

Empowering potential clients

Turning the intake consultation into a lesson in self-advocacy, particularly in representing tenants against landlords

By Eric Lifschitz

The intake consultation used by attorneys can provide an opportunity to provide pro bono educational services to all potential clients seeking the aid of the legal system, regardless of whether they become a client. Whatever the area of practice, an intake consultation is centered on a community member in need of legal advice, if not representation. As a tenant law firm, our intakes are tenants in some form of distress. Treating each intake as an opportunity to educate tenants and empower them on the importance of self-advocacy is a core value of our firm and a template for all attorneys on contributing to their community.

It is my belief and experience that, providing guidance and mentorship, any potential client can find extraordinary benefit in being directed on how to self-advocate and create a record of the abuse they are suffering at the hands of an unresponsive landlord. As a general rule, since landlords have more wealth than their tenants, they often hold control that frequently leaves tenants to the belief that they are powerless and without recourse to assert their right to safe, habitable housing free from harassment. Using the intake consultations as an opportunity to provide pro bono service to the community through education of rights and clear directions on self-advocacy allows attorneys to lift up members of their community regardless of whether an attorney-client relationship is established.

Contingency-fee attorneys play a critical role

As contingency-fee attorneys, we assume the financial risks of representing clients who would otherwise not be able to afford a fee-for-service retainer agreement. The baked-in assurances – that insurance carriers cover settlements or verdicts – provide a reliable means for contingency attorneys to collect on a monetary judgement, thus justifying the financial investment of firms to invest in tenant-based litigation. Without the contingency-fee system, many tenants would not have basic access to the courts to assert their rights through legal representation.

As housing claims and habitability claims in particular often stem from financial inequity between landlords and tenants, the insurance industry has sought to upend the equitable system by writing coverage exclusions into their policies to make claims less palatable to the contingency-fee attorney. The added risks associated with collecting on a judgment increases the 'overhead' – costs in time and expenses - that may be associated with an otherwise meritorious and financially viable contingency fee case and ultimately denying the aggrieved tenant access to the court to recover for their losses.

Toxic mold litigation is a prime example of the insurance industry furthering the social wealth equity divide in America. In the late 1990s, science began to substantiate personal injury claims of residents [tenants] living in damp indoor spaces. These claims are predominantly held by the poorest members of communities, who typically don't recognize that the substandard conditions of their homes are the cause of persistent and increasing health problems for them and their families. Insurers reacted to these class-based claims by writing coverage exclusions into their policies, dramatically increasing the risk for contingency-fee attorneys working with low-income clients. For families living in poverty, the chances of seeking redress became even more unattainable as they found fewer advocates willing to represent them. As a result, this widespread strategy by the insurance industry effectively caused an entire class of tenants to lose the ability to find no-cost legal representation. While my practice has specialized in circumventing these exclusions, the benefits of self-advocacy by tenants is a cornerstone to ensuring tenants are well positioned for the legal advocacy that can provide some means to recover for losses.

A call to service

My practice was founded with a sense of indignation at the injustices suffered by my tenant clients. My first career was as a chemist in the medical diagnostic industry; it laid the groundwork for my expertise and subsequent focus in 'toxic mold' litigation. While licensed as a patent attorney, pro bono eviction defense work early in my career became a pivot toward a different core value instilled by my family of personal injury attorneys: becoming an agent for justice for those unable to fight for themselves.

I share this background to set the stage for a call to action: I would like to see my colleagues consider their intake consultations as a separate opportunity to empower potential clients to self-advocate. This approach will amplify their clients' voices, instill confidence, foster knowledge of the legal system, and steer the potential client to a lifelong commit-

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ment to self-advocacy, agency, and independence.

All too often, initial consultations are focused on assessing whether a case is viable from the firm's business perspective. As a risk-mitigation policy, attorneys generally try to avoid giving valuable advice to the majority of intakes – those who do not become clients. This transactional approach to intake is a lost opportunity to empower people with basic knowledge and tools for self-advocacy that we are capable of instilling.

I have found that using the intake consultation to share the foundational steps needed for any legal claim – creating a record of events, clearly requesting actions that are in conformance with the law or industry standard, and a statement of personal impact so the author can express how they are impacted by the problems – expands the benefit of our training many fold beyond the select few that become clients. It also helps realize the call to justice that led so many of us to enter the legal profession in the first place.

Each intake consultation in my practice involves a strained relationship between the tenant and their landlord. There is no end to the types of highly charged allegations we see: illness-causing black mold from leaking roofs or burst pipes; rodent and bed bug infestations; harassment or refusal to repair to industry standards, and treating units as a landlord's do-it-yourself project, resulting in shoddy workmanship. The overarching theme is a treatment of tenants as beholden to their landlords instead of the actual role of a property owner – acting as steward of property that will exist long beyond any person's life, with obligation to maintain the property for future owners and ensure the occupants are provided a safe, habitable home free from harassment. Evading responsibilities or seeking only short-term solutions inevitably (and in many instances, intentionally) do real damage to their tenants' financial, mental and physical health, and is in fact traumatic and oppressive.

Our approach is to ensure all intakes receive a primer of tenant rights and how self-advocacy is always the first step to protecting oneself. Rather than only seeing each intake as a filtering process to find new clients, we provide all intakes with foundational information of their rights and remedies. It is our core belief that the road to justice starts with empathy. In particular, when speaking with lower income/disenfranchised community tenants, our role as "counselor" helps provide a balm for the anxiety caused by feelings of powerlessness that accompany being in crisis. By detailing a pathway to empower tenants to self-advocate with instructions on effectively documenting the oppression from their landlord, we help tenants build a case long before they ever sign a representation agreement.

This approach makes real the proverb, "Give a man a fish and you feed him for a day; teach a man to fish and they are fed for a lifetime." Our philosophy about the power of self-advocacy using intake consultations as opportunities for pro bono legal advice are applicable to the intake consultation for nearly all areas of law, in particular when the matter includes one of the fundamental rights that provide all members of our society the opportunity for advancement, such as in housing and employment law, education or even personal injury.

Consultations conclude with an actionable game plan and better understanding of the judicial system, providing the intake attorney a role in furthering social equity, whether or not a new client is added to the firm docket. While not a part of any law school curriculum, there is an inherent reverberation in being generous with our knowledge and teaching basic advocacy skills that ultimately leads to a consistent stream of new clients and a firm's success.

Empowering tenants: Self-action yields ownership to petition for their rights

Recognizing the limitations of what any attorney can accomplish, we routinely advise during intakes that no single person or agency can force a landlord to take any action, even if required under the law. However, what can be done is to ensure the violations of their rights are documented in a manner that creates the foundation for a viable legal claim down the road, through which, the landlord may be held to account for their actions. I emphasize that the injustice being wrought is the tenant's story and they are the best person to create a record through written petitions to their landlords. Reducing conversations to writing alone can often impact the response of a landlord who recognizes an elevated level of sophistication by their tenant, who is acting with intention to document their circumstance.

Each intake consultation concludes with a form follow-up email detailing the outline of the tenant's first assignment that may become part of the collaboration that is pursuing a claim down the road. The assignment: self-advocacy through the drafting of an initial notice letter to their landlord, but with the benefit of our office in reviewing their efforts for editing, revision and inclusion of basic principles of the law. We require that our intake tenants demonstrate their commitment to improving their circumstances by preparing a draft letter and then provide the pro bono review and revision to elevate their work. The process of demanding self-advocacy has the benefit of empowering tenants and giving them confidence in the reasonableness, if not righteousness, of their petitioning for their rights, with the skill and mentorship of a pro bono attorney reviewing their work. We have found clients' education level is inconsequential as everyone has some ability to find their voice (with

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encouragement) and so experience the power from a focused, clear expression of their housing problems to the person whose actions or lack of actions is the source of oppression. The polish our guidance and mentorship provides to their story further instills strength, fortifies tenants, and bolsters their self-esteem and resolve to see the problems through to resolution.

During intake consultations, we convey that even though we are ultimately looking for clients to represent, the start of any relationship begins with the collaborative effort of having them first self-advocate with our guidance. We also discuss how the act of recording their suffering through letters does not guarantee the landlord will take the needed action (more often than not, it doesn't), but it does create the foundational evidence that will support subsequent legal claims and often aids in demonstrating their oppressive landlord's bad faith in responding to their legal obligations – which often provides for heightened damages.

Our process also gives tenants the necessary resolve to make difficult decisions, often to abandon their home in order to be free of the toxic conditions impacting their health and well-being. Giving up their home generally leads to increased rent, less space or relocating to a less desirable location, but nonetheless, provides a new start in a safe, habitable home free from the tyranny of an oppressive landlord, who collects rent but refuses to ensure their property is safe, habitable and free from harassment for their tenants. The actual legal representation is explained to only begin when the matter is ripe for pursuing recovery, i.e., when either the issues are fully resolved through the self-advocacy process or (unfortunately, all too rare) for the tenant to recognize that their well-documented efforts are futile and provide the basis to make the reasonable decision to abandon their home. Our motto is: There is nothing more important than being healthy, and concurrent with a journey of healing and rebuilding a new community can be the legal effort to recover for the wrongful conduct and damages they endured.

Nuts and bolts: Taking the first step at directing a summary letter to landlords

After detailing in the intake consultation how the tenant will create their own record of events, a framework is provided on the simple, repeatable format for use in self-advocating for their right to safe housing. Our firm directs tenants on a three-point outline to use for all communications:

1. Summarize the past events;
2. Request an action to be taken by the landlord;
3. Include a statement of personal impact that details the hardships they are enduring to humanize their plight and provide them an opportunity to express the suffering they are enduring.

This simple outline is the foundation to be used to document every new event and ensure there is a record of wrongful conduct. While it is valuable for the tenant to provide their understanding of what is needed in the Request for Action section, it is the most common area for providing the benefit of our firm's particular expertise – detailing the industry standard for responding to the habitability conditions. For example, we routinely include links to state and federal guidelines in our revisions detailing the industry standard for responding to mold in the home. These links both educate the tenant on the dangers of living in their toxic homes and what is needed to make them safe. They also set out the clear industry standard for the landlord's response and thus increase the strength of claims of bad faith when those standards are ignored. These additions also help strengthen tenants' resolve and determination as they recognize the institutional efforts to ensure landlords understand how to address their particular problems. Last, the personal impact statement gives the tenant an opportunity to voice their suffering directly to their oppressor. I find this provides both a therapeutic benefit for the author and provides the strength and conviction needed to make the difficult decision to abandon their home when confronted with callous indifference to their plight by an unscrupulous landlord.

These letters serve a number of strategic purposes for any legal action. First, if the landlord does not directly dispute the summary of facts, then under the rules of evidence, they have made adoptive admissions that can be permitted to influence a jury. If the landlord does dispute the summary of events, it provides an opportunity to vet what will be the defenses they may assert and secure an indelible record of the parties for the later legal dispute. It also provides the tenant the opportunity to shore up any actions they can take to further strengthen their future claims.

The process of self-advocacy repeats with our pro bono guidance. For each response by the landlord, the tenant again drafts a reply using the outline provided and based on their reaction. Our office will again review, offer revisions, and answer questions to further educate the tenant on their rights. This interactive process continues until there is a resolution, with either the landlord being moved by the petitions and taking action that was previously refused, or with the tenant abandoning their home. Only at this point does my office begin the active legal representation, notifying the landlord and starting a claim, whether through litigation or pre-litigation negotiations. A benefit from this early work is to create a solid attorney-client relationship based in trust, appreciation, and collaboration. Even if no representation is taken, the pro bono work that flows from every intake consultation and subsequent review and editing serves our mission to provide access to justice to our community.

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As an aside, we also advise tenants to leave out requests for money damages or reimbursements while advocating for safe, healthy housing free from defects or harassment. This keeps the tenant focused on a virtuous path solely seeking action to resolve the harmful conditions and does nothing to diminish their future claims. By keeping the focus on the problems and seeking solely their resolution, it becomes easier for the tenant to come to terms with the need to abandon their home with newfound strength and conviction and begin the road to recovery.

Eric Lifschitz has owned and managed variations of his tenants' rights law practice since 2001, currently operating as Lifschitz Law. *He served as Board President of the Eviction Defense Collaborative (2015-2019), servicing the community via the EDC as shield to tenants undergoing eviction and through his practice as sword to recover for their losses. With a background in chemistry and training in the medical diagnostics industry, Eric has developed an expertise in toxic mold litigation and practices broadly as a tenants' rights advocate and related areas of law. Tenant Law Action has created a free community guide to help potential clients begin the steps of self-advocacy. You can download the guide at tenantlawaction.com/tenant-help-guide.*


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