

# *Hoarding Hazards: Municipal Response*

## CT HEALTH AND SAFETY LAWS



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# LEGAL DISCLAIMER



This presentation includes important general principles of law regarding building and safety code administration and enforcement. It is not intended to be used as legal advice, nor is it exhaustive in the areas referenced.

Questions of law on legal remedies, or proper administration and enforcement in your jurisdiction should be directed to your legal counsel.

## *Hoarding Hazards: Municipal Response* Objective:

To identify and review important sections of existing CT state law applicable to hoarding hazard response by state or local officials (police, fire, health, building, housing, zoning and blight), and in cases of rental property, by landlords and tenants.

# Who may get called about a hoarding complaint?

- Fire Department/ Fire Marshal's Office
- Health Department
- Police Department
- Building/Housing Department
- Animal Control Officer
- Landlord
- Adult and Child Protective Services
- And more...



# TEAM APPROACH WORKS!



The best and longest lasting response to severe hoarding behaviors is a coordinated team approach, with referral as needed for mental health evaluation, treatment and human services.

# THE MOST SUCCESSFUL HOARDING HAZARD RESPONSES **INCLUDE ALL**



# A Two-Tiered Response

Severe hoarding responses are two-tiered: Initial (sometimes emergency) response and Follow-up response (referrals).

**Safety** hazard responses necessarily come first. However, from the start make the necessary **referrals** including mandated reporting to safeguard persons or animals.

# A Two-Role Intervention

There are two roles for municipal intervention in severe hoarding cases:



- **Enforcement** by health and safety officials.
- **Support** by mental health, human and animal services.

# CONSIDER FIRST RESPONDER SAFETY



[www.paragonstl.com](http://www.paragonstl.com)

Qualified immunity protects all but the plainly incompetent or those government officials who knowingly violate the law.

# CONSIDER THE LAW

***“Qualified immunity protects all but the plainly incompetent or those government officials who knowingly violate the law.” U.S. Supreme Court***

*Mullenix v. Luna*, — U.S. —, 136 S.Ct. 305, 308, —L.Ed.2d — (2015) (*per curiam*).



# Duties: The Basics

## Discretionary vs. Ministerial

- When the law requires that an official perform any certain action, failure to perform is a violation of duty. This is the case particularly where the acts are ministerial in nature, rather than discretionary.

# Duties: The Basics

## Discretionary vs. Ministerial

- When is an act “discretionary?”
- When a law, policy or directive includes some act or omission, and the decision of how to perform the act or whether to act at all requires or allows for professional judgment. These are referred to as “**discretionary acts.**”
- Terms often used are “may” and “is authorized.”

# Duties: The Basics

## Discretionary vs. Ministerial

- When is an act “ministerial?”
- When a law, policy or directive clearly establishes that an act must be performed, the relevant officials are not free to exercise their own judgment in determining whether to perform the act. These are call “**ministerial acts.**”
- Often uses terms “shall”, “must” or “will.”

## **Before you get there...**

*Two fundamental questions must be answered by a governmental official:*

- a. Do I have jurisdiction?
- b. Does law I enforce apply?

## **When you arrive...**

Governmental official may only enter lawfully.

# What does this mean?

- **Jurisdiction:** Do I have authority here geographically?
- **Code Application:** Is this the type of structure that is covered by code or state statute?

# GOVERNMENTAL RIGHT OF ENTRY VS.



Know the extent of your inspection and enforcement requirements and those of the rights of the individual for privacy. Governmental officials, which includes code officials, should be prepared to answer questions about your authority in a respectful and professional manner.

# GOVERNMENTAL INSPECTION WHERE ENTRY REFUSED

*When cooperation ceases and access to the property is denied, an administrative search warrant is required before entry and inspection can be accomplished unless other lawful conditions for entry exist.*



**COME BACK  
WITH A  
WARRANT.**

# ADMINISTRATIVE SEARCH WARRANT PROCESS UPHOLD BY U.S. SUPREME COURT

“Probable cause to issue a warrant to inspect for safety code violation exists if reasonable legislative or administrative standards for conducting an area inspection are satisfied.” *Camara v. Municipal Court*, 387 U.S. 523 (1967).

# INSPECTION PROCESS ENFORCEMENT: ADMINISTRATIVE SEARCH WARRANTS

An administrative search warrant is similar to a search and seizure warrant except no seizure takes place and there is no requirement to show probable cause that a violation exists. All that there is to be demonstrated to a judge is that the official has a lawful right to inspect and that the premises is within your jurisdiction.

# INSPECTION PROCESS ENFORCEMENT: ADMINISTRATIVE SEARCH WARRANTS

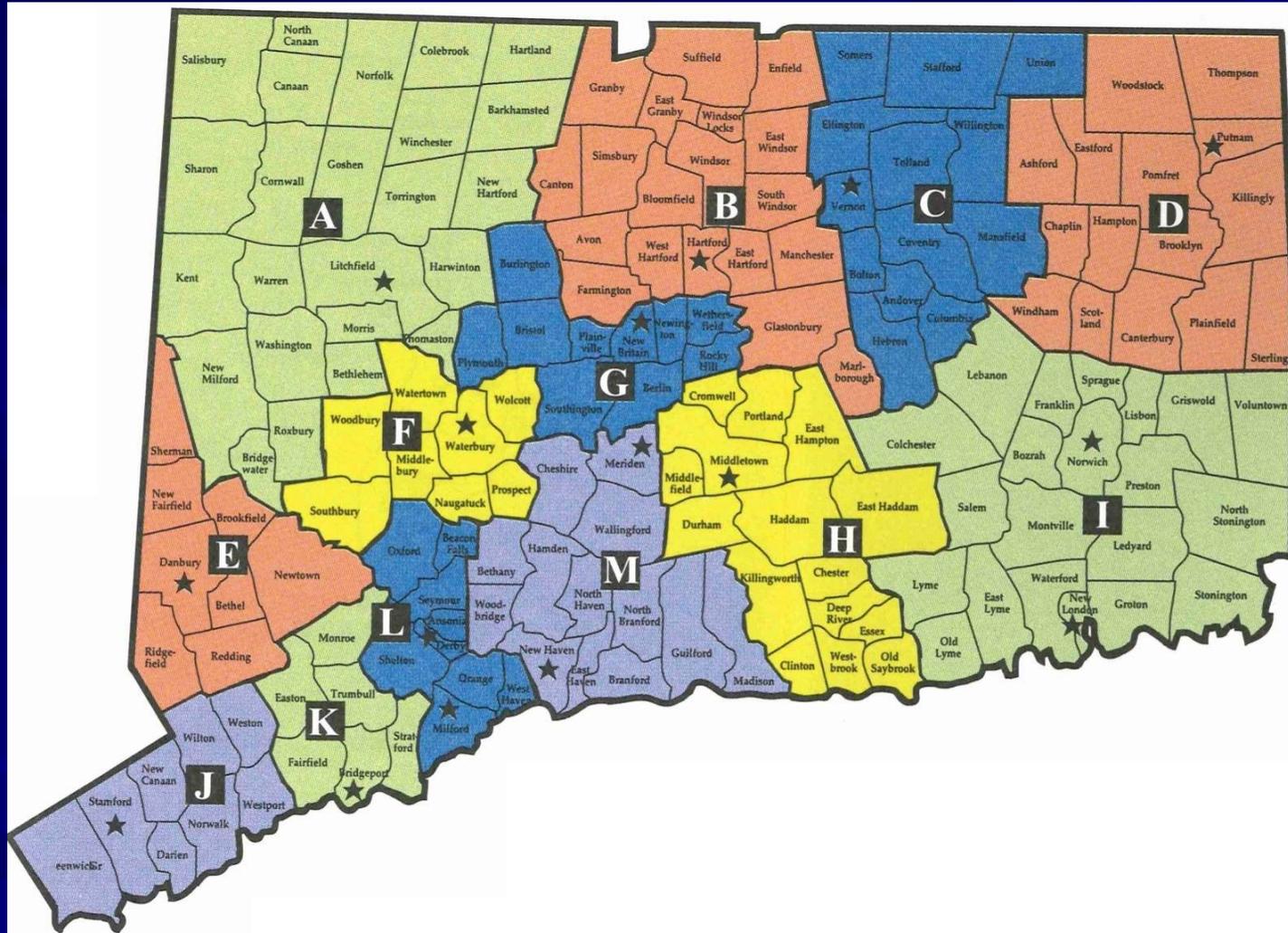
The administrative warrant affidavit and application is a simple form to complete. It must be signed by two co-affiants and sworn to or affirmed in the presence of a judge of the superior court.

Preparation of the affidavit is not complex, nor should it be.

# INSPECTION PROCESS ENFORCEMENT: ADMINISTRATIVE SEARCH WARRANTS

- A state prosecutor must review all administrative search warrant applications before they may be submitted to a judge.
- The administrative search warrant form is available through the State's Attorney's Office or the State Fire Marshal's Office.

# CT'S 13 JUDICIAL DISTRICTS



- A: Litchfield**
- B: Hartford**
- C: Tolland**
- D: Windham**
- E: Danbury**
- F: Waterbury**
- G: New Britain**
- H: Middlesex**
- I: New London**
- J: Stamford-Norwalk**
- K: Fairfield**
- L: Ansonia-Milford**
- M: New Haven**

# DCJ HOUSING PROSECUTOR ASSIGNMENTS AS OF MARCH 2019

<http://www.ct.gov/csao/cwp/view.asp?a=1798&q=477038>

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# **CT HOARDING HAZARDS: APPLICABLE INSPECTION AND ENFORCEMENT LAWS**

- **FIRE**
- **HEALTH**
- **BUILDING**
- **BLIGHT**
- **HOUSING**
- **ZONING**
- **LANDLORD/TENANT**



# FIRE



# CT General Statute 29-306(a) – INCLUDES ONE AND TWO FAMILY

Fire Marshal **shall** issue orders in **any** premises with:

- (1) combustible or explosive matter, dangerous accumulation of rubbish or any flammable material especially liable to fire, that is so situated as to endanger life or property,
- (2) obstructions or conditions that present a fire hazard to the occupants or interfere with their egress in case of fire,
- (3) a condition in violation of the statutes relating to fire prevention or safety, or any regulation made pursuant thereto...

# CGS 29-306(b) Notification, Referral and Civil Actions

## ■ CGS 29-306, cont.

- (b) the LFM **shall** notify the **prosecuting attorney** if the owner or occupant fail to abate a hazard as reasonably ordered by the LFM and further requires the SFM be notified of the referral to the prosecutor.
- (b) the LFM may ask the **municipality's attorney** to seek an additional remedy of a **civil injunction** to close or restrict the use of the building through a civil court order.

# What if there is imminent danger? Order to Vacate

- CGS 29-306, cont.

- (c) allows a local fire marshal or police officer to order **any** building vacated, where such person determines that there exists in the building a *risk of death or injury* from one or more of the *enumerated violations* known as the “five deadly sins”, which include:

cont. ...

# CGS 29-306(c) Vacate Order “Five Deadly Sins”

1. **Blocked, insufficient or impeded egress**

2. Required fire protection or warning system shut off or maintenance failure
3. Unpermitted flammable or explosive material or in excess of permitted quantities
4. Unpermitted fireworks or pyrotechnics
5. Exceeding occupancy limit established by FM

# Vacate Order Review by State Fire Marshal

- CGS 29-306(c), cont.
  - If imminent egress hazards cannot be corrected within FOUR HOURS, this statute and the SFM Directive #10 require notification to the State Fire Marshal who reviews the circumstances and may either uphold, modify or reverse the vacate order.

# Policy Directive # 10

STATE OF CT  
OFFICE OF STATE FIRE MARSHAL

**SUBJECT: Restricting the Use of a Building – Immediate Hazard**

**PURPOSE:**

(1) To establish a uniform enforcement platform for fire marshal's and police officers with guidance on the application of CGS 29-306 (c) for the issuance of a verbal or written order to immediately vacate a building for certain specified conditions that they determine to exist in a building and that place the occupants at risk for injury or death from these conditions.

(2) Establish a uniform method of notifying the state fire marshal that such an order has been issued, and what minimum information must be reported to the state fire marshal.

**Link to OSFM Directive 10:**

[http://www.ct.gov/dcs/lib/dcs/office\\_of\\_state\\_fire\\_marshal\\_files/directives-files/10/pd10.pdf](http://www.ct.gov/dcs/lib/dcs/office_of_state_fire_marshal_files/directives-files/10/pd10.pdf)

# HEALTH



CGS 19a-206.

Duty of directors of health.  
(see CGS Chapter 368f for  
Municipal District Health Directors)

# CGS 19a-206.

## DIRECTORS OF HEALTH

- (a) Town, city and borough directors of health or their authorized agents shall, within their respective jurisdictions, examine all nuisances and sources of filth injurious to the public health, cause such nuisances to be abated and cause to be removed all filth which in their judgment may endanger the health of the inhabitants.

## CGS 19a-206, cont.

### Right of Entry for Health Official

(a)...Any local director of health or his authorized agent or a sanitarian authorized **may enter all places within his jurisdiction where there is just cause to suspect any nuisance or source of filth exists** by such director, and abate or cause to be abated such nuisance and remove or cause to be removed such filth.

# CGS 19a-206, cont.

(b) When any such nuisance or source of filth is found on private property, **such director of health shall order the owner or occupant of such property, or both, to remove or abate the same within such time as the director directs.** If such order is not complied with, within the time fixed by such director: (1) Such director, or any official of such town, city or borough authorized to institute actions on behalf of such town, city or borough, may institute and maintain a civil action for injunctive relief in any court of competent jurisdiction to require the abatement of such nuisance, the removal of such filth and the restraining and prohibiting of acts which caused such nuisance or filth, and such court shall have power to grant such injunctive relief upon notice and hearing;

# CGS 19a-206, cont.

(e) When such nuisance is abated or source of filth is removed from private property, such abatement or removal shall be at the **expense of the owner or occupant of such property, or both**, and damages for such abatement or removal may be recovered against them by the town, city or borough in a civil action as provided in subsection (b) or in a separate civil action brought by the director of health or any official of such city, town or borough authorized to institute civil actions.

# CT PUBLIC HEALTH CODE - Conditions Specifically Declared To Constitute Public Nuisances

## 19-13-B1 includes:

- Discharge or exposure of sewage, garbage or any other organic filth into or on any public place in such a way that transmission of infective material may result thereby
- Stagnant water likely to afford breeding places for mosquitoes within a residential district or within a distance of one thousand feet therefrom.
- Buildings or any part thereof which are in a dilapidated or filthy condition which may endanger the life or health of persons living in the vicinity.

# CT PUBLIC HEALTH CODE – Abatement of Nuisance

**19-13-B2. Abatement of nuisance** (a) Any local director of health, upon information of the existence of a nuisance or any pollution occurring within his jurisdiction, or when any such nuisance or pollution comes to his attention, **shall, within a reasonable time, investigate** and, upon finding such nuisance or pollution exists, **shall issue his order** in writing for the abatement of the same.

(b) Such order shall specify the nature of such nuisance or pollution and shall designate the time within which such abatement or discontinuance shall be accomplished; and **if such order is not complied with within the time specified, the facts shall be submitted to the prosecuting authority.** Copies of all orders shall be kept on file by the director of health in his office and copies of the same shall be furnished the state commissioner of health on request.

# BUILDING



CGS 29-291, et seq.  
Duty of local building official.

# CGS 29-393

## Right of Entry

- On receipt of information from the **local fire marshal or from any other authentic source** that any building in his jurisdiction, due to lack of exit facilities, fire, deterioration, catastrophe or other cause, is in such condition as to be a **hazard** to any person or persons, **the building inspector shall immediately make an inspection** by himself or by his assistant,...

# CGS 29-393

## Right of Entry, cont.

...and **may make orders** for additional exit facilities or the repair or alteration of the building if the same is susceptible to repair or both or for the removal of such building or any portion thereof if any such order is **necessary in the interests of public safety.**

# CT State Building Code 115: Unsafe structures and equipment

- **The BO shall** deem structures or equipment an unsafe condition which are or become:
  - Unsafe
  - Insanitary
  - Deficient because of inadequate means of egress, inadequate light and ventilation

# SBC 115: Unsafe structures and equipment, cont.

- Constitute a fire hazard
- Or are otherwise dangerous to human life or public welfare
- Or that involve illegal or improper occupancy or inadequate maintenance.

The BO **shall** cause a report to be filed on an unsafe condition. SBC 115.2

# SBC 115: Unsafe structures and equipment, cont.

- The unsafe structure **shall** be taken down and removed or made safe, as the BO deems necessary.
- Formatted order for Unsafe Structure may be found at State Building Inspector page: <http://www.ct.gov/dcs/cwp/view.asp?a=4447&q=522242>

# SBC 116

## Emergency measures

- **Imminent danger of failure or collapse** of a building or structure or any part thereof which endangers human life, or
- **Has fallen and human life is endangered** by the occupation.
- BO is authorized and empowered to order and require the occupants to **vacate** forthwith. (Formatted order at same page.)

# HOUSING



# International Property Maintenance Code (IPMC) Section 305: Interior Structure

## SECTION 305 INTERIOR STRUCTURE

**305.1 General.** The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. *Occupants* shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every *owner* of a structure containing a *rooming house, housekeeping units*, a hotel, a dormitory, two or more *dwelling units* or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and *exterior property*.

# IPMC Section 308: Rubbish & Garbage

**308.1 Accumulation of rubbish or garbage.** All *exterior property* and *premises*, and the interior of every structure, shall be free from any accumulation of *rubbish* or garbage.

**308.2 Disposal of rubbish.** Every *occupant* of a structure shall dispose of all *rubbish* in a clean and sanitary manner by placing such *rubbish* in *approved* containers.

**308.2.1 Rubbish storage facilities.** The *owner* of every occupied *premises* shall supply *approved* covered containers for *rubbish*, and the *owner* of the *premises* shall be responsible for the removal of *rubbish*.

**308.2.2 Refrigerators.** Refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on *premises* without first removing the doors.

# ZONING



## ■ CGS 8-12 Enforcement of Zoning

- Shall be enforced by the officer or official board or authority designated therein.
- Written orders for the remedying of any condition found to exist in violation of any provision of the zoning regulations
- May cite owner or tenant, among others.
- Criminal penalty: \$10-\$100 for each day that such violation continues; but, if the offense is wilful, \$100-\$250 for each day that such violation continues, or 10-30 days imprisonment or both.
- Civil penalty: up to \$2500

# BLIGHT



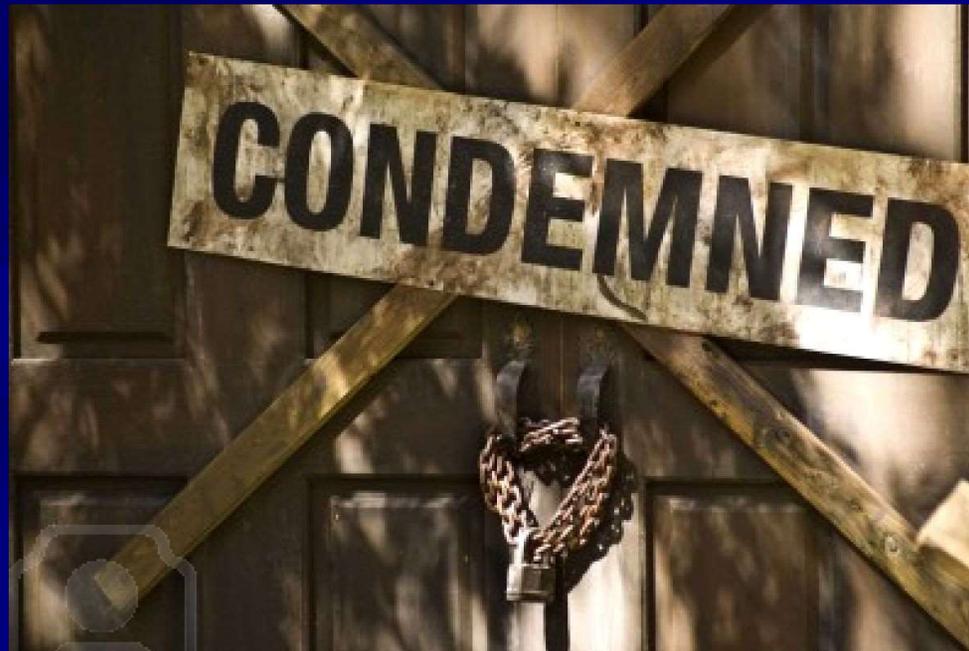
# BLIGHT – CIVIL REMEDIES

- From the Municipal Powers Act Section CGS 7-148(c)(7)(H)(xv):
- “Make and enforce regulations for the prevention and remediation of housing blight, including regulations reducing assessments and authorizing designated agents of the municipality to enter property during reasonable hours for the purpose of remediating blighted conditions, provided such regulations define housing blight and require such municipality to give **written notice** of any violation to the owner and occupant of the property and **provide a reasonable opportunity for the owner and occupant to remediate** the blighted conditions prior to any enforcement action being taken, and further provided such regulations **shall not authorize such municipality or its designated agents to enter any dwelling house or structure on such property**, and including regulations establishing a duty to maintain property and specifying standards to determine if there is neglect; prescribe civil penalties for the violation of such regulations of not less than ten or more than one hundred dollars for each day that a violation continues and, if such civil penalties are prescribed, such municipality shall adopt a citation hearing procedure in accordance with section 7-152c;”

# BLIGHT – CRIMINAL COURT REMEDIES

- **CCS Sec. 7-148o.** Wilful violation of ordinances concerning prevention and remediation of housing blight. Penalties. (a) Except as provided in subsection (b) of this section, any person who, **after written notice and a reasonable opportunity to remediate** blighted conditions, wilfully violates any regulation adopted pursuant to subparagraph (H)(xv) of subdivision (7) of subsection (c) of section 7-148 concerning the prevention and remediation of housing blight shall be **finned by the state not more than two hundred fifty dollars for each day** for which it can be shown, based on actual inspection of the property on each such day, that the blighted conditions continued to exist **after written notice to the owner or occupant** as provided in this section, and the expiration of a reasonable opportunity to remediate.  
(b) Any person who is a new owner or new occupant shall, upon request, be granted a thirty-day extension of the notice and opportunity to remediate provided pursuant to subsection (a) of this section. For the purposes of this section, “new owner” means any person or entity who has taken title to a property within thirty days of the notice, and “new occupant” means any person who has taken occupancy of a property within thirty days of the notice.

# RELOCATION



# RELOCATION - CGS 8-266

Uniform Relocation Act applies in:

- circumstances involving removal of persons from use or occupancy of buildings by officials.
- Affixes to shut down of a premises under relevant CT General Statutes.
- **Requires** referral to Uniform Relocation Act administrator for your town, city or district for assistance to affected occupants.

# LANDLORD-TENANT



Landlord must control safety of the building but tenant cooperation is needed.



# Tenant's responsibilities.

## CGS §47a-11.

A tenant shall: (a) Comply with all obligations primarily imposed upon tenants by applicable provisions of any building, housing or fire code materially affecting health and safety; (b) **keep such part of the premises that he occupies and uses as clean and safe** as the condition of the premises permit; (c) **remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner** to the place provided by the landlord pursuant to subdivision (5) of subsection (a) of section 47a-7; (d) keep all plumbing fixtures and appliances in the dwelling unit or used by the tenant as clean as the condition of each such fixture or appliance permits; (e) use all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in the premises in a reasonable manner; (f) not wilfully or negligently destroy, deface, damage, impair or remove any part of the premises or permit any other person to do so; (g) **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 or constitute a nuisance**, as defined in section 47a-32,...

The landlord has good information about a hoarding hazard in a tenant's unit.

Is it enough to say:  
“Tenant won't allow access?”

# LEGAL ENTRY BY A LANDLORD

- CGS 47a-16 LANDLORD'S RIGHT OF ENTRY
- CGS 47a-18 LANDLORD'S REMEDY ON TENANT REFUSAL

# CGS 47a-16

## Landlord's right of entry

- **47a-16. When landlord may enter rented unit.** (a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed to repairs, alterations or improvements, **supply necessary or agreed to services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.**

(b) A landlord may enter the dwelling unit without consent of the tenant in case of **emergency**.

## CGS 47a-16, cont.

(c) A landlord shall not abuse the right of entry or use such right of entry to harass the tenant. The landlord shall give the tenant reasonable written or oral notice of his intent to enter and **may enter only at reasonable times, except in case of emergency.**

(d) A landlord may not enter the dwelling unit without the consent of the tenant except (1) in case of emergency, (2) as permitted by section 47a-16a, (3) pursuant to a **court order**, or (4) if the tenant has abandoned or surrendered the premises.

# CGS 47a-18

## Court order for entry.

- **47a-18. Judicial relief if tenant refuses entry.** If the tenant refuses to allow entry pursuant to section 47a-16 or section 47a-16a, the landlord may obtain a declaratory judgment or injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages and reasonable attorney's fees.

Thank you.



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**BEFORE**



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**AFTER**