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Combating Substandard Housing Through Medical-Legal Partnership

Allyson E. Gold

University of Alabama - School of Law, agold@law.ua.edu

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Recommended Citation

Allyson E. Gold, *Combating Substandard Housing Through Medical-Legal Partnership*, (2016).

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Combating Substandard Housing Through Medical-Legal Partnerships

Vol. 16 No. 9

By Allyson E. Gold


Allyson E. Gold is a supervising attorney at the Health Justice Project, a medical-legal partnership clinic in the Beazley Institute for Health Law and Policy at Loyola University Chicago School of Law. She may be reached at agold@luc.edu.


In a traditional legal service model, the client seeks out legal services. This model assumes that clients know when they need legal assistance.

This assumption is problematic, particularly for vulnerable clients. For example, a low-income client living in a mold-infested apartment is at-risk for developing a bronchial condition. However, unless the client is particularly litigious, he is more likely to discuss mold exposure with his doctor than with his lawyer. This is because clients generally don't realize they require the assistance of a lawyer until they have a legal crisis. For the client living in the mold-infested apartment, this is typically an eviction proceeding for non-payment of rent. Therefore, our profession's challenge is to develop a model that allows us to prevent these crises, rather than merely respond to them.

A model that developed to prevent crises is the medical-legal partnership (MLP). In an MLP, in addition to mental and physical conditions, health services providers identify social and legal factors that contribute to poor health outcomes for patients, such as housing conditions and adequacy of income. If a health services provider identifies a social determinant of health, she refers the patient to a lawyer to remedy that issue.

Through MLPs, lawyers serving low-income tenants are quicker to remove a client from harmful conditions. Lawyers can also help clients avoid homelessness, damage to their property, and creating or exacerbating health conditions. To do so, lawyers representing clients in substandard housing should consider the



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following claims:

Tort Action

Clients that have suffered a negative health outcome may have an available action in tort. Before asserting a tort action, a lawyer must ensure that the landlord had notice of the condition that caused the client's injury. Once notice is established, lawyers should consider the following tort actions to bring relief to their clients:

Negligence

To prevail on a negligence action, it is not enough to demonstrate that the tenant was injured on the property, even if the property was not in reasonably safe condition. A lawyer must also demonstrate duty, breach, and causation. Most courts will find a landlord breached a duty to the tenant if he knew of a dangerous condition and failed to act. To establish causation, attorneys should consult the client's medical records.

Negligence Per Se

Under negligence per se, a landlord's violation of a statute gives rise to liability. In some jurisdictions, violation of a building code, housing code, or landlord and tenant ordinance provides the claim. Once the landlord's statutory violation is established, an attorney need only prove cause and injury.

Contract Action

Unlike tort actions, causes of action rooted in contract are available where the client has not suffered a negative health outcome, incurred costly medical expenses, or experienced damage to their property. As a result, this allows for the earliest possible legal intervention. Lawyers representing clients in substandard conditions should consider the following claims:

Violation of Lease Agreement

Many written leases specifically delineate the landlord's obligations to make repairs. If the landlord fails to uphold his obligation, a lawyer can bring a claim.

Violation of the Warranty of Habitability

Most jurisdictions impose a warranty of habitability in all lease agreements, whether written or oral. Generally, a violation of this warranty occurs when the premises are unfit for occupancy, which most jurisdictions construe as extremely poor housing. Therefore, this cause of action may only be available in severe circumstances.

Constructive Eviction

If a landlord deprives a client the beneficial use or enjoyment of the premises, a lawyer may bring an action for constructive

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Managing Editor

American Bar

Association

321 N. Clark St.

Chicago, IL 60654

Phone: 312-988-5935

Fax: 312-988-6030

lindsay.cummings@americanbar.org

eviction. Many jurisdictions require the tenant to abandon the premises to prevail. For low-income clients, this may be impossible. Therefore, lawyers should consider the viability of a partial constructive eviction claim in the event that substandard conditions foreclose the client's use of part of a residence, such as the client sleeping in the living room due to broken windows and extreme mold in the bedroom.

Consumer Fraud Violation

Most jurisdictions recognize a tenant as a protected class under consumer fraud statutes. This claim may be available to clients if the landlord employed deceit in inducing the client to enter into the lease agreement, such as falsely asserting the residence is in good condition.

By partnering with health service providers through MLPs to detect legal issues, lawyers can engage in early action to achieve better outcomes for clients in substandard housing conditions.

Kelly Book
Art Director
American Bar
Association
321 N. Clark Street
Chicago, IL 60654