final determination.[148] If a tenant does not respond to the PHA's termination warnings, the termination is considered final and binding once the tenant receives the default notice.[149] New York courts have recognized a rebuttable presumption that a default notice is received five days after mailing.[150] Failure to receive a default notice tolls the statute of limitations.[151] In the event of a default, the four-month statute of limitations begins to run from the date that a tenant's application to vacate a default is denied.[152]

D. Opting Out of Tenant-Based Section 8

Several issues arose as Section 8 matured as a wide-reaching public-housing program. First, owners were concerned about the statute's "take-one, take-all" provisions.[153] The take-one, take-all rule came from section 8(t) of the U.S. Housing Act of 1937. That section forbade an owner who already entered into a HAP contract on any tenant's behalf in a multifamily housing project to refuse to lease a unit in the owner's multifamily housing projects, if the proximate cause of the refusal was that the family was a Section 8 certificate or voucher holder. Second, owners protested against what they called the Housing Act's "endless lease" provisions. Section 8(d)(1)(B)(ii) provided that an owner may not terminate a Section 8 tenancy except for serious or repeated lease violations, for violating applicable federal, state, or local law, or for other good cause. Third, owners disliked the opt-out requirement that they send a written notice to HUD before a HAP contract was terminated.[154] Section 8(c)(9) required an owner to provide written notice to a HUD field office and the family not less than 90 calendar days before a tenant-based HAP contract ended.

In 1996, Congress attempted to address what in the legislative history is referred to as "disincentives" to Section 8 owner participation. This act temporarily amended the U.S. Housing Act of 1937 to suspend the "take-one, take-all" provision. It also amended §§ 8(d)(1)(B)(ii) and (iii) so that landlords need good cause to terminate a Section 8 tenancy only during the term of the lease. In other words, landlords—with important exceptions explained below—are now free to stop accepting Section 8 subsidies without cause if they do so at the end of a lease term.

This act also amended Housing Act § 8(c)(9) to eliminate the requirement that owners participating in the certificate or voucher programs provide a 90-day termination notice to families that are voucher holders and one-year termination notices to HUD for project-based HAP contracts. In 1998, Congress made these amendments permanent.

Although the 1996 amendment is straight-forward as applied to non-regulated tenancies, controversy arose when applying it to rent-stabilized tenancies in New York State. New York's Rent Stabilization Code requires that landlords offer to renew all stabilized leases and that these renewal leases be "on the same terms and conditions of the expired lease."[155] In *Bran-Trav Development v. Matus*, a Kings County court found that accepting a Section 8 subsidy is "a material term and condition of a rent stabilized lease."[156] The court held that stabilized leases must be renewed and that a landlord's acceptance of Section 8 subsidies is a part of a stabilized lease also subject to renewal.[157] Citing *Mott v. Department of Housing and Community Renewal*, the *Matus* court held that the Section 8 regulatory scheme did not pre-empt state law regarding rent regulation.[158] In *M 1849 LLC v. Inniss*, a Bronx County court cited *Matus* with approval, adding that from a public-policy perspective, allowing landlords to opt out of Section 8 when renewing rent-stabilized leases would put tenants on the street and violate the Rent Stabilization Code.[159]

Other New York courts disagreed. In *Seminara Pelham, LLC v. Formisano*, a New Rochelle court found that Congress intended to allow landlords to opt out.[160] The court added that because Section 8 is a federal program, Congress was free to control who would receive benefits.[161] The court further found no conflict between state and federal law, because the Rent Stabilization Code and *Mott* dealt with rent regulation while the 1996 amendment controlled who would participate in the Section 8 program.[162] Similarly, in *Licht v. Moses*, a Kings County court noted that the 1996 amendment was introduced to improve landlord cooperation with the Section 8 program. Federal law should prevail over the New York Rent Stabilization Code because, according to the *Licht* court, the latter would obstruct the 1996 amendment's goals.[163]

Some New York courts took a middle ground, holding that although rent-stabilized leases must be renewed on the same terms and conditions, accepting Section 8 subsidies was not such a term and condition unless the original lease expressly provided for it.[164] These courts found that although HAP contracts between a local PHA and the landlord ran concurrently with a rent-stabilized lease, they were independent contracts.[165] Landlords choosing to opt out would terminate their HAP contract with the PHAs, and the rent-stabilized lease would continue without Section 8 subsidies unless the lease expressly allowed it.[166]

Even the PHAs disagreed on how to address the issue. DHCR took the position that the HAP contract and the actual lease were not "inextricably merged."[167] NYCHA, on the other hand, issued an opinion letter stating that "[i]f a landlord of an occupied rent stabilized apartment offers the tenant a renewal lease . . . the landlord cannot offer the tenant a renewal term without also renewing Section 8 subsidy for the tenant."[168]

In July 2007, the New York Court of Appeals resolved the controversy in *Diagonal Realty v. Rosario*.[169] The court found that a landlord's decision to accept Section 8 rental subsidy payments was a term of every Section 8 lease executed with a rent-stabilized tenant.[170] The court pointed to HUD's regulations that require landlords to include tenancy addendums in every lease they sign with Section 8 beneficiaries.[171] This addendum must state that the tenant is receiving Section 8 assistance and is not responsible for paying the subsidy portion of the rent. The court found that this was sufficient to make "acceptance of Section 8 subsidies a term of every lease that a landlord signs with a Section 8 tenant."[172] Thus, the court ruled, landlords may not opt out of Section 8 arrangements with rent-stabilized tenants. Because the Rent Stabilization Code refers only to the "existing" lease, it does not matter whether the tenants were Section 8 recipients when they first moved into the home.[173] The addendum would have been written into the lease when the tenants began to receive Section 8 benefits, and all subsequent renewals would contain that provision.[174]

Turning to the preemption question, the court found that one of the defenses Congress advanced in support of repealing the endless-lease provision was that "protections will be continued under State . . . and local tenant laws."[175] The court found no conflict between state and federal law to suggest implied preemption. Landlords remain free to opt out when the tenancy is unregulated. The New York Rent Stabilization Code applies only when rent-regulated tenancies are involved.[176]

A landlord's ability to opt out might be restricted in some additional circumstances. For example, landlords that received tax benefits under New York City Administrative Code § 11-243 may not decline to accept Section 8 subsidies. Subdivision (k) of § 11-243 is an anti-discrimination provision that prohibits landlords receiving tax benefits from discriminating against Section 8 participants. The Appellate Term, First Department, has held that allowing opt out when the landlord receives tax benefits "would have the effect of rendering the anti-discrimination provision meaningless."[177]

E. Opting Out of Project-Based Section 8

Project-based Section 8 assistance first became available in the 1970s. Participating landlords typically committed their housing project to a 20-year term.[178] Landlords have always been free to opt out of Section 8 after their project-based contract expired.[179]

When a landlord opts out, many low-income tenants become unable to pay their rent. As a result, Congress amended the Housing Act in 1999 to provide these tenants with "enhanced vouchers," also called "sticky vouchers."[180] These vouchers allow tenants to keep paying the rent they owed when their building was still under project-based assistance, as long as the tenant lived in the same building.[181] Enhanced vouchers are typically of higher value than the typical tenant-based, fixed-value voucher. In New York City, HPD administers enhanced vouchers.

Some landlords opted out of a project-based contract at the end of its term and then tried to opt out of taking the enhanced vouchers at the end of the next lease term. Federal law, however, prohibits landlords from refusing to accept enhanced vouchers. In *Esteves v. Cosmopolitan Associates, L.L.C.*, building owners argued that the Housing Act grants tenants a right to receive an enhanced voucher from PHAs but does not require landlords to accept them.[182] The District Court for the Southern District of New York disagreed, holding that because enhanced vouchers were created to allow tenants to keep their homes, a landlord must accept the voucher. Otherwise, the federal "right to remain would be illusory."[183] The owners argued that this interpretation would essentially be an "end run" around the 1996 repeal of the endless-lease provision. The court disagreed, finding that if anything, enhanced vouchers were created because of the 1996 repeal as a special exception "granting extra protection to [a] subgroup of tenants."[184] The court warned that if owners tried to circumvent this by refusing to enter into HAP contracts with HPD, they would be barred from suing an enhanced voucher-holder for the voucher portion of the rent.[185]

F. Nonpayment Issues After the Termination of Section 8 Subsidies

As long as a NYCHA Section 8 lease continues and the landlord is unable to opt out—for example, if the tenant is rent-stabilized—a landlord is prohibited by the second *Williams* partial consent judgment from suing the tenant to collect the subsidy portion of the rent. Even if a Section 8 subsidy is properly terminated, a landlord may not initiate a nonpayment proceeding to recover the subsidy portion of the rent from the tenant; under a Section 8 lease, the tenant agrees to pay only the tenant's portion of the rent.[186] If the PHA has properly terminated the HAP contract, the landlord is similarly unable to recover the value of the subsidy from the PHA.[187]

This does not mean that a landlord is without recourse. A landlord may seek what was formerly the subsidy portion of the rent from the tenant if, after the subsidy is terminated, the landlord and tenant enter into a new agreement "in which the tenant agrees to pay the non-tenant share of the rent."[188] This must be a new lease agreement, not merely a renewal lease.[189] If a tenant signs a new agreement, the landlord may initiate a nonpayment proceeding if the tenant fails to pay any portion of the specified rent.[190] In addition, landlords may refuse to offer a renewal lease or a new rental agreement. They may then initiate a holdover proceeding and possibly recover market-value use and occupancy for the holdover period.[191]

A stipulation to settle a nonpayment proceeding in which the tenant agrees to pay the subsidy portion of the rent does not constitute a new rental agreement and is invalid.[192] The implication is that because a nonpayment proceeding could not have been initiated in the first instance, there could be no settlement. The New York State rule for nonpayment proceedings prevents tenants from ever being "liable for the Section 8 share of the rent as *rent*"[193] absent a new agreement.

G. Section 8 and Succession

Under the Section 8 program, federal law recognizes the entire family as the tenant-household.[194] If a family member were to vacate or pass away, the remaining family members may succeed a tenant-based voucher if they were part of the household for one year (NYCHA vouchers) or six months (HPD vouchers), provided the household remains eligible.[195] It is possible for minor children to succeed the subject premises.[196] To succeed to a tenant-based voucher, remaining family members must be registered with the PHA. In *Evans v. Franco*, the New York Court of Appeals held that the remaining family members of a Section 8 tenant-based voucher holder could not succeed to the subsidy; they had not been certified as family members and did not appear on income affidavits.[197] The court reasoned that allowing succession based solely on evidence of extended cohabitability would open the door to possibly fraudulent claims against the Section 8 program.[198] To succeed to a tenant-based voucher, remaining family members must register with the PHA and have their income factored into the household's eligibility calculation.

New York law governing the succession of project-based Section 8 assistance is less clear than the law governing tenant-based Section 8 assistance. After *Evans* was decided in 1999, several courts, including the Appellate Term, First Department, applied the *Evans* holding to project-based subsidies as well as to tenant-based vouchers and rejected succession claims by persons the PHA did not approve as family members.[199] In *Manhattan Plaza Associates L.P. v. Department Housing Preservation and Development*, however, the Appellate Division declined to extend *Evans* to project-based subsidies.[200] The *Manhattan Plaza* court held that HPD's rules for project-based assistance did not preclude the possibility of a hearing to determine succession even if the claiming party was not certified on income affidavits.[201]

Later cases appeared to follow *Manhattan Plaza*. In *2013 Amsterdam Avenue Housing Associates v. Wells*, the Appellate Term, First Department, held that "the absence of [Wells's]

name on the family composition document was not fatal to her succession claim otherwise established by the trial evidence."[202] Wells could succeed because she could prove she lived in the apartment for two years before her mother's death, as required under New York tenancy succession law (i.e., not voucher succession).[203] *Wells* was followed by a New York City court in *Upaca Site 7 Associates v. Hunter-Crawford*.[204]

The *Manhattan Plaza* decision relied on New York City Mitchell-Lama regulations stating that the absence of income affidavits created only a presumption against co-occupancy.[205] However, these regulations have since been amended to require listing on affidavits in addition to proof that the applicant seeking to succeed lived in the dwelling for two years before the succession claim.[206] Few cases dealing with this question have arisen since *Wells*. It is unclear whether *Wells* represents a permanent departure from cases that applied *Evans* to project-based Section 8.[207]

Other laws governing succession of project-based Section 8 are more well-settled. Because some housing projects are contracted to provide housing for a specific class of tenants, tenants who fall outside that class cannot succeed a project-based subsidy even if they are certified and can otherwise prove extended co-residency. In *St. Phillips Church Housing Corporation v. George*, a 45-year-old son's application to succeed his father's unit was denied because the Housing Corporation had been granted a project-based contract to provide housing for low-income senior citizens.[208] A court found that because project-based subsidies are not portable, "the right to possession and the right to the subsidy cannot be separated."[209] Those ineligible to occupy an apartment may not succeed a project-based Section 8 subsidy tied to that apartment.

It is therefore possible in New York City for individuals to succeed to both tenant-based vouchers and project-based subsidies, especially if they are listed as members of the household in the recertification documents.

V. Section 8: Anti-Discrimination Issues

Tenant advocates and policy-makers have long struggled to prevent landlords from discriminating against Section 8 recipients.[210] Many landlords cite bureaucratic entanglements, delays, and the burden of inspections as reasons for their refusal to accept Section 8 from tenants. Other landlords reject Section 8 tenants to discriminate against the poor and minorities.

Various state and local jurisdictions throughout the United States have adopted anti-discrimination laws to protect Section 8 voucher holders. A statute in Los Angeles, California, provides that "[i]t shall be unlawful for any landlord to terminate or fail to renew a rental assistance contract with the Housing Authority of the City of Los Angeles (HACLA), and then demand that the tenant pay rent in excess of the tenant's portion of the rent under the rental assistance contract."[211]

The New York City Council attempted to enact its own anti-discrimination law but was initially thwarted. According to the *New York Times*, Mayor Michael Bloomberg said that the bill, while well-intentioned, prohibited landlords from making sound business decisions and required them to enter into contracts with government agencies they might otherwise avoid. In a press release, the Mayor stated that the bill "fails to recognize that the onus should be on government to make the program more attractive for private sector participation, not the other way around."[212]

On March 26, 2008, the City Council voted to override the Mayor's veto. According to a statement from Speaker Christine Quinn: "This legislation . . . will not only increase access for people eligible for Section 8 vouchers to affordable housing, it will fully protect an individual's right to housing, regardless of their financial circumstances."[213]

Specifically, this law amended Chapter 1 of Title 8 of the administrative code to proscribe lawful source of income as a category of discrimination and to define lawful source of income as "income derived from social security, or any form of federal, state or local public assistance or housing assistance including Section 8 vouchers."[214] This law does not apply to buildings containing fewer than six units,[215] although units in smaller buildings are also protected if the units are rent controlled or if the landlord of the unit owns another building with at least six units.[216]

Although it is difficult to predict the long-term effects of this law, at least one court has already cited it in favor of tenants who sued their landlord to force it to accept Section 8. In *Rizzuti v. Hazel Towers*, the court found that the new law is unambiguous: It requires landlords to accept Section 8 vouchers from otherwise eligible tenants.[217]

Recent Section 8 litigation may reflect a broadening anti-discrimination attitude in the New York courts when it comes to Section 8 tenants. The New York City Civil Court, Housing Part, recently held in *Metro North Owners v. Thorpe* that the Federal Violence Against Women Act applies to female Section 8 tenants to prevent them from being evicted on the basis of domestic violence against them.[218] In that case, the landlord had sought to evict the Section 8 tenant based on an alleged lease violation grounded in nuisance.[219] The incidents of nuisance were domestic-violence altercations between the tenant and a male aggressor. Because the tenant showed evidence of "battered woman syndrome" in her relations with the man, VAWA protection was appropriate.[220] It remains to be seen whether other courts will continue to expand anti-discriminatory protections for Section 8 tenants.

VI. Conclusion

The Section 8 program continues to be a boon for thousands of tenants and landlords in New York City. Its rules and regulations, while confounding to many, have provided steady rents for landlords and stable homes for tenants. As with any federal program, the story of Section 8 will continue to be written through litigation, legislation, and compromise. Its theme of a public-private partnership to provide safe, decent, and affordable housing will probably endure.

Endnotes

1. Congress has initiated reforms to the Section 8 program, called the "Section 8 Voucher Reform Act of 2007," or "SEVRA," to increase the number of vouchers, eliminate inefficiencies, and appease concerns of landlords and tenants. However, this bill remains controversial among low-income housing advocates and is currently stalled in a Senate committee. *See* http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.1851: (last visited Feb. 10, 2009).
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6. *Id.* at 613.
7. *Id.*
8. U.S. Dep't of Hous. & Urban Dev., HUD's History, *available at* http://www.hud.gov/library/bookshelf12/hudhistory.cfm (last visited Feb. 10, 2009).
9. Guidebook, *supra* note 3, at 1-2.
10. Katharine L. Bradbury, 20 J. Econ. Lit. 637, 637 (1982) (reviewing Housing Vouchers for the Poor: Lessons from a National Experiment (Raymond J. Struyk & Marc Bendick, Jr., eds. 1981)).
11. Guidebook, *supra* note 3, at 1–2.
12. *Id.* at 1–3.
13. *Id.*
14. *See* 42 U.S.C. § 1437 (2000).
15. Guidebook, *supra* note 3, at 1–3.
16. *Id.*
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23. *Id.*
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26. N.Y. State Div. of Hous. & Cmty. Renewal, *Statewide Section 8 Program*, *available* at http://www.dhcr.state.ny.us/publications/housinginformationseries/hissec8.htm (last visited Feb. 10, 2009).
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29. *Id.*
30. U.S. Dep't of Hous. & Urban Dev., Housing Choice Vouchers Fact Sheet, *available at* http://www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm (last visited Feb. 10, 2009) [hereinafter Fact Sheet].
31. Introduction, *supra* note 18.
32. *Id.*
33. *Id.*
34. U.S. Dep't of Hous. & Urban Dev., 2008 Income Limitations—State: New York, 2 (2008), *available at* http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/2008/ny.pdf (last visited Feb. 10, 2009) [hereinafter Income Limits].
35. Fact Sheet, *supra* note 30; Introduction, *supra* note 18.
36. Guidebook, *supra* note 3, at 5–3.
37. *Id.*
38. *Id.*
39. *Id.* at 5–1.
40. *Id.*
41. *Id.* at 5–3.
42. *Id.* at 5–1.
43. *Id.* at 5–5.
44. *Id.*
45. Fact Sheet, *supra* note 30.
46. N.Y. City Hous. Auth., Guide to the Section 8 Housing Assistance Program, 1 (May 2008), *available at* http://www.nyc.gov/html/nycha/downloads/pdf/070213N.pdf (last visited Feb. 5, 2009) [hereinafter NYCHA Guide].
47. *Id.* at 2–3.
48. *Id.* at 3; Income Limits, *supra* note 34, at 2.
49. Residential Tenants, *supra* note 25.
50. *Id.*
51. *Id.*
52. *Esteves v. Cosmopolitan Assocs.* N.Y. L.J, Dec. 12, 2005, at 23, col. 3 (E.D.N.Y. 2005).
53. Residential Tenants, *supra* note 25.
54. N.Y. St. Div. of Hous. & Cmty Renewal, Subsidy Services Unit, *available at* http://www.dhcr.state.ny.us/Programs/Section8HCV/subsvs.htm (last visited Feb. 10, 2009).
55. Introduction, *supra* note 18.
56. Introduction, *supra* note 18; NYCHA Guide, *supra* note 46, at 6.
57. Fact Sheet, *supra* note 30.
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59. Guidebook, *supra* note 3, at 6-2.
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61. Guidebook, *supra* note 3, at 6–2; NYCHA Guide, *supra* note 42, at 6; Residential Tenants, *supra* note 25.
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63. *Id.*
64. NYCHA Guide, *supra* note 46, at 6.
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70. *Id.*
71. Fact Sheet, *supra* note 30.
72. *Id.*
73. *Id.*
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76. *Id.*
77. *Id.*
78. Introduction, *supra* note 18.
79. *Id.*
80. *Id.*
81. *Williams v. N.Y. City Hous. Auth.*, 81 Civ. 1801, 1994 WL 323634 (S.D.N.Y. 1994)

[hereinafter *Williams Approval*] (decision approving class-action settlement).

82. *Williams v. N.Y. City Hous. Auth.*, Second Partial Consent Judgment, 81 Civ. 1801, at 2 (S.D.N.Y. 1995) [hereinafter *Williams II*].

83. *Williams v. N.Y. City Hous. Auth.*, First Partial Consent Judgment, 81 Civ. 1801 (S.D.N.Y. 1995) [hereinafter *Williams I*].

84. *Id.* at 1.

85. *Id.* at 2.

86. *Id.* at 8.

87. *Id.* at 10.

88. *Williams II*, 81 Civ. 1801.

89. 42 U.S.C. § 1437f(d)(1)(B)(ii) (2000).

90. 42 U.S.C. § 1437f(d)(1)(B)(iv) (2000).

91. *Williams Approval*, 1994 WL 323634 at *3.

92. *Id.* at *4.

93. N.Y. City Hous. Auth., Consequences of *Williams* Consent Judgment for Housing Court Proceedings, 5 (1997) (prepared by NYCHA for Housing Court seminar of Oct. 27, 1997) [hereinafter Consequences].

94. *Id.* at 3.

95. *Williams Approval*, 1994 W.L. 323634, at *3.

96. *Id.*

97. *Id.* at *2.

98. *Id.* at *4.

99. Consequences at 5.

100. *Williams v. N.Y. City Hous. Auth.*, 81 Civ. 1801, 1994 WL 533572, at *1 (S.D.N.Y. 1994) (decision extending scope of second partial consent judgment).

101. Consequences at 5.

102. *Id.* at 3.

103. *Id.* at 1.

104. *See, e.g.*, N.Y. City Hous. Auth., Section 8 Frequently Asked Questions, *available at* http://www.nyc.gov/html/nycha/html/section8/lh_ll_faqs.shtml#q8 (last visited Jan. 4, 2009).

105. *McNeill v. N.Y. City Hous. Auth., Stipulation of Settlement*, 88 Civ. 5870 (S.D.N.Y. 2002).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Frunzescu v. N.Y. City Hous. Auth., Stipulation of Settlement*, 2000 Civ. 6838 (E.D.N.Y. 2002).

111. *D'Alesso v. Haggins*, 9 Misc. 3d 138(A), 2005 N.Y. Slip Op. 51799(U), *4, 2005 WL 2937287, at *2, 2005 N.Y. Misc. LEXIS 2458, at *5 (Sup. Ct. App. T. 2d Dep't 2005) (Belen, J., concurring) (*citing Perrotta v. Western Regional Off-Track Betting Corp.*, 98 A.D.2d 1, 2, 469 N.Y.S.2d 504, 505 (4th Dep't 1983)).

112. *Perrotta v. Western Regional Off-Track Betting Corp.*, 98 A.D.2d 1, 2, 469 N.Y.S.2d 504, 505 (4th Dep't 1983).

113. *D'Alesso*, 9 Misc. 3d 138(A), 2005 N.Y. Slip Op. 51799(U) at*4, 2005 WL 2937287 at *2, 2005 N.Y. Misc. LEXIS 2458 at *6 (Belen, J., concurring).

114. *See* 42 U.S.C. § 1437f(9)(C)(ii) (2006); *see also Lemle Realty Corp. v. Desjardin*, N.Y. L.J., Mar. 24, 2004, at 19, col. 1 (Civ. Ct., Bronx Co. 2004).

115. I*mpac Assocs. Redev. Co. v. Robinson*, 9 Misc. 3d 1065, 1066, 805 N.Y.S.2d 253, 254 (Civ. Ct., N.Y. Co. 2005).

116. *Id.*

117. *Robinson*, 9 Misc. 3d at 1067, 805 N.Y.S.2d at 254 (*citing Nelson v. Roberts*, 304 A.D.2d 20, 757 N.Y.S.2d 41 (1st Dep't 2003)).

118. 276 A.D.2d 360, 360, 715 N.Y.S.2d 6, 6 (1st Dep't 2000); *see also* Jennifer Levy, Federally Subsidized Housing 6–7 (2009) (unpublished monograph for 2009 Summer N.Y. St. Jud. Seminars).

119. *Id.*

120. *See, e.g.*, P*aikoff v. Harris*, 185 Misc. 2d 372, 713 N.Y.S.2d 109 (Sup. Ct. App. T. 2d Dep't 1999) (failing to state regulatory status is amendable, at least where tenant is apprised of issue in prior litigation); *see also* Levy, *supra* note 118, at 8.

121. *Nichols v. Drake*, 2 Misc. 3d 902, 905, 771 N.Y.S.2d 823, 825-26 (N.Y. Civ. Ct., N.Y. Co. 2004).

122. *Id.*, 771 N.Y.S.2d at 825–26.

123. *Id.*, 771 N.Y.S.2d at 825–26.

124. *Nichols*, 2 Misc. 3d at 904, 711 N.Y.S.2d 823 at 825.

125. *Cashmere Realty Corp. v. Hersi*, 2005 N.Y. Misc. LEXIS 3573, at *5-6 (Civ. Ct., N.Y. Co. 2005).

126. *Id.* at *10.

127. Memorandum LHD #04-43 from Gregory A. Kern, Director of the N.Y. City Hous. Auth. Leased Hous. Dep't to all Leased Hous. Dep't supervisors (Nov. 5, 2004), *available at* https://a996-housingauthority.nyc.gov/Landlord/view_doc.aspx?id=92 (last visited Feb. 10, 2009).

128. *Committed Cmty. Assocs. v. Croswell*, 164 Misc. 2d 756, 757, 625 N.Y.S.2d 441, 442 (Civ. Ct. N.Y. Co. 1995) [hereinafter *Croswell I*].

129. *Committed Cmty. Assocs. v. Croswell*, 171 Misc. 2d 340, 342, 659 N.Y.S.2d 691, 692 (Sup. Ct. App. T. 1st Dep't 1997) (*per curiam*) [hereinafter *Croswell II*].

130. *Croswell I*, 164 Misc. 2d at 758, 625 N.Y.S.2d at 443.

131. *Id.* at 757, 625 N.Y.S.2d at 442.

132. *Croswell II*, 171 Misc. 2d at 345, 659 N.Y.S.2d at 694.

133. *Id.* at 344–45, 659 N.Y.S.2d at 693 (for the reader's convenience, the numbers in this example have been modified from those given in the *Croswell* opinion).

134. *Id.* at 344, 659 N.Y.S.2d at 693.

135. *Id.* at 344–45, 659 N.Y.S.2d at 693.

136. *Committed Cmty. Assocs. v. Croswell*, 250 A.D.2d 845, 846, 673 N.Y.S.2d 708, 708 (2d Dep't 1998) (mem.).

137. *See* 24 C.F.R. 982.516 (2008); *see also* 24 C.F.R. 982.551(b) (2008).

138. *See Singletary v. Hernandez*, 9 Misc. 3d 1127(A), 2005 N.Y. Slip Op. 51807(U), 2005 WL 2997752, 2005 N.Y. Misc. LEXIS 2470 (Sup. Ct., Kings Co. 2005).

139. 24 C.F.R. § 982.405 (2008).

140. *See Matos v. Hernandez*, 10 Misc. 3d 1068(A), 814 N.Y.S.2d 562, 2005 N.Y. Slip Op. 52188(U), 2005 WL 3617745, 2005 N.Y. Misc. LEXIS 2980 (Sup. Ct. N.Y. Co. 2005).

141. *Id.* at 1068(A), 814 N.Y.S.2d at 562, 2005 N.Y. Slip Op. 52188(U) at *2, 2005 WL 3617745 at *2, 2005 N.Y. Misc. LEXIS 2980.

142. *Id.*

143. N.Y. L.J., Dec. 28, 2005, at 19, col. 1 (Sup. Ct., N.Y. Co. 2005).

144. *Almieda v. Hernandez*, 9 Misc. 3d 986, 991, 804 N.Y.S.2d 648, 651 (Sup. Ct., Kings Co. 2005).

145. *Id.*

146. *Id.*

147. *See Quesada v. Hernandez*, 5 Misc. 3d 1028(A), 2004 N.Y. Slip Op. 51597(U), 799 N.Y.S.2d 163, 2004 WL 2903633, 2004 N.Y. Misc. LEXIS 2620 (Sup. Ct., N.Y. Co. 2004).

148. *Id.*, 5 Misc. 3d 1028(A), 2004 N.Y. Slip Op. 51597(U) at *2, 799 N.Y.S.2d at 163, 2004 WL 2903633 at *2, 2004 N.Y. Misc. LEXIS 2620 at *2.

149. *Matos*, 10 Misc. 3d at 1068(A), 814 N.Y.S.2d at 562, 2005 N.Y. Slip Op. 52188(U) at *4, 2005 WL 3617745 at *3, 2005 N.Y. Misc. LEXIS 2980 at *3.

150. *Singletary*, 9 Misc. 3d 1127(A), 2005 N.Y. Slip Op. 51807(U) at *4, 2005 WL 2997752 at *3, 2005 N.Y. Misc. LEXIS 2470 at *9.

151. *Yarbough v. Franco*, 95 N.Y.2d 342, 346, 740 N.E.2d 224, 225, 717 N.Y.S.2d 79, 80 (2000).

152. *Id.*

153. *Licht v. Moses*, N.Y. L.J., Dec. 15, 2004, at 19, col. 3 (Civ. Ct., Kings Co.).

154. *See Kulick & Rheingold Realty v. Montero*, 8 Misc. 3d 1007(A), 801 N.Y.S.2d 778, 2005 N.Y. Slip Op. 50974(U) at *2, 2005 WL 1528750 at *2, 2005 N.Y. Misc. LEXIS 1275 (Civ. Ct., N.Y. Co. 2005) (holding that landlord was under no obligation to inform NYCHA because he had opted out before proceeding had commenced).

155. N.Y.C.R.R. tit. 9, ch. VIII 2522.5(g)(1) (2009).

156. N.Y. L.J., Aug. 11, 2004, at 19, col. 3 (Civ. Ct., Kings Co.).

157. *Id.*

158. *Id.* (citing 211 A.D.2d 147, 151-54, 628 N.Y.S.2d 712, 715-17 (2d Dep't 1995)).

159. N.Y. L.J., Nov. 10, 2004, at 20, col. 3 (Civ. Ct., Bronx Co.).

160. 5 Misc. 3d 695, 782 N.Y.S.2d 898 (New Rochelle City Ct. 2004).

161. *Id.* at 698, 782 N.Y.S.2d at 901.

162. *Id.*, 782 N.Y.S.2d at 901.

163. *Licht v. Moses*, N.Y. L.J, Dec.15, 2004, at 19, col. 3 (Civ. Ct., Kings Co. 2004).

164. *See Cosmopolitan Assocs. v. Ortiz*, N.Y. L.J., Nov. 12, 2004, at 20, col. 1 (Civ. Ct., Queens Co.).

165. *Id.*

166. *Id.*

167. *In re Admin. Appeal of Highland Mgmt. Corp.*, DHCR Dkt. No. QB910041RO, Nov. 6, 2002.

168. *Tibout Estates, L.L.C. v. Coleman*, N.Y. L.J., Oct. 19, 2004, at 20, col. 1 (Civ. Ct., Bronx Co.) (citing Memorandum LHD #03-22 from the N.Y. City Hous. Auth. Leased Hous. Dep't (Aug. 19, 2004)).

169. 8 N.Y.3d 755, 872 N.E.2d 860, N.Y.S.2d 748 (2007); *see also* Mitchell L. Posilkin, Section 8 (2009) (unpublished monograph for 2009 Legal Update Training) (portion entitled "Section 8 as a Term and Condition of Rent-Stabilized Leases").

170. *Id.* at 762, 872 N.E.2d at 863, N.Y.S.2d at 751.

171. *Id.* at 762, 872 N.E.2d at 863, N.Y.S.2d at 751(citing 24 C.F.R. § 982.305(a)(3) (2007); 24 C.F.R. § 982.308(b)(2) (2007)).

172. *Id.* at 762, 872 N.E.2d at 863, 860 N.Y.S.2d at 751.

173. *Diagonal Realty v. Rosario*, 8 N.Y.3d, 755, 762, 872 N.E.2d 860, 863, 860 N.Y.S.2d 748, 751 (2007).

174. *Id.*

175. *Id.* at 763, 872 N.E.2d at 864, 860 N.Y.S.2d at 752; S Rep No. 195, at 32 (1996).

176. *Rosario*, 8 N.Y.3d at 763, 872 N.E.2d at 864, 860 N.Y.S.2d at 752.

177. *See Cosmopolitan Assocs. v. Fuentes*, 11 Misc. 3d 37, 812 N.Y.S.2d 738 (Sup. Ct. App. T. 2d Dep't 2006) (mem).

178. *Esteves v. Cosmopolitan Assocs.*, N.Y. L.J., Dec. 12, 2005, at 23, col. 3 (S.D.N.Y.).

179. *Id.*

180. 42 U.S.C. § 1437f(t) (2000).

181. *Id.*

182. N.Y. L.J., Dec. 12, 2005, at 23, col. 3 (S.D.N.Y.).

183. *Id.* (*quoting Jeanty v. Shore Terrace Realty Ass'n*, N.Y. L.J., Aug. 18, 2004, at 24, col. 1 (S.D.N.Y.)).

184. *Esteves*, Dec. 12, 2005, at 23, col. 3.

185. *Id.*

186. *Rainbow Assocs. v. Culkin*, 2003 N.Y. Slip Op. 50771(U), *2, 2003 W.L. 2004427, at *1, 2003 N.Y. Misc. LEXIS 392, at *2 (Sup. Ct. App. T. 2d Dep't 2003) (mem.).

187. *See Cooper v. N.Y. City Hous. Auth.*, 13 Misc. 3d 132(A), 831 N.Y.S.2d 347, N.Y. Slip Op. 51874(U), 2006 WL 2829858, 2006 N.Y. Misc. LEXIS 2761 (Sup. Ct. App. T. 2d Dep't 2006) (mem.).

188. *See Moshulu Assocs. v. Cortes*, N.Y. L.J., Apr. 5, 2006, at 21, col. 3 (Civ. Ct., Bronx Co.).

189. *Id.*

190. *Id.*

191. *Id.*

192. *See Dawkins v. Ruff*, 10 Misc. 3d 88, 810 N.Y.S.2d 783 (Sup. Ct. App. T. 2d Dep't 2005) (mem.).

193. *Prospect Place HDFC v. Gaildon*, 6 Misc. 3d 135(A), 800 N.Y.S.2d 355, 2005 N.Y. Slip Op. 50232(U), *2, 2005 W.L. 487008, *1, 2005 N.Y. Misc. LEXIS 331 (Sup. Ct. App. T. 1st Dep't 2005) (*per curiam*) (emphasis added).

194. *Upaca Site 7 Assocs. v. Hunter-Crawford*, 12 Misc. 3d 1154(A), 819 N.Y.S2d 213, 2006 NY Slip Op. 50887(U), 2006 W.L. 1341018, 2006 N.Y. Misc. LEXIS 1164 (Civ. Ct. N.Y. Co. 2006).

195. Edward Josephson & Jennifer Levy, Federally Subsidized Housing 16 (2008) (unpublished monograph for 2008 Summer N.Y. St. Jud. Seminars); N.Y. City Dep't of Hous. Pres. & Dev., Housing Choice Voucher (Section 8) Administrative Plan, 5–4 (2007).

196. *See generally Borough Park Courts Assocs. v. Mori*, N.Y. L.J., Sept. 21, 2005, at 19, col. 3 (Civ. Ct., Kings Co.) (citing authority in concluding that minor child can be awarded succession rights).

197. 93 N.Y.2d 823, 825, 687 N.Y.S.2d 615, 616-17, 710 N.E.2d 261, 262–63 (1999).

198. *Id.*, 687 N.Y.S.2d at 617, 710 N.E.2d at 263.

199. *See Davidson 1992 Assocs. v. Corbet*t, 190 Misc. 2d 813, 738 N.Y.S.2d 813 (Sup. Ct. App. T. 1st Dep't 2002) (*per curiam*).

200. 8 A.D.3d 111, 112, 778 N.Y.S.2d 164, 164 (1st Dep't 2002) (mem.).

201. *Id.* at 112, 778 N.Y.S.2d at 164.

202. 10 Misc. 3d 142(A), 814 N.Y.S.2d 893, 2006 N.Y. Slip Op. 50084(U), 2006 W.L. 176950, 2006 N.Y. Misc. LEXIS 109 (Sup. Ct. App. T. 1st Dep't 2006) (*per curiam*).

203. *Id.*

204. 12 Misc. 3d at 1154(A), 819 N.Y.S2d at 213.

205. *See* Josephson & Levy, *supra* note 195, at 17.

206. *See id.*; *see also* New York, N.Y., R.C.N.Y. Tit. 28, § 3-02(p) (2008).

207. *See* Josephson & Levy, *supra* note 195, at 17.

208. N.Y. L.J., Jan. 26, 2005, at 19, col. 1 (N.Y.C. Civ. Ct., New York Co. 2005). *See also* Levy, *supra* note 118, at 2.

209. *Id.*

210. Manny Fernandez, *Bias Is Seen as Landlords Bar Vouchers*, N.Y. Times, Oct. 30, 2007, *available at* 2007 WLNR 21341685.

211. Los Angeles, Cal., Mun. Code § 151.04(b) (2002).

212. Manny Fernandez, *Mayor Vetoes Bill Protecting Section 8 Tenants from Landlord Bias*, N.Y. Times, Mar. 1, 2008, *available at* 2008 WLNR 4094552.

213. N.Y. City Council, Preserving Access to Affordable Housing, Council Votes on Override to Protect Low-Income Renters from Discrimination, *available at* http://council.nyc.gov/html/releases/024_032608_prestated_sec8override.shtml (last visited Feb. 10, 2009); *see also* Posilkin, *supra* note 169 (portion entitled "Discrimination Based Upon Source of Income, Including Section 8").

214. Int. no. 61A.

215. NYC Code § 8-107.5(o); Local Law No. 2008/010, *available at* http://nyccouncil.info/pdf_files/bills/law08010.pdf (last visited Feb. 10, 2009).

216. *Id.*

217. N.Y.L.J., Apr. 2, 2008, at 27, col. 1 (Sup. Ct., N.Y. Co.).

218. 870 N.Y.S.2d 768, 773-74 (Civ. Ct., N.Y. Co. 2008) (Gerald Lebovits, J.).

219. *Id.* at 769.

220. *Id.* at 773-74.

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