

NOTES

NAVIGATING THE GOAT PATHS:

COMPULSIVE HOARDING, OR COLLYER BROTHERS SYNDROME, AND THE LEGAL REALITY OF CLUTTER

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"I want to lead the Victorian life, surrounded by exquisite clutter."¹

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1. Interview by Don Rush with Freddie Mercury, *Circus Magazine* (Mar. 17, 1977), available at <http://freddie.helenheart.com/circus.htm>.

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I. INTRODUCTION

In a society that spends an average of over \$800 per person on holiday shopping,² contributes consumer spending to 70% of the gross domestic product,³ and has the lowest savings rate in the world at 0.4%,⁴ it is easy to recognize America's obsession with objects. Advertisers are masterminds at creating a nexus between what is necessary and what is desired while manipulating consumer anxiety to drive demand for products.⁵ Not surprisingly, many Americans feel an attachment to their possessions.⁶ This Note, however, specifically addresses the legal consequences for those American consumers suffering from a mental disability that drives their need to acquire and hoard objects. Known as compulsive hoarders, these individuals may accumulate enough clutter to threaten the safety of the members of their households and unduly burden the surrounding community.⁷

Housing law, to be effective, must balance the interests of the individual with that of the general public. Therefore, this Note argues that local municipalities, agencies, and landlords must

2. See Bill Hardekopf, *Credit Card Tips for Holiday Shopping*, FORBES.COM (Nov. 12, 2010, 1:10 PM), <http://www.forbes.com/sites/moneybuilder/2010/11/12/credit-card-tips-for-holiday-shopping/> ("13.6 million Americans are still paying for last year's holiday shopping. The presents may have been forgotten, but the debt and interest payments live on."); Lacey Rose, *Christmas by the Numbers*, FORBES.COM (Dec. 5, 2006, 6:00 AM), http://www.forbes.com/2006/12/04/christmas-spending-breakdown-biz_cx_lr_1205christmas_print.html (noting that researchers predicted that Americans celebrating Christmas in 2006 would spend \$154 billion on gifts).

3. Katherine Lewis, *World Economy Turns on U.S. Consumer Behavior, and It is Changing*, AMERICA.GOV (Dec. 3, 2008), <http://www.america.gov/st/business-english/2008/December/20081203154212berehellek0.2330286.html>.

4. *Id.*

5. See Colin Campbell, *Consumption and the Rhetorics of Need and Want*, 11 J. DESIGN HIST. 235, 244 (1998). For an extremist view of the capitalist market and advertising in America, see *Freeganism, Waste and the Ideology of the Product*, FREEGAN.INFO, <http://freegan.info/what-is-a-freegan/freegan-philosophy/freeganism-waste-and-the-ideology-of-the-product/> (last visited Nov. 11, 2011) ("[I]n the absence of consumer wants and needs generating real demand for products, the sellers of products must invent desires, manufacture demand, and fabricate need."). The advertiser serves the producer by inventing a consumer demand thereby making a market for the producer. *See id.*

6. Jessica R. Grisham et al., *Formation of Attachment to Possessions in Compulsive Hoarding*, 23 J. ANXIETY DISORDERS 357, 357 (2009) (arguing that people often feel an emotional attachment to an object for reasons other than its perceived use). "[O]wnership helps individuals define themselves, express to others who they are, and enable them to maintain a sense of continuity, and to remain connected to the past." *Id.*

7. *See infra* Part II.

collaborate to abate the consequences of compulsive hoarding.⁸ However, because of the magnitude of danger hoarding may create, there is a danger that compulsive hoarders lack sufficient protection at a local level. When state and municipal law fails, this Note argues that compulsive hoarding should be recognized as a mental disability under the Fair Housing Amendments Act, and, as a result, landlords should be required to provide a reasonable accommodation that is consistent with the intent and spirit of the Act.⁹ Furthermore, it argues that in the Section Eight Housing Choice Voucher Program context, landlords have an equal, if not heightened, responsibility to provide hoarder tenants with reasonable accommodations to reconcile lease violations caused by compulsive hoarding.¹⁰ Hoarders require an accommodation that is tailored to the source of the mental disability, not a transitory solution.

In Part II.A, this Note defines compulsive hoarding, explains its traits, and describes the living conditions of those affected with the mental disorder. Part II.B depicts a specific subset of compulsive hoarding—animal hoarding—and describes its specific consequences. Part II.C analyses whether compulsive hoarding is its own disability and supports its inclusion in the DSM-5. In Part III, this Note describes and analyzes the potential legal consequences for compulsive hoarders, beginning with state and municipal law—including housing codes and residential lease agreements—in Part III.A.1, followed by the influence of adult and child protective services in Part III.A.2. In Part III.B, this Note analyzes the role of the Fair Housing Amendments Act in the lives of compulsive hoarders, beginning with the background of the Act in Part III.B.1, followed by the rights of compulsive hoarders to receive a reasonable accommodation under the Act in Part III.B.2, and finishing with an analysis of whether landlords may circumvent hoarders' requests for reasonable accommodations under the Act's health and safety exception in Part III.B.3. Finally, in Part IV, this Note offers recommendations and solutions to municipalities and agencies that struggle with compulsive hoarders that will reduce recidivism, streamline problem-solving, and coincide with the purpose of the Fair Housing Amendments Act.

II. WHAT IS COMPULSIVE HOARDING?

Compulsive hoarding is defined as “the acquisition of, and failure to discard . . . possessions that appear to be useless or of limited value; . . . living spaces sufficiently cluttered so as to preclude activities for which those spaces were designed; and . . . significant

8. See *infra* Part IV.

9. See *infra* Part III.B.2.

10. See *infra* Part III.B.2.

distress or impairment in functioning caused by the hoarding.”¹¹ This definition identifies four factors fundamental to compulsive hoarding: 1) excessive acquiring; 2) difficulty discarding; 3) cluttered living spaces; and 4) having significant impairment or distress.¹²

A. *Attributes of Compulsive Hoarders*

Hoarders excessively acquire items through either buying more than needed at flea markets, yard sales, or stores or by collecting free items like discarded newspapers or objects from the trash.¹³ A key feature of the acquired objects is that they appear to have little or no value to the outside observer.¹⁴ Hoarders, on the other hand, see almost all of their possessions as having a potential use.¹⁵ To the outside observer, a hoarder’s clutter contains a mixture of valuable and worthless objects, but, to the hoarder, it contains equally valuable items.¹⁶ Objects are based on use-value—the potential use that they represent—not actual use.¹⁷ Because hoarders view objects as having high potential uses, they face difficulty discarding them.¹⁸ Hoarding problems usually involve a “fear of waste, the allure of opportunity, or the comfort and safety provided by objects.”¹⁹ Hoarders experience a “connection between possessions and security.”²⁰ Studies show that hoarders have a greater level of

11. Randy O. Frost & Tamara L. Hartl, *A Cognitive-Behavioral Model of Compulsive Hoarding*, 34 BEHAV. RES. AND THERAPY 341, 341 (1996). According to the International OCD Foundation, compulsive hoarding occurs when

1. [a] person collects and keeps a lot of items, even things that appear useless or of little value to most people, and 2. [t]hese items clutter the living spaces and keep the person from using their rooms as they were intended, and 3. [t]hese items cause distress or problems in day-to-day activities.

Hoarding Fact Sheet, INTERNATIONAL OCD FOUNDATION, [http://www.ocfoundation.org/uploadedFiles/Hoarding Fact Sheet.pdf](http://www.ocfoundation.org/uploadedFiles/Hoarding_Fact_Sheet.pdf) (last visited Nov. 30, 2011).

12. MICHAEL A. TOMPKINS & TAMARA L. HARTL, DIGGING OUT: HELPING YOUR LOVED ONE MANAGE CLUTTER, HOARDING & COMPULSIVE ACQUIRING 14 (2009) [hereinafter DIGGING OUT].

13. *Id.*; DAVID F. TOLIN, RANDY O. FROST & GAIL STEKETEE, BURIED IN TREASURES: HELP FOR COMPULSIVE ACQUIRING, SAVING, AND HOARDING 12 (2007) [hereinafter BURIED IN TREASURES].

14. BURIED IN TREASURES, *supra* note 13, at 12-13.

15. *See* RANDY O. FROST & GAIL STEKETEE, STUFF: COMPULSIVE HOARDING AND THE MEANING OF THINGS 15 (2010) [hereinafter STUFF] (“Although hoarding is considered a mental disorder, it may stem from an extraordinary ability. For hoarders, every object is rich with detail.”).

16. *See id.* at 24. “Some people who hoard never have lucid moments about their habits,” however, even those who have “‘insight’ into the irrationality of [their] hoarding behavior” may not be able to see the absurdity of keeping a ten-year-old newspaper. *Id.* at 23.

17. *See id.* at 101-02.

18. *See* BURIED IN TREASURES, *supra* note 13.

19. STUFF, *supra* note 15.

20. *Id.* at 87 (“Violations of ownership lead to extreme feelings of vulnerability.”).

emotional attachment to inanimate objects than do nonhoarders, and “[t]hese attachments are associated with beliefs about the meaning and importance of possessions in the lives of hoarders.”²¹ Furthermore, hoarders have trouble discarding objects because they have difficulty making decisions.²² To increase perception of control, hoarders avoid decisions about keeping or discarding objects.²³ Fearing that discarding an object will result in a potentially important mistake, hoarders avoid discarding altogether.²⁴

Hoarding likely results, “at least in part, from deficits in processing information.”²⁵ Deciding whether to discard or how to organize possessions entails sustained attention and faith in one’s memory.²⁶ Because hoarders lack the requisite categorization skills and the confidence in memory to discard objects, their living spaces reach the point of extreme clutter.²⁷ Living in excessive clutter is one of the most recognized functional deficits of hoarders.²⁸ Such excessive clutter is the root of the many legal problems that can beset a hoarder’s life.²⁹ What differentiates hoarders from people who are simply messy is that hoarders’ living spaces can no longer be used as

21. Gail Steketee, Randy O. Frost & Michael Kyrios, *Cognitive Aspects of Compulsive Hoarding*, 27 COGNITIVE THERAPY AND RES. 463, 464 (2003); see also Frost & Hartl, *supra* note 11, at 347 (“[P]ossessions provide a source of comfort and security and may signal a safe environment. . . . The thought of getting rid of the possession violates this feeling of safety.”). Acquiring even unnecessary and frivolous objects provides comfort to hoarders, and in this sense, compulsive buying and hoarding are likely related. *Id.*

22. See STUFF, *supra* note 15, at 28. When trying to clean their piles, hoarders justify reasons to keep objects and fail to distinguish unimportant objects; the result is that objects on the bottom of the pile get shuffled to the top, while the objects at the top find their way to the bottom. *Id.* In effect, hardly anything is discarded. See *id.* This process is termed “churning.” *Id.* Churning reveals that hoarders desire “to keep objects in sight in order to remember them.” See *id.* at 29. Sometimes hoarders save objects out of a distrust of their own memories. See *id.* at 30.

23. See Steketee, Frost & Kyrios, *supra* note 21, at 465.

24. *Id.* “Keeping the item by default becomes the way out of this dilemma.” DIGGING OUT, *supra* note 12, at 15. Other hoarders experience feelings of grief when they discard objects, and so they stop discarding everything in order to escape the feelings of profound loss. *Id.*

25. STUFF, *supra* note 15, at 31.

26. *Id.* at 31-32.

27. See *id.* at 31 (“Although a visual/spatial organizing scheme might work on a modest scale, it’s not an efficient way to deal with a large volume of possessions.”); Frost & Hartl, *supra* note 11, at 341, 346-47 (explaining some hoarders express a lack of confidence in their ability to remember an event if the object associated with the event is discarded, prompting them to keep more objects than people with higher levels of confidence in their memories). Additionally, hoarders have reported buying replacements for items they know they already have but cannot locate. See STUFF, *supra* note 15, at 31.

28. See Frost & Hartl, *supra* note 11.

29. See *infra* Part III.

originally intended.³⁰ Hoarders' homes often have an assortment of items stacked to the ceiling with very little space to move and function normally. As a result, hoarders are left with diminished living space—moving “through each room on ‘goat paths’ (a phrase well-known in the hoarding self-help world), narrow trails not more than a foot wide where the floor [is] occasionally visible.”³¹ “For some people, compulsive hoarding involves more than just clutter: there [is] a distinctively unsanitary element to their home.”³²

The significant stress or impairment that hoarding causes manifests in several ways:

excessive anxiety about others moving or touching possessions, conflict with spouse over clutter, illnesses of family members that are directly linked to the clutter (e.g. allergies), inability to complete necessary activities due to clutter (cooking, paying bills, etc.), distress over not providing a ‘proper’ home environment for children, embarrassment or withdrawal from social relationships due to the clutter, inability to invite others into the home, and inability to work because of the clutter (i.e. inefficiency caused by clutter).³³

Based on its manifestations, compulsive hoarding often causes substantial impairment of major life activities for those afflicted. As peculiar as hoarding may seem, the signs are virtually universal; therefore, one may have noticed the footprint of a hoarder without making the connection to the disorder.³⁴ The prevalence rate of hoarding in North America is approximately 2%-5% of the population, not an insubstantial portion of the populace.³⁵

30. BURIED IN TREASURES, *supra* note 13, at 13. Many hoarders cannot cook or eat in their kitchens because clutter has made their stoves and tables unusable. *Id.* “Others . . . [cannot] sleep in their bed[s] because clothing is piled all over [them].” *Id.*

31. See STUFF, *supra* note 15, at 22. “In hoarding cases, clutter prevents the normal use of space for basic activities such as cooking, cleaning, moving through the house, and even sleeping. Interference with these functions can make hoarding a dangerous problem, putting people at risk for fire, falling, poor sanitation, and health risks.” Amanda K. Gibson et al., *Ethical Considerations in the Treatment of Compulsive Hoarding*, 17 COGNITIVE AND BEHAV. PRAC. 426, 426 (2010).

32. BURIED IN TREASURES, *supra* note 13, at 18 (“Rotten food is strewn around; mold and mildew are growing on the walls; animal, or even human, urine or feces go uncleaned.”).

33. Frost & Hartl, *supra* note 11, at 342; see also DIGGING OUT, *supra* note 12, at 15-16; STUFF, *supra* note 15, at 11 (“Hoarders tend to be ashamed of their disorder and unwelcoming to those who would interfere with their activities.”).

34. See STUFF, *supra* note 15, at 9. “Hoarding has been reported throughout the world on every continent but Antarctica . . . [and] the behavior of excessive collecting and storing of objects does not appear to be an exclusively culture-bound syndrome.” *Id.* at 62.

35. Gibson et al., *supra* note 31; STUFF, *supra* note 15, at 9 (“[S]ix million to fifteen million Americans suffer from hoarding that causes them distress or interferes with their ability to live.”).

One of the most traumatic experiences for hoarders involves public health officials or family members coming to clear out the hoarders' homes.³⁶ Because hoarders' possessions may resemble trash, an observer may not understand the hoarder's extreme reaction to the removal of items.³⁷ "These scenarios almost always leave the hoarder feeling as if his or her most valued possessions have been taken away."³⁸ Whether the possessions are objectively valuable or trash, one can empathize with a feeling of loss and understand the distress caused by an intrusion into the sanctum of the home. Forced cleanouts are expensive and do not treat the root of the hoarding problem: the behavior that causes the disability.³⁹

B. Animal Hoarding: A Variant of Compulsive Hoarding

A variant of compulsive hoarding—animal hoarding—involves those who collect, but do not care for, a great number of animals.⁴⁰ Some health concerns for animal hoarders are catching zoonotic diseases, which can spread from animal to human, and living with poor air quality arising from the accumulation of ammonia and bioaerosol from decaying animals and their waste.⁴¹ Although the threat to human health is severe, the animals themselves do not escape the danger. Besides general neglect from lack of water, food, veterinary care, and sanitation, the animals often suffer from unnatural and severe crowding that causes behavioral problems.⁴² Although, they may face many of the same legal consequences as

36. STUFF, *supra* note 15, at 96-97.

37. *See id.* at 97.

38. *Id.* Due to their trouble differentiating which objects lack value, hoarders can easily place objectively valuable objects, like gold earrings, amongst five-year-old newspapers. *Id.*

39. *Id.* In Massachusetts, one town's health department spent \$16,000 clearing out a hoarder's home "only to face the same problem 18 months later." David F. Tolin et al., *The Economic and Social Burden of Compulsive Hoarding*, 160 PSYCHIATRY RES. 200, 201 (2008).

40. Randy O. Frost, Gail Steketee & Lauren Williams, *Hoarding: A Community Health Problem*, 8 HEALTH & SOC. CARE COMMUNITY 229, 229-30 (2000). A woman hoarder was caught keeping 589 feral and inbred cats. Lisa Avery, *From Helping to Hoarding to Hurting: When the Acts of "Good Samaritans" Become Felony Animal Cruelty*, 39 VAL. U. L. REV. 815, 825 (2005). Nine cats were found dead in a closet and stuffed under couch cushions, though the woman insisted that all of her pets were fine. *Id.*

41. *Animal Hoarding and Public Health*, THE HOARDING OF ANIMALS RESEARCH CONSORTIUM, <http://www.tufts.edu/vet/hoarding/pubhlth.htm#A1> (last visited Nov. 11, 2011). The major levels of ammonia found in animal hoarding homes make clean-outs a significant health danger and force workers to wear protective masks to ensure appropriate ventilation while assisting in the removal efforts. *See id.*

42. Colin Berry, Gary Patronek & Randall Lockwood, *Long-Term Outcomes in Animal Hoarding Cases*, 11 ANIMAL L. 167, 170 (2005). Such behavioral problems make adoption difficult for abused animals, thereby increasing the chances of euthanasia. *Id.*

general compulsive hoarders, this section describes the implications specific to animal hoarding.

Animal hoarders tend to complicate more agencies and health departments and live in less sanitary conditions than nonanimal hoarders.⁴³ The high expense of animal hoarding cases can rapidly “exhaust non-profit agencies’ lean budgets, thereby eliminating resources for animal care and animal care employees.”⁴⁴ Additionally, rescues overcrowd shelters’ populations, sometimes doubling them in one night, which can force such shelters to file bankruptcy.⁴⁵

Most statutory laws affecting animal hoarders are broad anti-cruelty laws.⁴⁶ These laws prove ineffective in controlling animal hoarding because they are vaguely worded and only require owners to provide adequate food, water, and shelter for the animals.⁴⁷ Such vague statutory construction leaves too much room for interpretation, possibly allowing animal hoarders to own 200 pets living in horrific conditions so long as there is a torn bag of Meow Mix on the floor and an open toilet.⁴⁸ Another drawback of animal cruelty laws’ attempt at addressing hoarding is the hoarder’s lack of intent to harm the animals.⁴⁹ When neglect is the main cause of abuse in animal hoarding cases, statutes that require deliberate abuse prove futile for hoarders whose guilt is that of omission.⁵⁰ Although increased prosecution of animal hoarders and stricter animal cruelty legislation may reduce the amount of animal abuse, controlling animal hoarding requires a deeper commitment to

43. See Frost, Steketee & Williams, *supra* note 40, at 233-34. To seize all hoarded animals in just one case often takes animal control officers hours or even days. Berry, Patronek & Lockwood, *supra* note 42. Rescues often require help from police officers and firefighters who have the training and equipment to work with hazardous materials found in animal hoarding homes. *Id.* Shelters usually pay the bill for the animals’ food, veterinary care, and housing once the animals are removed. *Id.* Local governments “may also incur bills for numerous visits by health and county zone inspectors to the hoarder’s property, cleanup or demolition of the property, court appointed attorneys for some offenders, and the cost of administrative hearings.” *Id.*

44. Avery, *supra* note 40, at 839. A humane society in California spent over \$45,000 caring for twenty-three animals owned by one hoarder. *Id.* at 838. Similarly, a humane society in Florida spent \$450,000 on veterinarian bills and boarding costs for 110 dogs seized from a repeat hoarder awaiting trial. *Id.*

45. *Id.* at 839.

46. See Berry, Patronek & Lockwood, *supra* note 42, at 170-73; Megan L. Renwick, Note, *Animal Hoarding: A Legislative Solution*, 47 U. LOUISVILLE L. REV. 585, 591 (2009) (noting the difficulty in proving the intent to harm in hoarding cases that is often required under general animal cruelty laws).

47. Renwick, *supra* note 46, at 591.

48. See Berry, Patronek & Lockwood, *supra* note 42, at 172.

49. See Renwick, *supra* note 46, at 593.

50. *Id.* Prosecutors may also be reluctant to bring charges against hoarders “whose apparent crime is being an animal-lover—especially where, as in many cases, the hoarder genuinely believes no mistreatment has occurred.” *Id.*

addressing the mental disability that causes the extreme hoarding.⁵¹ To prevent recidivism of animal abuse, judges must force mandatory treatment and monitoring of animal hoarders and ensure that their orders are enforced.⁵²

C. *Compulsive Hoarding Under the DSM-5*

An important step toward beneficial treatment for mental disorders is a listing in the Diagnostic and Statistical Handbook for Mental Disorders (“DSM”), because “accurate diagnosis leads to appropriate treatment.”⁵³ Published by the American Psychiatric Association (“APA”) the DSM provides a common language for diagnosis of mental disorders.⁵⁴ It describes the symptoms and criteria for mental disorders to ensure accurate diagnosis.⁵⁵ The DSM is important to the legal process, and “if a person’s mental state is at issue, the attorneys or the courts turn to mental health experts, and they usually call upon them for a diagnosis.”⁵⁶ The current edition of the DSM, the DSM-IV-TR,⁵⁷ does not list compulsive hoarding as a mental disorder.⁵⁸ Rather, the DSM-IV-TR advises that a diagnosis of obsessive compulsive disorder (“OCD”) should be considered if hoarding symptoms are extreme.⁵⁹ Consequently, “[t]he ambiguous status of hoarding in DSM-IV-TR can be confusing and clinicians may struggle deciding when a diagnosis of OCD is appropriate in individuals presenting with hoarding behavior, particularly in the absence of other prototypical OCD symptoms.”⁶⁰

The scheduled release date of the next edition of the DSM, the DSM-5, is May 2013.⁶¹ Though the APA states that the DSM-5 will not provide guidelines for treatment, the APA offers that the “DSM-5 will . . . be helpful in measuring the effectiveness of treatment, as dimensional assessments will assist in assessing any changes in

51. See, e.g., Avery, *supra* note 40, at 852-53; Berry, Patronek & Lockwood, *supra* note 42, at 187-88; Renwick, *supra* note 46, at 605.

52. See Renwick, *supra* note 46, at 605.

53. *Frequently Asked Questions, DSM-5 Development*, AM. PSYCHIATRIC ASS’N, <http://www.dsm5.org/about/Pages/faq.aspx> (last visited Dec. 7, 2011).

54. *Id.*

55. *Id.*

56. Ralph Slovenko, *The Role of Psychiatric Diagnosis in the Law*, 30 J. PSYCHIATRY & L. 421, 422-23 (2002).

57. See AM. PSYCHIATRIC ASS’N, DSM-IV-TR (4th ed. 2000).

58. Alberto Pertusa, Randy O. Frost & David Mataix-Cols, *When Hoarding is a Symptom of OCD: A Case Series and Implications for DSM-V*, 48 BEHAV. RES. & THERAPY 1012, 1012 (2010).

59. *Id.*

60. *Id.*

61. Am. Psychiatric Ass’n, *DSM-5 Publication Date Moved to May 2013 - American Psychiatric Association*, MEDICAL NEWS TODAY (Dec. 11, 2009), <http://www.medicalnewstoday.com/articles/173742.php>.

severity levels as a response to treatment.”⁶² Unfortunately, without a uniform diagnostic of hoarding in the DSM-5, lawyers face an uphill battle of proving the benefits of therapy for hoarders and lack the authority of classifying compulsive hoarding as a mental disability, which a listing in the DSM would provide.⁶³

III. LEGAL CONSEQUENCES OF COMPULSIVE HOARDING

Having described the characteristics of compulsive hoarding, this section will address the numerous legal consequences that may beset a hoarder. The type of clutter associated with compulsive hoarding increases the risks of falling, fire, health issues, and poor sanitation.⁶⁴ Accumulating clutter poses a fire hazard if exits are blocked, or if flammable materials, such as newspapers and magazines, are stacked on or near furnaces and stoves, or if the sheer volume of objects would make fires harder to contain.⁶⁵ Newspapers often report cases of hoarders falling victim to their obsession when they become trapped inside their homes during a fire.⁶⁶ The amassing of clutter can also increase one’s chance of falling, as well as jeopardize one’s health through rotting foods, exposure to bacteria, and problems with dust accumulation.⁶⁷

For instance, New Yorkers who grew up in the mid 1900s surely remember the Collyer brothers.⁶⁸ The famous brothers filled their brownstone mansion with 130 tons of newspapers, possessions, and junk.⁶⁹ Homer was a blind and paralyzed lawyer who was completely dependent on his sibling, Langley, a failed pianist.⁷⁰ Because Langley feared home intrusion, he riddled the interior of the mansion with a framework of mazes and tunnels fixed with booby traps.⁷¹ In the end, Langley triggered one of his own traps and was crushed to death by

62. *Frequently Asked Questions, DSM-5 Development*, *supra* note 53.

63. *See infra* Part IV.

64. Tolin et al., *supra* note 39.

65. Frost, Steketee & Williams, *supra* note 40, at 229.

66. *See id.*; Madison Park, *Drowning in Junk: Hoarding Called a Public Health Issue*, CNN (Aug. 5, 2010, 5:51 AM), <http://www.cnn.com/2010/HEALTH/07/29/hoarding.mental.behavior/index.html>; Emily Friedman, *Chicago Couple Buried in Their Own Trash for Weeks*, ABC NEWS (May 26, 2010), <http://abcnews.go.com/US/chicago-hoarders-buried-alive-trash/story?id=10750192>.

67. Frost, Steketee & Williams, *supra* note 40, at 229.

68. *See, e.g.*, Robert M. Jarvis, *The Curious Legal Career of Homer L. Collyer*, 38 J. MAR. L. & COM. 571 (2007); Kenneth J. Weiss, *Hoarding, Hermitage, and the Law: Why We Love the Collyer Brothers*, 38 J. AM. ACAD. PSYCHIATRY L. 251 (2010).

69. Weiss, *supra* note 68, at 251. A disassembled car, ten grand pianos, a canoe, 25,000 books, clothing, furniture, and rugs were found inside the home. Jarvis, *supra* note 68. After taxes, however, the estate was worth only \$51,000. *Id.*

70. *See* Weiss, *supra* note 68, at 251; Jarvis, *supra* note 68, at 571-72.

71. Weiss, *supra* note 68, at 251.

toppling debris.⁷² In 1947, police found both brothers, Langley (age 61) and Homer (age 64), dead in their mansion.⁷³ Homer died from starvation just ten feet from where his brother lay dead, buried under junk.⁷⁴ Because of the extreme state of clutter, the mansion was “declared a public nuisance and torn down in 1947,” eventually becoming a public space designated “Collyer Brothers Park.”⁷⁵ The Collyer brothers became iconic hermits, and the source of the 1950s goad, “[c]lean up your room or you’ll end up like the Collyer brothers!”⁷⁶ To the public, the Collyer brothers have become synonymous with hoarding, from firefighters using the term “Collyer mansion” to describe dangerous debris filled sites, to psychiatrists and courts “refer[ring] to compulsive hoarding as ‘Collyer Brothers Syndrome.’”⁷⁷

Today, hoarders similar to the Collyer brothers risk municipal health department investigations and eviction as a result of health and safety code violations.⁷⁸ Additionally, hoarders living with minor children or adults under the care of adult protective services face the possibility of agencies removing the protected person from the home.⁷⁹

A. *State and Municipal Law*

1. Housing Codes and Residential Lease Agreements

Hoarders’ homes often violate multiple municipal housing codes and residential lease agreements.⁸⁰ In many circumstances, the corrective action for such violations involves proceedings to evict the hoarder.⁸¹ Evicting tenants and condemning homes is very costly for

72. *Id.*

73. Jarvis, *supra* note 68, at 571.

74. Weiss, *supra* note 68, at 251. Although Homer knew his brother had died, due to his poor health he could do nothing but sit and wait to die of starvation. See Jarvis, *supra* note 68, at 572.

75. Jarvis, *supra* note 68, at 582 n.47. For a description of the brothers and the park, see *Collyer Brothers Park*, N.Y.C. DEPARTMENT OF PARKS AND RECREATION, <http://www.nycgovparks.org/parks/M305/highlights/7845> (last visited Dec. 7, 2011).

76. Weiss, *supra* note 68, at 251 (internal quotation marks omitted).

77. Jarvis, *supra* note 68, at 572-73; see, e.g., *In re Nolan v. N.Y.C. Human Res. Admin.*, No. 400720/09, slip op. at 2 (N.Y. Sup. Ct. July 31, 2009) (defendant suffered from Collyer Brothers Syndrome and required a guardian ad litem to advocate for her interests while facing eviction from her apartment due to its cluttered condition); *Roffman v. Knickerbocker Plaza Assoc.*, No. 04 Civ. 3885(PKC), 2008 WL 919613, at *15 (S.D.N.Y. Mar. 31, 2008) (defendant suffered from Collyer Brothers Syndrome and alleged that the FDNY, EMS, and Knickerbocker defendants were in a conspiracy to discriminate against her because a fireman once called her a “Collyer”).

78. See Frost, Steketee & Williams, *supra* note 40, at 229.

79. See Tolin et al., *supra* note 39, at 209; see also *infra* Part III.A.2.

80. See Frost, Steketee & Williams, *supra* note 40, at 229.

81. See *id.* at 233.

municipalities⁸² and is often for naught because eviction does not correct the behavior that causes hoarding, so hoarders continue their compulsion upon relocation.⁸³

Examples of municipal codes that affect hoarders include the San Francisco and San Jose nuisance codes that forbid any accumulation of litter, waste paper, combustible trash, garbage, filth, waste materials, decaying animal matter, unsanitary debris, or conditions that may cause or spread fire.⁸⁴ Further, San Francisco and San Jose have exit codes that require all rescue or escape windows and bedroom doors to have clear openings with at least three feet of clear space surrounding the openings.⁸⁵

The Massachusetts Sanitary Code exemplifies the typical health code that extreme clutter will violate. Chapter II of the Massachusetts Sanitary Code, for example, establishes that the purpose of the code is “to protect the health, safety and well-being of the occupants of housing and of the general public.”⁸⁶ Several provisions potentially affect hoarders. One mandates that “[t]he occupant of any dwelling unit shall be responsible for maintaining in a clean and sanitary condition and free of garbage, rubbish, other filth or causes of sickness that part of the dwelling which he exclusively occupies or controls.”⁸⁷ Another sets forth the “[c]onditions [d]eemed to [e]ndanger or [i]mpair [h]ealth or [s]afety.”⁸⁸ If an inspector believes a provision has been violated and

82. In New York City, sheltering an individual costs \$23,000 per year, and New York City spent over \$4.5 billion on maintaining and building emergency shelters over the last ten years. Conference Report, *The New York City Housing Court in the 21st Century: Can It Better Address the Problems Before It?*, 3 CARDOZO PUB. L. POL'Y & ETHICS J. 601, 627 (2006) [hereinafter *N.Y.C. Housing Court*] “[P]reventing just 10% of the 25,000 evictions each year would yield a savings to the city of roughly \$75 million in direct shelter costs alone.” *Id.*

83. See Frost, Steketee & Williams, *supra* note 40, at 234. In a Massachusetts hoarding study, many of the hoarding “cases involved two or more agencies, with repeated visits and attempts to resolve the complaints. When city officials have to clear and store possessions from a cluttered home, the costs can be considerable.” *Id.* “Based on the total population of [1,790,000] served by the responding health departments, the overall rate of hoarding complaints among responding health departments was 26.3 per [100,000] people during [the] 5-year period [of the study.]” *Id.* at 231. “The circumstances most often cited in the complaints were unsanitary conditions and the accumulation of junk, both of which were reported in 88% of cases. Fire hazard was alleged in 67% of cases, followed by odour and odd behaviour (53% and 38%, respectively).” *Id.*

84. See *Housing Codes*, SQUALOR SURVIVORS, <http://www.squalorsurvivors.com/squalor/housing-codes.shtml> (last visited Nov. 11, 2011).

85. *Id.*

86. 105 MASS. CODE REGS. 410.001 (West, Westlaw through Dec. 23, 2011).

87. *Id.* at 410.602(B).

88. *Id.* at 410.750; see also *id.* at 410.750(G) (“Failure to provide adequate exits, or the obstruction of any exit, passageway or common area caused by any object, including garbage or trash, which prevents egress in case of an emergency 105 CMR

finds the dwelling “unfit for human habitation,” the board of health may determine that “an order to secure and vacate should be issued.”⁸⁹

Hoarders who live in one of the states that have adopted the Uniform Residential Landlord and Tenant Act (“URLAT”) also run the risk of violating several provisions of the Act’s maintenance duties.⁹⁰ For instance, extreme clutter may violate the tenant’s duty to:

- (1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- (2) keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
- (3) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;
- (4) keep all plumbing fixtures in the dwelling unit or used by the tenant as clear as their condition permits;
- (5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises;
- (6) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so; and
- (7) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors’ peaceful enjoyment of the premises.⁹¹

Because of hoarder tenants’ tendency to block windows, stack waste, and live in unsanitary conditions, hoarder tenants are likely to

410.450, 410.451 and 410.452.”); *id.* at 410.750(I) (“Failure to comply with any provisions of 105 CMR 410.600, 410.601, or 410.602 which results in any accumulation of garbage, rubbish, filth or other causes of sickness which may provide a food source or harborage for rodents, insects or other pests or otherwise contribute to accidents or to the creation or spread of disease.”).

89. *Id.* at 410.831(B)(5).

90. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 3.101 (amended 1974). The URLAT is a uniform law meant:

- (1) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;
- (2) to encourage landlords and tenants to maintain and improve the quality of housing; and
- (3) to make uniform the law with respect to the subject of this Act among those states which enact it.

§ 1.102. Adopting states include Alaska, Arizona, Florida, Hawaii, Iowa, Kansas, Kentucky, Montana, Nebraska, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, and Virginia. Legal Information Institute, *Uniform Business and Financial Laws Locator*, CORNELL U. L. SCH. (April 2003), <http://www.law.cornell.edu/uniform/vol7.html>.

91. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 3.101.

violate the URLAT and thus face eviction.⁹²

While not all states have enacted the URLAT, most states have statutes that set forth rules and obligations on the subject.⁹³ In New Jersey, for instance, landlord-tenant law is dispersed over several titles, and although much is found in Titles 2A and 46, several provisions are in nonsequential chapters.⁹⁴ The New Jersey Law Revision Commission (“the Commission”) is revising the current law to create a single new landlord-tenant title—proposed Title 46A.⁹⁵ Although the Commission is using much of the existing language of New Jersey’s landlord-tenant law in codifying the new Title, the Commission is modifying what was the Anti-Eviction Act to include new grounds for eviction in rental premises.⁹⁶ Under the new Title 46A:15-1a(10):

A tenant may be evicted if the tenant:

. . .

(10) is found to have engaged in extraordinary conduct that

- a. creates or is reasonably likely to create immediate injury or death to other tenants or occupants, or catastrophic destruction to the rental premises or the building; and
- b. is so excessive or severe that the conduct having occurred even once instills fear or apprehension in a reasonable person; and
- c. is not likely to be rectified by service of a notice to cease on the tenant responsible for the conduct⁹⁷

This language is concerning to tenants who suffer from compulsive hoarding because of the nature of the mental disability.⁹⁸ Moreover, the modified statute accounts for situations where the danger is so serious that a landlord may file a notice to quit rather than a notice to cease.⁹⁹ In such a situation, the tenant can be forced to evacuate

92. *See id.*

93. *See, e.g.*, CAL. CIV. CODE §§ 1925 to 1954, 1961 to 1997.270 (West, Westlaw through 2011 Legis. Sess.); MASS. GEN. LAWS ch. 186, §§ 1 to 22 (West, Westlaw through 1st Sess. 2011); N.J. STAT. ANN. §§ 46:8-1 to -50 (West, Westlaw through 2011 Legis. Sess.); N.J. STAT. ANN. §§ 2A:42-1 to -96.

94. *See* N.J. STAT. ANN. §§ 46:8-1 to -50; *id.* §§ 2A:42-1 to -96.

95. N.J. LAW REVISION COMM’N, DRAFT FINAL REPORT RELATING TO LANDLORD AND TENANT LAW 2 (Jan. 9, 2012), <http://www.lawrev.state.nj.us/landlordtenant/landlordtenantDFR011912.pdf> [hereinafter NJLRC REPORT].

96. *See id.* at 65-78.

97. *Id.* at 65-67.

98. *See supra* notes 64-67, 74 and accompanying text (describing how compulsive hoarding can lead to death and complete destruction of properties).

99. *See* NJLRC REPORT, *supra* note 95, at 65 (specifying certain “[t]enant conduct for which no notice to cease is required”). “[A] ‘notice to quit’ is a notice served by a landlord upon the tenant . . . for the landlord to terminate the tenancy and regain possession” *Id.* at 116.

the premises much faster than if a notice to cease was required.¹⁰⁰

The Commission recognizes the magnitude of harm that an accelerated eviction may cause a tenant and drafted the statute as a last resort for the landlord.¹⁰¹ During a June 16, 2011 meeting, the Commission heard from tenants groups concerned about the statute's potential effect on hoarders.¹⁰² In response, the Commission attempted to draft language that would only affect the most extreme and dangerous tenants.¹⁰³

Arguably, eviction is not the worst potential consequence to extreme hoarding. Consider the City of Dickinson in North Dakota, which in 1992 secured a permanent injunction to enjoin Milton Aune and Eunice Scholkowsky from storing and hauling junk on their properties.¹⁰⁴ After disobeying the judicial order, in 2000, Aune received a sentence of one year in prison.¹⁰⁵ After most of the sentence was reduced to probation, in 2001, the State petitioned the court to revoke Aune's probation, alleging a violation of the 1992 injunction.¹⁰⁶ At this point, Aune received psychiatric testing that revealed he suffered from obsessive-compulsive behaviors, such as hoarding junk.¹⁰⁷ After learning of the diagnosis, the trial court sentenced Aune to further imprisonment and probation and prohibited Aune from entering Scholkowsky's property.¹⁰⁸ The North Dakota Supreme Court affirmed the trial court's judgment, finding that the probation condition "protects the rights of law-abiding citizens from the economic, aesthetic, and public health aspects of [Aune's] hoarding behavior."¹⁰⁹

From potential eviction to criminal charges, compulsive hoarders must tread carefully in states with particularly unsympathetic statutes and common law.

1. Threat to the Welfare of Children and Elderly

Compulsive hoarding can also have a profound impact on other

100. *See id.* at 78-82 (stating notice to cease tenants have a "reasonable period" of time to stop the unacceptable behavior, whereas with notices to quit, tenants have no such opportunity).

101. *See id.* at 70; N.J. LAW REVISION COMM'N, MINUTES OF COMM'N MEETING 4 (June 16, 2011), <http://www.lawrev.state.nj.us/minutes.html> (follow "PDF" hyperlink for June 16, 2011) [hereinafter COMM'N MEETING].

102. *See* COMM'N MEETING, *supra* note 101, at 4-10.

103. *See id.*

104. *State v. Aune*, 653 N.W.2d 53, 54 (N.D. 2002).

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 54-55.

109. *Id.* at 56.

members of the household.¹¹⁰ Children live in these homes, sleep in these homes, and breathe the air in these homes; and the legal system must be aware of the rights of these third parties who are affected by the clutter. Children who live in hoarding households with severe clutter may have more difficulty making friends and be ashamed of their home's condition, reducing their social contact at home.¹¹¹ Additionally, children raised in severely cluttered households suffer from higher stress levels and decreased happiness compared to children raised in nonhoarding homes.¹¹²

The paramount fear of hoarders living with children is that child protective services will remove their children because of the unsafe condition of their homes. Because the outcome of family law cases are based predominantly on the facts, rather than decided on the basis of novelty, many hoarding cases in which children are removed from the home are unpublished.¹¹³ *B. R. v. Paula R.* is the prototypical hoarding case in which a parent suffering from hoarding failed to maintain her home in a condition suitable to raise a minor child.¹¹⁴ The home contained several dangerous conditions connected to hoarding, including blocked hallways, combustible materials on the stove, and a cockroach infestation.¹¹⁵ The court used a common substantial danger test to uphold removing the child from the hoarding household and concluded that “there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the parent’s . . . physical custody.”¹¹⁶

In this case, a psychologist diagnosed the parent with compulsive hoarding.¹¹⁷ Although acknowledging that reunification with the child was possible after extensive therapy, the psychologist did not recommend it until the hoarding parent recognized that she had a

110. See David F. Tolin, Randy O. Frost, Gail Steketee & Kristin E. Fitch, *Family Burden of Compulsive Hoarding: Results of an Internet Survey*, 46 BEHAV. RES. AND THERAPY 334, 343 (2008).

111. See *id.* at 342.

112. See *id.*

113. Courts generally decide to publish opinions based on several factors including “whether the opinion . . . establishes, clarifies or changes a rule[] of law.” Shenoa L. Payne, *The Ethical Conundrums of Unpublished Opinions*, 44 WILLAMETTE L. REV. 723, 726-27 (2008) (noting that unpublished opinions lack factual information, cite fewer legal cases, and have less legal analysis).

114. See *B.R. v. Paula R. (In re B.R.)*, No. C051395, 2006 WL 2349187, at *4 (Cal. Ct. App. Aug. 15, 2006).

115. *Id.* at *3.

116. *Id.* at *4 (quoting CAL. WELF. & INST. CODE § 361(c)(1) (West, Westlaw through 2012 Leg. Sess.) (alteration in original) (finding that there “would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home”).

117. *Id.* at *2.

problem and was willing to undergo the required treatment.¹¹⁸ Hoarders' anxiety about compulsive hoarding and their denial of a problem can make treatment difficult, especially when protective services is evaluating the level of commitment necessary from the parent to ensure the safety of the child in the home.¹¹⁹ Here, the court stressed that until the appellant could prove that she would benefit from intensive therapy, there was ample evidence to support the removal of the child from the home.¹²⁰

Children are not the only ones affected by hoarding households. Adult protective services often become involved in hoarding situations when they learn about an unsafe condition that involves a mentally incapacitated adult.¹²¹ For instance, after eviction proceedings were initiated against Mr. and Mrs. F., the court found the couple to be incapacitated and appointed a guardian of the person and property for the couple.¹²² Mr. F. was diagnosed as a compulsive hoarder, and the couple's apartment illustrated his condition with garbage, old mail, magazines, and newspapers stacked floor to ceiling, along with insect infestation and animal defecation.¹²³ Interestingly, hoarding expert Dr. Randy Frost¹²⁴ consulted with the appointed guardian for the couple and found their hoarding symptoms to be extreme; yet, the couple did not believe their apartment needed any major cleaning despite the apartment's obvious squalor.¹²⁵ Because they refused to acknowledge the severity of their situation and work toward living in sanitary conditions, the court did not release the couple from adult protective services.¹²⁶

Recently, the State of Illinois amended its Elder Abuse and Neglect Act ("EANA") to recognize compulsive hoarding as a form of self-neglect among the state's elderly.¹²⁷ This progressive statute defines compulsive hoarding as "the acquisition and retention of large quantities of items and materials that produce an extensively cluttered living space, which significantly impairs the performance of essential self-care tasks or otherwise substantially threatens life or

118. *Id.*

119. *See id.*; *Hoarding Fact Sheet*, *supra* note 11 (explaining that people who suffer from compulsive hoarding cannot be helped until they are self-motivated).

120. *See In re B.R.*, 2006 WL 2349187, at *5.

121. *See, e.g., In re Murray F.*, No. 109059/01, 2005 WL 887276, at *1 (N.Y. Sup. Ct. Apr. 11, 2005), *aff'd*, 818 N.Y.S.2d 467 (App. Div. 2006).

122. *Id.*

123. *Id.*

124. Dr. Frost, of Smith College, is the lead author of several compulsive hoarding articles and books and is one of the most cited and renowned experts on compulsive hoarding in the nation. *See, e.g., Frost & Hartl*, *supra* note 11, at 341-42.

125. *See In re Murray F.*, 2005 WL 887276, at *2-3.

126. *Id.* at *2-3, *6.

127. 320 ILL. COMP. STAT. ANN. 20 / 2(i-5) (West, Westlaw through P.A. 97-671 of 2011 Leg. Sess.) (definitions).

safety.”¹²⁸ The Department on Aging (“DOA”) is required to “establish, design and manage a program of response and services for persons 60 years of age and older who have been, or are alleged to be, victims of abuse, neglect, financial exploitation, or self-neglect.”¹²⁹ Because Illinois codified compulsive hoarding as a form of self-neglect, the DOA is now required to provide services to address the needs of elderly compulsive hoarders.¹³⁰ Additionally, the DOA must “contract with or fund or, contract with and fund, regional administrative agencies, provider agencies, or both, for the provision of those functions, and, contingent on adequate funding, with attorneys or legal services provider agencies for the provision of legal assistance pursuant to [EANA].”¹³¹ More importantly, the program requires counseling, caseworker services, and temporary housing for “eligible adults who have been removed from their residences for the purpose of cleanup or repairs . . . to try to ensure that the conditions necessitating the removal do not reoccur.”¹³²

Recognizing that compulsive hoarding is a problem among elderly adults is a progressive move by the Illinois Legislature. But, concertedly codifying a statute that provides services to counsel and prevents recidivism among compulsive hoarders is an exceptional achievement.

While adult and child protective services attempt to provide relief for the alleged victim in hoarding situations, the hoarder may not want the agencies informed. Clinicians treating compulsive hoarders should recognize the risk that adult and child protective services might become involved if they are working with other agencies during eviction proceedings.¹³³ An ethical conflict arises in situations where clinicians must decide between protecting the safety of family members living at the residence and violating the trust and interests of their patient.¹³⁴ If working with another agency, clinicians should always be aware of the effect of disclosing too much information about a patient to social services because of the possibility that social services may separate the hoarder from his or

128. *Id.* The state’s definition of compulsive hoarding is similar in substance to the definition prepared by Frost and Hartl and the International OCD Foundation. *See supra* note 11 and accompanying text. It remains to be determined how the courts will interpret what constitutes a significant impairment of self-care tasks, or what is a substantial threat to life or safety. There is always a chance that a court will construe a statute’s text as over- or under-inclusive; however, compulsive hoarding advocates should take solace in the fact the State of Illinois took the first step in recognizing compulsive hoarding as an issue that deserves legislative attention.

129. 320 ILL. COMP. STAT. ANN. 20 / 3(a) (responsibilities).

130. *See id.* at 20 / 2(i-5) (definitions).

131. *Id.* at 20 / 3(a) (responsibilities).

132. *Id.*

133. Gibson et al., *supra* note 31, at 430.

134. *Id.*

her family.¹³⁵

B. Federal Law: Compulsive Hoarding and the Fair Housing Amendments Act

This section argues that compulsive hoarding should be a mental disability cognizable under the Fair Housing Amendments Act and that tenants with the disability deserve a specialized, reasonable accommodation based on their individual needs.

1. Background of the Act

The Fair Housing Act of 1968 (“FHA”), also known as Title VIII of the Civil Rights Act of 1968, was enacted to protect tenants from housing discrimination on the basis of sex, color, race, religion, or national origin.¹³⁶ In 1988, Congress extended the FHA by enacting the Fair Housing Amendments Act of 1988 (“FHAA” or “the Act”), which included provisions meant to protect tenants from housing discrimination based on familial status or disability.¹³⁷ The purpose of the FHAA is “to end the unnecessary exclusion of persons with handicaps from the American mainstream” and to recognize that “the right to be free from housing discrimination is essential to the goal of independent living.”¹³⁸ The Department of Urban Housing and Development (“HUD”) and the Department of Justice (“DOJ”) are jointly responsible for implementing the regulations of the Act as well as issuing regulations and investigating possible discriminatory housing practices.¹³⁹

Section 3604(f)(1) of the Fair Housing Amendments Act makes it illegal:

[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

135. See *id.* (noting the importance of nondisclosure when working with other agencies).

136. See Fair Housing Act, 42 U.S.C. §§ 3601-3619 (2006).

137. See generally Fair Housing Amendments Act, Pub. L. No. 100-430, 102 Stat. 1619 (codified at 42 U.S.C. § 3604 (2006)).

138. *Bronk v. Ineichen*, 54 F.3d 425, 428 (7th Cir. 1995) (quoting H.R. REP. NO. 100-711, at 18 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2179).

139. See DEP’T OF HOUS. & URBAN DEV. & DEP’T OF JUSTICE, REASONABLE MODIFICATIONS UNDER THE FAIR HOUSING ACT 1 (2008), available at http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf [hereinafter REASONABLE MODIFICATIONS].

(C) any person associated with that buyer or renter.¹⁴⁰

Section 3604(f)(2) of the Fair Housing Amendments Act also makes it illegal:

[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.¹⁴¹

“Under the FHA, a disabled individual can bring a claim against a party under any of the following three theories: intentional discrimination, disparate impact, or failure to make reasonable accommodation as required by 42 U.S.C. § 3604(f).”¹⁴² This Note addresses how hoarders can assert protections under the FHAA against a potential eviction proceeding by arguing that their disability requires a reasonable accommodation under the FHAA.

2. Reasonable Accommodation: An Important Tool for Compulsive Hoarders

The Fair Housing Amendments Act requires participants to provide a reasonable accommodation for persons with disabilities by defining discrimination as “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”¹⁴³ A substantial amount of the decisional law involving the reasonable accommodation directive of the FHAA “involve[s] refusals by municipalities or other governmental entities to grant relief from zoning or other land use restrictions prohibiting or impeding the establishment or operation of congregate living arrangements for [disabled persons].”¹⁴⁴

The Court of Appeals for the District of Columbia, in *Douglas v. Kriegsfeld Corp.*, established the elements for a reasonable accommodation defense:

To establish a reasonable accommodation defense under the Fair

140. § 3604(f)(1) (footnote omitted).

141. § 3604(f)(2).

142. Jennifer L. Dolak, Note, *The FHAA's Reasonable Accommodation & Direct Threat Provisions as Applied to Disabled Individuals Who Become Disruptive, Abusive, or Destructive in Their Housing Environment*, 36 IND. L. REV. 759, 760 (2003).

143. § 3604(f)(3)(B).

144. See William H. Danne, Jr., Annotation, *Construction and Application of § 804(f) of Fair Housing Act (42 U.S.C.A. § 3604(f)), Prohibiting Discrimination in Housing Because of Individual's Disability*, 148 A.L.R. FED. 1, 2a (West 2005).

Housing Act, the tenant must demonstrate that (1) she suffered from a “handicap” (or “disability”), (2) the landlord knew or should have known of the disability, (3) an accommodation of the disability may be necessary to afford the tenant an equal opportunity to use and enjoy her apartment, (4) the tenant requested a reasonable accommodation, and (5) the landlord refused to grant a reasonable accommodation.¹⁴⁵

“A ‘handicap’ [under the FHAA] is defined to include a ‘mental impairment’ and even applies to someone who is merely ‘regarded as having such an impairment,’ whether impaired or not.”¹⁴⁶ Therefore, “actions based on a landlord’s perception of mental impairment, not only on the reality of it, can give rise to actionable discrimination; and discrimination can be found even in a landlord’s failure to offer a tenant assistance, not merely in affirmative acts of rejection.”¹⁴⁷ In the *Douglas* court’s interpretation of the FHAA, if the tenant requested the reasonable accommodation and the landlord knew his tenant was a hoarder who had a mental disability affecting his ability to properly maintain the premises, the landlord would be responsible for providing a reasonable accommodation to any lease provisions the tenant might be violating.¹⁴⁸ If such a scenario is covered under the FHAA, then the growing popularization and public awareness of hoarding in the media will likely increase the amount of relief afforded to hoarders because their illness will become more widely recognized, and judges and attorneys may be more apt to recognize the symptoms and strive for an accommodation.¹⁴⁹

“Under the Fair Housing Act, a landlord ‘is only obligated to provide a reasonable accommodation’ to a tenant ‘if a request for the accommodation has been made.’”¹⁵⁰ Also, tenants should explain that they are requesting an exception to a rule, policy, or practice, and they should explain what accommodation they are requesting.¹⁵¹ However, if the request is not detailed enough, the Act “requires the landlord to ‘open a dialogue’ with the tenant, eliciting more information as needed, to determine what specifics the tenant has in mind and whether such accommodation would, in fact, be reasonable under the circumstances.”¹⁵² Furthermore, when interpreting the

145. *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1129 (D.C. 2005).

146. *Id.* at 1120 (citing 42 U.S.C. § 3602(h)(1)-(3) (2000)).

147. *Id.* at 1120.

148. *See id.* at 1122.

149. Television shows like A&E’s *Hoarders: Buried Alive* are contributing to the awareness of hoarding in America. *See Weiss, supra* note 68, at 253.

150. *Douglas*, 884 A.2d at 1122 (quoting REASONABLE MODIFICATIONS, *supra* note 139)).

151. *Douglas*, 884 A.2d at 1122.

152. *Id.*; *see also Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891, 895 (7th Cir. 1996) (ruling that if a landlord is “skeptical of” the nature of the tenant’s disability, he is obligated to “open a dialogue”).

FHAA, the established practice of courts is to rely on the Rehabilitation Act¹⁵³ and the Americans with Disabilities Act,¹⁵⁴ “which mandate an interactive process through which employers and employees explore what accommodations are reasonable.”¹⁵⁵ Therefore, courts require the same type of interactive process between landlords and tenants, in which landlords must discuss with tenants what types of reasonable accommodations would suit the tenants’ needs without posing an undue burden on the landlords.¹⁵⁶

When facing eviction or discrimination, compulsive hoarders should turn to every resource available. Perhaps the hoarder lives in a particularly knowledgeable and understanding location, and the hoarder will not need to stray from municipal or state protection.¹⁵⁷ However, the FHAA was created because discrimination in housing was a national problem that states had not sufficiently addressed.¹⁵⁸ Therefore, vindicating the rights of a compulsive hoarder through federal action seems not only appropriate but also necessary.

Douglas v. Kriegsfeld is a prime example of a case in which the housing dispute centers around a tenant’s unclean home.¹⁵⁹ Although the court did not label her as a hoarder, the tenant’s actions certainly resembled the symptoms attributable to the disorder.¹⁶⁰ Douglas’s apartment “had a foul odor emanating into the rest of the building[,] . . . the toilet was frequently filled with feces and urine[,] and . . . garbage, rotting food, and dirty laundry were strewn about.”¹⁶¹ The defendant requested a reasonable accommodation under the FHAA because she had a “mood disorder” that affected her ability to keep her apartment clean, sanitary, and safe.¹⁶² The defendant’s requested accommodation was “a stay of the eviction proceeding for a period long enough for the District government to clean the premises and thus cure the tenant’s breach

153. 29 U.S.C. § 794 (2006).

154. 42 U.S.C. §§ 12101-12212 (2006).

155. *Douglas*, 884 A.2d at 1123 n.22 (citations omitted); *see, e.g.*, 29 C.F.R. § 1630.2(o)(3) (2011) (describing the interactive process); *Good Shepherd Manor Found., Inc. v. City of Mومence*, 323 F.3d 557, 561 (7th Cir. 2003); *Erdman v. City of Fort Atkinson*, 84 F.3d 960, 962 (7th Cir. 1996).

156. *See Douglas*, 884 A.2d at 1122 n.22.

157. *See supra* note 127 and accompanying text. States such as Illinois reflect the type of conscientious legislation that demonstrates understanding of the disability and provides state solutions to localized problems, like that of compulsive hoarding. *See* 320 ILL. COMP. STAT. ANN. 2(i-5) (West, Westlaw through P.A. 97-671 of 2011 Leg. Sess.) (definitions). If more states adopted protective measures for disabilities, federal action would be unneeded.

158. *See* 42 U.S.C. § 3604 (2006).

159. *Douglas*, 884 A.2d at 1115.

160. *See id.*

161. *Id.*

162. *Id.*

of the lease.”¹⁶³ With proper psychiatric evaluation of the defendants and classification of hoarding in the DSM-5, defendants in this type of case would likely be diagnosed as compulsive hoarders.¹⁶⁴

If compulsive hoarding was recognized as a mental disability, hoarders could seek a suitable reasonable accommodation in housing disputes. Unfortunately, absent this recognition, courts lack the appropriate medical and legal context to consistently address the issues common to hoarding cases. For example, in *Pine Valley Court Apartments v. Bowe*, even though the defendant exhibited hoarding tendencies such as anxiety, denial of responsibility, and clutter in the home,¹⁶⁵ the court refused to grant the defendant’s requested reasonable accommodation, under the FHAA, for a stay of eviction to allow for “the agencies assisting her to do their work.”¹⁶⁶ The court reasoned that Bowe “provided no evidence or explanation as to how her disability precluded her from removing her trash or covering her food.”¹⁶⁷ The court’s lack of knowledge regarding the disability and its skepticism of Bowe’s ability to maintain a clean apartment diminished the kind and quality of the reasonable accommodation analysis.¹⁶⁸ The court attempted to follow *Douglas*,¹⁶⁹ which held that an eviction might be justified if a requested accommodation does not assure a prompt cleaning and “a reasonable prospect” for the apartment staying clean.¹⁷⁰ However, the court did not complete the *Douglas* analysis. The court in *Douglas* stressed that before concluding that there is no accommodation available, the parties

163. *Id.* at 1117.

164. *See infra* Part IV for continued analysis.

165. *Pine Valley Court Apartments v. Bowe*, No. A-6042-04T2, 2007 N.J. Super. Unpub. LEXIS 1604, at *2, *5-6 (N.J. Super. Ct. App. Div. Mar. 29, 2007), *cert. denied*, 927 A.2d 1291 (N.J. 2007) (evidencing the N.J. Supreme Court’s failure to grant certification to provide attention and analysis commensurate with the magnitude of the hoarding issue when it arises in an unpublished opinion). Besides the clutter and anxiety felt by the defendant, “the Board of Health found dirty appliances, roaches and other pests, and excessive food, dirt and trash scattered over her apartment.” *Id.* at *2. Additionally, the defendant believed that she cleaned her apartment everyday and denied responsibility for the infestation. *Id.* at *5-6. All of these traits are consistent with the behavior of a hoarder. *See supra* notes 32-33, 94 and accompanying text.

166. *Bowe*, 2007 N.J. Super. Unpub. LEXIS 1604, at *4, *13-14. The defendant wanted a delay of eviction so the agencies could provide her counseling and housekeeping assistance. *Id.* at *4.

167. *See id.* at *11-12.

168. *See id.* at *11 (“Because there is no evidence that would have permitted the trial judge to conclude that plaintiff failed to offer a reasonable accommodation that would have addressed defendant’s claimed inability to maintain sanitary conditions as required by her lease, it is unnecessary to discuss the availability of the defense at length.”).

169. *Id.* at *12.

170. *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1126 (D.C. Cir. 2005); *see also* discussion *infra* note 185.

must fervently explore reasonable accommodations, and a court must make concrete factual findings.¹⁷¹

Instead, the court in *Pine Valley* started the analysis where *Douglas* said to finish. The court preemptively concluded that no accommodation was available and that the defendant would not maintain a clean apartment.¹⁷² Perhaps facts were omitted that proved dispositive; however, the opinion fails to illustrate why an accommodation would have been futile and does not show that the landlord engaged in a good faith dialogue to fully explore the options. The court merely concluded that one accommodation—more counseling—was inefficient, and found that the tenant would not maintain a clean apartment.¹⁷³ Although relying on *Douglas*,¹⁷⁴ the court essentially provided the type of analysis that *Douglas* feared—the court “concluded to a virtual certainty that no reasonable accommodation was realistically available” without “com[ing] to grips with how thoroughly a tenant’s request for accommodation must be explored.”¹⁷⁵ Consequently, by transfixing on its conclusion rather than working toward a solution, the court engaged in a cursory reasonable accommodation analysis.

The legal challenge to providing adequate reasonable accommodations to compulsive hoarders is two-fold: (1) the legal system’s lack of knowledge about the mental disorder impairs its ability to treat hoarders fairly and consistently, and (2) at this point, there is not an established solution for dealing with hoarding. Until compulsive hoarding is more widely recognized and uniformly treated, courts will lack faith in accommodations that seek treatment rather than aggressive cleanouts and will have little confidence in a hoarder tenant’s ability to maintain restored apartments.

Nonetheless, one particular subset of the hoarding population that currently may be able to assert their rights to reasonable accommodations are those who receive federal housing assistance through Section Eight Housing. Such persons may be in a better position than average tenants because of due process safeguards and the type of reasonable accommodation they should be afforded. Section 3608 mandates that “[a]ll executive departments and agencies shall administer their programs and activities relating to

171. *Douglas*, 884 A.2d at 1126.

172. *See* *Bowe*, 2007 N.J. Super. Unpub. LEXIS 1604, at *12-13. Specifically, the court reasoned that because the condition of the defendant’s apartment remained unchanged, even though social service agencies counseled the defendant and provided housekeeping, additional counseling would not improve the situation. *See id.* at *4, *12. Based on its speculation that the tenant would not maintain the apartment, the court refused to grant an accommodation. *See id.* at *12-13.

173. *See id.*

174. *See id.* at *12.

175. *See Douglas*, 884 A.2d at 1126.

housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further [fair housing] and shall cooperate with the Secretary to further such purposes.”¹⁷⁶ Furthermore, HUD also imposed the same mandate on local public housing authorities.¹⁷⁷ This means that hoarders in Section Eight Housing are in a position where the housing authority is mandated to help them, which at the very least can help them delay eviction to seek a home cleanout.¹⁷⁸

3. Health and Safety Exception

Although the Fair Housing Amendments Act is a medium to protect hoarders from discrimination, it may also protect the public from the dangerous consequences of compulsive hoarding. The FHAA provides an exception to the affirmative duties imposed upon landlords when the “tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”¹⁷⁹ “The Act’s administrators, as well as the courts, have also ruled that an accommodation will not be reasonable . . . if it ‘would impose an undue financial and administrative burden’ on the landlord or ‘would fundamentally alter the nature’ of the landlord’s operation.”¹⁸⁰ This subsection, known as the “direct threat exception,” may render the

176. Fair Housing Act, 42 U.S.C. § 3608(d) (2006).

177. See 24 C.F.R. § 903.7(o) (2010).

178. Often people in Section Eight Housing receive assistance because they have nowhere else to turn; an eviction from Section Eight Housing can be equivalent to forced homelessness.

179. 42 U.S.C. § 3604(f)(9) (2006). The Code of Federal Regulations further elaborates the direct threat exception:

(a) This part does not require the agency to permit an individual to participate in, or benefit from the goods, services, facilities, privileges, advantages and accommodations of that agency when that individual poses a direct threat to the health or safety of others.

(b) “Direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(c) In determining whether an individual poses a direct threat to the health or safety of others, the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

24 C.F.R. § 9.131 (2010).

180. *Douglas*, 884 A.2d at 1120 (citing REASONABLE MODIFICATIONS, *supra* note 139). The court noted that “[a]lthough [the] Joint Statement did not result from a notice-and-comment rulemaking, it is entitled to substantial deference.” *Id.* at 1120 n.10.

FHAA useless for tenants who suffer from compulsive hoarding.¹⁸¹

Luckily, federal courts have interpreted the Fair Housing Act to hold “that this exception does not come into play until after the trial court has evaluated the landlord’s response to a requested accommodation and has determined . . . that no reasonable accommodation could ameliorate the situation sufficiently to protect the health, safety, and property of others.”¹⁸² The court in *Douglas* held that in a situation where the tenant is being evicted because of unsanitary living conditions, like that of a hoarder, it is not necessarily the case that no accommodation “could protect the health, safety, or property of others.”¹⁸³ However, the court opined “that, unless the requested accommodation gave adequate assurance that the apartment would be cleaned up promptly—and offered a reasonable prospect for its staying clean—the health and safety exception would likely justify the tenant’s eviction.”¹⁸⁴ The health and safety exception, however, may not be based on speculative facts regarding whether the hoarder will clean and maintain the apartment.¹⁸⁵ Furthermore, courts must recognize “how thoroughly a tenant’s request for accommodation must be explored—first by the landlord, then by the court—before a forfeiture order is lawful.”¹⁸⁶ The problem is the amount of time given to hoarders to clean up their apartment.¹⁸⁷ Hoarders cannot clean out their apartments and expect

181. See *Douglas*, 884 A.2d at 1120. Because hoarders often live in extreme squalor with pest infestations and garbage, they could possibly be considered a direct threat to the health and safety of other tenants or individuals in the apartment complex. See *id.*

182. See *id.* at 1125 (citing *Radecki v. Joura*, 114 F.3d 115, 117 (8th Cir. 1997)); see also, e.g., *Howard v. City of Beavercreek*, 108 F. Supp. 2d 866, 875 (S.D. Ohio 2000); *Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814, 822-23 (D. Colo. 1995); *Roe v. Sugar River Mills Assocs.*, 820 F. Supp. 636, 639 (D.N.H. 1993).

183. See *Douglas*, 884 A.2d at 1125.

184. *Id.* at 1126. In *Douglas*, the appellate court was more worried about the trial court prematurely ruling that the health and safety exception barred the defendant’s reasonable accommodation defense. See *id.* The court held that a trial court must first give a requested accommodation the appropriate consideration rather than ruling *per se* that no accommodation would be reasonable. *Id.* The hope for hoarder tenants lies in the fact that although they may not seem willing to clean their home (because hoarders are reluctant to dispose of their possessions), the court held that this does not end the discussion of a reasonable accommodation. *Id.* The FHAA “requires reasonable accommodation of a ‘mental impairment,’ which, unlike many handicaps, inherently reflects varied, unusual behaviors that will require unique responses—limited, of course, to reasonable ones—if the statutory purpose of ‘accommodation’ is to be effectuated.” *Id.* at 1127.

185. See *id.* at 1126.

186. *Id.* The court mentioned the potential of agencies helping to clean an apartment and the possibility of an accommodation that would give the landlord a right to evict *after* proof of a tenant not maintaining it—rather than a conclusory ruling that the health and safety exception applies. See *id.*

187. One cannot go into a hoarder’s home and begin throwing out items indiscriminately. See Jennifer Pittman, *Calling All Clutterers*, S.F. APARTMENT MAG.,

the problem to cease. The cleanup itself can take six to eight weeks to be completed and afterwards hoarders need ongoing treatment.¹⁸⁸ “Disabilities don’t just disappear.”¹⁸⁹

What direction courts may be going in regard to the exception’s application is still to be determined. Interestingly, at least one court, in fact, has held that the exception may not apply to compulsive hoarders. According to Clifford E. Fried, a lawyer and editorialist of the *San Francisco Apartment Magazine*, in a local superior court eviction trial, *Trophy Properties v. Taylor*, “[a] jury . . . decided that, although the defendant created a nuisance by hoarding and cluttering in her apartment, the tenant couldn’t be evicted because she suffered from a disability and the landlord failed to accommodate her.”¹⁹⁰ Remarkably, even though the jury found that the defendant created a nuisance by keeping her apartment in a dangerous and unsanitary condition, because she was not offered a reasonable accommodation, the jury decided that she could stay.¹⁹¹ If this case is not an outlier but an approaching trend of the San Francisco courts, there may be new support for a finding that the health and safety exception of the FHAA does not apply to hoarders.

VI. RECOMMENDATIONS AND FUTURE SOLUTIONS

Hoarding is a community health problem that requires a communal solution. To characterize hoarding as an individualized issue is to ignore substantial evidence proving the social costs of hoarding.¹⁹² Clearly, eviction and forced cleanouts do not effectively reduce the social costs of the disorder when data shows that most hoarding cases require the intervention of two or more agencies and repeated visits.¹⁹³ Local housing authorities must focus their attention on the mental disability that causes the housing violations and causes hoarders to endanger themselves and others. Focusing on the causation, rather than the manifestation of hoarding, will better promote the spirit of the Fair Housing Amendments Act and

Aug. 2010, available at http://www.sfaa.org/august2010/1008_clutterers.html. In San Francisco, the Mental Health Advocacy Project will often respond “to a tenant clean-up order with a letter to the housing provider about reasonable accommodation and ideas to resolve the problem.” *Id.* This letter describes the reality of the mental condition and “verifies that the case has been referred to a social service agency.” *Id.* The letter also will often “offer mitigating solutions such as ongoing periodic unit inspections, a tenant agreement to work with a professional on the issue and the availability of a third-party communicator.” *Id.*

188. *Id.*

189. *Id.* (internal quotation marks omitted).

190. Clifford E. Fried, *OCD Sufferers Have a Right to Create Nuisance*, S.F. APARTMENT MAG., Oct. 2006, available at <http://www.sfaa.org/0610fried.html>.

191. *Id.*

192. *See supra* note 82 and accompanying text.

193. *See* Frost, Steketee & Williams, *supra* note 40, at 234.

hopefully reduce the amount of repeated violations among hoarders. Housing Law must address compulsive hoarding in a way that attends to the hoarder's psychological needs while reducing the liability of a cluttered apartment for the landlord. Additionally, protecting the general public is a legitimate goal of the legal community.

This section offers information demonstrating why it is worthwhile for courts to delay evictions so that hoarders may attend therapy sessions. This section also explains why including a compulsive hoarding section in the DSM-5 will help tenants with hoarding symptoms and likely increase positive treatment. Lastly, this section proposes the creation of hoarding task forces in all major localities and emphasizes the importance of interagency cooperation at the local level to properly address the mess that is a hoarder's life.

A. *Cognitive Behavioral Therapy: A Practical Remedial Alternative to Eviction*

Standards and tools for measuring hoarding have progressed as psychologists' understanding of compulsive hoarding has evolved.¹⁹⁴ With the tools for a better understanding of compulsive hoarding, clinicians have made positive headway in the form of pharmacological and psychological treatment.¹⁹⁵ Cognitive Behavioral Therapy ("CBT") is promising therapy for hoarders.¹⁹⁶ CBT treatment consists of "office and in-home sessions that focus on motivational interviewing; skills training (organizing, decision-making, problem solving, etc.); exposure to sorting, discarding, and not acquiring; and cognitive restructuring."¹⁹⁷ CBT case studies have yielded positive results for hoarders, with substantial improvement in hoarding's core features, including difficulty discarding, acquisition of objects, and living in clutter.¹⁹⁸ CBT requires patients to adhere to homework assignments, such as cleaning in between therapy sessions, for greater symptom improvement.¹⁹⁹ With case studies showing hoarding symptoms improving by 23-37%, overall,

194. See Alberto Pertusa et al., *Refining the Diagnostic Boundaries of Compulsive Hoarding: A Critical Review*, CLINICAL PSYCHOL. REV. 371, 380 (2010) (describing the strengths and weaknesses of a variety of hoarding measuring scales).

195. See *id.* at 381-83.

196. *Id.* at 382.

197. *Id.*

198. Christina M. Gilliam & David F. Tolin, *Compulsive Hoarding*, 74 BULLETIN OF THE MENNINGER CLINIC 93, 109-10 (2010).

199. See *id.* at 103. Because adherence to homework was strongly associated with better outcomes, but patients showed limited adherence to homework assignments, the CBT manual was refined to better emphasize motivational enhancement strategies. Pertusa et al., *supra* note 194, at 383. Since introducing the revised manual, CBT patients' adherence to home has improved. *Id.*

CBT appears to be a promising treatment for compulsive hoarding.²⁰⁰ While long-term studies of CBT for hoarding have yet to be done, at this point CBT may be the best treatment option for compulsive hoarders.²⁰¹

Courts should consider the positive treatment responses to compulsive hoarding when assessing delayed eviction proceedings. Individuals suffering from the disorder that causes them to hoard have to live somewhere. If stress exacerbates hoarding, forced eviction without treatment not only relocates the problem, it is likely to make it worse. CBT treatment may help the hoarder tenant live in a safe environment that satisfies the community and the landlord. Since therapy may help, courts should consider ordering or allowing tenants to seek therapy before eviction, otherwise, hoarders will continue their destructive cluttering symptoms wherever they relocate.

B. Listing Compulsive Hoarding as a Disability: A Case for Inclusion in the DSM-5

Listing compulsive hoarding as its own psychological disease in the DSM-5, rather than a symptom of obsessive compulsive disorder,²⁰² will provide much needed guidance for the court system on the scope of the illness and the manner in which to proceed with eviction proceedings. Without the validation of publication in the DSM-5, hoarding defendants lack credibility as to the severity of their disease and, more importantly, the proof that their symptoms are treatable. Compulsive hoarding certainly has a profound enough impact on the hoarder's work, family, home, and community to warrant its inclusion as a mental disorder.²⁰³ Furthermore, inclusion in the DSM-5 can lead to more homogenized diagnostic criteria for compulsive hoarding, which may increase the amount of reported cases. Although compulsive hoarding poses a substantial burden on its sufferers and their families and communities, it is still under-recognized and undertreated.²⁰⁴ "Including hoarding as a separate disorder would potentially increase public awareness, improve identification of cases, accuracy of diagnosis, and tailoring of treatment."²⁰⁵ Hoarding literature has only become a popular topic in

200. See Pertusa et al., *supra* note 194, at 383.

201. See Gilliam & Tolin, *supra* note 198, at 110.

202. For a detailed report on why compulsive hoarding is not likely a symptom of obsessive compulsive disorder, see David Mataix-Cols et al., Review, *Hoarding Disorder: A New Diagnosis for DSM-V?*, 27 DEPRESSION AND ANXIETY 556, 556-64 (2010), available at http://www.dsm5.org/Research/Documents/DMC_Hoarding_Disorder.pdf.

203. *Id.* at 565.

204. *Id.* at 566.

205. *Id.* "[R]esearchers are already developing specific psychological interventions

the last decade, with a robust increase since 1996.²⁰⁶ The lack of public awareness has led to several patients receiving no diagnosis. Additionally, compulsive hoarders are often treated according to obsessive-compulsive disorder guidelines rather than according to specific guidelines for hoarding, which leads to frequent treatment failures.²⁰⁷

Courtrooms across the country can benefit from the increased awareness obtained through a DSM-5 listing of compulsive hoarding, and courtrooms can then have access to clinicians who may better understand the treatment that can save hoarders from their clutter. While a specific diagnosis is not required to find a tenant mentally impaired under the Fair Housing Amendments Act,²⁰⁸ as this Note has shown, the legitimacy of a diagnosed illness can help a tenant's claim, especially in light of the lack of awareness in the legal community of the compulsive hoarding disability.

C. Local Hoarding Task Forces: An Effective Use of Resources

To effectively control hoarding housing disputes, municipalities must also develop hoarding task forces. Eviction does not confront the hoarding behavior, and eviction without any attempt at accommodating disabled persons is not in harmony with the FHAA. Close to thirty-five American cities have active task forces that address compulsive hoarding.²⁰⁹ These task forces bring stakeholders

for this problem, as these patients do not respond optimally to standardized protocols developed for other disorders, such as [obsessive compulsive disorder]." *Id.*

206. *Id.* at 565-66.

207. *Id.* at 567.

208. See *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1131 (D.C. 2005); *Advocacy Ctr. for Persons with Disabilities, Inc. v. Woodlands Estates Ass'n*, 192 F. Supp. 2d 1344, 1347-48 (M.D. Fla. 2002) (plaintiffs need not show "exact disabilities" to demonstrate they are "developmentally disabled" and thus entitled to "reasonable accommodation" as handicapped persons under Fair Housing Act). The landlord's perception of a tenant's handicap—and discrimination based on that perception—is enough to establish a prima facie case for a reasonable accommodation. See *Douglas*, 884 A.2d at 1132 n.53. (emphasizing the landlord's perception of a mental disorder rather than "the established reality of it, is further (albeit indirect) evidence of a legislative policy that proof of a diagnosed subset of mental illness is not required before a landlord can be found to have discriminated on the basis of such handicap"). Nonetheless, courts do not necessarily follow this policy, as indicated earlier in this Note, and providing a diagnosis will certainly add to the legitimacy of the illness as well as establish a foundation for what accommodations are reasonable for compulsive hoarders. See *supra* notes 166-71 and accompanying text.

209. *E.g.*, SAN FRANCISCO TASK FORCE ON COMPULSIVE HOARDING, BEYOND OVERWHELMED: THE IMPACT OF COMPULSIVE HOARDING AND CLUTTERING IN SAN FRANCISCO AND RECOMMENDATIONS TO REDUCE NEGATIVE IMPACTS AND IMPROVE CARE 8 (2009) [hereinafter *BEYOND OVERWHELMED*]. For a detailed listing of active hoarding task forces, see *Task Force List*, INTERNATIONAL EXCHANGE ON HOARDING, <http://www.hoardingtaskforce.org/taskforcelist?pg=1> (last visited Dec. 7, 2011).

together and help offer consultation on individual cases.²¹⁰ The task forces also provide vital education and training for courts, the public, and public agencies, and they provide support for the hoarders themselves.²¹¹ An important feature of task forces is that they facilitate interagency coordination.²¹² For instance, many agencies do not know what resources are available in other agencies, and hoarding task forces can alleviate this concern and provide better efficiency.²¹³ Furthermore, task forces provide guidelines on assessing hoarding situations and how to handle a cleanout, including who should physically help de-clutter.²¹⁴ To make sure that hoarders can actually receive the help they need in de-cluttering, municipalities must provide affordable resources that can assist the hoarders.

The San Francisco Task Force on Compulsive Hoarding (“the Task Force”) is a progressive organization designed to improve care for compulsive hoarders and is comprised of leaders in housing law as well renowned compulsive hoarding experts like David Tolin.²¹⁵ Recently, the Task Force released a report that attempts to improve care for compulsive hoarding, while reducing the negative impacts associated with the disability.²¹⁶ Notably, the report recommends eight strategies for hoarding task forces and municipalities:

1. Develop an assessment/crisis team to respond to referrals about hoarding cases and coordinate appropriate next steps to facilitate meaningful, long-term improvement for individuals.
2. Increase access to treatment for hoarding, including in the person’s home. Treatment can include therapists, organizers, coaches, and peers.
3. Expand support groups available locally, including peer support groups and groups for family members, and provide training for peer support facilitators. Build on the successes of support groups by offering groups for people at different stages of dealing with their hoarding behaviors, ranging from early awareness and those just starting out to those with substantial experience working on behavioral changes.
4. Create a services roadmap for people with hoarding behaviors and their families, service providers, and landlords so that people know what agencies to contact in different situations and have a way to identify and seek assistance. Establish a single point of

210. BEYOND OVERWHELMED, *supra* note 209.

211. *Id.*

212. *See id.* at 21-22 (recounting interviews with stakeholders in which they expressed need for better interagency coordination).

213. *Id.*

214. *Id.*

215. *Id.* at ii, 9.

216. BEYOND OVERWHELMED, *supra* note 209, at 1.

entry into the system of supports and resources that uses a single form for referrals, follows the services roadmap, and engages the assessment team.

5. Develop evaluation guidelines for landlords that are coordinated with fire department and health regulations.
6. Provide long-term case management services as an extension of initial assessment and treatment.
7. Offer training for therapists, 211/311 staff, landlords, agency staff, and families; recruit and train trainers; and provide cross-training for identification/screening/assessment across agencies.
8. Ensure overarching coordination and evaluation of recommended priorities (hoarding and cluttering “czar”); track implementation of priorities and evaluate success.²¹⁷

If these recommendations are implemented nationally, municipalities will reduce the recidivism of compulsive hoarders and lessen the amount of money contributed to the escalated problems associated with compulsive hoarding.²¹⁸ At the very least, housing courts should work in harmony with other support services and maintain an updated list of social services, community organizations, and health providers so that housing courts can appropriately refer parties to the right setting.²¹⁹ Compulsive hoarding is a shared problem that will not be resolved unless society accepts its responsibility in the process.

217. *Id.* at 37-38.

218. *See id.* at 35.

219. *See N.Y.C. Housing Court, supra* note 82, at 640.