

THE NEW YORK CITY REPAIR ENFORCEMENT BOARD: *A Better Model of Code Enforcement to Hold Negligent Landlords Accountable*

Each year 400,000 violations of the housing maintenance code are issued in New York City. The majority are ignored. Adoption of a Repair Enforcement Board would usher in a new era of effective code enforcement.

How Does Housing Code Enforcement Work in New York City?

Enforcement of the Housing Maintenance Code can be divided into two systems.

- 1) Approximately 25% of violations are heard by a judge in Housing Court. The Housing Court System works reasonably well, with 80% of violations corrected within two years.
- 2) The other 75% are dealt with by sending the landlord a Notice of Violation (NOV), at which point enforcement effectively ends. The NOV system is a failure by any measure. As a result, there are currently 2.75 million unresolved Housing Code violations in the City's records.

Why the Notice of Violation System Fails to Get Repairs

When an inspector from the Department of Housing Preservation and Development (HPD) documents a violation, an NOV is sent to the landlord. Because the NOV is not an enforceable judgment, no fine is attached, no fines accumulate regardless of how long the violation goes unaddressed, and there is no incentive for the landlord to make the repairs. In fact, HPD must commence a legal case to have a judge convert the NOV into a court order. This is a cumbersome, expensive, and time consuming step that HPD only takes with a fraction of the violations, which explains why 75% of violations languish in this ineffective "honor" system. Merely allocating additional resources to HPD is not the best solution because litigating every violation—even minor ones—would be prohibitively expensive and administratively inefficient.

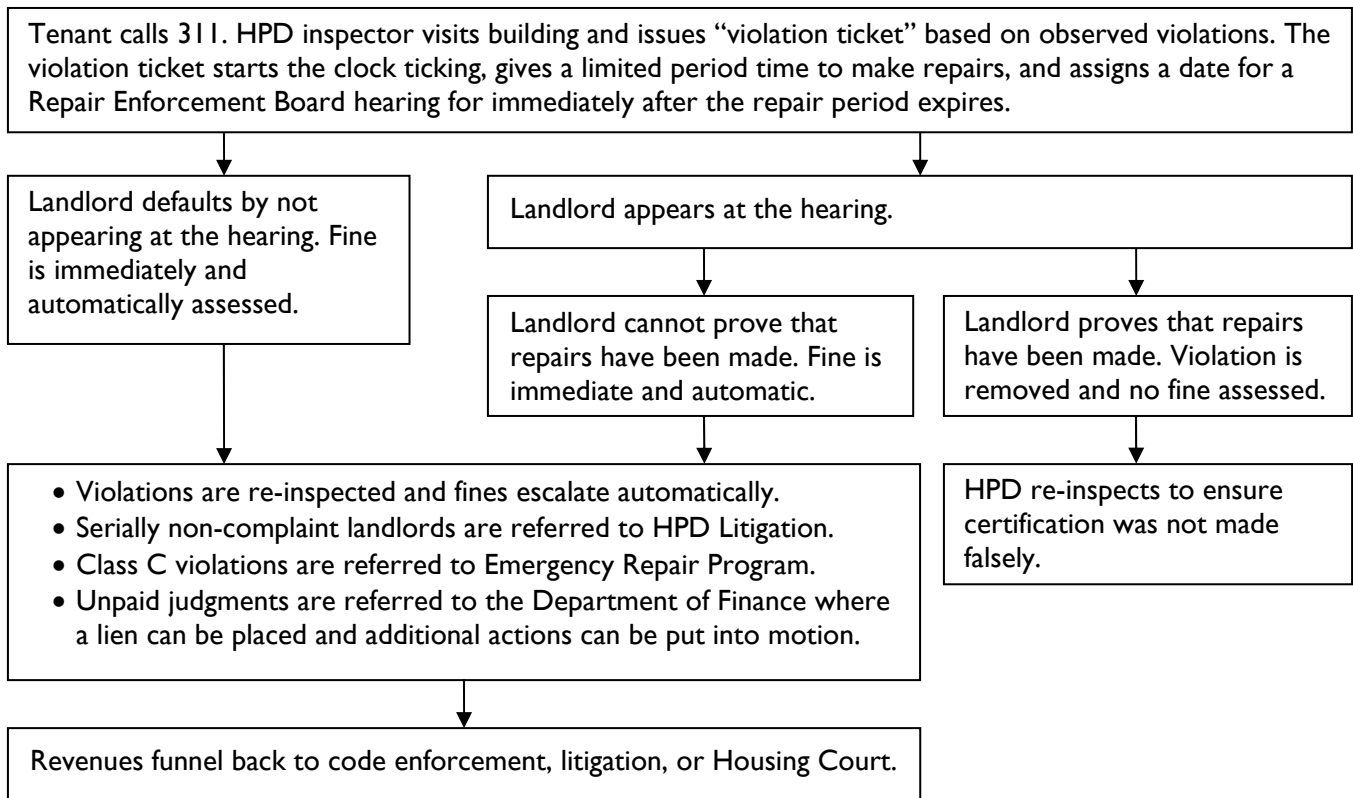
Another Model: The Administrative Tribunal

The administrative tribunal model of the Repair Enforcement Board is well established. Cities including Chicago, Dallas, Boston, and Washington D.C. use this system to enforce the Housing Code. The Chicago system, called the Department of Administrative Hearings, has been in place since 1996 and has doubled the city's rate of code compliance and fine collection. The average time of a hearing in Chicago's highly efficient system is seven minutes.

In New York City, the Environmental Control Board (ECB) enforces 23 separate health and safety codes, processes the violations from the issuing agency, serves the notice on the respondent, and holds the hearings when required. Compliance with NOV's under these codes is far higher than the City's Housing Maintenance Code, which does not utilize automatically enforceable judgments. In 2004, the ECB adjudicated 594,634 cases, issued 181,869 decisions, had a case resolution rate of 75.6% and collected over \$63 million in fines with an average yield of \$107.33 per violation issued. The majority of cases processed by the ECB are sanitation violations, where the goal is a guilty plea and collection of a fine. The ECB does not function as well when processing complaints of agencies such as the Department of Buildings (DOB), where the goal is correction of a serious violation. The DOB experience illustrates the importance of follow-up to ensure repairs are made.

The Repair Enforcement Board: Putting the Enforcement into Code Enforcement

By creating a Repair Enforcement Board, HPD inspections will quickly and easily become enforceable judgments. This addresses the flaw that handicaps the current system. To be effective, the Repair Enforcement Board and HPD must work together in one integrated code enforcement process. Here is how the Repair Enforcement Board system would work:



Key Elements to Make a Repair Enforcement Board Work

Other cities’ experience indicates that the following elements are critical to creating an effective system:

- Establishing by statute the fine amount and time period by which repairs must be made.
- Efficient hearings that focus solely on the question of whether the violation has been corrected.
- A violation ticket that constitutes a rebuttable presumption that a violation exists.
- A waiving of fines only when the violation is proved to have been corrected by the initial hearing.

Steps that HPD must take include:

- Institute automatic re-inspection if respondent defaults or if violation is uncorrected.
- Establish an escalating fine structure if the respondent defaults or if violation is not corrected.
- Create a referral system where uncorrected violations are sent to HPD litigation.
- Refer uncorrected Class “C” violations to HPD’s Emergency Repair Program.
- Develop a system of referral and follow-up by the Department of Finance if the fines are not paid.
- Integrate buildings with liens into the Third Party Transfer Program.
- Maintain or increase funding for HPD litigation of code violations in Housing Court.

HPD must also advocate at the state level for legislation enabling the Repair Enforcement Board.

Revenue Generated from the Repair Enforcement Board

It is estimated that a Repair Enforcement Board would collect approximately \$16 million a year in fines; all of which shall be cycled back into the code enforcement system. This figure was calculated using HPD data, fine rates in comparable tribunal systems, and the current average dollar amount per violation.

Preserving the Role of Housing Court

Housing Court works and it should continue to have primary, not concurrent, jurisdiction over repair issues. When a case is commenced in Housing Court, any case for that apartment will be pulled out of the Repair Enforcement Board. This will ensure that Housing Court judges continue to enforce the Warranty of Habitability, and that tenants are able to file Housing Part (HP) Actions, raise repair issues in non-payment cases, and withhold rent to get repairs. The Repair Enforcement Board will deal with the 75% of the housing code violations that does not make it to Housing Court.