

aCITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS

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February 1st, 2010  
Start: 10:11 am  
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HELD AT: Council Chambers  
City Hall

B E F O R E:  
KAREN KOSLOWITZ  
Chairperson

COUNCIL MEMBERS:  
Charles Barron  
Leroy G. Comrie, Jr.  
James F. Gennaro  
G. Oliver Koppell  
Julissa Ferreras  
Daniel R. Garodnick

## A P P E A R A N C E S (CONTINUED)

Andrew Eiler  
Director of Legislative Affairs  
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Barbara Flynn  
Chief of Staff, Intergovernmental Division  
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Fran Freedman  
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CHAIRPERSON KOSLOWITZ: Good morning. My name is Karen Koslowitz. You'll have to excuse me, but I have a cold so it's not how I normally sound, I hope. My name is Karen Koslowitz and I am the new Chair of the Committee on Consumer Affairs. You might also consider me the returning Chair of the Committee, since I held this position during my previous tenure at the City Council.

As today's hearing is the first Consumer Affairs hearing of the new season, I'll begin by acknowledging the members of the Committee, many of whom were on the Committee in the previous session. I'd like to welcome Council Member Comrie, who was the Chair and now is going to be the Chair of the Land Use Committee.

COUNCIL MEMBER COMRIE: I'm happy to be demoted to return the Chair to its original owner.

CHAIRPERSON KOSLOWITZ: Glad to have you. We could use your experience. And as well, Council Member Charles Barron. Nice to have you. And we have Council Member Dan Garodnick.

[Pause]

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2 CHAIRPERSON KOSLOWITZ: Okay. And  
3 I'm sure we'll be joined by other Council Members  
4 shortly.

5 Today we'll be discussing an issue  
6 that affects millions of New Yorkers, Tenant  
7 Screening Reports. As many of you probably  
8 already know, Tenant Screening Reports have been  
9 used more frequently in recent years to evaluate  
10 the fitness of prospective tenants. Offered by  
11 over 600 tenant screening companies throughout the  
12 United States, these reports compile information  
13 about an individual's Housing Court History, among  
14 other items, and ostensibly assist the landlord in  
15 determining whether a tenant is likely to fall  
16 behind on his or her rent or be litigious in  
17 nature.

18 Since Housing Court filings are  
19 public information, a company serving clients in  
20 New York City would simply go to the New York City  
21 Housing Courts Office of Court Administration,  
22 which sells large quantities of this data in  
23 electronic form. A tenant with a history of  
24 landlord tenant disputes or eviction filings in  
25 Housing Court might encounter great difficulty in

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2 renting a new apartment.

3                   While it is reasonable that  
4 landlords would want to perform a background check  
5 on their prospective tenants, many tenant  
6 advocates have criticized the sale of this  
7 information because it publishes only the Housing  
8 Court filings and may not include the eventual  
9 outcome of the case. There are many legitimate  
10 reasons a tenant might have a Housing Court filing  
11 on their record, including such unfair eviction  
12 filings as owner occupancy evictions, harassment  
13 based evictions or evictions following the legal  
14 withholding of rent pending the completion of  
15 necessary repairs. A prospective tenant can also  
16 be unfairly penalized for sharing a similar name  
17 as someone who actually has a Housing Court  
18 history.

19                   In sum, it is entirely possible  
20 that a person who prevailed in Housing Court or a  
21 person who has never even been to Housing Court  
22 may be turned down for an apartment simply because  
23 a tenant screening company produced an inaccurate,  
24 incomplete or wholly erroneous background check.

25                   The introduction we're hearing

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2 today attempts to address this issue. It would  
3 require any user of a tenant screening report,  
4 including landlords and management companies, to  
5 disclose to the applicant that he or she is  
6 entitled to one free copy of his or her tenant  
7 screening report per year from each national  
8 reporting company, and the name and contact  
9 information of the screening company, and the name  
10 and contact--I read that already--the screening  
11 company they used. This information would be  
12 disclosed on all application materials and on  
13 signs in users' offices. This disclosure would  
14 give tenants the opportunity to correct any  
15 inaccuracies on their report and potentially  
16 prevent an unwarranted rejection by a landlord.

17           Again, I'd like to thank everybody  
18 for attending today's hearing and at this point  
19 I'll turn the floor over to Council Member  
20 Garodnick, the prime sponsor of this legislation.

21           COUNCIL MEMBER GARODNICK: Thank  
22 you Chair Koslowitz. It's great to have you back  
23 and I am looking forward to working with you on  
24 the many, many issues that we will be able to  
25 tackle together in your new and returning role.

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2 I'm glad to have the opportunity to  
3 participate in today's hearing, which of course is  
4 the second hearing on the disclosure of tenant  
5 screening reports.

6 Finding an apartment in New York  
7 City is a challenging and overwhelming task for  
8 anyone attempting to navigate the system. This  
9 process is further complicated when potential  
10 renters are denied apartments because their names,  
11 unbeknownst to them, are listed in the tenant  
12 screening report that landlords use to learn about  
13 prospective tenants' rental histories. These  
14 tenant screening reports, which are the housing  
15 equivalent of a credit report, list any tenant who  
16 goes to Housing Court, yet they often lack  
17 meaningful detail regarding the cases. Tenants  
18 who went to Court to assert their rights against a  
19 landlord may be listed among others with bad  
20 credit or even a history of non-payment. Even if  
21 the case comes out in the tenant's favor, his or  
22 her name is still not removed from the tenant  
23 screening report in most circumstances, if at all.

24 Since the City has no formal  
25 mechanism to monitor agencies that sell tenant

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2 screening reports, and because hundreds of such  
3 agencies exist, tenants find it nearly impossible  
4 to track down all versions of their tenant  
5 screening report. Therefore a prospective tenant  
6 may never know whether his or her name is on such  
7 a list and there is no way to correct that report  
8 if there is a mistake.

9           While we understand a landlord's  
10 need to screen for people who are unlikely to pay  
11 the bills, screening reports have improperly  
12 created problems for diligent, rent-paying  
13 renters. The legislation that we are discussing  
14 today and discussed last year will add a measure  
15 of clarity to the reports and will give  
16 prospective renters the chance to correct and  
17 amend information about their own history as a  
18 tenant. This bill will require, as the Chair  
19 said, that any landlord, management agency or  
20 broker who uses a tenant screening report disclose  
21 the name of the agency by providing a copy of the  
22 report, which enables the tenant to dispute  
23 inaccuracies directly with that agency. All users  
24 of tenant screening reports will also be required  
25 to post a sign telling tenants that under Federal

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2 law they are entitled to a free copy of their  
3 report each year from each tenant screening  
4 agency.

5 Tenants should not be afraid to  
6 exercise their rights in Housing Court or be held  
7 accountable for someone else's mistakes without  
8 any recourse at all. This bill gives tenants the  
9 opportunity to remedy those challenges and I'm  
10 very, very glad that we're having this second  
11 hearing today and I look forward to getting this  
12 passed through the City Council. Thank you, Madam  
13 Chair.

14 COUNCIL MEMBER BARRON: Thank you  
15 very much, Madam Chair. I probably will ask  
16 others this question, but I just wanted to know  
17 from the sponsor of the bill, Garodnick, could the  
18 tenant--the landlord, act before it's corrected?  
19 Like say this is just basically saying that they  
20 have to supply the report and give the tenant an  
21 opportunity to correct anything that's wrong. But  
22 is there anything in the bill that says until--if  
23 the tenant feels there is something wrong, could  
24 the landlord make a decision before it's  
25 corrected? Or once they supply the tenant with

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2 the information of the company that's doing the  
3 report, does that abdicate any more responsibility  
4 from the landlord?

5 COUNCIL MEMBER GARODNICK: Thank  
6 you, Council Member Barron. In answer to your  
7 question, it is not articulated in the bill  
8 specifically that a landlord must hold or that  
9 there must be sort of a stay of any decision until  
10 issues are corrected. The bill at the moment  
11 requires the disclosure of the screening agency  
12 that's being used and gives the opportunity to  
13 tenants to know what exactly is being used and  
14 gives them an understanding of their rights and  
15 the possibility of correcting errors in the  
16 reports. But no, it does not, as drafted right  
17 now, require that there be any holds or stays or  
18 limitations on renting. We wanted to make sure  
19 that we got a foot in the door here to make sure  
20 that tenants had an opportunity to know what  
21 information about them is out there and how they  
22 can correct it.

23 COUNCIL MEMBER BARRON: And so you  
24 wouldn't want a friendly amendment? Or you just  
25 want to get this passed and then build on it as we

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2 go along? Or is there something in there to give  
3 it at least a grace period, some kind of period,  
4 where it allows the tenant a chance to make the  
5 correction and holds the landlord up from making  
6 the decision on, you know, providing the lease and  
7 allowing the tenant to be a part of whatever the  
8 development is? Because if we just put it out  
9 there saying you can get the report, you know,  
10 nothing is stopping landlords from acting before  
11 the report is corrected. But anyway.

12 COUNCIL MEMBER GARODNICK: I'll  
13 respond briefly, Madam Chair, just to say I'd  
14 encourage Council Member Barron to test the  
15 thought on that with the Administration through  
16 the questions and I will express my own  
17 reservations about holds or interfering with the  
18 ability for somebody to enter into a contract that  
19 is outside of the governmental authority here,  
20 only because that may present additional questions  
21 or concerns for us. But I would encourage you to  
22 test that with DCA when they come up and I'm open  
23 to having the discussion. I do think it presents  
24 certain legal issues that we may not be able to  
25 get in to.

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2 CHAIRPERSON KOSLOWITZ: I'd like to  
3 acknowledge Councilwoman Julissa Ferreras.

4 Welcome. Good morning.

5 [Pause]

6 CHAIRPERSON KOSLOWITZ: DCA?

7 ANDREW EILER: Good morning, Chair  
8 Koslowitz and Committee Members and welcome back.  
9 It's been a while. The last time I was here was I  
10 think we were dealing with towing and DARP and all  
11 of that good stuff.

12 I'm Andrew Eiler, Director of  
13 Legislative Affairs for the Department of Consumer  
14 Affairs. Commissioner Mintz asked me to thank you  
15 for the opportunity to appear before you at your  
16 hearing on a pre-considered Intro regarding the  
17 use of tenant screening reports by landlords to  
18 review potential tenants' backgrounds.

19 We appreciate the Council's  
20 concerns regarding prospective tenants who may be  
21 unaware that landlords or their representatives  
22 may utilize tenant screening reports containing  
23 applicant's personal information as well as  
24 employment and rental histories as a basis for  
25 denying applications for apartments. We agree

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2 that it is important for prospective tenants to  
3 understand and know about how credit reports and  
4 other screening reports can impact on their  
5 ability to rent housing and to know which consumer  
6 reporting agencies will be providing that  
7 information.

8 By requiring the disclosure on all  
9 applications for housing, this bill will ensure  
10 that those who rent prospective tenants better  
11 inform prospective tenants about the use of  
12 screening reports, their rights under Federal and  
13 State law and how to obtain redress for erroneous  
14 information contained in those reports. The  
15 disclosure must state that the applicant  
16 information be used to obtain the screening report  
17 and must include the name of the reporting agency  
18 from which such reports will be obtained.

19 Importantly the bill lets consumers know that they  
20 are entitled to a free tenant screening report  
21 from each national consumer reporting agency  
22 annually and to a free credit report obtained from  
23 [www.annualcreditreport.com](http://www.annualcreditreport.com).

24 This bill would also require users  
25 of tenant screening reports to post signs about

1  
2 the use of such reports at any location where  
3 business transactions pertaining to rental  
4 residential real estate are conducted.

5 We would like to draw attention to  
6 some operational concerns we have with the bill as  
7 drafted. For example, the required signs would  
8 have to be posted in myriad locations that  
9 comprise non-traditional territory for DCA  
10 inspectors--real estate offices and offices of  
11 building managers, superintendents, maintenance  
12 staff, rental agents or landlords. Okay,  
13 moreover, the requirement that signs only be  
14 posted at locations at which the principle purpose  
15 was conducting business transactions pertaining to  
16 rental of real property creates substantial  
17 ambiguity as to whether there's compliance with  
18 that requirement.

19 As currently drafted, landlords  
20 must only provide certain disclosures if they  
21 requires a tenant screening report. This will be  
22 extremely difficult to enforce because there's  
23 almost no way to know if a landlord has requested  
24 a tenant screening report. To ensure that  
25 prospective tenants receive all the necessary

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 2 disclosures, the bill should be amended to require  
 3 a landlord to make all disclosures required by the  
 4 bill any time a prospective tenant provides  
 5 application information, a term defined in the  
 6 bill.

7           A related problematic area for  
 8 enforcement is this, if a landlord fails to make a  
 9 required disclosure about a tenant screening  
 10 report to an applicant on the application, the  
 11 City would not know whether the landlord was in  
 12 violation of this law or simply wasn't planning to  
 13 use such reports. To eliminate ambiguity we  
 14 suggest that the bill require landlords to either  
 15 disclose the name of the consumer reporting agency  
 16 they plan to use or affirm that no such agency  
 17 will be use. The requirement that written  
 18 disclosures be made even when application  
 19 information is obtained orally is unenforceable,  
 20 especially if the information is obtained over the  
 21 telephone. It will never be possible to establish  
 22 when or if all the required information had been  
 23 provided when such information is obtained orally.  
 24 We therefore recommend that this requirement be  
 25 omitted.

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2                   Incidentally, the term User should  
3 be amended to ensure that the bill does not  
4 inadvertently require local government agency to  
5 provide disclosure when it requests information  
6 from people for the purpose of assessing  
7 eligibility for housing.

8                   The Administration is committed to  
9 encouraging transparency by industries in their  
10 dealing with consumers, which this bill seeks to  
11 promote. We appreciate the Council supporting our  
12 collective efforts to help New Yorkers gain access  
13 to information they need to make informed  
14 decisions in the housing market. We look forward  
15 to working with the Speaker, Council Member  
16 Garodnick and the Consumer Affairs Committee to  
17 address the enforcement concerns we have  
18 identified, to facilitate implementation and to  
19 improve transparency in the rental process. I'll  
20 be glad to answer your questions.

21                   CHAIRPERSON KOSLOWITZ: Before we  
22 start with questions, I want to recognize--

23                   [Pause]

24                   COUNCIL MEMBER KOPPELL: Thank you,  
25 Madam Chair and welcome back to the Council and

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it's a pleasure to be serving with you.

COUNCIL MEMBER GARODNICK: Thank you, Madam Chair and thank you, Mr. Eiler, for your testimony.

I want to just go through a few of your recommendations and see if we can talk about them for a moment. The first point that you made here on your operational concerns was that signs would have to be posted in areas that are non-traditional territory for DCA inspectors. I wanted to understand from you what is traditional territory for DCA inspectors and does it not include areas which are--well go ahead and just tell me what your traditional territory is.

ANDREW EILER: Well traditional territory involves, of course, any place that we specifically license, but in the general sense anyone that sells products or services. Specifically excluded from that is the sale and rental of real property. So that those kind of transactions are essentially outside our general purview. Specifically under the Consumer Protection Law that applies, which is dealing with deceptive practices, that law specifically is

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2 limited to sale of goods or services or credit,  
3 and therefore real--specifically real property  
4 transactions are excluded.

5 COUNCIL MEMBER GARODNICK: So are  
6 you saying that any enforcement of any of this is  
7 outside the jurisdiction of DCA?

8 ANDREW EILER: Well I mean if the  
9 law says we check for this, yes. But in terms of-

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11 COUNCIL MEMBER GARODNICK:  
12 [Interposing] I'm sorry. If the law says that you  
13 should check for this then, yes, it is within the  
14 jurisdiction of the DCA?

15 ANDREW EILER: Yes, but it's not in  
16 areas--

17 COUNCIL MEMBER GARODNICK:  
18 [Interposing] Let's just--

19 ANDREW EILER: [Interposing] Okay.

20 COUNCIL MEMBER GARODNICK: The  
21 answer to that is yes?

22 ANDREW EILER: The answer is if we  
23 are required to check for this, this and this,  
24 it's obviously within our jurisdiction. But the  
25 areas where we would be checking for this would

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2 not be in areas that would normally be where DCA  
3 inspectors routinely, you know, go. Because we  
4 don't go to real estate offices, we don't go to  
5 management company offices. We don't, because  
6 these are outside of our jurisdiction with regard  
7 to those activities.

8 COUNCIL MEMBER GARODNICK: So the  
9 obvious follow up question here is, so what? It  
10 is not your traditional venue, but there is no  
11 obstacle to DCA being able to do this, is there?

12 ANDREW EILER: I mean obviously  
13 inspectors--but it's not places that we would  
14 normally be aware of, would be on our routes. It  
15 would be a--we would end up having to operate--you  
16 know, it creates a staffing issue and basically  
17 because it broadens the kind of places where  
18 inspectors would have to be going.

19 I mean normally inspectors go down  
20 and look for various kinds of stores and shops and  
21 whatever where we like--supermarkets and licensees  
22 and so forth and so on. Inspectors would not  
23 even, in many cases, know where these landlord  
24 offices are. They would not be in street fronts  
25 and so forth and so on. So there's an obstacle to

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doing this signage enforcement.

COUNCIL MEMBER GARODNICK: Let's take a step back. The notion, and we certainly I think for the long time now have been under the impression that DCA is supportive of the idea of signage to protect consumers and to give them the opportunity to know what their rights are in the context of renting apartments. Is that correct?

ANDREW EILER: Yeah. The signage, I'm saying it's one of the ways of putting it out there. However, one of the things that's worth considering is that if the information is included in every rental application, application for rent, then the consumer gets that information and not only in a much better form, because the consumer would also get a copy of that application and that information would be then available to him at all times rather than just within the signage, which you know--

COUNCIL MEMBER GARODNICK:  
[Interposing] Let's go to that in a moment. That was one of your other points. I just want to focus on this, that it is DCA's view that it is to the benefit of consumers in New York City to have

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2 the opportunity to know their rights, however we  
3 may communicate it to them and make that part of  
4 the law. Is that correct?

5                   ANDREW EILER: It can be helpful.  
6 I'm just calling attention to the extra efforts  
7 and whatever that would be required to do any kind  
8 of--

9                   COUNCIL MEMBER GARODNICK:  
10 [Interposing] Obviously any kind of thing that we  
11 put into the law will require extra efforts on the  
12 part of DCA. My question for you is, is DCA  
13 embracing those extra efforts or are you rejecting  
14 them?

15                   ANDREW EILER: Well whatever is in  
16 the law we'll obviously have to follow.

17                   COUNCIL MEMBER GARODNICK: Okay.  
18 So let's go to some of your other points, the one  
19 that you just made a moment ago, which was giving  
20 the information to tenants when they provide--  
21 prospective tenants--when they provide application  
22 information. You suggested here that prospective  
23 tenants receive all the necessary disclosures and  
24 you say that the bill should be amended to require  
25 a landlord to make all of the disclosures required

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2 by this bill anytime a prospective tenant provides  
3 application information; that is a term defined in  
4 the bill. Correct?

5 ANDREW EILER: Uh-huh.

6 COUNCIL MEMBER GARODNICK: I just  
7 wanted to draw your attention to section 20-808  
8 Disclosure, subsection C, which says that if  
9 application information is requested in writing,  
10 the statements required by subdivisions A and B of  
11 this section shall be in writing located  
12 immediately adjacent to where the personal  
13 information is requested and set off in a box and  
14 printed in a color that sharply contrasts with the  
15 print surrounding it. So, does that deal with  
16 your concern there?

17 ANDREW EILER: No.

18 COUNCIL MEMBER GARODNICK: Okay.  
19 Explain why, because I may not be understanding it  
20 correctly.

21 ANDREW EILER: The issue may be in  
22 the definition of User, that has the requirement  
23 that the property owner who requests or receives  
24 furnish the information, or the representative of  
25 the property owner who requests or receives the

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2 tenant report. And the fact that the triggering  
3 requirement is that the person request or receive,  
4 what creates a situation there is that it's very  
5 possible that the agent or representative would  
6 not be the one who was requesting or receiving the  
7 information, it was instead only the landlord or  
8 the property owner, which creates an ambiguity as  
9 to who would be required to make the disclosure  
10 because the law or the bill provides that it was  
11 the user who do so. So this requirement should be  
12 tweaked to make sure that the user would be  
13 defined in a way that ensures that whenever  
14 application information is request that  
15 information has to be furnished whether--whoever  
16 requests the information, whether it's the  
17 property owner or the agent, so that either one of  
18 them--otherwise it creates an ambiguity as to  
19 whether or not it has to be done. And then the  
20 related point to that is to say that there should  
21 be that exception for government agencies who are  
22 obtaining--

23 COUNCIL MEMBER GARODNICK:

24 [Interposing] Hold that thought for one second. I  
25 want to go to that in a minute. Okay. So your

1  
2 point here, if I understand you correctly, is you  
3 want to make sure that prospective tenants are  
4 informed of this right regardless of whether it is  
5 the property owner or their agent who is  
6 requesting the information.

7 ANDREW EILER: Right.

8 COUNCIL MEMBER GARODNICK: Okay.

9 Thank you. That certainly is something we can see  
10 whether it is already addressed or whether--that's  
11 absolutely our intent in the bill so that should  
12 be easy.

13 ANDREW EILER: I don't think it's a  
14 difficult fix.

15 COUNCIL MEMBER GARODNICK: No. The  
16 other point you made, in the next paragraph, was  
17 to eliminate ambiguity request that the bill  
18 require landlords to either disclose the name of  
19 the consumer reporting agency they plan to use or  
20 affirm that no such agency will be used. I think  
21 that sounds perfectly reasonable and I would be  
22 pleased to include that in the bill.

23 On the subject or oral references  
24 here, where information is obtained orally, you  
25 note that that is unenforceable, particularly

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2 where information is obtained over the telephone,  
3 and you recommend omitting that requirement.

4 Explain a little more why you think that that  
5 requirement shouldn't be in there and why it's  
6 truly not at all enforceable.

7           ANDREW EILER: Well because  
8 basically the triggering mechanism for making the  
9 disclosure, first of all, if it's a verbal  
10 situation there may not even be a written--if  
11 there is no written, so the question is under what  
12 circumstances it would even have to be sent,  
13 where, to whom, and how. But second, the  
14 requirement is that it's triggered if all the  
15 application information is provided. So if  
16 there's incomplete application information, then  
17 basically the requirement to provide is not  
18 triggered. So you would end up into a constant  
19 argument about he said, she said, he said, who  
20 said, about whether or not all the application  
21 information had been provided that obligated the  
22 user or the landlord to actually fulfill the  
23 requirement. And it would be next to impossible  
24 to establish what had transpired in an oral  
25 conversation with respect to such applications.

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2 So that it would be, you know, how are we going to  
3 tell, how are we going to say this violation has  
4 occurred?

5 COUNCIL MEMBER GARODNICK: Do you  
6 have--and we can ask the advocates this question  
7 too when they come up--but do you have any sense  
8 as to how frequently application information, in  
9 this context, is obtained orally as opposed to in  
10 written form?

11 ANDREW EILER: No. Like I say,  
12 this is not--

13 COUNCIL MEMBER GARODNICK:  
14 [Interposing] Not your...

15 ANDREW EILER: This is not  
16 something we handle.

17 COUNCIL MEMBER GARODNICK: You will  
18 soon.

19 ANDREW EILER: Thank you very much.

20 COUNCIL MEMBER GARODNICK: You're  
21 welcome. Okay. So we will take a look at that  
22 question because I hear your point. The last  
23 question I had for you was on the term User. You  
24 say it should be amended so that the bill does not  
25 inadvertently require a local government agency to

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2 provide disclosures when it requests information  
3 from people for the purposes of assessing  
4 eligibility for housing. I see you're joined by  
5 HPD, so let me just point you to the text of the  
6 bill and then let's talk about the ambiguity that  
7 you think may lie here.

8 Section D of 20-807 Definition  
9 says, User, when used in connection with the use  
10 of a tenant screening report means any property  
11 owner who receives or requests a tenant screening  
12 report for a prospective tenant or tenants or an  
13 agent or representative of such property owner, by  
14 the way, agent or representative of such property  
15 owner was in there. I didn't actually note--

16 ANDREW EILER: [Interposing] No, I-

17 -

18 COUNCIL MEMBER GARODNICK:

19 [Interposing] Okay. Who receives or requests a  
20 tenant screening report. So, I will pose this to  
21 you or HPD, what's the concern from the City  
22 Government perspective about being captured into  
23 the definition of User?

24 BARBARA FLYNN: I'm Barbara Flynn  
25 from--Chief of Staff of Intergovernmental at HPD.

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2 We have two divisions that deal with this, the  
3 first is Mitchell Lama. And housing development  
4 agencies, the Mitchell Lama agencies, request the  
5 application and the credit screening report from  
6 the perspective tenant. If the tenant is denied,  
7 they have a right to appeal. That appeal comes to  
8 HPD. We then receive a copy of the tenant's  
9 folder, which includes--and then we receive the  
10 credit screening report. We don't want to be--and  
11 then we make the final decision. We don't want to  
12 be considered an agent or representative of the  
13 landlord in that case.

14 COUNCIL MEMBER GARODNICK: Okay,  
15 just so I understand. It's essentially in an  
16 appeal situation--

17 BARBARA FLYNN: [Interposing]  
18 Correct.

19 COUNCIL MEMBER GARODNICK: Where  
20 you get an entire file.

21 BARBARA FLYNN: Correct.

22 COUNCIL MEMBER GARODNICK: At the  
23 end. So in that context you have received--

24 BARBARA FLYNN: [Interposing]  
25 Correct.

1  
2 COUNCIL MEMBER GARODNICK: --a  
3 tenant screening report, even though you didn't  
4 request it.

5 BARBARA FLYNN: That's correct.

6 COUNCIL MEMBER GARODNICK: And it's  
7 for a perspective tenant or tenants.

8 BARBARA FLYNN: Correct. We have a  
9 second instance, which would be when we coordinate  
10 homeless rental process with Homeless Services.  
11 We act as a go between and we receive an  
12 application, we forward the application, we also  
13 get consent forms and we send them to the  
14 developer or sponsor who is actually getting the  
15 information, requesting the tenant screening  
16 information, the credit check. But we pass along  
17 a piece of paper, a consent form, to the developer  
18 or the sponsor. Again, we don't want to be  
19 considered an agent of the property owner.

20 COUNCIL MEMBER GARODNICK: Is HPD  
21 ever using the screening report for the purpose of  
22 making decisions?

23 BARBARA FLYNN: Well in the  
24 Mitchell Lama situation we may be. If the tenant  
25 is initially denied by the housing corporation,

1  
2 the housing development agency, and then it comes  
3 to HPD on appeal, we may then use that information  
4 to also deny the tenant an apartment.

5 COUNCIL MEMBER GARODNICK: In that  
6 situation, wouldn't they have already gotten  
7 notice from the initial application that they have  
8 the right to obtain tenant screening report?

9 BARBARA FLYNN: They are supposed  
10 to get that in both those situations, that's  
11 correct.

12 COUNCIL MEMBER GARODNICK: In both  
13 situations.

14 BARBARA FLYNN: That's correct.

15 COUNCIL MEMBER GARODNICK: They  
16 would have already gotten it.

17 BARBARA FLYNN: That's correct.

18 COUNCIL MEMBER GARODNICK: So  
19 really the concern for HPD is when you are in the  
20 position of either an appeal or a pass through or  
21 something of that nature, that you might have to  
22 make additional--

23 BARBARA FLYNN: [Interposing]  
24 Correct.

25 COUNCIL MEMBER GARODNICK: --

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disclosures where they have already been made?

BARBARA FLYNN: Correct.

COUNCIL MEMBER GARODNICK: Do you have a proposal as to what you'd like to see in terms of language here?

BARBARA FLYNN: Just to exclude governmental agencies. We have language that--

ANDREW EILER: [Interposing] Yeah, we have it.

COUNCIL MEMBER GARODNICK: Okay. Well we'll have to talk about that because we want to provide maximum protection for tenants, but we're also not looking to add unnecessary paper for governments, so we should talk about that. It may actually--we'll talk with Counsel here, it may satisfactorily already be in here so as to already protect you, but we'll have to take a look at that.

BARBARA FLYNN: Thank you.

COUNCIL MEMBER GARODNICK: And thanks, Madam Chair, for your indulgence. I really appreciate the time.

COUNCIL MEMBER BARRON: Thank you, Madam Chair. You know if you don't want to pose

1  
2 stuff, I know I'm in trouble with my question.  
3 But anyway. I'm concerned. The spirit of this  
4 bill is that the tenant screening report of course  
5 be--transparency be there, the tenant gets a  
6 right, the prospective tenant, and that the  
7 landlord also has some obligation around  
8 disclosure. But my concern is that if we're  
9 saying that these tenant screening reports may not  
10 be completed or may not be accurate or may have  
11 things in there where something was adjudicated  
12 and it's not in the report or it could be things  
13 that they need to clean up just like you clean up  
14 any other credit--why wouldn't there be a grace  
15 period for allowing the tenant to still be open  
16 and still be a prospective tenant until those  
17 things could happen? Because the way it stands  
18 now as long as they disclose it and they do  
19 anything here, they can just deny a tenant based  
20 upon a report, irrespective of its accuracy or  
21 completeness. So I just wanted to have some  
22 discussion on that.

23                   FRAN FREEDMAN: I'm Fran Freedman,  
24 Deputy Commissioner for the Department of Consumer  
25 Affairs and I'd like to speak to your point,

1  
2 Council Member, because the Department also has  
3 that concern that tenants should be notified--all  
4 consumers should be notified in advance for  
5 precisely the reason that you pose. And, thank  
6 you. Thank you. What we would love to see happen  
7 is, and perhaps could even be included in the bill  
8 Council Member, is a public awareness campaign  
9 that tells the public that before you get ready to  
10 pursue a rental that you look at your credit  
11 reports and clean them up. And I think that we  
12 can do that in some effective way so that people,  
13 all consumers are on notice that indeed that's  
14 what they have to do before they even go to the  
15 landlord or the real estate broker, etcetera. It  
16 would be a very useful public awareness campaign  
17 and would take care of your issue.

18 COUNCIL MEMBER BARRON: Well it  
19 would in one sense, it would take care. But I'm  
20 not looking for a public campaign. We can do  
21 that. But in the event one slips through that,  
22 someone who didn't get the information from the  
23 public campaign, I'm still looking at something  
24 that would at least, if a tenant appealed to the  
25 landlord and said, hey, you know like my report

1  
2 there are some things that are inaccurate in that  
3 report and before you make your decision, you  
4 know, I would like to have a, you know, period to  
5 correct it. So I mean we can do the public thing,  
6 I'm fine with that. But when we're talking about  
7 laws we're talking about power, authority and  
8 things like that. We always know how to do public  
9 campaigns; we don't necessarily need a bill for  
10 that.

11 ANDREW EILER: I think Council  
12 Member Garodnick already pointed to the issues  
13 involved in here, that would be barring of a  
14 prospective landlord or property owner from  
15 entering into an agreement. I mean he's offering  
16 an apartment for rent and you have a number of  
17 applicants that come asking for it. And then the  
18 issue that arises is if someone is turned down or  
19 doesn't get the apartment then if someone wants to  
20 raise issues about the accuracy of that report  
21 after finding out where it came from, somehow this  
22 private individual is then--should be barred from  
23 being able to enter into other contracts pending  
24 the outcome of this issue; an apartment has to be  
25 left empty and no one is in there. I mean it

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creates a number of--

COUNCIL MEMBER BARRON:

[Interposing] Yeah, I was just saying it also--it doesn't get to the spirit of the bill if in fact that someone can be barred. I understand what you're saying from the landlord's perspective, but also from the tenant's perspective that that tenant would be denied based upon an inaccurate report.

ANDREW EILER: That I think was the

Deputy Commissioner's point is the public awareness, that people ought to be--

COUNCIL MEMBER BARRON:

[Interposing] Yeah, we got the public awareness part and we're going to do that, because we don't need a bill to do public awareness. I'm talking about looking at something in--not a long grace period but a small grace period.

ANDREW EILER: I mean basically

it's a question of what is it that the prospective tenant, if you're going to into the rental market, it would be advisable to find out what the information is out there and make sure that it can be corrected before it needs to be used. I mean

1  
2 that was the whole point of having the free  
3 screening reports for credit reporting agencies  
4 and that was the whole issue about--

5 COUNCIL MEMBER BARRON:

6 [Interposing] Yeah, I understand that, but this  
7 bill is speaking to the fact that screening  
8 reports are not complete and landlords are denying  
9 prospective tenants. I mean that's what this bill  
10 is--we wouldn't be having this bill if everything  
11 was fine and that the reports--so the purpose of,  
12 one of the purposes of the bill is to make sure  
13 that a landlord doesn't deny a tenant based upon a  
14 tenant's screening report that may not be  
15 accurate.

16 ANDREW EILER: Well--

17 COUNCIL MEMBER BARRON:

18 [Interposing] So what happens if the tenant  
19 screening report is inaccurate, there's nothing  
20 here that stops a landlord from denying them. But  
21 anyway--

22 ANDREW EILER: [Interposing] I  
23 think you might want to take that issue up with--

24 COUNCIL MEMBER BARRON:

25 [Interposing] I think I got my point.

1  
2                   ANDREW EILER: I think you might  
3 want to take that issue up with the sponsor of the  
4 bill.

5                   COUNCIL MEMBER BARRON: I'm taking  
6 it up with you. I know how to talk to my partner.

7                   ANDREW EILER: Okay.

8                   COUNCIL MEMBER BARRON: I just want  
9 to see what you think. I know how to talk to him;  
10 I don't need you to tell me to talk to him.

11                  ANDREW EILER: Okay.

12                  COUNCIL MEMBER BARRON: I got that.  
13 I just want to know what you thought about it and  
14 whether there would be any problems.

15                  ANDREW EILER: Well there are  
16 issues that would be created, I think.

17                  COUNCIL MEMBER BARRON: Okay.  
18 That's what I was trying to hear.

19                  ANDREW EILER: So we can certainly  
20 discuss it.

21                  COUNCIL MEMBER BARRON: Just for  
22 the record, you know, when I ask these things  
23 about a bill I don't need you to tell me we can do  
24 a public, you know, education campaign. We know  
25 we can do that and I know I can talk to my

1  
2 colleague. I was trying to get your thinking on  
3 it and what your opinion was on it and what some  
4 of the pros and cons and whatever.

5 ANDREW EILER: I'd be glad to tell  
6 you.

7 COUNCIL MEMBER BARRON: Well thank  
8 you.

9 CHAIRPERSON KOSLOWITZ: I would  
10 like to ask a question--

11 [Pause]

12 ANDREW EILER: Yes there are.  
13 There are three major agencies that do the so-  
14 called credit reports. There are, we've counted  
15 11 that do in the New York are that do tenant  
16 screening, that specifically advertise doing  
17 tenant screening reports, and there probably are  
18 more. But we've identified 11, so it's a much  
19 broader universe, and it's a very specialized kind  
20 of reporting as opposed to the credit reports.

21 CHAIRPERSON KOSLOWITZ: Well how do  
22 the people find out about the others? Most people  
23 know about the three major ones.

24 ANDREW EILER: Well technically  
25 speaking, whenever someone--these tenant screening

1 reports, under the New York Fair Credit Reporting  
2 Act, are considered to be credit reports. And  
3 whenever someone uses such a report as a basis for  
4 turning down credit and a negative action, they're  
5 supposed to inform the applicant of the agency  
6 whose information was used and then the consumer  
7 can go back to check that information. So that's  
8 already currently the requirement. The problem is  
9 I think there's a lot of people that never know  
10 and no one ever tells them that the information  
11 was used as a basis for turning down their credit  
12 and that's the real issue. So that by telling  
13 people that this information will be sought by the  
14 landlord encourages the consumer to look for and  
15 check up on the information that those agencies  
16 have.

17  
18 CHAIRPERSON KOSLOWITZ: And it also  
19 lists--

20 ANDREW EILER: [Interposing] Well  
21 it lists where they can go. And then of course  
22 also checking with the three major ones.

23 CHAIRPERSON KOSLOWITZ: Koppell?

24 COUNCIL MEMBER KOPPELL: Yes. I  
25 think this is a very good idea. I would ask to be

1 listed as a co-sponsor when that becomes possible.  
2  
3 I am confused about your response on the oral  
4 requirement, because I think that fairly  
5 frequently this information might be taken down  
6 orally by the renting agent or landlord and I  
7 don't know why--we require all kinds of  
8 disclosures made when oral offers are made. I  
9 don't understand why we can't require the landlord  
10 to say, you know, if you give us this information  
11 we're going to consult a screening--or at the very  
12 least requiring that if they send some sort of  
13 communication, either by email or by regular mail  
14 that that communication include this information.  
15 I don't understand why oral representations should  
16 not provoke the same kind of disclosure.

17           ANDREW EILER: Well I think if  
18 there's anything in writing that's given,  
19 certainly that could be the foundation for it.  
20 But based on the way the bill is drafted right  
21 now, in an oral situation the requirement is  
22 triggered by giving a complete--by someone  
23 fulfilling or completing all the information, then  
24 it triggers the disclosure requirement. Because  
25 it's verbal, of course it's nothing presumably

1  
2 done in writing. So then whatever is done in  
3 writing has to be sent to someplace somewhere or  
4 to whom and at what point. There's nothing being  
5 done in writing so at what point and how is the  
6 written information communicated. And secondly,  
7 we'll always get into the question of, well, did  
8 you provide all the information to begin with that  
9 triggers the requirement. And in order for--then  
10 to enforce this aspect of it, we'd have to be able  
11 to substantiate that yes indeed the applicant  
12 provided all the information in an oral discussion  
13 that you failed then, you violated the law. You  
14 know, the kind of issues that would create are  
15 just next to insurmountable.

16 COUNCIL MEMBER KOPPELL: I don't  
17 agree with that at all. I mean if someone calls  
18 up to a renting agent and says I'd like to rent an  
19 apartment in Manhattan and the renting agent says,  
20 well we have a house on 14th Street, give me your  
21 name, your address, your social security number,  
22 your past rental history and they write it down,  
23 you mean you say you can't require that rental  
24 agent to say, you realize we're going to use this  
25 information to get your credit report? And you

1  
2 can have checkers. I mean you can have someone  
3 call up. Look, we expect most people will obey  
4 the law. If we didn't expect most people to obey  
5 the law, the legal system wouldn't work. So first  
6 of all, if we put such requirement in I assume  
7 that reputable agencies will make the disclosure.  
8 That's the first thing. The second thing is if  
9 you want to check up on them, certainly you can  
10 have checkers. You can have someone call up to  
11 check and see whether the agency is making those  
12 disclosures. You can have a complaint system so  
13 that if a tenant or perspective tenant complains,  
14 you know, they got my credit report and they never  
15 told me they were going to do this, you can then  
16 contact the agency and say, well did you contact--  
17 you can do an investigation, very simple, to find  
18 out whether they did it or didn't do it. So I  
19 don't see the insurmountable problem here  
20 whatsoever.

21                   FRAN FREEDMAN: I think you hit the  
22 nail on the head. If something is--we have no  
23 objection to oral disclosures and they should in  
24 fact be made. Perhaps what could be included in  
25 the bill is a written email confirmation that such

1  
2 disclosure was given in the course of an oral  
3 application. As a confirmation. Just so that--

4 COUNCIL MEMBER KOPPELL:

5 [Interposing] Well we--

6 FRAN FREEDMAN: --we don't get into  
7 the he said, she said.

8 COUNCIL MEMBER KOPPELL: Well.

9 FRAN FREEDMAN: Which is what we're  
10 worried about.

11 COUNCIL MEMBER KOPPELL: I  
12 understand. I don't think it's so big a problem,  
13 but at the very least the bill could provide that  
14 if there's any written communication following up  
15 on the oral communication that that would contain  
16 the disclosure.

17 FRAN FREEDMAN: That's a better  
18 solution.

19 ANDREW EILER: Exactly. If the  
20 requirement or the conditions under which those  
21 disclosures would have to be made were more  
22 specifically identified, then it would be a  
23 clearer, it would eliminate ambiguities. What my  
24 point is, right now the requirement is triggered  
25 by someone providing all the required application

1  
2 information rather than--you just listed three or  
3 four things, a social security number, address and  
4 so forth and so on, as the triggering requirement.  
5 Right now the way the bill is written, all the  
6 required information has to be furnished to  
7 trigger the disclosure requirement. And that  
8 opens up the issue as to whether or not that  
9 triggering mechanism has been triggered.

10 COUNCIL MEMBER KOPPELL: I hear  
11 your problem. I think if that's the problem maybe  
12 you could say substantially all, but I think we  
13 can deal with that. Thank you.

14 FRAN FREEDMAN: Absolutely.

15 COUNCIL MEMBER KOPPELL: I wouldn't  
16 eliminate oral though, because a lot of  
17 communication is oral and I wouldn't recommend  
18 eliminating that.

19 FRAN FREEDMAN: As long as we--

20 COUNCIL MEMBER KOPPELL:  
21 [Interposing] We could do it more carefully  
22 perhaps, but I wouldn't eliminate it. Thank you.

23 [Pause]

24 CHAIRPERSON KOSLOWITZ: --Legal  
25 Services.

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[Pause]

CHAIRPERSON KOSLOWITZ: Mario

Mizoni [phonetic].

C.J. MASIMORE: Good morning

members of the committee. Thank you for inviting MFY Legal Services to this hearing and giving us the opportunity to share with you our support for the Tenant Fair Chance Act. My name is C.J. Masimore and I am a staff attorney for the Neighborhood Preservation Project at MFY. This project is made possible by grants from the New York State Division of Housing and Community - - and the New York City Department of Housing Preservation and Development.

MFY is a non-profit legal services organization that serves low income New Yorkers by providing advice, informal advocacy and full representation. The Neighborhood Preservation Project aims to preserve affordable housing in New York City and protect the dwindling housing stock on which low income and marginalized populations depend.

MFY strongly urges the passage of the Tenant Fair Chance Act, which will protect

1  
2 tenants from abuses that occur through the use of  
3 tenant screening reports. The New York State  
4 Office of Court Administration sells electronic  
5 data about Housing Court to tenant screening  
6 companies. These companies create tenant  
7 screening reports that include rudimentary  
8 information about a case, which can be inaccurate,  
9 incomplete or misleading. They then sell these  
10 reports to landlords who use them to routinely  
11 deny applicants who have been named in a Housing  
12 Court proceeding, regardless of the reason or the  
13 outcome. As a result, qualified tenants are  
14 prevented from obtaining apartments in New York  
15 City's competitive rental market.

16 My former client, Jeffrey, is  
17 currently at risk of losing an affordable housing  
18 apartment he obtained through a lottery because of  
19 one such tenant screening report. In 2007 Jeffrey  
20 and his mother lived together in a New York City  
21 Housing Authority apartment. In October 2007,  
22 Jeffrey's mother passed away. Over the next few  
23 months, Jeffrey attempted to get the lease  
24 transferred into his name. Instead of putting the  
25 lease in his name, NYCHA brought a licensee

1  
2 holdover proceeding against him. In Housing Court  
3 NYCHA conceded that Jeffrey was legally entitled  
4 to secede to his mother's tenancy, put his name on  
5 the lease and voluntarily discontinued the case.  
6 Jeffrey contacted me earlier this week to inform  
7 me that he and his fiancée had been selected in an  
8 affordable housing lottery for a building in West  
9 Chelsea. However, a tenant screening report  
10 revealed that he had been subject to a landlord  
11 tenant proceeding and his application was put on  
12 hold. Jeffrey was not brought to Housing Court  
13 through any fault of his own. No judgment was  
14 entered against him. Once in Court, his landlord  
15 voluntarily discontinued the case against him.  
16 Now a tenant screening report, otherwise known as  
17 the Blacklist, jeopardizes the scarce affordable  
18 housing he has found for his young family.

19 In addition to unjustly punishing  
20 tenants who are sued through no fault of their  
21 own, tenant screening reports have a chilling  
22 effect on a tenant's right to withhold rent to  
23 obtain needed repairs. I recently spoke with  
24 Steven, a senior citizen who lives in rent  
25 regulated housing over MFY's Housing Assistance

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2 line. The wood surrounding one of Steven's  
3 windows is rotten, resulting in a constant stream  
4 of cold air into his apartment. He has repeatedly  
5 asked the landlord to repair the window and HPD  
6 has placed multiple violations on the apartment,  
7 yet the landlord has refused to make this vital  
8 repair. To keep the cold air out, Steven has  
9 piled boxes against the window and has tried to  
10 cover up the window to block the wind.

11 Because of the prevalence of these  
12 tenant screening reports, he is actively  
13 discouraged from withholding his rent to force the  
14 landlord to make the repair. Even if he were  
15 successful in court and awarded a 90% abatement,  
16 the Blacklist would report that the landlord  
17 received a judgment against him, thereby  
18 endangering his ability to rent a different  
19 apartment in the future.

20 MFY strongly urges the passage of  
21 the Tenant Fair Chance Act. This act provides  
22 significant needed protections to tenants from the  
23 harms presented by tenant screening reports. My  
24 client, Jeffrey lamented that though he diligently  
25 monitors his credit report, he was not aware of

1  
2 the existence of the tenant screening report until  
3 he was contacted by his prospective new landlord.  
4 Jeffrey's story is not unique among MFY clients.  
5 Section 20-808 of the Tenant Fair Chance Act would  
6 require users of tenant screening reports to  
7 disclose to tenants like Jeffrey the name and  
8 address of the consumer reporting agency that  
9 issued the report.

10 While this act does not protect  
11 tenants from all the harms presented by the tenant  
12 screening reports, it is a good starting point.  
13 It allows tenants to obtain a copy of tenant  
14 screening reports and dispute any inaccurate or  
15 misleading information. It also requires that a  
16 sign be posted to notify tenants of their right to  
17 repair and correct inaccurate data and penalizes  
18 abusers of the act. MFY legal services welcomes  
19 the tenant protections created under the act and  
20 strongly recommends that the City Council enact  
21 this law.

22 MARIO MIZONI: My name is Mario  
23 Mizoni. I'm the Lead Organizer at Metropolitan  
24 Council on Housing. We're New York City's oldest  
25 tenants' union, and our organization counsels

1  
2 thousands of tenants every year and organizes  
3 tenants and tenants associations across New York  
4 City.

5           If you don't mind I'll go off the  
6 cuff for a second or two. This includes a  
7 telephone hotline, walk-in tenants, and we daily  
8 speak about the tenant Blacklist. I'm happy to be  
9 here speaking about the issue of tenant screening  
10 reports. I think to begin we all need to start  
11 out with the understanding that these reports  
12 contain misleading and inaccurate data, as we've  
13 all been talking about this morning. And  
14 certainly the issue of somebody being  
15 misrepresented, your name may be associated with  
16 another person of the same name.

17           I went on to the report looking--  
18 the last time I went to apply for an apartment, it  
19 was Safe Rent that checked my credit. I went on  
20 to the Safe Rent website. It is nothing like the  
21 credit reporting bureaus in terms of your ability  
22 to dispute this. I'm going off the cuff to say  
23 that I don't want to cover issues that have  
24 already been said, but when you're talking about  
25 changing inaccurate information, it's not like

1  
2 Experian, TransUnion and Expedia--excuse me,  
3 what's the other one? It's not like the three  
4 credit reporting bureaus, for which there is  
5 constant monitoring of this, and for which the  
6 process of disputing is clear. I think one of the  
7 reasons why this is the case is that when you're  
8 talking about what a tenant screening report is,  
9 it may not be from the company that actually  
10 purchased from the Court System, it may be a  
11 reseller of that information or somebody who is  
12 repackaging that information. So I think we need  
13 to be clear about what that process of dispute  
14 actually involves. It's not a clear process. I  
15 wouldn't know how to go about it myself with most  
16 of these companies.

17 So, essentially the tenant  
18 screening reports are databases of allegations  
19 with cursory information as to the merits of the  
20 allegations that are used to decide whether or not  
21 to approve or deny a tenant a housing  
22 accommodation. People outside of the housing  
23 advocacy and organizing community would be shocked  
24 to find out how common it is for landlords to sue  
25 for non-payment of rent that has actually already

1  
2 been paid, every month, on time; and how many  
3 baseless holdover proceedings are brought against  
4 tenants to try to get the tenant out. If it  
5 sounds absurd to say that this is widespread, you  
6 need to remember that the basic assumptions of  
7 real estate in New York are not the same as would  
8 apply in the rest of the country, because  
9 landlords often do not want a tenant who is a  
10 responsible, paying tenant month after month.  
11 What they would rather have is a vacant apartment.  
12 So these cases are not often brought erroneously,  
13 they're brought on purpose.

14                   People who have paid attention to  
15 the news will notice last week Vantage Properties,  
16 which is a predatory equity company, purchases  
17 real estate and tries to get tenants out--that's  
18 their business model--and they're being sued for  
19 exactly what we're facing today, which is tenants  
20 who are being brought to court for non-payment of  
21 rent which they actually paid; and tenants being  
22 brought on holdover proceedings for cases in which  
23 the landlord is doing what they call fishing--  
24 throwing the same baseless claim at lots of  
25 tenants, hoping that one of them will not show up

1  
2 to the court appearance or hoping that the tenant  
3 will be intimidated and not want to go through the  
4 court appearance and then therefore give up their  
5 apartment. The larger issue we're talking about  
6 here is not cases in which the landlord wins, but  
7 cases in which the landlord doesn't win and the  
8 tenant is now blacklisted and unable to find a new  
9 apartment.

10 And so I have outlined here the  
11 instances that we see on a regular basis. And I  
12 think it's critical to note that we're not  
13 necessarily speaking about people who's  
14 information is even there through any action that  
15 they caused, whether or not the outcome of the  
16 case is there; it may be a completely baseless  
17 claim.

18 To skip ahead, obviously tenants  
19 who are withholding their rent, as has been  
20 brought up, are discouraged from even pursuing  
21 this legal action, which has been upheld as a  
22 right of a tenant. Withholding rent as a way of  
23 getting repairs is a legal process that has been  
24 upheld as something that is legitimate, and yet we  
25 are in the business, on a regular basis, of

1  
2 advising tenants you may not want to do this  
3 because of the tenant Blacklist. And the question  
4 fundamentally comes down to do you have statutory  
5 rights and do you think this will be the apartment  
6 that you intend to live in for the rest of your  
7 life, or do you intend to be back on the housing  
8 market? That's not the kind of question that  
9 should be used in determining whether somebody  
10 should use the mechanism of withholding rent.

11 Another thing which I have not  
12 heard said today that comes up is that tenants who  
13 are sued for non-payment of rent for rent they've  
14 already paid, oftentimes decide to pay the same  
15 month's rent twice because it's an apartment that  
16 they may not be living in for the near future,  
17 because they have a terrible landlord that does  
18 things like bring non-made payment cases against  
19 tenants who have paid their rent, so they double-  
20 pay for a month because they know they're going to  
21 be back on the housing market.

22 Tenants in market rate apartments  
23 more than anyone else are subject to this fear of  
24 the tenant blacklist because they do not have  
25 statutory eviction protections. They do not have

1  
2 the right to renew their lease upon lease renewal.  
3 And so the universe that's mostly affected are  
4 people who are going to be back on the housing  
5 market soon.

6 I'm going to just say--I'm not a  
7 legislator, I'm not a lawyer. I don't know what  
8 the bounds of the City Council are, nor of this  
9 Committee. But I think that the unstated fact  
10 today that we all know is that these tenant  
11 screening reports should not be used. This is not  
12 really something that should be legally allowed to  
13 be used as a basis for denying somebody an  
14 apartment because the important information is not  
15 what's in the report; it's that you're in it. The  
16 valuable information is, is this tenant somebody  
17 who's been to Housing Court. That extra  
18 information, which is misleading, inaccurate,  
19 problematic, difficult to challenge, that's not  
20 what's important. What's important is that you  
21 ended up on the list at all. And I don't know of  
22 any broker in the City who would be interested in  
23 hearing from a tenant, this is why I'm on the  
24 tenant Blacklist, it's not the right information.  
25 And whatever degree the City Council can establish

1  
2 a law that would force these--I don't know whether  
3 this is possible, but to force these tenant  
4 screening reports to take out information that  
5 were found to be baseless, inaccurate or having  
6 nothing to do with the fault of the tenant, to be  
7 removed from these lists. Without that all we're  
8 doing by this action of disclosure is telling a  
9 tenant why they were denied an apartment, but it's  
10 unclear for how many people this will actually  
11 improve their ability to find a new apartment. So  
12 this is an important step and I in some ways  
13 consider this to be the education campaign that  
14 was spoken about, because the outcome of this may  
15 not be more people finding apartments, but more  
16 people being aware of the unjust nature of these  
17 tenant screening reports.

18 [Pause]

19 COUNCIL MEMBER KOPPELL: I'm  
20 wondering, and you don't need to answer this right  
21 away, you might want to think about it a little  
22 bit. I think that outlawing the reports  
23 altogether and whether we can do it or whether it  
24 may require State legislation is a separate issue,  
25 but if it requires State legislation we can

1  
2 certainly ask the legislature to consider it, I  
3 think you've raised some very important points and  
4 I'm wondering whether there might be something  
5 short of outlawing the reports, which I'm not sure  
6 you could do and I doubt that it would happen  
7 because of opposition--I mean a tenant who would  
8 legitimately has--a prospective tenant who  
9 legitimately has a very poor payment history where  
10 they've, you know, defaulted several times on  
11 payment of rent, I think a landlord probably has a  
12 right to consider that. On the other hand, there  
13 are a lot of things that a landlord doesn't have  
14 an appropriate right to consider but might  
15 consider, such as the instances that you mentioned  
16 where tenants have been victims of harassment.  
17 And I'm wondering whether there could be some,  
18 even some sort of cause of action constructed that  
19 would allow some sort of recourse. And the  
20 analogy that I think of, I think it's a pretty  
21 good analogy, is the idea of retaliatory firing or  
22 retaliatory eviction, where you can't evict  
23 someone for making a legitimate complaint. I  
24 think that's already illegal. You certainly can't  
25 fire someone for complaining about discrimination,

1  
2 for instance, even if the discrimination is not  
3 ultimately proven. So there are instances where  
4 we have--we give people recourse to prevent this  
5 kind of unfair treatment arising out of legal  
6 action. So it should be possible somehow to find  
7 a remedy so that it would say that if you have  
8 recourse to court, that that in itself cannot be  
9 the grounds for denying you a lease. You might  
10 want to think about that. We should all think  
11 about some way of creating a legal right. And it  
12 may be somewhat difficult to prove, but in some  
13 instance you could prove it. And then if you  
14 could prove that it was really egregious you could  
15 have punitive damages that might have a deterrent  
16 effect. So we might think about--you might think  
17 about it. We should think about it.

18 MARIO MIZONI: Can I just respond  
19 really quickly to say I hope that I did not  
20 represent the opinion that all screening reports  
21 should be outlawed. The words may have come out  
22 that way. I completely understand what your  
23 suggestion is, which is that it might not be legal  
24 to regulate in the way that we want to. But what  
25 I would suggest, that we don't want screening

1 reports as they are now. And what the criteria  
2 that we want to establish is that information that  
3 should not reflect poorly on the tenant will not  
4 lead to the tenant being on that report. And so,  
5 you know, matters resolved by stipulation, it's  
6 almost impossible for the court record to show  
7 that. Matters in which a rent abatement was  
8 incurred should not lead to a person being on  
9 that. There's certainly a criteria you could  
10 establish. And what you're talking about is an  
11 unregulated body of data and that while it's an  
12 unregulated body of data it's very difficult to  
13 create a system by which that can be appropriately  
14 applied. So I think the outcome of the case  
15 should not--we should be looking towards a system  
16 for which the outcome of the case is not better  
17 represented on that report, but for which reports  
18 about a tenant's history, the tenant will be  
19 omitted from that report if the information about  
20 the outcome of the case suggests that the tenant  
21 was not the person who was at fault.

23 COUNCIL MEMBER GARODNICK: Thank  
24 you, Madam Chair. Just to thank Council Member  
25 Koppell for his comments. And on these reports,

1  
2 you're correct to point out that recourse to Court  
3 should never be a basis and to the extent that we  
4 have the power to do it or whether we need help  
5 from the State is something that we certainly  
6 should explore. I have in my hand a sample  
7 screening report, which is like a blunt instrument  
8 in that it has a thumbs down at the top of the  
9 page. It has a tenant who meets every category to  
10 be eligible for an apartment, gross monthly income  
11 after rent including it exceeds more than 30% of  
12 the monthly income, the income to rent ratio,  
13 unpaid collections, any bankruptcy, all fine,  
14 fine, fine, no misdemeanor convictions, felony  
15 convictions, not a sex offender--nothing except  
16 one thing, on the issue, it says has not had a  
17 Housing Court lawsuit or landlord collection filed  
18 and it says fail on that one point. And the  
19 overall result is a thumbs down on the report, and  
20 that's exactly what we are looking to avoid here.  
21 And you know, I do think that there is another  
22 angle too, even beyond the retaliatory action. If  
23 somebody is aware of a mistake or error, whether  
24 it's their name or incorrect record and one of  
25 these reports does not correct, I think that they

1  
2 are subject to other legal issues, whether it's  
3 fraud or consumer protection statues that are out  
4 there on misrepresentation in a commercial  
5 context. So I do think that there are other  
6 avenues. And of course there is also the  
7 marketplace in that if a landlord is using a  
8 reporting company that is shown to give inaccurate  
9 information there are hundreds of them out there.  
10 We would hope that that would create some  
11 additional pressure too. But I would agree with  
12 you. This is a first step and it is about the  
13 disclosure and the transparency, but to really  
14 deal completely we may need some help from the  
15 State.

16           The last thing I wanted to say was  
17 on the subject of the lawsuits in non-primary  
18 residence cases, I have seen that in my district  
19 over the past three years in an extraordinary  
20 fashion, particularly in Stuyvesant Town and Peter  
21 Cooper Village where there was an entire business  
22 model built on the idea that a landlord could file  
23 Golub Notices against tenants, claim that they  
24 were not actually living there as their primary  
25 residence, move them to the market rate and

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2 deliver on the business plan, which was a fantasy.

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3 So we hear you and we thank you both for your

4

4 testimony and your insights.

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MARIO MIZONI: Thank you.

6

[Pause]

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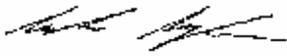
CHAIRPERSON KOSLOWITZ: This

8

8 meeting is adjourned.

C E R T I F I C A T E

I, Erika Swyler certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature  \_\_\_\_\_

Date February 3, 2010