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## Slum Housing Receivership as a Mode of Municipal Housing Code Enforcement

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**SLUM HOUSING RECEIVERSHIP AS A MODE OF  
MUNICIPAL HOUSING CODE ENFORCEMENT**

by

**Francis R. Parente**

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of Loyola University in Partial Fulfillment  
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## CHAPTER I

### THE CONTEXT FOR RECEIVERSHIP:

#### HOUSING CODE ENFORCEMENT

#### INTRODUCTION

On February 23, 1966, the Rev. Martin Luther King, Jr., in cooperation with three civil rights organizations, assumed what he called informal "trusteeship" of an old and neglected six-flat building on Chicago's west side. The structure, at 1321 South Homan Avenue, was occupied by four families and had twenty-three municipal housing code violations. Twenty children were included in the four families, and two of the families were on County welfare rolls. The tenants had complained of lack of heat, no refuse collection, and serious electrical and plumbing deficiencies. Moreover, the 81-year-old non-resident landlord apparently had been unable to replace the janitor-manager who had "disappeared" a week before.<sup>1</sup>

The Rev. King's plan was to collect rents from the tenants and use the money for the cleaning and renovation of what was basically a sound building. Disregarding the property rights of the owner of the building, Dr. King, in a "supralegal" action,

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<sup>1</sup>Chicago Tribune, February 24, 1966, p. 3.

sought to correct the building's defects and then return the property to the landlord.

For the activist civil rights leader, the normal processes of law and bureaucratic procedures of civil administration failed to deal effectively with a housing situation that cried out for remedy. Speaking from the steps of the building, Dr. King declared that "the moral question is far more important than the legal one."<sup>2</sup>

By April 6, 1966, King's group had been enjoined by a chancery court justice from collecting rents, "entering or interfering" with the building and a Milton M. Worsek, head of a real estate company, became court-appointed receiver of the property, charged with the duty of determining the feasibility of the property's rehabilitation.<sup>3</sup> In a way, King had lost this bout in the struggle against substandard housing and "ghettoized" patterns of living for minority groups in large cities; but in another way, he had won. Something was being done about the building at 1321 South Homan Avenue. "Slumlords" were put on notice that their property rights were not quite as sacred as before, and the tenants of substandard buildings everywhere began to feel that their lot was not as hopeless as it had been and that they were not alone.

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<sup>2</sup>Ibid.

<sup>3</sup>Chicago Tribune, April 6, 1966, p. 1.

The "trusteeship" idea, characteristic of King's pragmatic approach of uncovering and making notorious social situations in need of attention, presaged a long summer of demonstrations and marches into all-white Chicago neighborhoods. The demand for more, better, and open housing, however, was only a single facet of the civil rights movement that, in essence, called for a redistribution of power so that the minority group that perhaps has suffered most at the hands of our society could redress the balance and seek the "good life" without pre-condition or limitation. And, certainly, the civil rights movement was only a facet of a whole constellation of urban problems that transcended purely racial concerns.

The misery, the social disorganization, and the deplorable conditions that Martin Luther King saw in the run-down housing on Chicago's west side in 1966 was the same phenomenon the social critics at the turn of the century observed both in Chicago and in other large industrial cities. The "muckrakers" and those who followed them tried to arouse public consciousness about problems such as these by vividly portraying the conditions under which segments of our population lived. For the slums of the present, as for the slums of forty or sixty years ago, "'community' is scarcely more than a geographical expression."<sup>4</sup>

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<sup>4</sup>Harvey W. Zorbaugh, The Gold Coast and the Slum (Chicago: The University of Chicago Press, 1929), p. 271.

The prototype of today's slum, the ethnic slum that was fed by the heavy influx of immigrants during America's industrial revolution, bears great resemblance to the post World War II racial ghettos of northern cities.

Chicago's near north side ethnic slum, "Little Hell" or "Little Sicily", in the 1920's look like this:

Dirty and narrow streets, alleys piled with refuse and alive with dogs and rats, goats hitched to carts, bleak tenements, the smoke of industry hanging in a haze, the market along the curb, foreign names on shops, and foreign faces on the streets, the dissonant cry of the huckster and peddler, the clanging and rattling of railroads and the elevated, the pealing of the bells of the great Catholic churches, the music of marching bands and the crackling of fireworks on feast days, the occasional dull boom of a bomb or the bark of a revolver, the shouts of children at play in the street, a strange staccato speech, the taste of soot, and the smell of gas from the huge 'gas house' by the river, whose belching flames make the skies lurid at night and long ago earned for the district the name Little Hell--on every hand one is met by sights and sounds and smells that are peculiar to this area, that are 'foreign' and of the slum.<sup>5</sup>

In recent times, the ethnic immigrant slum of the past gave way to the slum inhabited by what Michael Harrington has called "internal migrants," people who do not participate in the "culture of aspiration that was the vitality of the ethnic slum."<sup>6</sup> This group is composed mainly, but not exclusively, of Negroes. "In the twenty-four metropolitan areas with a half-

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<sup>5</sup>Ibid., pp. 159-160.

<sup>6</sup>Michael Harrington, The Other America (Baltimore: Penguin Books, Inc., 1962), p. 141.



million or more residents . . . ,” Charles Silberman points out from U.S. census figures, “Negroes now account for over 20 per cent of the population.”<sup>7</sup> For Silberman, “it is the explosive growth of their Negro populations, however, that constitute the large cities’ principal problem and concern. . . . Every city has a large and growing Negro population.”<sup>8</sup>

Coupled with this explosive growth is the factor of limited mobility and housing choice for minorities.

The general picture of the future is clear enough: large non-white concentrates (in a few cases, majorities) in the principal central cities; large white majorities, with segregated Negro enclaves, in the areas outside.<sup>9</sup>

In further describing the inhabitants of slums, Michael Harrington points out that “in Chicago, an important element is the Negro; in St. Louis, the white sharecropper; in Los Angeles, the Mexican-American. But in each case the internal migrant joins with the traditionalists and failures from the ethnic slum.”<sup>10</sup>

Notwithstanding post-World War II increases in population, overcrowding in central cities and acute housing shortages on the metropolitan-wide level, there seems to be reason for optimism

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<sup>7</sup>Charles E. Silberman, Crisis in Black and White (New York: Vintage Books, 1964), pp. 31-32.

<sup>8</sup>Ibid., p. 34.

<sup>9</sup>Morton Grodzins, “The Metropolitan Area as a Racial Problem,” ed. Earl Raab, American Race Relations Today (New York: Anchor Books, 1962), p. 88.

<sup>10</sup>Harrington, op.cit., p. 141.

about the urban condition.

Examining the four "indices" of urban politics, crime, schools, and housing in some perspective, an eminent historian, Richard C. Wade, recently asserted that what problems we now have are problems which are inseparable from urban life.

They are not problems that are ever going to be 'solved.' They are problems which are adjusted, processed for a generation, and then met again. The questions of housing, the questions of crime, of schools, etc., are not things for which we ought to be looking for 'solutions.' I think what we have to do is to see how we can best manage the questions in our own time and with the tools and the capacities we have at our disposal.<sup>11</sup>

In discussing the present state of housing, Professor Wade continues: "In Chicago, in the congested areas of the first precinct, in 1906 three out of every five children died before the age of one. We have nothing in the American cities today that is comparable to this. Indeed, at present a lower proportion of American people are living in substandard housing than ever before."<sup>12</sup>

Powerful forces in the private housing market have been at work in raising environmental standards in older housing in recent years. Rehabilitation of older, central city housing has improved the quality of urban living astoundingly.

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<sup>11</sup> Richard C. Wade, "The Urban Crisis: An Historian's View," New City (August, 1966), p. 11.

<sup>12</sup> Ibid., p. 10.

In cities of over 100,000 population, 2.6 million units -- 20 per cent of the housing stock -- were substandard in 1950. By 1960, a combination of renovation and demolition had reduced this number to 2.0 million, or 11 per cent of the total.<sup>13</sup>

In the public sector, since the passage of the Federal Housing Act of 1949 -- indeed since the Federal Government's first attempt to come to grips with the problem of substandard housing during the depression of the 1930's -- all levels of the Federal System have increasingly cooperated in a concerted attempt to provide a decent home in a decent neighborhood for every American family.

The Housing and Urban Development Acts of the 1960's have established and expanded programs for concentrated housing code enforcement, Community Renewal Program planning assistance, multi-purpose neighborhood facilities, rehabilitation loans and grants, so-called turnkey, low-rent public housing, rent supplements, comprehensive "Demonstration Cities" programs, and other programs. Recently, the Department of Housing and Urban Development was established and given cabinet-level status.

Don Hummel, Assistant Secretary for Renewal and Housing Assistance for the Department of Housing and Urban Development, underlined the changed and expanded role government plays in urban redevelopment:

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<sup>13</sup> Bernard J. Frieden, The Future of Old Neighborhoods (Cambridge: The M.I.T. Press, 1964), p. 23. Calculated by Frieden from U.S. Census of Housing, 1950 and 1960.

With each succeeding Congress, our programs for urban aid have expanded in scope, and become more specialized in terms of their application. Our approach has broadened to urban development, and our programs are people-oriented, in response to one of the basic elements of the city problem. Emphasis is being given to the use of rehabilitation, to conserve our present housing investment, and to minimize the problems involved in massive clearance.<sup>14</sup>

Despite the increasing efforts of government, however, it was nevertheless true that, as of 1963, "the actual quantitative impact of urban renewal activities [had] affected less than 5 per cent of all buildings and a scarcely measurable fraction of all areas developed."<sup>15</sup>

Those tempted toward complacency and self-satisfaction with the achievements of the past were apprised of the magnitude of the task that remained unfinished:

From the total housing inventory of 58 million units for 1960, 15.7 million dwellings were listed as substandard (either dilapidated or lacking a private inside bath or hot and cold running water) or located in slum areas where 'they will soon deteriorate into the substandard category.' About 47 million people were living in these units.<sup>16</sup>

Although it could perhaps be demonstrated statistically

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<sup>14</sup>Don Hummel, "The City and Its Challenge," an Address to the 51st Annual Conference of the New Jersey State League of Municipalities, Atlantic City, New Jersey, November 16, 1966, p. 9.

<sup>15</sup>William L.C. Wheaton, Foreword to William G. Grigsby, Housing Markets and Public Policy (Philadelphia: University of Pennsylvania Press, 1963), p. 5.

<sup>16</sup>Charles Abrams, The City is the Frontier (New York: Harper & Row, 1965), pp. 25-26.

that the housing situation was improving in terms of the gradual elimination of, for example, buildings lacking indoor plumbing, there seemed to be common agreement that our housing problems were far from "solved." As the level of expectation for all Americans rose so that indoor plumbing was no longer considered "unthinkable" in the poorer sections of the city, concern over deterioration and desire for amenities in housing increased. The result was the re-defining of what constituted decent surroundings--a raising of standards that was both desirable and logical in a country which considered it an off-year when only 8.5 million new automobiles were purchased.

#### THE HOUSING MARKET AND THE FORMATION OF URBAN SLUMS

Analysts disagree as to what explains the formation of slums, assuming of course that a definition of what constitutes a slum can be agreed upon. Some emphasize jobs, schools, environmental factors, delayed maintenance, limited home ownership, overcrowding, discrimination, poor planning, and the like. About solutions to the problem, there is even more disagreement. More and better jobs, better and earlier schooling, improved environmental conditions, lower taxes as incentives for home improvement, more housing, more or modified urban renewal efforts are all suggested remedies. The list is quite long and is made more complex by the added dimensions of political practicability and economic feasibility.

There is widespread agreement, however, that the normal housing "market" is not performing satisfactorily and that Americans are dissatisfied with the quality of life that results.

The classic example of the performance of the housing market is the process of "filtering", as described by Professor Ratcliff:

It is a well-recognized phenomenon that housing tends to move downward in the quality and value scales as it ages. Thus housing that is introduced at or near the top descends gradually through successively lower strata. It is often contended that the needs for additional housing on the part of the lower income groups can be met by the production of an adequate supply of new housing for the upper income groups. Thus, used homes would be released to be passed down to successively lower levels until the effect reached the bottom of the market.<sup>17</sup>

But a "natural" process such as filtering is hindered by many factors unlooked for in a pure market. Long term inflation of housing values and the fact that styles of houses go out of fashion too slowly are only a few obstacles that stand in the way of successful filtering. The theory assumes an abundance of houses so that the bad housing at the bottom of the market that is eliminated is compensated for by new construction.

The principal requirement for successful filtration, then, is a volume of new construction sustained for a long enough period at a high enough rate to create the surpluses which the theory assumes.<sup>18</sup>

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<sup>17</sup>Richard U. Ratcliff, Urban Land Economics (New York: McGraw-Hill, 1949), p. 231.

<sup>18</sup>Martin Meyerson, Barbara Terrett, William L.C. Wheaton, Housing, People and Cities (New York: McGraw-Hill, 1962), p. 44.

The United States had not yet even shaken off the effects of the post World War II housing shortage when the newly-married "war babies" began demanding their own places to live.

Perhaps the area of greatest concern, among analysts of the housing situation, is the existing stock of houses. New construction techniques and workmanship of high quality, coupled with higher building and occupancy standards, seem to assure the quality of future housing. Moreover, "only 2 to 3 per cent is added to the durable existing supply of housing units each year."<sup>19</sup> Therefore, a grave concern for the rehabilitation and preservation of what constitutes the lion's share of housing seems to be justified.

The shift in emphasis toward the preservation and rehabilitation of existing housing and the rising concern among people in the housing field was recently typified by President Kennedy's 1961 reference to our investment in residential real estate as the "largest single component in our national wealth." It is of some significance that the President's statement "was quickly followed by the Urban Renewal Administration's announcement of plans to retain 128,500 of 235,000 targeted dwelling units in 135 localities."<sup>20</sup>

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<sup>19</sup>Henry B. Schechter, "The Changing Nature of the Housing Market," an Address to the 42nd Annual Agricultural Outlook Conference, Washington, D.D., November 18, 1964, p. 1.

<sup>20</sup>Abrams, op. cit., p. 185.

A concern for the preservation and rehabilitation of housing had actually antedated the Kennedy era by several generations. The New York Progressive, Lawrence Veiller, at the turn of the century, introduced landmark tenement laws concerning occupancy of dwellings that sought to eliminate such evils as air shafts that constrict light and air, and to provide sanitary facilities in tenements.<sup>21</sup> Along with other social critics such as Jacob Riis, Veiller sought to forge housing occupancy codes that would make existing and future urban housing safer, cleaner, and more comfortable. Indeed, Veiller's New York crusade for better housing "became the fountainhead for the national crusade . . . ." <sup>22</sup> that provided legislators and others concerned with urban redevelopment an ideal--such as the Tenement House Law of 1901.

As if in fulfillment of the promise of Veiller's efforts in the field of tenement housing, the Eisenhower administration in 1954 sought to modify existing federal housing legislation, which had been devised primarily as a slum clearance and housing program," by proposing "a new formula under which each community would now have to present a 'workable program,' dealing both with the causes and the consequences of slum formation and urban

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<sup>21</sup> Roy Lubove, The Progressives and The Slums (Pittsburgh: The University of Pittsburgh Press, 1962), p. 134.

<sup>22</sup> Ibid., p. 140.



decay.<sup>23</sup> To qualify, an area no longer need be literally a slum. It could merely be in a state of decline. Along with "promises" concerning comprehensive community planning, neighborhood analysis, administrative organization, financing, housing for displaced families, and citizen participation, a potential urban renewal recipient area had to submit evidence that adequate housing codes and ordinances would be enacted and enforced.<sup>24</sup>

#### HOUSING CODES: A FUNCTIONAL DEFINITION

The term "housing code" is usually used generically, referring to an array of codes and ordinances and practices relative to the regulation of conditions of occupancy of housing. A health or sanitary ordinance is sometimes considered part of a municipality's housing code--the same is true of a building code, although there is a technical distinction. Perhaps the best definition of a housing code is one which describes it functionally.

Housing codes usually regulate the availability of facilities for bathing, heating, garbage disposal, lighting, ventilation, sink, toilet, and sewage disposal. Typically they

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<sup>23</sup>Abrams, op. cit., pp. 86-87.

<sup>24</sup>The Workable Program for Community Improvement (Washington: U.S. Department of Housing and Urban Development, November, 1965), p. 2. "If not already adopted, adequate codes and ordinances that provide sound standards for the construction and for the use of dwelling units must be put into effect within a year after the original Workable Program has been certified. The basic codes are building, plumbing, electrical, housing, and fire prevention."

limit densities of occupancy and establish standards of maintenance and cleanliness, including the elimination of such nuisances as rats and other unsanitary conditions. For a city with an aging and deteriorating housing stock, "the most significant function of a housing code may be to aid in the prevention or delay of slum formation by conserving those areas which are worth saving but which have begun to deteriorate into slums."<sup>25</sup>

Zoning ordinances, which regulate land uses, and building codes, which regulate new and renovated buildings, operate "prospectively," having "little impact on existing housing until renovation of that housing begins."<sup>26</sup> Further, whereas "existing housing is regulated to a certain extent by health and fire codes or by ordinances specifically dealing with plumbing, wiring, and the like," enforcement of these measures "is not directed at blight, as such, and leaves unaffected many important causes of blight."<sup>27</sup> It is to this problem that housing codes address themselves, serving to regulate as many of the conditions of occupancy as is possible so that a concerted, comprehensive attack on housing blight can be made.

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<sup>25</sup>69 Harvard Law Review 1117 (1956), "Municipal Housing Codes."

<sup>26</sup>106 University of Pennsylvania Law Review 439 (1958), "Administration and Enforcement of the Philadelphia Housing Code."

<sup>27</sup>Ibid.

## HOUSING CODE ENFORCEMENT AND THE DETERIORATION PROCESS OF HOUSING

Housing code enforcement, as one of a battery of ameliorative devices available to cities, seeks to arrest the process of housing deterioration. This deterioration process has been described thusly:

When signs of blight or impending racial or economic change appear, financial institutions, anticipating a potential drop in market value, become reluctant to invest in an area. Responsible individuals are deterred from purchasing buildings, and present owners may be unable to finance improvements. As surrounding properties deteriorate, homeowners lose faith in the neighborhood and neglect basic maintenance; landlords, fearful that rental income will be too low to justify investment, react similarly. Financing and ownership devolve upon investors who demand substantial short-range profits for their high-risk investment. Because tenants often cannot afford higher rents, landlords may increase their returns by deferring maintenance and by overcrowding individual units. This, in turn, speeds deterioration and overburdens community facilities. As one building after another becomes blighted, the character of the neighborhood worsens, investors demand that their capital be returned more quickly, and the downward spiral continues at an accelerating pace.<sup>28</sup>

Code enforcement seeks both to prevent the development of slums and to compel correction by punishing code violators. The malfunctionings of the normal housing market and the economic dislocations attributable to war, depression, and ghetto patterns of living for certain groups have contributed to abnormalities that have led to overcrowding and ultimate deterioration. An

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<sup>28</sup>78 Harvard Law Review 801 (1965), "Enforcement of Municipal Housing Codes."

unwillingness or an inability strictly to enforce housing codes, along with both administrative and judicial failures have played a part as well. Code enforcement, as the first line of defense against the development and the continuation of the deterioration syndrome, merits considerable attention.

#### THE INCREASING RATE OF ADOPTION OF HOUSING OCCUPANCY-RELATED CODES

Roy Lubove, in his treatment of early efforts in tenement house reform in New York City, pointed up the fact that before 1900, New York and Pennsylvania were the only states to enact housing laws.<sup>29</sup> Cities in other states had to depend upon local building and health ordinances of questionable comprehensiveness and quality. Where such codes and ordinances existed at all, enforcement was at best "spotty."<sup>30</sup> Although it was true that each city, as a product of historical development, had unique conditions that must be considered in forging appropriate codes and ordinances, there existed a clear need for some sort of uniformity. Unfortunately, by mid-twentieth century, the development of municipal housing codes--completely aside from the enforcement aspect--was still at a primitive stage.

Frank T. DeStefano, Assistant Director of the National Association of Housing and Redevelopment Officials, recently quoted U.S. Public Health Service sources to the effect that,

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<sup>29</sup>Lubove, op. cit., p. 142.

<sup>30</sup>Ibid.

as of 1964, only six states had made efforts to deal with code enforcement problems on a state-wide level--either through state-wide code programs or through the utilization of model housing codes.<sup>31</sup>

A majority of cities and towns in America lack housing codes although the absolute number of cities with such codes is constantly increasing. It is reported that in 1956, "only about 150 cities out of nearly 35,000 cities and towns had housing codes."<sup>32</sup> By 1960, the Municipal Year Book, in a special section, could report that 229 cities over 10,000 population had some form of housing code.<sup>33</sup> In analyzing these figures, it was documented that "the increase in the number of cities with housing standards is related to the federal urban renewal program. A total of 125 of the 229 cities reported that they have urban renewal programs under way, and 86 of the 125 indicated that their housing standard codes were adopted or substantially revised as a part of this program."<sup>34</sup>

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<sup>31</sup>Frank T. DeStefano, "Comments on Housing and Urbanization," an Address to the 1st Governor's Conference on Orderly and Healthful Development of Metropolitan Areas, New Orleans, Louisiana, September 14, 1966, p. 2.

<sup>32</sup>William W. Nash, Residential Rehabilitation: Private Profits and Public Purposes (New York: McGraw-Hill, 1959), p. 85.

<sup>33</sup>"Municipal Housing Code," The Municipal Year Book, 1960, Year Book of the International City Managers Association (Chicago: International City Managers Association, 1960), p. 318.

<sup>34</sup>Ibid., p. 319.

Robert C. Weaver, then an administrator for the Housing and Home Finance Agency, could point with satisfaction in 1964 to the fact that between June 1961 and June 1963 the adoption of 718 new housing occupancy-related codes and the revision or amending of 378 others by local communities was due in great part to local compliance with Urban Renewal's Workable Program requirements. In terms of housing codes alone, the Housing and Home Finance Agency found that by mid-year of 1963 there were in excess of 640.<sup>35</sup>

The increasing rate of adoption of municipal codes relating to housing occupancy standards is undeniable, although the figures quoted above are hardly comparable. My purpose in quoting figures enumerating the number of housing codes in existence over a period of time is merely to give an indication that the number is increasing in a way that mathematicians would call a geometric progression and to suggest that the advent of Urban Renewal's Workable Program requirements has acted as a spur of some potency in getting codes and ordinances of this kind on the books.

#### THE ROLE OF HOUSING CODE ENFORCEMENT

#### QUESTIONED

Accompanying this widespread adoption of municipal codes has been a recent tendency to concentrate more on problems relat-

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<sup>35</sup>Robert C. Weaver, The Urban Complex (Garden City, New York: Doubleday & Co., Inc., 1964), p. 99.

ing to the coordination and efficient administration of new and old codes and a tendency toward finding new and better approaches to code enforcement. The importance of code enforcement and the role it plays in a city's attempt to upgrade and preserve its housing has also been questioned.

One school of thought, reflecting a faith in the preventive medicine of planning ahead and the potential deriving from good municipal housekeeping, feels that "zoning, building, and housing codes are the basic tools for dealing with urban renewal problems."<sup>36</sup> It excoriates those "housing and urban renewal officials [who] dismiss code enforcement as being of relatively little value, citing the difficulties of securing compliance, pointing out that codes do not build housing units, and asserting that code enforcement may interfere with long-range planning."<sup>37</sup>

Another school of thought, representing perhaps a more balanced view, asserts that while "rigorous code enforcement, in and of itself, currently is essential," at the same time it is "limited in its effectiveness."<sup>38</sup> In this view, among the variables of level of municipal services, availability of financing for resident owners and rates of real estate taxation is to be

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<sup>36</sup>Thomas F. Johnson, James R. Morris, and Joseph G. Butts, Renewing America's Cities (Washington, D.C.: The Institute for Social Science Research, 1962), p. 121.

<sup>37</sup>Ibid., p. 122.

<sup>38</sup>George Sternlieb, The Tenement Landlord (New Brunswick, New Jersey: Rutgers, 1966), p. 183.

found an "optimum bundle of carrots and sticks with which to secure upgrading of slum housing."<sup>39</sup> Code enforcement, though a valuable and necessary "stick," is not the beginning and the end of urban redevelopment.

#### PROBLEMS OF HOUSING CODE ENFORCEMENT

My purpose in this section is to enumerate and briefly discuss some of the problems relating to the effective administration of housing codes. Then I will proceed to describe some of the approaches to code enforcement employed in different cities in the United States in order that the reader will be provided with some context and perspective from which to consider the use of slum housing receiverships--the topic that was only suggested in the opening pages of this study--as a mode of municipal housing code enforcement.

The problems of code enforcement, like almost all of the problems of cities in general, are difficult because of a multiplicity of factors involved. Part of the problem is one of time, different cities developing demographically and ecologically in different ways and at different times. Part of the problem is one of administration, different cities allocating money and time and effort differently, depending on values, political interests, and popular consensus. Part of the problem is judicial, since the judicial system plays a great part in code enforcement activi-

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<sup>39</sup>Ibid., p. xiii.



ties. The attitudes, interests, and values of legislators, both locally and at state levels, is also of great significance.

One of the problems of code enforcement is that of antiquated and unclear codes and ordinances relating to housing occupancy. Many cities depend merely on building and health codes, laxly enforced, to regulate housing. Moreover, political compromises with legislators or interest groups have led to problems. Lubove points out that Veiller discouraged the literal adoption of the "model" New York housing law when it was passed because it was the product of many compromises.<sup>40</sup>

Code enforcement in the past has been hindered both by lack of funds and by limitations of the availability of qualified staff for code enforcement agencies.

Budgetary limitations also preclude payment of salaries that will attract highly qualified personnel. Selection of a competent staff is further hampered by the common requirement that inspectors have five years' experience in a building trade, in building maintenance, or sanitation.<sup>41</sup>

In New York, a city that has done much to come to terms with housing problems, inefficient enforcement has proved to be a problem because of a "proliferation of agency responsibility" that led to housing surveillance that was both "ponderous and

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<sup>40</sup> Lubove, op. cit., p. 142 ff.

<sup>41</sup>78 Harvard Law Review, op. cit., p. 805.

haphazard."<sup>42</sup> As a response to a situation where, for example, no less than six Departments of the city had some jurisdiction over housing, in 1964 a "consolidated Department of Housing Maintenance" was recommended in a commission study so that New York, like some other American cities, could begin again to restore efficiency and economy of administration to code enforcement activities.<sup>43</sup>

The problem of proper identification of persons responsible for the maintenance of particular buildings in violation of municipal housing codes, in criminal and quasi-criminal actions, has proved to be a stumbling block to code enforcement. In order to convict slumlords in criminal actions, it must be proved, as a matter of proper legal procedure, that the parties of interest in property are correctly identified. Although the overwhelming number of cases in New York City resulted in convictions, the Community Service Society in a recent study pointed out that "in most of the cases lost in court, the defendant is found not guilty or the case is dismissed because the People have failed to prove

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<sup>42</sup>Elizabeth Van Hoorn, Code Enforcement for Multiple Dwellings in New York City, A Survey with Recommendations by the Committee on Housing and Urban Development (New York: Community Service Society of New York, 1962), p. 41.

<sup>43</sup>Legislative Drafting Fund of Columbia University, Administrative Consolidation of Housing Enforcement Agencies of the City of New York (New York: Legislative Drafting Fund of Columbia University, 1964), pp. 5-6.

that he is the responsible party."<sup>44</sup>

In the face of strict code enforcement, owners of sub-standard buildings are confronted by certain dilemmas about the desirability and economic feasibility of rehabilitation as against the merits of selling their property. On the one hand, rehabilitation is really a gamble on the future of what may be a changing neighborhood, and it assumes that adequate financing is available. Further, the facts of local economic circumstance may make the higher rents that have typically resulted from rehabilitation an onerous burden for the potential tenantry of a poor neighborhood. In a recent code enforcement program in Charlotte, North Carolina, increased rents were a seemingly "necessary" byproduct of neighborhood upgrading. Sale of the property in question, on the other hand, may mean an economic loss.<sup>45</sup>

From the standpoint of landlords, code enforcement is sometimes "pitted against the businessman's incentive to make profit."<sup>46</sup> It is asserted that property taxes, which are based

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<sup>44</sup>Carolyn J. Odell, Code Enforcement for Multiple Dwellings in New York City: Part II: Enforcement through Criminal Court Actions, A Survey with Recommendations Prepared for the Committee on Housing and Urban Development, (New York: Community Service Society of New York, 1965), p. 54.

<sup>45</sup>Nash, op. cit., pp. 87-96.

<sup>46</sup>A. Schorr, Slums and Social Insecurity (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1963), pp. 91-93.

upon valuation, increase when property is improved--thus higher rents. Also, depreciation allowances on buildings make it more profitable for landlords to allow their property to deteriorate and not reinvest profits in the form of improvements or rehabilitation. In short, "maximum profit lies in manipulating tax and financial matters quite unrelated to building maintenance. It lies also in securing high short-term profit: this translates into securing the most tenants that are feasible in the space available, with the lowest possible expenditure."<sup>47</sup>

Charles Abrams pointed out that code enforcement "has ... begun to take an increasing toll of poor peoples' dwellings and increased the number of evictions."<sup>48</sup> In California, for example, he pointed out that between 1962 and 1964, the absolute number of evictions resulting from urban renewal, highway construction, and code enforcement activities was increasing from 7,220 to 18,968. Moreover, code enforcement activities represented 48% or almost half of the latter figure. Of the former total, code enforcement represented 38% of the evictions.<sup>49</sup>

This survey of problems inherent in the administration and enforcement of municipal housing codes is not meant to be all-inclusive. The field of code enforcement is extremely wide

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<sup>47</sup> Ibid.

<sup>48</sup> Abrams, op. cit., pp. 133-134.

<sup>49</sup> Ibid.

and no survey could do more than scratch the surface in such limited space. My purpose is merely to give an indication of the complexity of problems that inhibit the smooth and efficient administration of housing standards, where they exist. The fact that code enforcement activities may be becoming a significant cause of evictions in the face of housing shortages, the fact that landlords do not always find code enforcement and rehabilitation of property in their best economic interests, the fact that codes are not administered efficiently and code enforcement agencies suffer from chronic manpower shortages, the fact that housing codes are a patchwork quilt, varying from city to city and in some places are completely lacking--these and other factors and variables go into making a housing problem of massive proportion.

#### ATTEMPTS TO INCREASE THE EFFECTIVENESS OF HOUSING CODE ENFORCEMENT

Notwithstanding the difficulties inherent in housing code enforcement activities, legislators, municipal officers and other interested parties have generated an array of code enforcement devices that are formidable in their impact on urban housing. These devices reflect the complexity of our legal system and an imagination of mind that seem to give cause for optimism about the solution of many housing problems through the medium of housing code enforcement.

Slum housing receivership as a device to promote code compliance is not the least of these "solutions" but a fuller

consideration of this question proceeds from a treatment of several attempts to increase the effectiveness of code enforcement--ranging from the traditional responses of nuisance abatement and criminal prosecution to the more modern approaches of rent manipulation and withholding, area-wide and community-wide concern on the part of municipality and populace and federal involvement in promoting code compliance.

#### THE TRADITIONAL APPROACH: NUISANCE ABATEMENT AND CRIMINAL PROSECUTION

One of the basic approaches to housing code enforcement is the use of the vacate order--a building being posted as "unfit for human habitation." The power emanates from a municipality's authority to abate nuisances. The Municipal Year Book for 1960 reported that over 85% of the 229 cities over 10,000 population surveyed had authority to order occupancy of hazardous buildings terminated.<sup>50</sup> In many instances, this device, especially when used in conjunction with demolition proceedings, is effective in upgrading the quality of housing in a city. However, the effectiveness of vacation may be vitiated by the fact that hazardous buildings are allowed to stand and by the fact that the displacement of tenants results.

In studying the opening and closing of housing in a

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<sup>50</sup>"Municipal Housing Codes," op. cit., pp. 322-328.  
Figures computed from table.

declining area of New York's Lower East Side, Leo Grebler ably discussed the variables that are involved. Six per cent of the available housing in an Old Law area of New York at one time was vacated, many closings "caused by actual or anticipated vacate orders for violations of law."<sup>51</sup> However, the advent of the World War II housing shortage led to the re-occupancy of much of this "'stand-by' housing, more or less improved. . .:"<sup>52</sup>

Enforcement of safety and sanitary laws was (and in most cities is today) limited to prohibition of occupancy. The New York City statutes authorize the city to condemn and remove or improve multiple dwellings under court order if the building is unsafe or dangerous and if the owner fails to act upon notice. However, little use has apparently been made of this authority.<sup>53</sup>

In a smaller city, where the Corporation Counsel had indicated that posting buildings "unfit for human habitation" was in his view the most effective device available in gaining code compliance, problems resulted. "Those who favor the adoption of the Property Maintenance Code and its strict enforcement," he concluded, "are now giving second thought to such an approach unless it is accompanied by housing for those who are displaced."<sup>54</sup>

Demolition of buildings in an effort to eliminate code

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<sup>51</sup>Leo Grebler, Housing Market Behavior in a Declining Area (New York: Columbia University Press, 1952), p. 41.

<sup>52</sup>Ibid., p. 45.

<sup>53</sup>Ibid.

<sup>54</sup>Letter to author from Edward Sachar, Corporation Counsel City of Plainfield, New Jersey, February 9, 1967.

violations and to upgrade the quality of life in cities is a common device used by municipalities. Inherent in the use of demolitions are many of the same problems of vacation. Advantage derives, however, from the fact that buildings which constitute a nuisance for a community and detract from market values of neighboring structures are physically removed. Thus, land is made re-usable. The Urban Development Act of 1965 made demolition of buildings a more practical tool by providing grants to cities available (under section 116) to facilitate the demolition of offensive structures. By May, 1966, grants covering two-thirds of the cost of such demolitions had been approved for not less than 4,000 structures in a dozen American cities.<sup>55</sup>

The imposition of fines and sentences for convictions in criminal actions encourages compliance with municipal housing codes. Maintenance of dwellings that are in violation of existing codes and ordinances of cities and states is discouraged in this way. Many cities in recent years have established special housing courts and special procedures of administration in order to deal with problems of housing code violations through the courts in criminal actions. Many of the problems involved in this type of remedy in terms of the attitudes of the courts, the low amount of fines imposed, and the like have been discussed

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<sup>55</sup>NAHRO Codes Newsletter, May 25, 1966, National Association of Housing and Redevelopment Officials, Washington, D.C., p. 3.



elsewhere.<sup>56</sup> The point here is that the courts are being resorted to, both in criminal and in equity actions, in order to effect code compliance.

The utilization of vacation and demolition of buildings, while useful in eliminating the worst slum buildings, is limited in its effectiveness, as is the criminal remedy with its characteristically small fine when conviction is achieved. There is seemingly no middle ground where a recalcitrant landlord can be forced to make needed repairs between the two traditional code compliance approaches of vacation-demolition and conviction in criminal actions.

#### RENT MANIPULATION AND RENT WITHHOLDING

In New York, where laws relating to occupancy standards and to criminal sanctions are seemingly legion, several innovations have been attempted in recent years. Because some of the housing in New York City is still under the rent control system that grew out of wartime housing shortages, rent manipulation is used as a coercive technique to enforce housing standards. It is reported, for example, that from May 1, 1962 to April 30, 1963, the Rent and Rehabilitation Administration "processed 95,402 tenant applications for rent decrease. Landlords settled 44 per cent by restoring (curtailed or discontinued) services;

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<sup>56</sup>78 Harvard Law Review, op. cit., Carolyn J. Odell, op. cit., Legislative Drafting Research Fund of Columbia University, op. cit., etc.

tenants got rent reductions in 21 per cent of the cases and 35 per cent were denied.<sup>57</sup>

Rent withholding, when certain types of housing violations are found to be in existence for a certain period of time, has been employed in order to force landlords to supply services, and safe and healthy surroundings. In these instances, rents falling due during the time when the case is pending are deposited with the court having jurisdiction over the case.<sup>58</sup>

In New York and Chicago, withholding of rent in certain welfare cases is permitted. In the New York practice, where such rent withholding has recently been embodied in state legislation, the mechanics of rent withholding are described thusly:

In the unusual circumstance where the [Welfare] Department has been paying the relief recipient's rent directly to the landlord, the Department ceases such payments and notifies the landlord of the reason; more commonly, the Department instructs the client to stop paying rent and it reduces the client's stipend by the amount of the usual rent allowance.<sup>59</sup>

The landlord, in order to collect rents from welfare recipients,

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<sup>57</sup>New York Rent and Rehabilitation Administration, The New Little Book on Rent Control, by Alexander L. Crosby (New York, 1963), p. 7.

<sup>58</sup>The City of New York Department of Buildings, You and Your Landlord, by Martin Perimutter (New York, 1966), p. 21.

<sup>59</sup>Peter Simmons, "Passion and Prudence: Rent Withholding under New York's Spiegel Law," Buffalo Law Review (1966), p. 574. Recently, "tenant unions" have been organized in order to force landlords to eliminate unhealthy surroundings. A discussion of the common law implications of such unions as well as an evaluation of a recent New York statute (Article 7A, Real Property Actions and Proceedings Law, ch. 909, 1965) relating to tenant "class actions" against neglectful landlords is contained in

must remove violations.

#### AREA-WIDE CODE ENFORCEMENT

Efforts to combat the deterioration of housing on an area-wide basis have been made by several cities in recent years. Perhaps the most well-publicized program of this type is the "Baltimore Plan" of concentrated code enforcement of the early 1950's. Baltimore was one of the first cities to attempt to wage a full scale war on rundown areas of the city through improved occupancy ordinances, administrative coordination and concentrated code enforcement techniques. A special court was established to hear housing cases only and "the responsibility of the city government for directing proportionate services to the neediest elements of the population"<sup>60</sup> was recognized. Concentrating on the areas of the cities that were in the worst condition, action was "carefully organized on a block-by-block basis instead of on a basis of scattered complaints and actions."<sup>61</sup>

Although highly touted in the beginning because of the dramatic improvements it made in the city's worst slums, it is

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Peggy A. Hillman, Tenant Unions in the Common Law, A Paper presented to the Conference on the Landlord-Tenant Relationship (University of Chicago Law School, November, 1966).

<sup>60</sup> Housing and Home Finance Agency, Local Development and Enforcement of Housing Codes, Division of Housing Research (Washington, D.C., 1953), p. 29.

<sup>61</sup> Miles L. Colean, Renewing Our Cities (New York: The Twentieth Century Fund, 1953), p. 50.

commonly thought today that the Baltimore Plan hoped for too much from code enforcement alone.

Its [Baltimore's] experience indicated that while intensive area code enforcement could bring individual buildings up to minimum standards, it could not bring lasting improvement to a neighborhood with essentially poor housing, serious environmental deficiencies, and lack of social strength and stability.<sup>62</sup>

The Baltimore experience was of great value, however, for it demonstrated, among other things, that code enforcement activities could be improved and that there were alternative modes of procedure to the traditional complaint-initiated inspectional patterns of the past. Moreover, it seemed to indicate that there was a community consciousness and spirit that could be both awakened and put to use in a determined effort to rid a city of its slums. Such a spirit and an optimism about the future of a neighborhood or a community may well play a part in determining whether decline and abandonment by both tenants and landlords in the face of incipient slum formation will continue or be arrested.

#### NEIGHBORHOOD COOPERATION AND COMMUNITY

##### ORGANIZATION

A program that weds the improved code enforcement efforts of the city to neighborhood cooperation is New York City's Neighborhood Conservation Program. This recently organized effort

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<sup>62</sup>Boston Municipal Research Bureau, Improving Our Neighborhoods (Boston, January, 1962), p. viii.

draws on all the inspectional services of the city for a campaign of code enforcement in designated city districts. Included is a program for improving tenant housekeeping practices as well as a consultation service whereby landlords can learn of opportunities for financing capital improvements.<sup>63</sup> Increased surveillance of buildings and the intensification of the whole code enforcement process is jointly financed by the neighborhood organizations and the city. In one pilot project under this program where 954 violations of housing codes were uncovered by preliminary inspections of a single city block, 15.4 % of the violations were still outstanding a year after notification to the owners involved.<sup>64</sup>

One optimistic observer of the program put his evaluation in these terms:

This neighborhood conservation approach appears to have in it some promise for helping create strong neighborhood communities out of gray areas which have not yet passed the fail-safe point of deterioration and decay, and it demonstrates the need and wisdom of localizing municipal services. Its principal strength comes from the direct commitment of city government.<sup>65</sup>

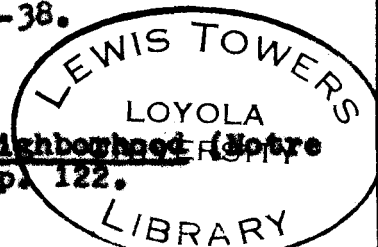
Citizen and community organization participation in code enforcement can be of great significance in a community's con-

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<sup>63</sup>Elizabeth Van Hoorn, op. cit., pp. 36-38.

<sup>64</sup>Ibid.

<sup>65</sup>James V. Cunningham, The Resurgent Neighborhood (Notre Dame, Indiana: Fides Publishers, Inc., 1965), p. 122.



fronting housing problems. Since great difficulties face individuals in terms of landlord recalcitrance and lax city code enforcement efforts, citizens must expend systematic, organized and assiduous effort in seeing to it that codes are enforced and that services are provided. Community organization often seems to provide an appropriate medium through which necessary pressure can be brought to bear.

Even when organization such as this has been achieved however, problems still exist. A guide to housing code enforcement written especially for community organization use in Chicago, instructs its readers thusly:

Appear in court, where possible, to observe or to participate in cases dealing with buildings in your community. Your organization may provide additional witnesses and information to strengthen the city's case in your behalf. The presence of representatives of a community impresses upon city enforcement agencies the desire and pressure for stronger enforcement of codes.<sup>66</sup>

#### THE FEDERAL INVOLVEMENT

Recent approaches to code enforcement, from what we have seen thus far, tend to emphasize reorganization and modernization of traditional methods. Moreover, inter-agency coordination and cooperation with interested community organizations typifies recent patterns of activity in the field. The Federal government,

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<sup>66</sup> Association of Community Councils of Metropolitan Chicago, Inc., A Guide to Housing and Zoning Code Enforcement, by the Neighborhood Conservation Committee (Chicago, 1956), p. 2.

with its view that only a comprehensive approach can be successful in solving urban slum problems, has made several devices--besides the section 116 demolition program mentioned earlier--available. In Urban Renewal conservation areas, for example, financing of rehabilitation for community upgrading has been made available.

Under section 117 of the 1965 Housing Act, financial assistance for code enforcement was provided to cities in two forms: direct grants covering the cost of concentrated code enforcement programs in designated areas and eligibility of the cost of enforcement activities carried out in an urban renewal project area.<sup>67</sup>

In response to the fact that many counties and small communities lack financial resources and manpower to develop and execute housing code enforcement programs, the Federal government has made funds available for Urban Planning Assistance Programs. The Kentucky Department of Commerce's efforts to assist local entities in establishing or revising code enforcement programs represents a first attempt under this program. The total program in Kentucky provides services to over 160 cities and counties in the fields of design, housing, codes, workable program assist-

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<sup>67</sup> Housing and Home Finance Agency, "Local Public Agency Letter Number 345," Urban Renewal Administration (Washington, D.C., August 18, 1965).

ance, programming and budgeting and planning.<sup>68</sup> Recently a "model" Housing and Unsafe Building Code was produced as a first fruit of the Kentucky program.

**CONCLUDING REMARKS: TOWARD THE EXPERIMENTAL**

A brief description of one final approach to code enforcement, a departure from traditional methods employed, is in order before we consider slum housing receivership as an effective device for bringing about code compliance. The "emergency repair" device has certain qualities that, if successfully employed, provide an interesting alternative to traditional criminal, equitable, or administrative code enforcement practices. In one variation, the judicial process is by-passed for an administrative hearing of some kind where a city may declare any code violation a nuisance and, after adequate notice and opportunity for making necessary repairs is provided, the city proceeds to contract for repairs. The owner is then billed for all costs plus a certain per cent overhead. If he does not pay, the bill, plus perhaps a penalty, is entered on his tax rolls and is pay-

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<sup>68</sup>Letter to author from Ray Eaton, Director, Division of Community Planning and Development, Department of Commerce, Commonwealth of Kentucky, January 12, 1967.



able before a first mortgage.<sup>69</sup> This procedure assumes, of course, economic feasibility for the city, which would have to provide some sort of administrative machinery to carry out rehabilitation. Moreover, a prior lien law might be necessary so as to assure eventual recovery of monies spent.

A program of this kind, some have suggested, would be effective where landlords fail to make legally required improvements voluntarily and should have further encouragement at the national level.<sup>70</sup>

This discussion of code enforcement practices has been topical rather than systematic and analytical, leaving aside, for the most part, a discussion of number of dwelling units rehabilitated, costs per room and other such technical matters. My purpose has been to apprise the reader of the importance

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<sup>69</sup> Sinclair Powell, Survey of Housing Code Enforcement Practices in 24 Medium-Sized American Cities, A Report to The Better Housing League of Greater Cincinnati, Inc., Prepared by the Author as Consultant to the League (Cincinnati, December, 1965), p. 8. An example of a further variation on the "emergency repair" theme is contained in sections 108-110 of Chapter I of Housing and Unsafe Building Code, Model Ordinance Number 101-A (1966 Edition), drawn up by the Division of Community Planning and Development of the Kentucky Department of Commerce; in another case, certain housing conditions are declared to be a nuisance by city council resolution and a "special assessment" is levied against the parcel in question. (Montebello, California, Municipal Code (1966), Ordinance 1210, sections 3500-3511). Although this type of remedy for substandard housing is currently used in an extremely limited number of actual cases, it is worthy of being noted because of its similarity to some of the procedures employed in slum housing receivership practices.

<sup>70</sup> Grigsby, op. cit., p. 306.

of housing code enforcement as an element of urban redevelopment, to discuss some of the economic, administrative, and human problems that make code enforcement difficult, and to outline only a few of the traditional, governmental, and experimental approaches to code enforcement that have been devised to meet urban housing problems.

## CHAPTER II

### SLUM HOUSING RECEIVERSHIP AS A MODE OF MUNICIPAL HOUSING CODE ENFORCEMENT

#### EQUITY COURTS AND CODE ENFORCEMENT

The obstacles to code enforcement seem to center on the administrative, rather than the judicial question, since "it is generally noted that relatively few cases go to court."<sup>71</sup> "Persuasion is the major means of correction"<sup>72</sup> and apparently most landlords are willing to obey orders to comply with housing codes once they are told of deficiencies. However, judicial--both criminal and equitable--remedies have been employed in cases where recalcitrance has led to inaction detrimental to the common good. The preceding discussion touched on the criminal approach toward code enforcement, discussing the smallness of fines imposed and perhaps suggesting reasons why some people interested in bringing about code compliance have opted for civil proceed-

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<sup>71</sup>Ontario Department of Municipal Affairs, Housing Code Programs: A Summary of Experience in Selected American Cities, A Report Prepared by the Community Planning Branch (Toronto, Ontario, 1961), p. 6.

<sup>72</sup>Ibid.

ings in difficult cases involving hard-core slumlords.<sup>73</sup>

Certain advantages derive from equity proceedings that make such actions appropriate in some code compliance cases. An equity or chancery court is especially well equipped to handle "problem" cases of code compliance because of the inherent flexibility that, almost by definition, characterizes equity. Hardship cases, such as the 81-year-old owner of the building Martin Luther King took over in Chicago, can be handled without the arbitrariness that may characterize the strict "letter of the law" approach of a regular court of law or the limitations of a purely "administrative" approach. Moreover, "hard-core" slumlords who elude enforcement proceedings can be dealt with harshly, if necessary. Equity proceedings, on the other hand, tend to be expensive and time consuming, requiring careful case preparation and presentation to what may prove to be an unsympathetic bar of justice. Finally, it must be stated that equity proceedings, when they are aimed at recalcitrant landlords, may be harsh remedies, constituting, according to critics, a virtual expropriation of property.

Among the equitable remedies employed in housing code enforcement activities, mandatory injunctions and receiverships

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<sup>73</sup>Legislative Drafting Research Fund, Legal Remedies in Housing Code Enforcement in New York City, op.cit. The abandonment of criminal proceedings has been recommended because of smallness of fines, difficulty of proving criminal intent, etc. in favor of civil actions with per diem fines that would make failure to comply uneconomical indeed.

merit our attention here.

### MANDATORY INJUNCTIONS

When violations of municipal codes have proved to be particularly hazardous to tenants, mandatory injunctions have been obtained from equity courts to require "an owner either to repair or to vacate his building. Failure to obey can result in a civil contempt citation, the demolition of a building 'in a dangerous and unsafe condition or uncompleted and abandoned,' or receivership."<sup>74</sup> The City of Chicago, one of the few cities to employ mandatory injunctions extensively, issued such orders against 153 buildings in 1965.<sup>75</sup>

Mandatory injunctions are seen as incomplete remedies, however, requiring contempt proceedings and further litigation before actual rehabilitation or demolition is begun. Where statutory authorization has existed, receivers have been appointed to manage and rehabilitate buildings in violation of municipal codes.<sup>76</sup>

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<sup>74</sup> Harvard Law Review, op. cit., p. 827.

<sup>75</sup> City of Chicago, Workable Program for Community Improvement (1965), Department of Development and Planning (Chicago, 1966), p. 36.

<sup>76</sup> Charles Pratt, The Use of Receiverships in the Rehabilitation of Urban Housing, A Paper presented to the Conference on Landlord-Tenant Relationship (University of Chicago Law School, November, 1966), p. 3.

## RECEIVERSHIPS

The use of receiverships in code enforcement activities is a fairly recent development, although this equitable remedy is well established. Municipalities have traditionally had the power to abate nuisances. Rhyne points out that:

It has been held that under its general police power a city is authorized to suppress and abate nuisances. In the exercise of its police power a local legislative body may enact and enforce police ordinances to regulate or prohibit a thing or act of such a nature that it may become a nuisance or may be injurious if not regulated or abated. . . . The abatement of nuisances is a part of the governmental power of a municipality which, with the right of summary action, is a common law power under the police power.<sup>77</sup>

Under the equity power of the courts, receivers have been appointed as trustees for such things as railroads, public utilities, and corporations undergoing reorganization and in need of management until final disposition of the case has been decided. In brief, "the purpose of a receivership is the preservation and proper disposition of the subject of litigation. The appointment of a receiver . . . is not made for the purpose of destroying the rights of persons, but rather, that their rights may be made more secure. Such preservation ordinarily is of rights as they exist at the time of the appointment of the receiver, and the receivership operates to such effect."<sup>78</sup>

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<sup>77</sup>Charles S. Rhyne, Municipal Law (Washington, D.C.: National Institute of Municipal Law Officers, 1957), pp. 546-547.

<sup>78</sup>45 American Jurisprudence, Section 4, Purpose and Nature of Receiverships (1943).

Normally, the remedy of receivership, wherein a trustee is appointed by the court to hold or manage property pending final disposition, is resorted to only where there is no adequate legal or other remedy.

But, as in the cases of public utilities and railroads in the past, the role of receivers has been expanded so that "where the court is concerned not only with the interests of the immediate parties, but also those of the public generally, the powers of the receiver are enlarged beyond those of a simple custodian."<sup>79</sup> It is by analogy and adaptation of traditional legal practice that equity courts have in recent years appointed custodians or receivers for slum buildings in violation of municipal codes in order to effect code compliance where landlords have failed.

Slum housing receiverships, like mandatory injunctions, are drastic remedies intended to supplement normal code enforcement techniques and are useful in bringing pressure to bear on hard-core slum landlords who are either unable or unwilling to keep their buildings in proper condition. Receivership aims at breaking the cycle of inaction and neglect and deterioration by limiting the number of alternatives open to slumlords. Without the threat of drastic action on the part of city officials, landlords of badly deteriorated buildings have several alterna-

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<sup>79</sup>Pratt, op. cit., p. 2.

tives. A landlord may choose to neglect his building, to the detriment of his tenants, and merely collect as much rent as possible for as long as possible. Under these circumstances, he takes advantage of the fact that the city's code enforcement agencies and staff capabilities are such that often his activities will not be uncovered for some time. In the event the slum landlord is "found out," under normal conditions, he still has alternatives. He may choose to pay the small fine that is often imposed for criminal convictions in code violation cases. Moreover, he may hope that he can stall off the authorities until he sells his property. The slum landlord may choose to rehabilitate his property. We have seen how the federal government's efforts in the field of housing are beginning to make financing more available.

Receivership, as a kind of ultimate weapon used to achieve quick repair of sound but neglected buildings, tends to limit the alternatives open to chronic code violators. "Once the threat of losing control over the disposition of property is actually held over the head of a slumlord, he is faced with the choice of either bringing his building into code compliance or having it done for him--and at his expense--by a court appointed receiver."<sup>80</sup> If a receiver is appointed to carry out the rehabilitation of a building, the resulting expenses incurred

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<sup>80</sup> Interview with Mr. G.H. Wang, Assistant Director, Chicago Dwellings Association, February 28, 1967, Chicago, Ill.



have, by statutory authority granted where receivership is practiced, become liens on the property's rents and profits prior to all other encumbrances except taxes. Making resulting liens "prior" to all other encumbrances has been necessitated by the economics of rehabilitation of deteriorated buildings in marginal neighborhoods. Prior liens better the chances of recovery of expenses, for many such buildings are already mortgaged close to the full extent of the market value, and the saleability of resulting "receivership certificates" is enhanced by an assurance that money will be forthcoming from rents and other issues of the rehabilitated building. In the end, when rehabilitation is completed and resulting indebtedness paid off, control of properties fallen into receivership is returned to the owner of title and the receiver discharged by the court of jurisdiction.

#### SLUM HOUSING RECEIVERSHIP IN AMERICAN CITIES

Curious as to how the experiences of cities varied with respect to slum housing receiverships in code enforcement activities, I set out to develop a questionnaire that would be useful in understanding the practice of code enforcement in general and receiverships in particular. A copy of the questionnaire is added to this study as Appendix A.

Nineteen cities thought to be utilizing the receivership remedy in code enforcement activities were queried as to the operations of their programs. Although authority for receivership existed in six of the cities, the remedy was employed in

only two cities, New York and Chicago, on a scale great enough so as to justify somewhat intensive treatment. (Appendix B contains a description of the methodology employed in gathering data on the practice of receivership for this study). A brief treatment of receivership in the four other cities, Meriden, Connecticut, Plainfield and Trenton, New Jersey and St. Louis, Missouri, is in order before we proceed to a consideration of receivership in New York and Chicago.

In Meriden, Connecticut, receivership as a remedy for slum housing first became available by the passage of an enabling act (Public Act #554) which was enacted by the 1965 session of the Connecticut General Assembly and is incorporated into the General Statutes as Section 19-347a through 19-347h. The statutes permit the adoption of the sections by local ordinance and provide for the appointment of an authority ("the chief executive of such municipality or his delegate") in the event that an order to abate a nuisance is disregarded; the appointment of a receiver of rents; the scope of the liability of the owner; the payment of expenses and the use of municipal personnel to assist the receiver; the discharge of the receiver; the rights of mortgagees or lienors who have expended money in payment of expenses properly charged the owner and the recoveries (a prior lien provision); and the creation of a tenement house operating fund, to

be funded by the appropriating body of the municipality.<sup>81</sup> As of January, 1967, however, Meriden had not yet adopted the legislation permitting the use of receiverships.

In Plainfield, New Jersey, certain sections of the city's Property Maintenance Code relate to receivership. Only buildings with two or more dwelling units are covered by the receivership provision, which is closely tied to a section on registration of buildings. In the code, when a violator of the provisions of occupancy codes disregards the order of the Public Officer to correct the violations, "upon resolution duly approved by the Common Council, [the Public Officer] may commence an action in the Superior Court seeking appointment of the Public Officer as Receiver ex officio of the rents and income from the said property." The rents are used to secure code compliance, defray costs and expenses of receivership and pay the city for any fines or penalties with costs which may have been imposed. In Plainfield's code provisions, a mortgagee of the property may be nominated receiver, but a specific provision declares that "no fees shall be allowed the Receiver or his Counsel for acting as such Receiver or Counsel."<sup>82</sup>

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<sup>81</sup>Letter to author from Joseph P. Noonan, Assistant Corporation Counsel, City of Meriden, Connecticut, January 11, 1967.

<sup>82</sup>City of Plainfield, New Jersey, Property Maintenance Code (Adopted July 1, 1964), Sections 5.06-12 through 5.06-16 and 11.01.

Mr. Edward Sachar, Corporation Counsel of Plainfield, explained that Plainfield "has not used the receivership program as it is too costly" and, he found, that "using other methods such as posting a building 'unfit for human habitation' and prosecuting the owners gets results."<sup>83</sup> Alfred A. Schmidt, Public Officer of Plainfield, explained the rationale behind the original receivership provision wherein only buildings with five or more dwelling units were considered apt for receivership:

Our receivership provision applies to five and over family dwellings since we tied it in to the Section on registration of buildings. You will note that the new amendment to Section 11 now stipulates registration is required for two or more dwelling units. The original idea was that proceeds collected while in receivership would not be sufficient to take care of necessary repairs in dwellings under approximately five families.<sup>84</sup>

Mr. Schmidt's comment on the use of receiverships was that it is too "cumbersome" and that other modes of code enforcement have proved effective in the past for Plainfield.<sup>85</sup>

The city of Trenton, New Jersey responded that there existed a local ordinance (ordinance 63-38) in its code for slum housing receivership. In Trenton the Chief Housing Inspector would act as receiver for structures, but some flexibility would be allowed. A recalcitrant landlord, it appears, could carry

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<sup>83</sup>Letter to author from Edward Sachar, Corporation Counsel, Plainfield, New Jersey, January 24, 1967.

<sup>84</sup>Letter to author from Alfred A. Schmidt, Public Officer, Plainfield, New Jersey, February 16, 1967.

<sup>85</sup>Letter to author from Alfred A. Schmidt, February 10, 1967.

out his own rehabilitation with supervision from the receiver and the receiver could, if it were appropriate, recommend demolition of the property. In Trenton, no receivers have ever been appointed for buildings. Perhaps the lack of a prior lien provision stands in the way of the use of receivership as a remedy.

In 1966, the City of St. Louis, Missouri passed a loosely drawn receivership ordinance, specifying that a disinterested person, appointed by and acting at the discretion of the Circuit Court, would act for the purpose of keeping, preserving, and managing the property subject to litigation. While the ordinance granted the receiver authority to place a lien upon receivership properties, it did not give the lien priority over existing encumbrances.

Mr. James J. Wilson, Assistant City Counselor of St. Louis, described the city's early experience with the ordinance:

After the ordinance was passed, five lawsuits were filed requesting that a receiver be appointed. The Circuit Court of the City of St. Louis felt that it would not appoint a receiver until the Supreme Court upheld the validity of the ordinance. The Circuit Court proceeded to declare the ordinance invalid, and the appeal has now been taken by the City of St. Louis to the Supreme Court of Missouri.<sup>86</sup>

#### RECEIVERSHIP IN NEW YORK CITY

New York City, which has had the longest history of

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<sup>86</sup>Letter to author from James J. Wilson, Assistant City Counselor, St. Louis, Missouri, March 10, 1967.

experimentation with the receivership remedy, enacted a prior lien law in 1937 to supplement an already existing repair law authorizing correction of housing violations by city authorities. This prior lien law enabled the city to make needed repairs and to have a lien prior to the mortgage for costs incurred. One year later, in Central Savings Bank v. City of New York,<sup>87</sup> the law was successfully challenged in court and declared unconstitutional for procedural reasons:

The court found the statute procedurally defective in that the mortgagee was given no opportunity to be heard and could not even question the amount of the lien placed ahead of his mortgage. Compelled to 'sit idly by' while the value of his lien was being diminished, the mortgagee, the court took pains to point out, 'is given no opportunity for a hearing and cannot question the reasonableness or the amount of the expense. The result of this procedure is that the Mortgagees pay for all the improvements and alterations without having been given their day in court or afforded any hearing.'<sup>88</sup>

In 1962, because of the acuteness of New York's housing shortage, a bill drawn up by the Special Committee on Housing and Urban Development of the New York City Bar Association was adopted. The law studiously avoided the mistakes of the past, providing that proper notice be given to parties of interest and barring foreclosure of property to cover costs of repairs.<sup>89</sup>

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<sup>87</sup>Central Savings Bank v. City of New York, 279 N.Y. 266, 18 N.E. 2d 131 (1938), cert. denied, 306 U.S. 661 (1939).

<sup>88</sup>The Central Savings case is treated in In Re Department of Buildings, 20 App. Div. 2d 851, 248 N.Y.S. 2d 199 (1964).

<sup>89</sup>The provisions of the 1962 Receivership law, then pending in the state assembly, are discussed in New York Times, March 30, 1962, 18:2 and April 18, 1962, 27:1.

The new provisions for repairs with special liens treated of those nuisances which constituted "a serious fire hazard or is a serious threat to life, health, or safety."<sup>90</sup>

In 1964, the new receivership law was challenged in the courts on the grounds that it violated due process and it was an unconstitutional impairment of a mortgagee's contractual rights. The court declared that due process was served by the 1962 receivership's amended provisions and that all contracts, although considered sacred by tradition, are subject to the reasonable exercise of the state's police power. In the Appellate court's words:

If the legislation before us 'is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end,' it may not be stricken as unconstitutional, even though it may interfere with rights established by existing contracts.<sup>91</sup>

The decision on the New York receivership law is seen as being consistent with statutes traditionally justified on the basis of the state's police power.

As a general rule, a statute will be upheld so long as it bears a substantial relationship to public health, safety, or morals and is reasonably adapted to meeting the exigencies that occasioned its enactment.<sup>92</sup>

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<sup>90</sup>New York Multiple Dwelling Law, Section 309 (e).

<sup>91</sup>In Re Department of Buildings, pp. 436-437.

<sup>92</sup>63 Michigan Law Review (1965), "Prior Lien on Rents and Profits Upheld as a Method of Financing Repairs--In Re Department of Buildings."

Under the receivership law, a special unit of the Building Department handles cases that may be deemed appropriate for the receivership action. The building must constitute a serious threat to health and safety, but must be basically sound. An order to repair within 21 days is issued. In the order is a list of the violations in existence. All parties of interest to the property are notified that unless the nuisance is abated, application to the Supreme Court for the appointment of a receiver will be made. If compliance is not achieved through the order to repair, the city applies for an order to show cause why the commissioner of the Department should not be appointed receiver of the property. At the court hearing, any party of interest can contest the justice of appointing a receiver for the property. Moreover, the court may allow the owner, mortgagee, or lienor to undertake upcoding of the building within a specified time limit. If the parties of interest fail in upgrading the condition of the building, the court-appointed receiver is then ordered by the court to carry out the rehabilitation of the building in question and is given access to the rents and issues of the property. The receiver draws on a special revolving fund provided for by the receivership law and holds a prior lien to insure his recouping the monies expended in receivership. When the orders of the court and the receiver's expenses and fees are recovered, the receiver is discharged.

As of December 31, 1965 (unfortunately the latest figure



available at this time) 679 buildings in violation of New York's various codes and ordinances relating to occupancy had entered some phase of the receivership process.<sup>93</sup> Actual appointment of a receiver had been effected in 115 cases (about 17%). In 216 cases (about 32%), proceedings were discontinued because of total or substantial compliance. In 161 cases (about 24%), proceedings were pending, waiting for time limits to run out, awaiting appointment of a receiver, etc. In 187 cases (about 28%), application for receivers had either been denied by the Supreme Court (2 cases) or proceedings had been discontinued for lack of feasibility for receivership (185 cases).<sup>94</sup> Although the use of receiverships has come at a high cost,<sup>95</sup> code compliance has been effected in almost twice the number of buildings than those that have ended in actual appointment of receivers (17% v. 32%).

#### RECEIVERSHIP IN CHICAGO

Whereas in New York, the complicated provisions of Section 309 of the Multiple Dwellings Law authorize receivership, in

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<sup>93</sup>City of New York, Department of Buildings, Annual Report 1965 (New York, 1966), p. 103.

<sup>94</sup>Ibid. Percentages computed from Building Department figures.

<sup>95</sup>The Commissioner of Buildings estimated the cost to be about \$25,000 per building. Concerning the recovery of funds expended in receivership programs: "The city has spent \$1.5 million on repairing such buildings since the receivership law went into effect in mid 1962, but lacking the power of a prior lien, it has got back less than 10% of that outlay." New York Times, April 8, 1965, 21:1.

Illinois the authority for receivership is granted under general equity powers derived from a law authorizing an injunction to require compliance with housing codes. The law, which authorizes a prior lien as in New York, provides for the sale of resulting "receivership certificates" to cover the costs expended by receivers.

If upon application hereunder, the court orders the appointment of a receiver to cause such building or structure to conform, such receiver may use the rents and issues of such property toward repair and rehabilitation of the property prior to and despite any assignment of rents; and the court may further authorize the receiver to recover the cost of such repair and rehabilitation by the issuance and sale of notes or receiver's certificates bearing such interest as the court may fix, and such notes or certificates, after their initial issuance and transfer by the receiver, shall be freely transferable and when sold or transferred by the receiver in return for a valuable consideration in money, material, labor or services, shall be a first lien upon the real estate and the rents and issues thereof, and shall be superior to all prior assignments of rents and all prior existing liens and encumbrances, except taxes . . . .<sup>96</sup>

Unlike the New York practice where single and 2-family dwellings are somewhat neglected in code compliance activity, the Illinois law has been used extensively in this area.<sup>97</sup>

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<sup>96</sup> Illinois Revised Statutes, Chapter 24, Section 11-31-2 (1965).

<sup>97</sup> The New York Times reported (April 3, 1966, p. 50) that an \$8 million federal grant for concentrated program of code enforcement and sight improvements in deteriorated neighborhoods was being held up because of the lack of single and 2-family provisions in the city's codes. Around 38% of the buildings handled by the Chicago Dwellings Association (which currently acts as receiver for the bulk of Chicago's receivership cases) fall into the single or 2-family category. Interview with Wang, February 28, 1967.

As in New York, receivers are authorized to collect rents, secure additional financing as it is needed, conduct rehabilitation where it is appropriate, and return buildings to owners when code standards are met and all rehabilitation costs have been recouped. In Chicago, receivers have been appointed since 1956. Unlike New York, receivership has been carried out not only by public or quasi-public agencies related to city government, but also professional people, private corporations and non-profit corporations have been appointed by the equity courts. In all, Chicago courts have appointed receivers for in excess of 500 Buildings.

#### PRIVATE RECEIVERS

Richard Sampson, president of the private, non-profit, Community Renewal Foundation, outlined the difficulties involved with the appointment of private receivers:

When a receiver is put in charge to rehabilitate a building that the owner will not bring up to code specifications, his work is made almost impossible . . . by his inability to borrow money to make the necessary repairs.<sup>98</sup>

The problem of financing plagues all receivership efforts in Chicago due to the fact that, unlike New York, the prior lien provision of the receivership law has not been tested in the courts. It is anticipated that if the prior lien is upheld, Chicago's receivership efforts will be able to proceed on an

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<sup>98</sup>Chicago Sun-Times, July 9, 1964, p. 86.

"un-subsidized" basis, for receivership certificates will become saleable in the private market. As of early 1967, potential certificate purchasers hesitated because of a lack of faith in the untested prior lien provisions of the receivership law.

Because of the difficulty of finding capital to finance rehabilitation, private receivers without working capital have sometimes defaulted and sought to be relieved of their responsibilities as receivers.<sup>99</sup> Moreover, one party, acting as receiver, was held in contempt of court for acquiring title to properties for which he had been appointed receiver.

Richard A. Keefe, 36, president of Novy Realty company, 600 Randolph St., was fined \$5,000 for contempt of court yesterday by Judge Richard A. Napolitano in Housing court.

The punishment was imposed because he acquired title to properties at 1100-06, 1001-05, 935 and 938-44 N. Wells Street--four slum buildings for which he was serving as court appointed receiver. Napolitano termed his actions illegal, and said he perpetrated a fraud on the court.<sup>100</sup>

#### THE COMMUNITY RENEWAL FOUNDATION

In mid-1964, the non-profit Chicago City Missionary Society, affiliated with the private, interfaith Community Renewal Foundation, was awarded a federal demonstration grant of \$209,000 "for experimenting with the receivership technique to

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<sup>99</sup>Milton Worssek, who had been appointed receiver for the building Martin Luther King had taken over in February of 1966, "asked to be relieved because he had been unable to collect rents from the tenants, three of whom were on public aid." Chicago Tribune, May 27, 1966.

<sup>100</sup>Chicago Tribune, September 28, 1966.

determine if it can be made to work in saving many of Chicago's older apartment buildings now in danger of becoming slums."<sup>101</sup> By May, 1966, the foundation had carried out the rehabilitation of one receivership building and was in the process of carrying out repairs on seven others.

#### THE CHICAGO DWELLINGS ASSOCIATION

In the fall of 1965, the corporation counsel of the City of Chicago began requesting that the Chicago Dwellings Association, a quasi-public unit of the city government, be appointed trustee in receivership cases. Chicago's experience with private receivers had been somewhat disappointing and, strengthened with the new prior lien provisions of the 1965 receivership law, a new approach toward receivership was tried.

The Chicago Dwellings Association, which operates from state grant funds acquired through its parent organization, the Chicago Housing Authority, began acting as receiver for properties in late 1965. By the end of that year, the Association had been appointed receiver for six buildings.<sup>102</sup> As of February, 1967, according to a weekly statistical Chicago Dwellings Association statistical report to the mayor dated February 24, 318 buildings had fallen into receivership.

Of the 318 receiverships, involving some 3,349 dwelling

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<sup>101</sup>Thomas Buck, "Chicago Pioneers a Plan for Middle-Income Housing," Commerce Magazine (May, 1966), p. 47.

<sup>102</sup>City of Chicago, Workable Program for Community Improvement (1965), op. cit., p. 11.

units, 186 buildings had been discharged because of compliance, demolition, or for other reasons. The Association had completed four rehabilitation jobs by February 24, 1967, but owner rehabilitation of receivership buildings under CDA supervision was either in progress or completed in 132 buildings.<sup>103</sup> The Association had rehabilitation commitments for 15 structures as of January 31, 1967, costing \$3,900 per unit or \$25,275 per building. The fifteen buildings averaged between five and six units, having 85 units in all.<sup>104</sup>

Demolition of receivership buildings under Chicago Dwellings Association supervision was either completed or pending in 67 cases.

Assistant Director Wang estimated that about 25% of the \$248,000 spent on receivership buildings has been recovered.<sup>105</sup>

Mr. Timothy O'Hara, Assistant Corporation Counsel of Chicago, pointed out that perhaps the biggest problem encountered in utilizing the receivership remedy is "the court's reluctance to appoint a receiver at the first hearing that the city proves it is entitled to such relief under the statute." Elaborating, Mr. O'Hara excoriated the "court's reluctance to grant the relief granted to cities by statute until after giving the owner 'one

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<sup>103</sup>Interview with Mr. Wang, February 28, 1967.

<sup>104</sup>Ibid.

<sup>105</sup>Ibid.

more chance' several times." This along with the equity court's failure to require an immediate answer by defendants in cases of hazardous structures, was a problem that stood in the way of effective administration of codes.<sup>106</sup>

#### CONCLUSION

Slum housing receivership, as a mode of <sup>d</sup>code enforcement, has advantages that seem to make it an indispensable tool in dealing with hard-core slum housing problems, but this equitable remedy also has disadvantages that limit its effectiveness. It cannot be doubted in any event, that receivership occupies a special place in code enforcement and that a definitive judgment at this time either in favor of or against this remedy would be premature.

In Illinois, the doubtful constitutionality of the prior lien provisions of the receivership statute clouds the future of receivership--especially in terms of funding the certificates sold to cover the costs of rehabilitation. Nevertheless, the Department of Housing and Urban Development recently decided to "risk" federal funds, in the form of a Section 314 Demonstration Grant, on receivership in Illinois.<sup>107</sup>

Assuming the constitutionality of receivership, however,

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<sup>106</sup>Mr. Timothy O'Hara, response to questionnaire, January, 1967.

<sup>107</sup>Interview with Mr. Wang, February 28, 1967.

several significant disadvantages are associated with this remedy. It is pointed out that the fine legal procedure necessary to assure due process of law makes this remedy cumbersome and difficult to carry out.

The legal procedure, necessarily, must be handled carefully, so that the courts can legally invoke the receivership sanction. In Chicago, for example, it has been found to be difficult to properly serve notice on all owners of record and others who have interest in a property, as is legally required. This has slowed the receivership program in the city.<sup>108</sup>

The receivership remedy, no matter how well justified in terms of providing safe and healthy surroundings for tenants, is a drastic remedy that virtually expropriates property rights from owners and mortgage holders. An owner of property that falls into receivership can lose control of his property for as much as fifteen years.<sup>109</sup> Under the circumstances of equity proceedings, property rights must be carefully balanced against the dignity and rights of tenants and the power of the state to provide for the general welfare. The traditional attitude of courts has been to favor property owners rather than tenants. In an interview, Mr. Timothy O'Hara, Assistant Corporation Counsel of Chicago, indicated that it was his experience in equity proceedings that local chancery courts favor even the most neglectful owners over

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<sup>108</sup> Frank T. DeStefano, "Comments on Code Enforcement in Washington, D.C.," A statement prepared for delivery before the Committee on the District of Columbia, United States Senate, Washington, D.C., August 4, 1966, p. 6.

<sup>109</sup> <sup>78</sup> Harvard Law Review, op. cit., p. 828.



the city's attempts to induce code compliance through equity proceedings.<sup>110</sup>

The question of economics enters the picture in receivership at several points. Perhaps the biggest problem is that of determining which properties are apt for receivership. The criterion of "most hazardous" neglects the factor of economic feasibility. Often, the most hazardous buildings are the least economically feasible for rehabilitation.

"In the case of receiverships, the rental proceeds may not be adequate to cover costs . . . ,<sup>111</sup> resulting, as we have seen, in a serious depletion of a "revolving fund" that may have been established to provide seminal funds for receivership. Partly because of the past lack of prior lien provisions in receivership laws and partly because of the economics of rehabilitation, receivership has failed in the past to recover monies spent. Notwithstanding social benefits of great worth, receivership has not been an economical activity. Moreover, from the survey of modes of code enforcement in Chapter I, it is apparent that increased rents accompany rehabilitation of structures.

The thrust of current thought regarding approaches toward urban redevelopment is in the direction of a community of area-wide approach. Federally insured loans are easier to come by

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<sup>110</sup> Interview with Timothy O'Hara, Assistant Corporation Counsel, City of Chicago, July 19, 1966, Chicago, Illinois.

<sup>111</sup> Department of Housing and Urban Development, Report on NAHRO Proposal on Concentrated Code Enforcement, A report prepared for the Committee on Banking and Currency, Washington, D.C., July 26, 1966, p. 3.

for owners of property in urban renewal conservation areas and code enforcement programs (like the Baltimore Plan) seem to emphasize the "concentrated area" idea. Receivership, although admittedly employed only as a last resort remedy to relieve hazardous situations in housing, operates in the opposite direction--lifting up a single building from the mass of slum dwellings that may surround it.

The complaint that the increased tempo of code enforcement activities undertaken by the city may be leading to a kind of tenant irresponsibility has been raised and, perhaps, has relevance here:

The enactment of the receivership law . . . put the city squarely into the business of building repair and rehabilitation. Having been given the requisite power to undertake the task, in popular expectation the city now has the responsibility for doing so. In fact, in many instances, tenants no longer look to their landlords for satisfaction, but make their demands to the city. As a consequence, other repair programs (outside the receivership program) have now been undertaken though it is too soon to assess their effectiveness.<sup>112</sup>

Receivership should not be conducted in such a way as to foster tenant dependence on government. The Chicago Dwellings Association conducts a kind of tenant training program in conjunction with its receivership activities that is designed to deal with

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<sup>112</sup>Judah Gribetz and Frank P. Grad, "Housing Code Enforcement," Journal of Housing (October, 1966), p. 512.

just this type of tenant incapacity independently to come to terms with urban life. An inordinate number of such inept and hapless people seem to be found in hazardous or unhealthy housing surroundings.

In concluding this discussion of disadvantages incident to the employment of the receivership remedy, the danger that a receivership program may become a political expedient wherein "showcase" structures are produced must be pointed out. Noticeable improvement in a building at phenomenal cost may pay dividends in terms of soothing civil rights groups, for example, that cry out for improvements in inner city housing.<sup>113</sup>

Mr. Frank T. DeStefano well summed up the problem of the receivership remedy in code enforcement activities when he pointed to the "administration gap" that may develop in operating a receivership program.<sup>114</sup> In his view, receivership should not become an administrative tool because of the problem of managing many trusteeship buildings. He pointed out that, presently, the New York Real Estate Department is not equipped to handle the administration involved in receivership.

Instead, he asserted that receivership's main value derives from the psychological effect that the thought of losing

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<sup>113</sup>63 Michigan Law Review, op. cit., p. 1309.

<sup>114</sup>Interview with Mr. Frank T. DeStefano, Assistant Director, National Association of Housing and Redevelopment Officials, November 28, 1966, Washington, D.C.

control over property has on recalcitrant code violators. For DeStefano, an optimum number of receiverships--enough so as to generate the desired effect, but not enough so as to create an overwhelming administrative problem--should be sought.

"Receivership," according to the then Deputy Commissioner of New York City's Department of Buildings, Judah Gribetz, "is the only legal weapon that generates activity by all parties who have an interest in the property. Property owners who studiously avoid service of criminal process suddenly appear at the department's offices to personally request the opportunity to comply with the violation schedules in order to avoid receivership."<sup>115</sup> The psychological-economic effect of receivership proceedings seems to have a great effect on chronic code violators. From the figures presented in considering both New York and Chicago's receivership programs, it is apparent that private rehabilitation is induced when the threat of receivership is near at hand. The Chicago Dwellings Association's number of completed rehabilitation jobs was four as against ninety-nine owner rehabilitations.

In contrasting the effectiveness of receivership with criminal prosecution in housing code enforcement cases, Professor Grad says that criminal proceedings often generate fines, but do nothing about making slum buildings more habitable. Moreover,

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<sup>115</sup>Judah Gribetz, "New York City's Receivership Law," Journal of Housing (July, 1964), p. 299.

For the slum dweller forced to occupy grossly sub-standard buildings--frequently with hundreds of violations--receivership alone provides certain removal of all serious hazards and, at least, minimum legal habitability.<sup>116</sup>

Perhaps the biggest advantage of receivership proceedings over traditional modes of code enforcement is its flexibility and the court's ability to maintain jurisdiction throughout the proceedings. During the receivership process, the owner of title or the mortgage holders are allowed to fulfill their duties as landlords by complying with housing codes, while both the receiver and the court is still within easy reach. And in a receiver-conducted rehabilitation, court jurisdiction continues until costs are paid off completely.

At least circumstantial evidence exists to the effect that receivership as a mode of housing code enforcement is more likely to succeed in large cities than in smaller cities. In smaller cities it is more likely that there will be a lack of qualified receivers to see receivership proceedings through and able financially to come up with the initial funding that seems to be necessary in receivership cases. Also, the problem of selection of apt buildings for this remedy assumes a large stock of rundown buildings to choose from where the legal processes of receivership will not be bogged down in court proceedings. In

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<sup>116</sup>Legislative Drafting Research Fund, Legal Remedies in Housing Code Enforcement in New York City, op. cit., pp. 115-116.

small cities where, perhaps, demolishing or posting "unfit for human habitation" signs has always proved satisfactory in inducing code compliance, this stock of appropriate buildings would not exist in great enough numbers to justify a receivership program.

Both New York City and Chicago receivers go through a thorough winnowing procedure to select structures that are not only hazardous and unhealthy, but also that are legally processable and economically feasible for rehabilitation. Public support for such a drastic remedy as receivership is necessary too. In smaller cities there seems to be some kind of "visceral attitude" that resists regulation of single and 2-family residences. A city that had a high rate of owner-occupancy and single family residences might react unfavorably to receivership in code compliance cases.<sup>117</sup>

A final judgment of slum housing receivership as a mode of code enforcement is premature at this time, since the adaptation of this legal remedy to code enforcement activities is of such recent date. Already it is clear, however, that there is a place in urban redevelopment for this kind of innovative approach in order to cope with chronic code violators who seem

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<sup>117</sup>New York City, the largest city of all, is an exception. Single and 2-family structures are exempted from many occupancy requirements.

to inflict with impunity the misery of slum housing conditions on disadvantaged urban dwellers through neglect, through overcrowding and perhaps through an inability or an unwillingness to get things done. Receivership, along with other equitable remedies adapted for use in the battle against slums, while never replacing the traditional, administrative approaches toward code compliance, seems to be a useful and effective supplement that holds great promise.

Martin Luther King, speaking from the steps of his "trusteeship" building on Chicago's west side in early 1966, had declared that the moral question raised by misery-laden housing conditions was more important than the legal question of property rights and landlord prerogatives. Perhaps King was wrong in dichotomizing the two.

**APPENFIX A**



Date \_\_\_\_\_

Respondent's Name \_\_\_\_\_

Respondent's Title \_\_\_\_\_

Respondent's Address \_\_\_\_\_

- 1) Year in which your receivership program started? \_\_\_\_\_
- 2) Is there specific enabling legislation relating to receivership? Yes \_\_\_ No \_\_\_ If yes, please cite \_\_\_\_\_
- 3) Is there specific enabling legislation relating to lien priority? Yes \_\_\_ No \_\_\_ If yes, please cite \_\_\_\_\_
- 4) Who qualifies for appointment as a slum receiver? (Check one or more).

- \_\_\_\_\_ Professional Person
- \_\_\_\_\_ Private Corporation
- \_\_\_\_\_ Non-Profit Corporation
- \_\_\_\_\_ Public Agency
- \_\_\_\_\_ Other (Specify) \_\_\_\_\_

- 5) How does receiver of slum properties carry out his responsibilities? (Please check)

Yes    No  
\_\_\_\_    \_\_\_\_

- \_\_\_\_\_ Can receiver of slum building supervise owner rehabilitation?
- \_\_\_\_\_ Can receiver carry out rehabilitation himself?
- \_\_\_\_\_ Can receiver recommend demolition?

- 6) Number of buildings, to date, that have fallen into receivership? \_\_\_\_\_
- 7) Approximate average age of these buildings? \_\_\_\_\_
- 8) Number of receivership buildings brought into code compliance? \_\_\_\_\_
- 9) Estimated average number of months elapsed from beginning of litigation until court discharge? \_\_\_\_\_
- 10) Estimate average number of court appearances necessary to receivership cases? \_\_\_\_\_
- 11) Does your city have a federally approved and financed Urban Renewal program? Yes \_\_\_ No \_\_\_

- 12) How does receiver recover expenses (rehabilitation costs and fees) incurred in the course of receivership?
- 13) Criteria for property falling into receivership. A short statement describing, from your experience, the criteria used in determining which properties are apt for the receivership remedy.
- 14) What, if anything, has been your city's single biggest problem in utilizing the receivership remedy?
- 15) Are there other problems? Yes \_\_\_\_ No \_\_\_\_ Please explain.
- 16) What in your estimation, is your city's most effective device, or combination of devices, for inducing housing code compliance?
- 17) What is the greatest single barrier to housing code enforcement in your city?

**APPENDIX B**

In 1960, The Municipal Year Book reported that thirteen cities had authority to place property in receivership to be operated by the city with the cost of repairs to be paid from the property.<sup>118</sup> These cities were Chicago, Illinois; Los Angeles, California; Kansas City, Kansas; Tacoma, Washington; Lubbock, Texas; Lockport, New York; Meriden, Connecticut; Montebello, California; White Plains, New York; Baytown Texas; Bell, California; Redlands, California; and Santa Clara, California. The cities varied in population size from about 10,000 up to over 1,000,000.

The Department of Housing and Urban Development queried its regional offices in 1966 as to the practice of receivership, updating the 1960 information, by reporting that five other cities which now have this authority are New York, New York; New Haven, Connecticut; Hartford, Connecticut; Trenton, New Jersey; and Plainfield, New Jersey.<sup>119</sup> Mr. Frank T. DeStefano, of the National Association of Housing and Redevelopment Officials, in an interview, pointed out that in 1966, St. Louis, Missouri had

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<sup>118</sup>"Municipal Housing Codes," op.cit., pp. 322-328.

<sup>119</sup>Letter to author from Leo Stern, Acting Director, Rehabilitation and Codes Division, Department of Housing and Urban Development, November 21, 1966.

initiated a receivership program as well.<sup>120</sup>

This brought to nineteen the number of cities with authority to appoint receivers. Since each city is different, having experienced unique code enforcement problems, cordial or hostile attitudes and responses from courts, and operating under varying legal authorizations, a systematic method of gleaning information about receiverships was in order. A questionnaire was developed for this purpose. Included in the questionnaire were questions about the existence of statutory authorization--or, possibly, the lack of it--for the appointment of receivers and lien priority. Questions about who qualifies for appointment as a slum receiver and about how receivers carry out their responsibilities were included in order to test the flexibility of the procedure. Certain statistical information was required about the number of buildings put into receivership, the average age of the buildings, the number of buildings brought into code compliance through receivership actions and about time elapsed between court appointment and discharge. Finally, open-ended questions about the criteria used in determining which properties are apt for the receivership remedy and about problems encountered in utilizing the receivership remedy were included.

The questionnaires were sent to the corporation counsels in the nineteen cities. As the legal officer of a city, the city

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<sup>120</sup> Interview with Mr. Frank T. DeStefano, Assistant Director, National Association of Housing and Redevelopment Officials, November 28, 1966, Washington, D.C.

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attorney or corporation counsel is in the best position to answer questions about receivership. In a few instances, follow-up letters were necessary to clear up questions raised by responses. In one instance, my inquiry was forwarded to building department personnel for attention.

Thirteen of the nineteen cities queried responded to the questionnaire, but only two cities, Chicago, Illinois and Trenton, New Jersey, actually completed the questionnaire. Eight cities said that they did not have authority to appoint receivers for properties in violation of housing codes. Three cities said either that they have such authority and do not use it, or that such authority (as in the case of Meriden, Connecticut) has not yet been adopted from existing state legislation. Only one city, Chicago, said that they have and use the receivership remedy for slum housing cases. The corporation counsel of New York City failed to respond to the questionnaire, but it is known from other sources that New York has an extensive receivership program. The results of the questionnaire are summarized in the following Table.

TABLE

| City                    | Responded | Authority<br>for<br>Receivership | Receivership<br>employed | No Authority<br>for<br>Receivership |
|-------------------------|-----------|----------------------------------|--------------------------|-------------------------------------|
| Chicago, Illinois       | X         | X                                | X                        |                                     |
| Meriden, Connecticut    | X         | X                                |                          |                                     |
| Plainfield, New Jersey  | X         | X                                |                          |                                     |
| Trenton, New Jersey     | X         | X                                |                          |                                     |
| White Plains, New York  | X         |                                  |                          | X                                   |
| Lubbock, Texas          | X         |                                  |                          | X                                   |
| Kansas City, Kansas     | X         |                                  |                          | X                                   |
| Tacoma, Washington      | X         |                                  |                          | X                                   |
| Redlands, California    | X         |                                  |                          | X                                   |
| Montebello, California  | X         |                                  |                          | X                                   |
| Santa Clara, California | X         |                                  |                          | X                                   |
| Los Angeles, California | X         |                                  |                          | X                                   |
| St. Louis, Missouri     | X         | X                                |                          |                                     |
| Lockport, New York      |           |                                  |                          |                                     |
| Baytown, Texas          |           |                                  |                          |                                     |
| Bell, California        |           |                                  |                          |                                     |
| New York, New York      |           | (X)*                             | (X)*                     |                                     |
| New Haven, Connecticut  |           |                                  |                          |                                     |
| Hartford, Connecticut   |           |                                  |                          |                                     |
| <b>TOTAL</b>            | <b>13</b> | <b>6</b>                         | <b>2</b>                 | <b>8</b>                            |

\*Known from sources other than questionnaire returns.

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APPROVAL SHEET

The thesis submitted by Francis R. Parente has been read and approved by the director of the thesis. Furthermore, the final copies have been examined by the director and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content and form.

The thesis is therefore accepted in partial fulfillment of the requirements for the degree of Master of Arts.

May 5 1967  
Date

  
Signature of Adviser