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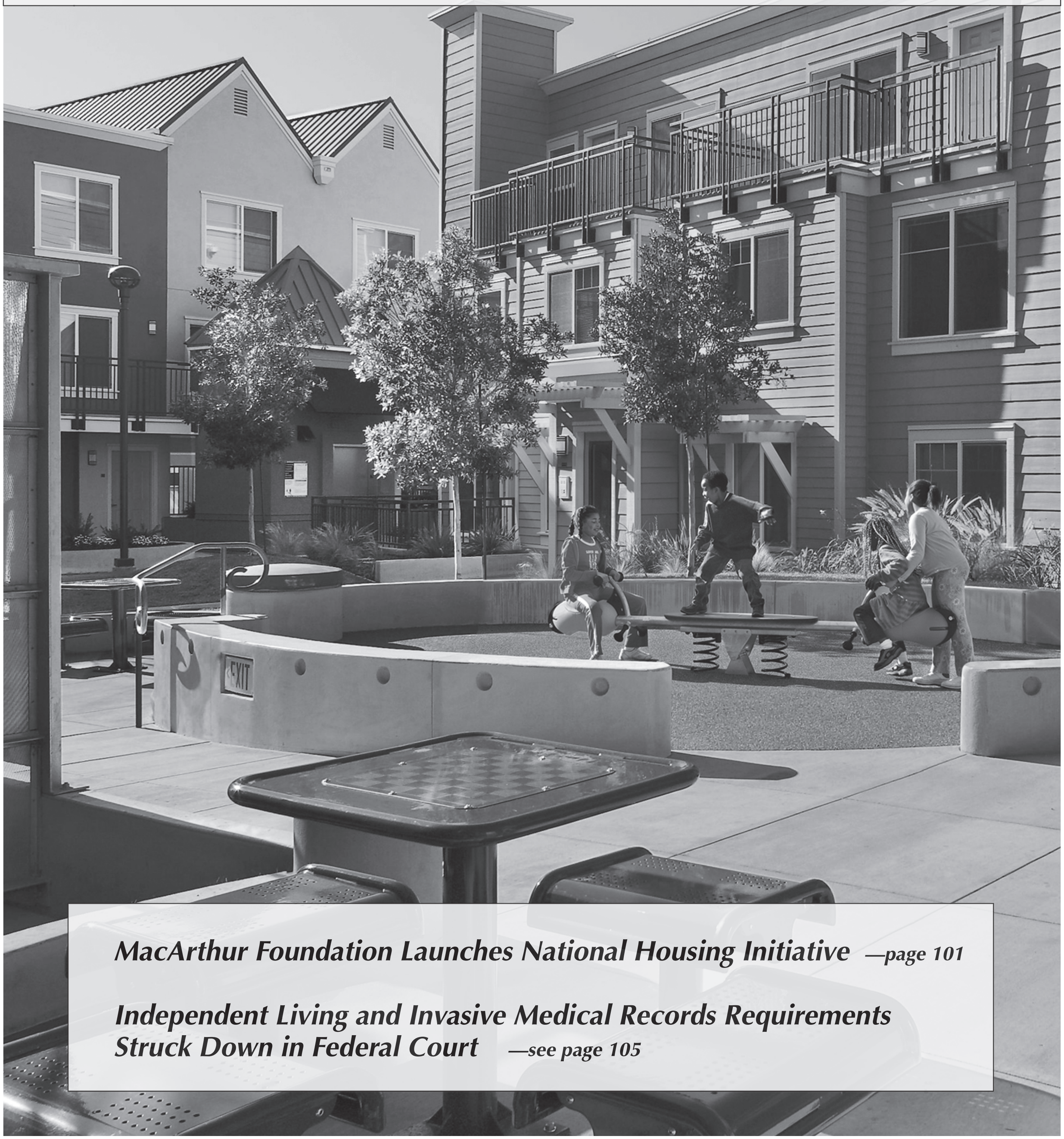

MacArthur Foundation Launches National Housing Initiative *—page 101*

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MacArthur Foundation Launches Preservation Initiatives in Twelve Selected Cities and States

Discussing the importance of affordable housing preservation, The John D. and Catherine T. MacArthur Foundation President Jonathon Fanton stated: "The end of the housing bubble and a wave of foreclosures have underscored the importance of affordable rental housing. We now have an opportunity to reset the policy agenda, restore rental housing to its proper place, and reshape the policy environment so that it both encourages rental housing preservation and makes it easier to do."[1] To further its preservation goals, the foundation announced, as part of its Window of Opportunity Initiative, twelve cities and states that will receive grants to implement creative and comprehensive preservation programs.[2] Each city or states faces a unique set of obstacles for affordable housing preservation and will thus use different tools to address them. The twelve project cities or states are: Denver, Florida, Iowa, Los Angeles, Maryland, Massachusetts, Minnesota, Ohio, Oregon/Portland, Pennsylvania, Vermont, and Washington/Seattle.[3]

Denver

Denver is a rapidly growing city undergoing a massive public transportation expansion. In addition to a greater demand for urban housing by people with higher incomes, a high rate of foreclosures has increased the number of people in the rental market.[4] Because of such high demand for housing in the urban area, Denver's working families spend approximately 59% of their gross income on housing and transportation.[5] In order to address the problem, Denver will use the MacArthur grant to focus on preserving affordable housing near public transportation.[6] This strategy should reduce both housing and transportation costs, while ensuring that low-income families have access to economic opportunities.

Denver's Transit-Oriented Development (TOD) Fund is a ten-year initiative to preserve affordable housing within a half-mile of existing and future rail lines, as well as housing within a quarter-mile of certain bus routes.[7] MacArthur will issue a Program-Related Investment (PRI) to Enterprise Community Partners in order to capitalize the fund.[8] The resources from the fund will be directed to the Urban Land Conservancy, a nonprofit organization that acquires and controls assets for public and charitable purposes. The Urban Land Conservancy will use the resources to preserve: existing federally assisted rental housing, existing unsubsidized rental housing that is affordable to families at or below 60% of area median income; and vacant and commercial properties on which new affordable housing may be built.[9] These targeted properties will be tracked through a database created using the grant funding.[10]

Florida

Florida's strategy for affordable housing has been to build new units.[11] However, these units are rarely affordable to the lowest income families—most of whom are paying more than 40% of their income toward rent.[12] Moreover, of the state's more than 253,000 subsidized rental units, over 43,000 of those subsidies will expire by 2015.[13] Therefore, housing groups are working toward a new approach to maintain affordable housing in Florida.

MacArthur's grants to Florida will be given to three organizations—the Shimberg Center for Housing Studies at the University of Florida, the Florida Housing Coalition, and the Florida Housing Finance Corporation. These groups will push to create more mission-driven organizations with the capacity to preserve housing for extremely low-income and special needs populations.[14] To reach that goal, the Florida Housing Coalition will engage in capacity building activities such as workshops for nonprofit developers and local governments regarding preservation, as well as technical support to certain nonprofit developers.[15] The Shimberg Center will undertake research initiatives to analyze information regarding the state's affordable housing supply and who is affected by the loss of assisted housing.[16] These activities, combined with other state preservation initiatives, will help further the goal of getting more mission-driven developers to preserve affordable housing.

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[1] *Preserving 70,000 Affordable Rental Homes* (MacArthur Foundation eNewsletter) February 2009, http://www.macfound.org/site/apps/nlnet/content2.aspx?c=lkLXJ8MQKrH&b=2024163&content_id={827BA54E-1D30-4912-95FD-2E78A84E7BB1}&notoc=1.

[2] *Id.*

[3] *Id.*

[4] MacArthur Foundation, State & Local Housing Preservation Leaders, City & County of Denver, www.macfound.org/housing/denver.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] MacArthur Foundation, State & Local Housing Preservation Leaders, Florida, www.macfound.org/housing/florida.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

Iowa

Rural preservation presents important issues slightly distinct from those in urban areas.[17] In Iowa, the population has declined significantly in certain areas, leaving unoccupied subsidized units, while other areas are growing rapidly, creating an undersupply of affordable rental housing. Many of Iowa's 43,000 subsidized units are funded by the Rural Development Section 515 program.[18] Owners of these units have been ending their restrictions and the stock will continue to lose affordability over the next ten years if property owners are unable or unwilling to maintain the properties or continue their participation in the Section 515 program.[19]

MacArthur's grant to the Iowa Finance Authority will help the agency "enhance the overall proficiency of developers to accelerate the preservation of Section 515 properties."[20] Activities will include creating a database of subsidized properties and developing and implementing an analysis tool to determine financial feasibility of preservation.[21] Additionally, the Iowa Finance Authority will recruit and provide technical assistance to developers to assume ownership of Section 515 properties.[22]

Los Angeles

An overwhelming number of Los Angeles residents are renters.[23] Close to half of those renters spend more than 30% of their income toward rent. Of the city's 65,000 subsidized units, about 22,000 are at risk of losing affordability.[24] One of the city's priorities is to preserve Single Room Occupancy (SRO) units, which provide housing opportunities for its residents most vulnerable to homelessness.[25] While Los Angeles has committed money and resources to the affordable housing problem, the MacArthur grant will provide necessary funds to increase capacity for preservation.

Los Angeles will primarily use its funds to focus on preservation of SRO units and to better coordinate existing programs. The city's Affordable Housing Preservation program will increase coordination of efforts with other city departments, collect data and perform outreach to owners of properties at risk of losing affordability.[26] This will be combined with a program to educate tenants living in expiring properties about their rights. The Affordable Housing Preservation program will also facilitate acquisition of properties for preservation.[27] The city's Community Redevelopment Agency will focus specifically on the Los Angeles neighborhoods of Central City East and Skid Row, which are home to some of the city's most vulnerable residents.[28] The Agency will hold workshops to build community consensus on preservation and neighborhood transformation issues. Finally, the City will invest in capacity building for two nonprofit SRO developers that have worked with the Skid Row community.[29]

Maryland

The Base Realignment and Closure (BRAC) process will expand military bases and lead to substantially increased populations in eight Maryland counties—an estimated 25,000 new households by 2011.[30] Thus, because Maryland maintains a strong rental market, it anticipates that, even assuming no current affordable units are lost, it will see a 78,000 affordable rental unit shortfall over the next eight years.[31]

Maryland will use its grant to hire consultants who will expand the information available regarding the eight targeted counties and develop a plan to educate property owners about preservation. The expanded information will include methods for prioritizing buildings for preservation, which will allow the state to do more targeted outreach to owners.[32] Furthermore, Maryland will use the grant money to create a compact between its Department of Housing and Community Development and the eight targeted counties in which they will develop common loan documents, underwriting and rehabilitation standards, and processing times for lenders.[33] The grant will also cover some costs with the Maryland Energy Administration to provide technical and financial assistance regarding energy efficiency improvements.[34] Finally, MacArthur has a granted a PRI to Maryland to help capitalize the Maryland-BRAC Preservation Loan Fund, which will help "generate short-term financing for preservation projects over a 10-year period."[35]

Massachusetts

Almost half of Massachusetts' renters pay over 30% of their income toward rent—its housing is the fifth most expensive in the country.[36] The state's housing will become increasingly unaffordable as an estimated 41,000

[17] MacArthur Foundation, State & Local Housing Preservation Leaders, Iowa, www.macfound.org/housing/iowa.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] MacArthur Foundation, State & Local Housing Preservation Leaders, Los Angeles, www.macfound.org/housing/losangeles.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] MacArthur Foundation, State & Local Housing Preservation Leaders, Maryland, www.macfound.org/housing/maryland.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] MacArthur Foundation, State & Local Housing Preservation Leaders, Massachusetts, www.macfound.org/housing/massachusetts.

units of subsidized housing are expected to be in peril of losing affordability restrictions.[37] Many of those units are properties with forty-year mortgages with no federal protections to encourage preservation. Other units are simply deteriorating because of age. Additionally, many smaller unsubsidized buildings that had been affordable to low-income families have been foreclosed upon.[38]

In order to address some of Massachusetts' affordability problems, the grant will fund the Community Economic Development Assistance Corporation (CEDAC) for a variety of activities. CEDAC will create an Interagency Working Group that will coordinate preservation activities among all levels of government, will advocate for preservation policy changes, create an early-warning system for at-risk properties, and develop a plan for stabilizing properties and establishing priorities for preservation.[39] The funding will also be used to create an advisory committee of preservation stakeholders.[40] Finally, MacArthur has granted a PRI that will provide funds for the Massachusetts Preservation Loan Fund, which provides financing for preservation purchasers.[41]

Minnesota

Both Minnesota's rural and urban areas are experiencing housing affordability crises. Many of the properties are older and deteriorating.[42] Estimates suggest 52,000 subsidized units may be lost in the next ten years.[43] Of the state's large rural subsidized housing stock, almost 80% are eligible for prepayment.[44] The "key risks to existing affordable housing include increased incentives for owners to opt-out of Section 8 subsidy contracts, conversions of tax credit properties to market-rate rents, expiring rental assistance contracts, demolition of public housing units that are not replaced, and federally-assisted properties at risk of contract termination for poor physical conditions."[45]

The grant's preservation activity will focus on supporting the Preservation Plus Initiative. This initiative will convene a working group to identify and resolve gaps in current procedures and resources for preservation of federally assisted housing, improve early-warning systems for at-risk properties, engage in operational capacity building of owners of existing affordable housing, develop a preservation strategy for unsubsidized affordable housing, and capitalize a flexible revolving loan fund for short-term financing of preservation needs.[46]

[37]*Id.*
[38]*Id.*
[39]*Id.*
[40]*Id.*
[41]*Id.*
[42]MacArthur Foundation, State & Local Housing Preservation Leaders, Minnesota, www.macfound.org/housing/minnesota.
[43]*Id.*
[44]*Id.*
[45]*Id.*
[46]*Id.*

Ohio

Ohio's unemployment and foreclosure rates are exceptionally high and create an increase in demand for affordable rental housing.[47] Almost 25% of the state's subsidized affordable housing stock, about 43,000 units, is at risk of losing affordability over the next ten years.[48]

The Ohio Housing Finance Agency (OHFA) leads a partnership of three statewide organizations to form the Ohio Preservation Compact. These organizations are OHFA, the Coalition on Homelessness and Housing in Ohio, and the Ohio Capital Finance Corporation.[49] OHFA will receive the MacArthur grant to create a comprehensive database of federally subsidized properties and increase outreach to both property owners and tenants living in subsidized housing. This database will allow the partnership to assess properties that should be prioritized for preservation.[50] Ideally, this information will lead to the transfer of ownership of properties to nonprofit organizations that will continue the affordable use restrictions.[51] The member organizations of the Ohio Preservation compact will also provide technical assistance to owners regarding a variety of issues and outreach to tenants to help them engage in the preservation process.[52] Finally, the Ohio Capital Finance Corporation will receive a PRI to establish a preservation loan fund to provide financing to developers.[53]

Oregon

Oregon suffers from soaring real estate prices and a rapidly increasing population.[54] Over a quarter of the state's population pays more than 50% of its income toward housing.[55] In the next five years, more than 80% of Oregon's federally subsidized housing stock will face contract expiration.[56] Compounding the problem is the closure of numerous manufactured home parks.[57]

In order to address the state's affordable housing problems, the Network for Affordable Housing will receive a grant and a PRI to work on preservation activities. Much of the grant will support the already existing Housing Acquisition Project, a collaboration of various organizations.[58] The activities will include increasing coordination

[47]MacArthur Foundation, State & Local Housing Preservation Leaders, Ohio, www.macfound.org/housing/ohio.
[48]*Id.*
[49]*Id.*
[50]*Id.*
[51]*Id.*
[52]*Id.*
[53]*Id.*
[54]MacArthur Foundation, State & Local Housing Preservation Leaders, Oregon, http://www.macfound.org/site/c.lkLXJ8MQKrH/b.4991523/k.C941/Oregon.htm.
[55]*Id.*
[56]*Id.*
[57]*Id.*
[58]*Id.*

between different levels of government housing agencies and improving an existing database of affordable properties.[59] The grant will also require that staff improve tenant outreach, partially by working with an existing tenant advocacy organization network to develop educational materials and outreach.[60] The PRI will help fund the Oregon Housing Acquisition Fund, which provides loans to purchase at-risk properties until a developer procures permanent financing, and engages in other preservation activities.[61]

About 250,000 households in Washington struggle to afford housing. Both federally subsidized units as well as Low Income Housing Tax Credit units have expiring use restrictions in the next five years.

Pennsylvania

Pennsylvania has an aging federally subsidized housing stock.[62] Almost 50% of the federally subsidized affordable housing in the state is over twenty-five years old.[63] The age of the units, combined with deregulation of utilities in Pennsylvania, will lead to soaring utility costs in the coming years, threatening their affordability.

Because of the costs of maintaining older buildings and the pending increase in utility costs, Pennsylvania's grant will fund its Preservation through Smart Rehab strategy—a strategy that focuses on green building and sustainability.[64] Program activities will include assessing utility expenses, mechanical systems, and physical condition of buildings to determine how they can become more energy-efficient. The Pennsylvania Housing Finance Agency will also create a group of energy auditors that will help owners take advantage of energy-efficient technology. In some cases, the grant will cover the costs of the audits.[65] It will also fund the marketing of this program. Finally, the Pennsylvania Housing Finance Agency will also provide loans for selected projects to upgrade their energy conservation technology.

[59]*Id.*
[60]*Id.*
[61]*Id.*
[62]MacArthur Foundation, State & Local Housing Preservation Leaders, Pennsylvania, www.macfound.org/housing/pennsylvania.
[63]*Id.*
[64]*Id.*
[65]*Id.*

Vermont

Vermont has an impressive track record of preserving affordable housing.[66] Vermont's economy remains strong—it faces few foreclosures and low unemployment. However, an increase in lower-wage jobs leaves many residents unable to afford rents and this leaves Vermont with an undersupply of affordable housing. Moreover, almost 60% of the state's federally subsidized housing stock will see expiring use restrictions by 2018.[67]

Because Vermont already maintains an effective preservation system, its grant will focus on increasing the need for loan products and technical assistance. To do this, the state will form a Preservation Council to coordinate new activities with existing ones.[68] The Vermont Housing and Conservation Board will also engage in several technical assistance activities and trainings to assist nonprofit developers. Topics of assistance will include creating a standardized appraisal guide, encouraging owner participation in preservation, and disseminating information to preservation-minded organizations.[69] Furthermore, the grant will provide funding for energy efficiency assessments and expansion of a supportive housing model to meet the needs of seniors. Finally, the Vermont Housing Finance Agency will receive a PRI to help develop new loan products.[70]

Washington

About 250,000 households in Washington struggle to afford housing.[71] Both federally subsidized units as well as Low Income Housing Tax Credit units have expiring use restrictions in the next five years.[72] Having seen success in preserving housing, Washington will continue its strategy of focusing on long-term viability of properties and assisting nonprofit owners.

The City of Seattle Office of Housing and the Housing Trust Fund will create a best practices guide for nonprofit owners and affordable housing funders on how to evaluate portfolios and recapitalization needs.[73] As a demonstration project, it will also provide portfolio evaluation services to ten to fifteen targeted nonprofit owners.[74] The Housing Trust Fund will also develop a web-based reporting system for affordable housing projects. The City of Seattle Office of Housing will support its asset management program, a network of funders and owners in the

[66]MacArthur Foundation, State & Local Housing Preservation Leaders, Vermont, www.macfound.org/housing/vermont.
[67]*Id.*
[68]*Id.*
[69]*Id.*
[70]*Id.*
[71]MacArthur Foundation, State & Local Housing Preservation Leaders, Washington, www.macfound.org/housing/washington-seattle.
[72]*Id.*
[73]*Id.*
[74]*Id.*

city that exchange best practices information and engage in discussions about challenges and solutions to maintaining affordable housing.[75]

Conclusion

As communities search for solutions to the ever-present need to preserve affordable rental housing, the MacArthur Foundation's grants to twelve innovative states and localities will help maintain the current stock. Many of these grantees will develop programs that may be models for others, from methods to increase energy efficiency to developing ways for advocates and developers to work together. Most of the states and localities will work on making more robust tracking and early warning systems to identify at-risk housing. As these programs develop, advocates should both look for successful models and seek to become involved with state or local preservation strategies wherever possible. ■

[75] *Id.*

Federal District Court Strikes Down Independent Living and Invasive Medical Records Requirements

In *Laflamme v. New Horizons, Inc.*,[1] the United States District Court of Connecticut issued an important ruling analyzing the Fair Housing Act's prohibition on discrimination against people with disabilities. Specifically, the court analyzed three substantive questions:

- Can a housing provider that operates rental housing for people with severe physical disabilities impose independent living requirements?
- Can the housing provider request extensive medical records from prospective tenants?
- Can the housing provider prevent a tenant whom it believes cannot live independently from returning to her housing without violating the Fair Housing Act?

The court held, for each question, that the housing provider cannot.

Background

New Horizons Village (NHV) is a housing provider that offers rental units for severely physically disabled adults.[2] NHV receives funding from the Connecticut Department of Social Services to help subsidize qualifying tenancies and the costs of employing personal care attendants. Personal care attendants help care for tenants a few hours a day if needed, but are not medical professionals.[3] NHV is not a nursing home or medical facility. Importantly, NHV requires that its tenants be capable of living independently. Furthermore, as part of its application process, NHV requires that tenants sign a release allowing it to access any and all medical records.[4]

Denise Laflamme has cerebral palsy and limited mobility. She also experiences seizures and is diagnosed with depression. In February 2004, she applied to become a tenant at NHV, and after she filled out a medical release form and underwent a rigorous interview process NHV approved her tenancy.

[1] __ F.Supp.2d __, 2009 WL 840758 (D.Conn. 2009).
[2] *Id.* at *2.
[3] *Id.*
[4] *Id* at *6. As quoted in the court's decision, New Horizons' chief financial officer characterized the requirements: "To be physically disabled is a necessary but not sufficient condition to live at New Horizons. The other necessary condition is that the person be able to and demonstrate the ability to live independently at New Horizons. This ability requires social and psychological competence to do so."